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THE

INDIAN DIGEST;

A COMPLETE INDEX

TO THE

Reported Cases of the High Courts Established in India.

BY

HERBERT COWELL.

SECOND EDITION.

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ADVERTISEMENT TO THE FIRST EDITION.

This compilation includes the notes of all the decisions of all the High Courts of Judicature established in India, which are reported in the following volumes :—

BENGAL LAW REPORTS, vols. i.—iii., inclusive.
SUTHERLAND'S WEEKLY REPORTER, 1864.
SUTHERLAND'S FULL BENCH RULINGS.
SUTHERLAND'S WEEKLY REPORTER, vols i.—xii., inclusive.
MADRAS HIGH COURT REPORTS, vols. i.—iii., inclusive.
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CORYTON'S REPORTS, 2 vols.
HYDE'S REPORTS, 2 vols.
MARSHALL'S REPORTS.
INDIAN JURIST, Old Series.
INDIAN JURIST, New Series, 2 vols.
BOURKE'S REPORTS.

A large number of Privy Council decisions are included in the above reports, and the notes of them will be found in the following pages.

H. C.

CALCUTTA, *June*, 1870.

PREFACE TO THE SECOND EDITION.

THE object of this Book is, in the first place, to facilitate reference to the enormous mass of reported decisions of the four High Courts established in British India during the ten years which immediately succeeded the establishment of the Bengal tribunal on the 1st July, 1862. Those decisions cannot practically be disregarded, however much they may in some cases be impugned. Those ten years comprise my own experience of the Indian Courts, and of the growing inconvenience of their undigested reports.

In the second place, the object is to systematize the subjects of those decisions. I have selected twenty-four heads or departments of law, in which to exhibit consecutively, under their different subdivisions, their gradual and comparative development by the aid of the four concurrent jurisdictions mentioned above, and also of the Privy Council. In doing so care has been taken, where several rulings have been made in the same case, to apportion them to their respective heads.

A former edition of this Work appeared three years ago, (bringing the decisions down to December, 1869,) having in view the first only of these objects, which may or may not have been adequately secured. At all events a considerable edition was disposed of, and the demand for a second, together with the greater leisure on return to England, suggested this effort (which has been a laborious one) to supply it.

The notes contained in the former edition have been to some extent, though sparingly, weeded. There have been added the notes contained in the following volumes :—

BENGAL LAW REPORTS, vols. iv.—viii., inclusive.
SUTHERLAND'S WEEKLY REPORTER, vols. xiii.—xvii., inclusive.
MADRAS HIGH COURT REPORTS, vols. iv.—vi., inclusive.
BOMBAY HIGH COURT REPORTS, vols. v.—vii., inclusive.
NORTH WEST REPORTS, vols. i.—iii., inclusive.

H. C.

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BENGAL SECRETARIAT LIBRARY

THE INDIAN DIGEST.

I.

ADMINISTRATION.

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1.—ADMINISTRATION.

Section 282 of the Indian Succession Act does not interfere with the right of a decree-holder under Section 203 Act VIII of 1859, to have his decree satisfied out of the property of a deceased person (or out of the property of the defendant, the representative, if it should appear that he has not duly applied the property of the deceased) to the exclusion of other creditors, after deducting the expenses chargeable under Sections 277 to 281 of the former Act. *Nil Komol Shaw* v. *I. Reed*, 17 S. W. R., C. R., 513.

Where a widow administering her husband's estate sued to recover certain moveable property [illegible]ngly appropriated by her son, who pleaded a set [illegible]nt of a claim against his father,—*Held* t[illegible]t was rightly referred to a separate suit. *[illegible]nly* 14. S. W. R., C. R., 136.

[illegible]f sued the defendants on the ground th[illegible] in possession of his deceased debtor's pr[illegible] being found that the defendants rec[illegible]sets from the deceased,—*Held*, the suit [illegible] dismissed.

I[illegible]d simply been against the defendants as l[illegible]onal representatives of the deceased, and [illegible] alleged that no assets had come to thei[illegible] plaintiff would have been entitled to a[illegible]inst them as representatives of the dece[illegible] had prayed for such a decree), with[illegible] a trial on the question whether or not the defendants had assets ; and in that case he might have proceeded, in enforcement of his decree, under the provisions of Section 203 of Act VIII of 1859. *Hiralall Mookerjee, In the matter of the petition of*, 6 B. L. R., Ap., 100, and 14 S. W. R., C. R., 431.

In the administration by the Court of the estate of a deceased, the dividend in respect of a debt against the estate is to be estimated on the amount of the debt at the date of the order for payment, and not at the date of proof. *Agra and Masterman's Bank* v. *J. M. Robinson. In the matter of the Land Mortgage Bank of India*, 6 B. L. R., Ap., 140.

A suit for a legacy must be brought, not within the jurisdiction where the legatee resides, but within the jurisdiction where the heir resides. *Ashootosh Bone* v. *Hum Chum Nag*, 16 S. W. R., C. R., 305.

Where an *ad valorem* stamp duty had been paid on a portion of the property of the testator under letters of administration which were valid until revoked, it was held that, in determining the stamp to be affixed to new letters of administration to be granted, credit should be given for the amount of duty which had been already paid, and such duty was not payable a second time. *In the goods of Lieutenant-General Peter Innis, deceased*, 16 S. W. R., C. R., 253.

The Court will restrain by injunction a creditor from proceeding in an administration suit, after an order has been made on a summons obtained by another creditor, under Section 24 of Act XI of 1854, for the administration of the same estate. *Lutcheemund Sett and others* v. *S. M. Komulmoney Dossee*, 1 Ind. Jur., N. S., 9.

2.—ADMINISTRATOR-GENERAL.

The statement of a belief by the Administrator-General that applicants for probate are about to make charges which Section 30, Act VIII of 1855, prohibits, and thereby renders it illegal for them to "receive or retain," is not a sufficient ground for inducing the Court to refuse letters of administration to applicants otherwise well entitled, and whose

application is altogether *de hors* the Administrator-General's Act. *Foggo* v. *Louden*, 1 Ind. Jur., O. S., 139.

The Administrator-General appointed under Act VIII of 1855, has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has. *Arthur M. Ritchie* v. *W. Stokes*, 2 Mad. Rep., 255.

Right of Administrator-General to retain assessment in his hands in respect of contingent debts. *Shepherd* v. *Hogg*, Cor. Rep., 67.

When letters of administration which had been granted to the Administrator-General of Madras were recalled, and he had merely taken manual possession of cash, Government promissory notes, and the title-deeds of leaseholds belonging to the deceased, the High Court, under Section 22 of Act VIII of 1855, allowed him commission at the rate of 2½ per cent. on the cash and the value of the notes, but refused to allow it on the leaseholds. *In the goods of Simpson, deceased*, 1 Mad. Rep., 171.

The bare possibility that the Act of Limitation may ultimately become a bar to the recovery of assets is not such danger of misappropriation as warrants the granting to the Administrator-General of an order under Section 12 of Act VIII of 1855.

Semble,—A debtor to the estate of a deceased person cannot apply for an order under that section. *In the goods of Girdir Das Vallaba Das, deceased*, 1 Mad. Rep., 234.

The Administrator-General appointed under Act VIII of 1855 has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has. *Arthur M. Ritchie* v. *W. Stokes and others*, 2 Mad. Rep., 255.

In a suit, brought by a second mortgagee against first mortgagees (admittedly overpaid) to compel the first mortgagees to convey to him the mortgaged premises, the heir or legal representative of the deceased mortgagor is, according to the balance of authority, a necessary party. Cases bearing on the above question collected and considered.

Where it was uncertain who was the heir and legal representative of the deceased mortgagor, and the circumstances attending the execution of the second mortgage were not free from doubt, the cause was allowed to stand over, for the purpose of enabling the plaintiff to apply for an order to the Administrator-General (under Section 17 of Act XXIV of 1867) directing him to apply for letters of administration to the estate and effects of the mortgagor; and the plaintiff was allowed (in the event of letters of administration being granted to the Administrator-General) to amend his plaint by making the Administrator-General a party to represent the deceased mortgagor. The plaintiff was, however, ordered to give security for the probable costs of the Administrator-General in the suit. *Vithaldás Narotamdás Karsandás Kishavdás et al.*, 5 Bom. Rep., O. C., 76.

Where a widow, not being resident in any zillah, had not been able to get a certificate under Act XXVII of 1860, letters of administration were, on the consent of the widow, directed to issue to the Administrator-General. *In the matter of Damoodar Doss, deceased*, Bourke's Rep., T. J., 6.

3.—Letters of Administration.

Natives are not bound to take out letters of administration. *In the matter of the pretended will of Tiruváhier Kirustuappa Mudlai*, 1 Mad. Rep., O. C., 60.

A Judge was held not to have exercised an unwise discretion in rejecting the claim of an applicant to be a co-administrator to his deceased brother's estate, when it was in evidence that the intestate had stated that he had to receive money from his brother (the applicant), although such statement was not in legal evidence. *Mr. Aratoon Stephen* v. *Mr. Carapiet Stephen*, 10 W. R., 90.

The High Court has no power to grant letters of administration to the attorney of the executor of a deceased, in respect of assets situate in the Punjab. The High Court has power to grant letters of administration in respect of such assets to the Administrator-General. *In the goods of Duncan (deceased)*, 1 B. L. R., O. C., 3.

A British subject died intestate, leaving property within the jurisdiction of the High Court for the N. W. Provinces, and of the High Court at Fort William. General letters of administration were granted by the High Court for the N. W. Provinces to the Administrator-General of Bengal, who was not then aware that the deceased had left property within the jurisdiction of the High Court at Fort William. On discovering that the deceased had left property within the jurisdiction of the latter Court, the Administrator-General applied to that Court for general letters of administration, which were granted by the Court, on condition that he would apply to have the letters of administration granted by the High Court for the N. W. Provinces recalled. The High Court at Fort William has power to grant to the Administrator-General letters of administration which shall operate throughout the whole of the Presidency of Bengal. *In the goods of F. Nechterlion*, 1 B. L. R., O. C., 19.

A pecuniary legatee is not entitled to letters of administration *cum test* in preference to a creditor, and therefore is not entitled, under Sections 10 and 17 of Act VIII of 1855, to a grant of administration in preference to the Administrator-General. *In the matter of the administration de bonis non cum test annexo of N. C. Viegas*, 1 Bom. Rep., 103.

When letters of administration have been granted to the Administrator-General, and subsequently withdrawn on a false representation, the Court will grant a rule calling on the executors to show cause why the rule should not be extended to the Registry of the Court. *In the goods of Maharajah Sreemunto Benaich Rao Imrit*, 1 Ind. Jur., N. S., 10.

Where citation has issued, and letters of administration have been brought in, the proper course is for the promovent to proceed by plaint. *In the goods of Hurrokisto Sett, deceased, and Kisto Mohun Bysack* v. *Radhakisto Sett*, 2 Ind. Jur., N. S., 117.

Under Sections 212 and 213 Act X of 1865, it is necessary that the attorney applying for letters of administration should be within the jurisdiction of the Court. *In the goods of J. C. Nesbitt. In the goods of F. C. Briant*, 4 B. L. R., Ap., 49.

In an application for letters of administration in suppression of those which had originally been granted by the Judge of the 24-Pergunnas, under Section 6 (1) of Act XXVII of 1860,

Norman, J., ruled that, sitting on the original side of the Court, he could not grant the latter. *Shamlal Das, In the goods of*, 5 B. L. R., Ap., 21.

4.—Certificates.

(a) *Right to Certificate.*

Two certificates of administration cannot run together. So, a widow who fails to appear and contest the grant of a certificate to another party, made prior to her own application, cannot claim one for herself afterwards, but she may be allowed a certificate to act as guardian of her minor (adopted) son. *Sreemutty Sham Manna* v. *Ramdyal Goohoo*, 1 W. R., Mis., 3.

Certificates under Act XXVII of 1860 can only be granted to persons claiming to be representatives of deceased persons to enable them to recover debts and receive interest or dividends; but such certificate concludes only the debtors of the estate, and the procedure given by the Act was not intended to apply to the decision of any right to succeed to the estate of a deceased person. *Ex-parte Ram Narasinga*, 2 Mad. Rep., 164.

A person was trustee of "wuqf" or trust property. He had also some other property (how much was not clear) of his own. He made a will relating only to the trust property, and appointed an executor. *Held* that the executor mentioned in the will was entitled to a certificate under Act XXVII of 1860, with regard to the trust property; and the legal personal representative of the deceased was entitled to a certificate under the same Act, with respect to any other property of which he died possessed. *Mirza Daud Ali* v. *Syed Nadir Hossein*, 3 B. L. R., A. C., 46; S. C., 11 W. R., 388.

The circumstance of a deceased party having the day of his death informed his debtor that he had given the whole of the moneys due to him to his mother-in-law, was held to be a sufficient indication (whether the gift was valid or not) that she was the proper person to receive the money due to the deceased and the certificate under Act XXVII of 1860. In cases under Act XXVII of 1860, Judges should always certify whether the certificate has been actually granted. *Zeemutoonissa Khanum* v. *Kutoo Begum*, 12 W. R., 239.

If there are several applicants for a certificate under Act XXVII of 1860, the heir or the person or persons having the largest interest in the estate are entitled to the certificate, in preference to others whose interests are less considerable. If the Court thinks any small interest not sufficiently protected, it may call upon the party taking the certificate to give security to the extent requisite for the protection of such interest. *Azeem Khan* v. *Mussamut Ameeran*, 12 W. R., 38.

The executor under a will, if it be not contested, has an undoubted right to a certificate under Act XXVII of 1860, though he be not the legal heir. If the will be contested the Judge should enquire into its validity, and, if he consider it proved, should give a certificate, leaving the parties dissatisfied to set it aside by a regular suit. *Bidhoo Bhooshun Mookerjee* v. *Issur Chunder Roy Chowdhry*, W. R., 1864, Mis., 4.

Claim under a will to a certificate to enable applicant to collect the debts of a deceased Mohammedan under Act XXVII of 1860. No necessity for collecting the debts being shown, and the inheritance being disputed,—*Held* that the Judge was right in refusing to give a certificate under that Act. *Syed Agameer* v. *Gomanee Khanum*, W. R., 1864, Mis., 6.

The allegation of objectors who claim the property of a deceased person under a *tukseemnamah* transferring the property from the widow to them, should be enquired into; and if it is proved to be genuine, the objectors are entitled to a certificate, instead of the widow, as legal heir of the deceased. *Deb Pershad* v. *Monga Koonwar*, 4 W. R., Mis., 19.

A certificate may be granted to a widow, as guardian of her minor son, to collect the debts due to her deceased husband, notwithstanding that the adoption of the husband may have been set aside. *Nitto Kallee Debee* v. *Obhoy Gobind Chowdhry*, 5 W. R., Mis., 10.

Where a will appointed the nephews of the testator to manage 4 annas of the property (the subject of the will) in their own right, and 12 annas as guardians of a minor son,—*Held* that the nephews were entitled to one certificate under Act XXVII of 1860 to collect the debts of the whole estate, and to another certificate under Act XL of 1858 to take charge of the minor's 12 annas. *Makhun Chunder Shaha and others* v. *Chand Monee Dassee and others*, 8 W. R., 105.

An heiress was held entitled to a certificate under Act XXVII of 1860, although the owner of the property had died nine years previously, and the property had been previously managed by a third party. *Pulash Money Dossee* v. *Anund Moyee Dossee*, 8 W. R., 398.

A Hindu female is not entitled to apply for a certificate under Act XXVII of 1860, on the presumption that her husband is dead, when he has only been absent nine years. *Shurno Moyee Dossee*, 8 W. R., 421.

When the title of a person claiming as adopted son of the deceased is disputed, the certificate may properly be granted to the widow of the deceased. *Dirg Paul Singh* v. *Mussamut Gainda Koonwar*, 1 Agra Rep., M.A., 13.

The application of a widow for a certificate having been opposed by a third party (K.), who produced an alleged will of the deceased, the Judge ordered the grant of a certificate to K. Subsequently the widow petitioned for an enquiry into the genuineness of the will, and the Judge, after examining witnesses, considered there were sufficient grounds for investigating the charge of forgery, and directed that K. should be sent to the Magistrate for that purpose.

Held that the Judge ought not to have granted the certificate to the party who produced the will unless he was quite satisfied that the will was genuine. As the order, however, directing that K. should be sent to a Magistrate was made with jurisdiction, the High Court could not interfere. *In the matter of Koongh Hur*, 11 W. R., 171.

As a general rule, the heir is the person who should have a certificate to collect the debts and manage the estate of a deceased person under Act XXVII of 1860. If he, as heir, is entitled to the whole surplus of the estate, the fact of his having been hostile to the deceased is immaterial. When there are several heirs, and no disputes amongst them, he who is entitled to the largest share may,

in the absence of other disqualifying circumstances, and in the discretion of the Court, be entrusted with the duty. *Abdool Ali* v. *Abidunnissa Khatoon*, W. R., 1864, Mis., 41.

Certificates under Act XXVII of 1860 can only be granted to persons claiming to be representatives of deceased persons to enable them to recover debts and receive interest or dividends; but such certificates include only the debtors of the estate, and the procedure given by the Act was not intended to apply to the decision of any right to succeed to the estate of a deceased person. *Ex-parte Ram Narasinga*, 2 Mad. Rep., 164.

A mother is not entitled to a certificate under Act XXVII of 1860 to collect debts due to her deceased daughter, in preferenee to the husband of the deceased. Such certificate, however, will not authorize the husband's interference with the mother's possession of the landed property which she claims as her own. *Mohun Soondur Koonwar* v. *Ramanoogro Narain*, 3 W. R., Mis., 3.

The mother of a deceased adopted minor son is his legal representative, and entitled to a certificate under Act XXVII of 1860 as his legal heir. *Sreemutty Deeno Moyee Dossee* v. *Doorga Pershad Mitter*, 3 W. R., Mis., 6.

Held that the certificate in this case was given to the party best entitled to it with reference to the object of Act XXVII of 1860, *i.e.* the deceased's full sister's son, who was the party in possession, in preference to the deceased's half brother. *Shaikh Lall Mahomed* v. *Buzlool Hossein*, 17 S. W. R., C. R., 562.

The childless widows of the brother and nephew of a deceased person are not entitled under the Hindu law to be considered as the legal representatives of the deceased; and there being evidence in this case of the deceased having assigned his property to his illegitimate sons and acknowledged them as his sons, a certificate under Act XXVII of 1860 to administer to his estate was granted to them. *Prodhan Ram* v. *Musst. Jeria Kooer*, 17 S. W. R., C. R., 189.

Certain members (N. and A.) of a joint Hindu family, having commenced a suit to set aside an adoption by one of the family (C.), a compromise was effected by which the several parties took separate shares of the family property. C. having died, N. and A. applied for a certificate to collect the debts due to his estate, but were opposed in a joint petition made by the widow and adopted son.

Held that the applicants could not be entitled to the certificate, which might, however, be given to the son with the consent of the widow. *Mussamut Munbasee Kooer* v. *Nowrungu Lall*, 15 S. W. R., C. R., 135.

Where the will set up by objectors to an application by the natural heir for a certificate of administration is not sufficiently proved, a Court is justified in looking on the natural heir as the party entitled to the certificate. *Dinobundhoo Chowdry* v. *Rajmohinee Chowdrain*, 15 S. W. R., C. R., 73.

A nephew is entitled to a certificate of administration in preference to a deceased son's daughter's son. *Aree Murdun Bhuggut* v. *Junnauth Bhuggut*, 15 S. W. R. C. R., 328.

A trustee who had been appointed by will to act in respect of Government securities belonging to an estate having demised, and the minor heir having come of age, the parties entitled applied for a certificate under Act XXVII of 1860 to enable them to draw interest on the securities. Upon this, the Judge recorded an order that they might apply for a certificate in respect of the deceased trustee's estates.

Held, that the applicants had nothing to do with the trustee's estate; and that it was the duty of the Judge to grant the application, if no person showed a better right. *Preonauth Sircur*, 13 S. W. R. C. R., 325.

Where the widow of a deceased sharer showed that he had mortgaged his share of joint family estate, and that each sharer had transacted business and dealt with parts of the property separately, it was held that there was sufficient evidence of separate right to entitle her to a certificate under Act XXVII of 1870. *Sumundree Koonwur* v. *Kalee Churn Singh*, 13 S. W. R., C. R., 199.

A Hindu widow is entitled to a certificate to collect her husband's debts if he was living separate from the rest of her family. *Chintanum Singh Chuwdry* v. *Mussamut Newlu Koonwaree*, 13 S. W. R., C. R., 469.

The person entitled to a certificate enabling him to collect the debts due to the estate of a deceased ascetic or devotee must be the disciple, or spiritual brother, or preceptor of the deceased, and such person should not be deprived of his right, even though mentally incapable of succeeding to the office of the deceased. *Gureeb Doss* v. *Mungh Doss*, 14 S. W. R., C. R., 383.

(*b*) *Effect of Certificate.*

Held that a certificate granted under Act XX of 1841 did not establish the right of inheritance of the party to whom it was granted, but simply empowered to collect debts due to the estate of the deceased. The title of plaintiff or her father could not, under the circumstances, be questioned by a co-sharer after its public acknowledgment and practical effect given to that acknowledgment during a long period of years. *A. Skinner, manager of Skinner's estate*, v. *Victoria Skinner*, 2 Agra Rep., A. C., 128.

A certificate under Act XXVII of 1860 authorizes the holder of it to collect debts due to the deceased, but not to recover property which belonged to the deceased from a person wrongfully in possession. *Awkinjee* v. *Mee Nay*, 8 W. R., 1.

The defendant gave a bond on unstamped paper to the plaintiff's eldest brother. On the obligee's death the succession was disputed, and the obligor refused to pay the subsequent interest to the plaintiff. *Held* that, as the plaintiff had failed to take out a certificate of succession to the obligee, the obligor was justified in such refusal.

Held also that the plaintiff could not recover the stamp penalty from the obligor. *Gudi Janakaya Gâru* v. *Gauruda Reddi*, 1 Mad. Rep., A. C., 124.

A certificate under Act XXVII of 1860 does not preclude a suitor from showing that the relationship certified to did not exist. *Bundhoo Bhugut* v. *Syed Mahomed Hossein*, 2 W. R., 70.

A certificate under Act XXVII of 1860 is not indispensable in order to allow a party who is next heir to come in to represent a deceased party in a

suit. *Olongo Moonjoree Dossee* v. *Gobindnath Sen*, W. R., 1864, Mis., 13.

A certificate for collecting the debts due to the estate of a deceased person given under Act XX of 1841 gives a personal right, and is not transferable by sale. *Syud Mehdee Ally Khan* v. *Luchmeeput Baboo*, 1 W. R., Mis., 28.

The sole question in an application for a certificate under Act XXVII of 1860 is the title to collect the debts due to the estate of the deceased, and it is not a matter for the Judge's consideration whether there are any, and what, debts due to the estate. The effect of such certificate is that it is conclusive of the representative title against all debtors to the deceased, and affords full indemnity to all debtors paying their debts to the persons to whom the certificate has been granted. *Mussamut Bhugobutty Kooer* v. *Bholanath Thakoor*, 8 W. R., 317.

A certificate of heirship granted under Regulation VIII of 1827 is not *primâ-facie* evidence that the holder of it is the rightful heir of the deceased. The effect of such certificate is merely to give security to persons in possession of or indebted to the estate of the deceased in dealing with such holder as the legal representative of the deceased. *Sripat Rámchandra Kulkarni* v. *Vithogee Valad Malharjee Pátil et al.*, 4 Bom. Rep., A. C., 178.

A certificate under Act XXVII of 1860 simply empowers the person to whom it is granted to demand and receive the debts due to the deceased, and is in no way a determination of a competent Civil Court of the right of such person to possession of land under attachment under Section 319 of the Code of Criminal Procedure. *Obilashery Debia and another, petitioners*, 9 W. R., Cr., 18.

The effect of an order under Act XX of 1841 is not to establish a will incontestably against the whole world, or to prevent a will from being impeached in a suit if set up to defeat the rights of parties claiming under the Law of Inheritance. *Mahomed Azeemoollah Khan* v. *Mussamut Suhoodia Bebee*, W. R., 1864, 227.

A Court may, on application, if satisfied, allow a party to represent a deceased person in carrying on a suit, or executing a decree, without his obtaining a certificate under Act XXVII of 1860. Such permission will be no warrant to such party to collect debts as if he held a certificate under that Act. *Syed Ekram Hossein* v. *Rajah Kietee Chunder Bahadoor*, 3 W. R., Mis., 9.

A certificate under Act XXVII of 1860 cannot determine any question of title, or decide what property belongs to the estate of the deceased; it merely enables the holder to collect the assets of that estate, and is conclusive of his representative title as against all debtors to the deceased.

A certificate cannot be granted for the collection of fractions of the debts of the deceased. *Waselan Huq* v. *Gowhuroonissa Bibee*, 10 W. R., 105.

A certificate granted under Act XL of 1858 to administer to an estate gives the right to collect the debts due to the estate; but if the debtor objects to pay the debt, that right cannot be enforced in Court without a certificate under Act XXVII of 1860.

Where an applicant for a certificate under Act XXVII of 1860 is opposed by a party claiming under a will, the Judge is bound to proceed under Section 3 of the Act, and determine which of the claimants is entitled to the certificate.

Where an applicant for a certificate is entitled to a share, the mere fact of the share being small will not debar her from getting a certificate entitling her to collect according to the share. *Raesunissa Begun* v. *Ranee Khugooronissa*, 10 W. R., 462.

The certificate under Act XXVII of 1860 does not determine any question of heirship, but merely protects debtors of a deceased person from liability for payments made to a certificate-holder.

If it be found that such certificate-holder was not the rightful heir, the question of heirship may be tried in a regular suit, notwithstanding the grant of a certificate.

The certificate to collect debts should nevertheless ordinarily be granted to the person entitled to the inheritance. *Mahomet Jouka* v. *Mahomet Bhugwanee*, 3 N. W. R., 320.

A certificate under Act XXVII of 1860 is not necessary to give to a person, claiming to be the representative of a deceased creditor, the right to institute a suit to recover a debt due to the estate of the deceased, or the right to present an application for execution of a decree obtained by the deceased. But such certificate, or a probate, or letters of administration, must be produced by the person proceeding as representative before a decree or order can be passed, or process of execution issued for payment of the debt due, except the Court should think that payment is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.

The effect of the provision in the note to Article 12, Schedule 1, of the Court Fees' Act (No. VII of 1870) on the operation of a certificate duly granted, which has become liable to cancellation under that provision, but has not been cancelled, considered. *Govindappah* v. *Kindappah Sa's Truler; Govindappa* v. *Kyatadoo; Mattappah* v. *Naganna*, 6 Mad. Rep., 131.

The object of a certificate under Act XXVII of 1860 is to enable the parties who represent the deceased at the time of his death, and not to recover fresh claims that may accrue subsequent to his death, and which may be due to other parties. *Mussumat Jhangoo Kooer* v. *Mussumat Dameenah Kooer*, 17 S. W. R., C. R., 343.

Parties who are decree-holders on the record are *primâ-facie* entitled to take proceedings in execution and draw the money standing to their credit under their decree, without the necessity of taking out a certificate under Act XXVII of 1860, when there are no debts to be collected as due to the estate of a deceased decree-holder. *Manick Mony Chowdrain* v. *Poorno Chunder Roy*, 17 S. W. R., C. R., 510.

A. died leaving a widow and two daughters, and property in cash and Government securities. None of his heirs being present at the time, the Magistrate sent the property to the Collector. The widow applied for a certificate under Act XXVII of 1860 and obtained it from the Judge, who rejected a similar application from one H., alleging himself to be a cousin of the deceased. The widow then armed with the certificate, applied for the property to the Magistrate, who, on a representation from H., that he had appealed to the High

Court, refused to deliver the property. The widow then appealed to the Sessions Judge, who dismissed her appeal. She then moved the High Court under Section 404 of the Criminal Procedure Code.

Held that the High Court had no jurisdiction to deal with the matter under the Section referred to, 404, Act XXV of 1861.

Held (as regards H.'s appeal) that the property might be delivered to the widow who held the certificate, on her furnishing proper security for the purpose of indemnifying the appellant H. *Cazee Abid Hossein* v. *Mussamut Reazun*, 15 S. W. R., C. R., 302.

In cases where the right of inheritance really vests, the purchaser of the rights of a deceased judgment-debtor, whose representatives hold under a certificate under Act XXVII of 1860, does not acquire the entire estate, but acquires it subject to all legal and equitable rights of inheritance. *Sham Cobmur Roy* v. *Juttun Bibee*, 14 S. W. R. C. R., 448.

Where a widow obtained an order for a certificate of administration to the estate of her deceased husband, which order was, however, reversed on appeal before the certificate was granted,—It was held that payments made to the widow before the order was reversed were unauthorized. *Dámodhur Bápúje Páchúpurkur* v. *Zingu Ram Rundlika*, 7 Bom. Rep., A. C., 31.

In a proceeding to obtain a certificate under Act XXVII of 1860, for the collection of debts payable to the representatives of deceased persons, the Court determines merely that the applicant is entitled to receive a certificate, and not his title as heir or legal representative of the deceased.

The rights as between each other of several persons claiming to be interested in the property of the deceased, are not for consideration and determination in such a proceeding.

The Act does not authorize the grant of a certificate for a portion of the property or debts, whether such portion be separate and defined or not. *Beychun Sahoo* v. *Ganesh Sahoo*, 2 N. W. R., 439.

(c) *Procedure in Application for Certificate.*

A. (a Hindu) died intestate in December, 1865, leaving his widow in possession of his property, moveable and immoveable. The descent of A.'s property was admittedly governed by the law of the Mitackshara. On the 19th January, 1866, A.'s nephew presented a petition to the Zillah Court, under Act XIX of 1841, denying the title of the widow. Upon this alone the Judge directed the widow to come in and show cause, which she did on the 2nd February following. A daughter of A. on the 19th March presented a petition in opposition to the nephew's claim for possession. The nephew filed a reply. In the meantime the widow applied for a certificate under Act XXVII of 1860, which was opposed by both nephew and daughter. The nephew also filed a cross-petition under Act XXVII of 1860.

All these petitions came on by consent together for adjudication on a state of facts admitted by all parties through their pleaders, who also, by consent between themselves, submitted their view of the question of law to be decided on the Acts of 1841 and 1860. The questions so submitted were—(1) Did it appear on the evidence that there was a separation between A. and his nephew according to the Mitackshara doctrine? (2) If the evidence *per se* established a legal separation, was such separation negatived by certain admissions of A.? The Judge refused the application of the widow under Act XXVII of 1860, and granted possession to the nephew under Act XIX of 1841. The nephew was a man of substance, and able to bring a regular suit, and there was no evidence of possession by force or fraud on the part of the widow, the only question being her right according to the Mitackshara law.

Held that the Judge was in error in proceeding summarily under Act XIX of 1841 on the declaration of the applicant alone, and without other enquiry; but that this defect was cured by the widow's appearing. That the Judge ought not to have tried the cases under Act XIX of 1841 and Act XXVII of 1860 together and on the same issues; but the Judge having jurisdiction over the subject-matter, and to frame the issues, his order was not open to appeal or review.

Per Jackson, J.—A vakeel in the Courts of the Mofussil is not empowered to make admission on points of law on behalf of his client, although he may make admissions on points of fact. *Jusoda Koonwar* v. *Gouree Byjnath Pershad*, 1 Ind. Jur., N. S., 365.

Where a Judge, on hearing an application, under Act XIX of 1841, from the nephew of a deceased Hindu, in which no case of force or fraud, nor of a likelihood of misappropriation, nor of an inability to proceed by regular suit, was submitted to the Judge simply on the solemn declaration of the complainant, and without making the preliminary enquiry required by Section 3, issued his citation to the widow complained of,—*Held* that the defect in the Judge's procedure had been cured by the widow appearing and opposing the application on its merits. *Jusoda Koonwar* v. *Gouree Byjnath Pershad*, 6 W. R., Mis., 53.

There are no general words in any part of Act XXVII of 1860, declaring that orders made by the Zillah Court under that Act as to the form of the certificate shall be subject to appeal to a High Court. *Baneemadhub Mookerjee* v. *Nilambur Banerjee*, 8 W. R., 376.

When applications are made for certificates under Act XXVII of 1860, a Judge should determine who is entitled, and should grant the certificate accordingly. He has no power to make an order in respect of the property of the deceased. *Khajah Oheed Khan* v. *The Collector of Shahabad*, 9 W. R., 502.

Where application is made for a certificate under Act XXVII of 1860, on the allegation that there are debts due to the estate of the deceased, and the allegation is not denied, the Court is bound to hear the petition. *Fuzl Moula* v. *Gholam Shurreff*, 12 W. R., 505.

On an application for a certificate of administration under Act XXVII of 1860, when the applicant claimed as heir of the deceased and impugned his marriage,—*Held* that the Judge was bound to enquire summarily into the question of the marriage of the deceased and the consequent legitimacy of his children. *Taylor* v. *Mussamut Nundu Jan* W. R., 1864, Mis., 25.

When an application is made for a certificate

under Act XXVII of 1860, the Judge, instead of considering the necessity or otherwise for a certificate, should ascertain whether the applicant or any one else is entitled to the certificate sought, and grant the same accordingly. *Sheikh Mean Jan, appellant*, 5 W. R., Mis., 20.

Where an application is made for a certificate under Act XXVII of 1860, the Judge, instead of enquiring whether any debts are due, and whether or not those debts are barred by limitation, ought simply to determine the right to the certificate; and if there be such a right, to grant the certificate. *Kaleenath Dutt*, 8 W. R., 12.

One E. K. obtained, on a stamp sufficient to cover Rs. 2,000 only, a certificate to collect the debts of her alleged father, H. B. The debts due to the estate having turned out to be larger than had been supposed, she applied for the cancelment of the first certificate, and the grant of a fresh one on a higher stamp. Meantime one B. represented to the Judge that she was the widow and sole heir of H. B., and that E. K. was in no way connected with the deceased, asking for enquiry into the alleged fraud, and the grant of a certificate to herself. This application having been rejected, an appeal was preferred to the High Court, which was also dismissed. Before the decision of the appeal, B. intervened on E. K.'s second application, praying that orders might be stayed until the decision. The Judge refused to entertain B.'s petition, and returned it to her vakeel. An order was afterwards obtained from the High Court suspending the grant of the further certificate to E. K.

Held that, under the special and remarkable circumstances of this case, which called for the most careful enquiry and scrutiny, the Judge should have made enquiry into B.'s allegations, and if he had ascertained that they were correct, should have refused to grant to E. K. an extension of her certificate, and should have taken measures to have the parties who committed the fraud punished in the Criminal Court. *Mussamut Bheekun* v. *Mussamut Elahee Khanum*, 11 W. R., 153.

An application having been made by the widow of a deceased proprietor for a certificate under Act XXVII of 1860, on the ground that she was entitled in right of inheritance (her husband having separated himself from his brother, the objector), and a will also having been set up which gave her extensive rights over the estate, the Judge granted the application without going into the validity of the will. *Held* that, for the purposes of the Act, it was quite sufficient to decide the case upon the question whether the estates of the two brothers were joint and separate at the time of the death of the applicant's husband. *Sookrajh Bahadoor* v. *Jurinah Bibee*, 11 W. R., 341.

Where N. applied for a certificate under Act XXVII of 1860 to collect the debts of M., who held property from one K. subject to certain trusts, and the application was opposed by one claiming to be the legal heir of the deceased, and alleging that the will was spurious, as well as the deed by which M. had held from K.,—*Held* that the only point to be determined, in order to the grant of the certificate, was the validity of the will. A party may by will appoint a stranger to succeed him in the trust of property, while his legal heir succeeds to his private property: the former in such a case would be entitled to collect debts due to him in his private capacity, and each may have a certificate granted to collect his respective debts. *Daood Ally Beg* v. *Nadis Hossein*, 11 W. R., 389.

A Hindu woman applied for a certificate of administration under Act XXVII of 1860 to the estate of her brother, who had died seven years before, and whose property had since been in the possession of his so-called heir-at-law. The applicant alleged that, at the time of her brother's death, she was pregnant, and subsequently gave birth to a son, who died in infancy. As representative of that son, who was deceased's legal heir, she asked for the certificate. The Lower Court summarily rejected her application on the ground of lapse of time. *Held* that this was not a sufficient reason for rejecting the application, and that the Judge must proceed to an enquiry under the Act. *Srimaty Doorgadasi Dabi* v. *Judunauth Mookerjee*, 2 B. L. R., Ap., 26.

A., as widow of B., and guardian, under a will, of his minor son, obtained a certificate of administration under Section 3 of Act XL of 1858. C., another widow of B., subsequently applied for a certificate under Section 3 of Act XXVII of 1860. The Judge summarily rejected C.'s application, on the ground that the grant of a certificate to her would lead to confusion.

Held, on appeal, that the Judge ought to have issued notices and proceeded under Section 3 of Act XXVII of 1860. *In the matter of Rani Raisunnissa Begum*, 2 B. L. R., A. C., 129.

The objects of Acts XIX of 1841 and XXVII of 1860 are so different that two cases under those Acts respectively cannot be decided entirely upon issues common to both. In this case, although the widow was bound by the mistaken consent of her Pleader to abide by the issues of law erroneously framed by the Judge,—*Held* that the Judge's error in drawing the issues gave this Court no jurisdiction to interfere with an order as to which, by Section 18, Act XIX of 1841, neither appeal nor revision was allowed. *Jusoda Koonwar* v. *Baboo Gouree Byjnath Pershad*, 6 W. R., Mis., 53.

The petitioner, a Hindu widow, applied for a certificate under Act XXVII of 1860 of her deceased husband's estate, and stated in her petition that her husband possessed, at the time of his death, self-acquired property, besides the property he had inherited from his brother. The opposing parties set up a will of the deceased's father under which a certain share of the testator's estate was given to the petitioner's husband, and in the event of his death without children to his mother, and after her death to his brother. *Held* that it was not necessary for the purpose of the application to decide on the validity or otherwise of the will, as the widow was entitled to a certificate in respect of her husband's property; and further that the will, which purported, in certain events, to give to the testator's widow that share of the property which he bequeathed to his son (the petitioner's husband), could not affect her claim to the certificate in respect of her husband's self-acquired property. *Mussamut Khoodoomoney Dabee*

Mussamut Golockmoney Dabee, 1 Ind. Jur., O. S., 36.

Before granting a certificate under Act XXVII of 1860, a Judge is not required to ascertain whether there are any debts due to the estate of the deceased. *Shurut Chunder Mookerjee* v. *Thakoormonee Debia and others*, 9 W. R., 240.

To entitle an applicant to a certificate under Act XXVII of 1860, it is not necessary for him to show that debts are actually due; it is sufficient if circumstances render it possible that debts may be due, or may accrue within the jurisdiction of the Court. *Bamakally Dossee, appellant*, 10 W. R., 4.

A suit to set aside a summary order passed under Act XXVII of 1860 may be brought within a year from the date of the order; but such order is no bar to a suit upon title, though brought after the year. *Kalee Prosunno Mookerjee* v. *Sreemutty Koylash Monie Debia*, 8 W. R., 126.

When a party claims a certificate under Act XXVII of 1860 by reason of a will said to have been executed by the deceased, the Judge should decide upon the issue raised by him and say whether under the will he has a preferable right, instead of granting a certificate to the widow of the deceased upon her giving security to satisfy any claims which may be brought, should the will be proved to be a genuine document in a Civil Court. *Juggut Chunder Roy* v. *Chunder Monee Shaha*, 17 S. W. R., C. R., 377.

No appeal lies from an order of a District Judge refusing to grant a certificate under Act XXVII of 1860. *Vishvanáth Hari et al.*, 7 Bom. Rep., A. C. J., 71.

Where an application for a certificate under Act XXVII of 1860 has been transferred by the High Court, in the exercise of the power vested in it by Section 19 Act XVI of 1868, from the file of a Judge to that of a subordinate Judge, the order of the latter is appealable to the Court of the Zillah Judge, and only specially applicable to the High Court. *Syud Fuzl Hassein* v. *Tupuduck Ali Khan*, 13 S. W. R., C. R., 395.

Where, after a certificate has been granted under Act XXVII of 1860, an application is made by a party claiming to be the rightful heir, with a distinct allegation of fraud having been committed in obtaining the certificate, it is the duty of the Judge to call upon the opposite party to substantiate their allegation that the claimant is disqualified from inheriting. *Khetter Monee Dabee* v. *Mudhule Chunder Roy*, 13 S. W. R., C. R., 160.

Where a Judge, holding that the special title put forward by an objector had not been proved, decided that the widow of the deceased was best entitled to a certificate under Act XXVII of 1860, the decision was held to be correct, inasmuch as the Judge was not deciding upon the general right and title of the parties to the property, but under a special law for the collection of debts and for the protection of debtors. *Protap Narain Doss*, v. *Poorno Mathee Dass*, 14 S. W. R., C. R., 415.

(*d*) *Miscellaneous.*

In a case in which a Judge refused, on the ground of want of competency, to entertain a petition which asked him to recall a certificate granted by him under Act XXVII of 1860, as having been obtained by fraud, it was held that it is a power inherent in every Court of Justice, on finding that an order has been obtained from it by fraud and misrepresentation, and that if the real facts had been known to the Court it would not have acted in the matter, to recall the order made in ignorance of the true circumstances by reason of the misrepresentation alleged. *Hameeda Bibee and others* v. *Noor Bibee* 9 W. R., 394.

Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance, but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert. *Srimati Amirunissa Barkat* v. *Srimati Affiattunissa*, 3 B. L. R., A. C., 404; S. C., 12 W. R., 307.

A Court cannot, solely on the petition of a party, cancel a certificate granted to him under Act XX of 1841, or declare that his trust and guardianship have ceased. If he gives up his duties of his own accord he does so on his own responsibility, and the Court will not order him to act. *Sumbhoo Chunder Khan* v. *Ishan Chunder Banerjee*, W. R., 1864, Mis., 24.

Under Act XXVII of 1860, an order cannot be obtained from the Court in recognition of two wills. *Bemola Moyee Debea* v. *Kishtomonee Debea*, W. R., 1864, Mis., 10.

A Judge can, under Sections 8 and 21 of Act XXVII of 1860, empower the holders of a certificate under that Act to negotiate a Government security mentioned in the will. *Sreemutty Bhuggobutty Debia, appellant*, 3 W. R., Mis., 18.

A certificate under Act XXVII of 1860 cannot be limited to particular debts.

It is no ground for appeal against an order granting such a certificate that the Judge joined with the appellant another person who had an interest in the debts to be collected. *Pran Khan, petitioner*, 17 S. W. R., C. R., 238.

A Hindu widow holding a certificate under Act XXVII of 1860 to collect debts due to the estate of her deceased son, who had been allowed to draw interest on certain Government Promissory Notes, which, though entered in the certificate, stood apparently in the name of her late husband, having applied for authority to negotiate those Promissory Notes,—*Held* that she was bound to show how she got possession of those notes. *Bidya Soonduree Dossee*, 15 S. W. R., C. R., 267.

Where security has been taken by an order of the High Court from the holder of a certificate under Act XXVII of 1860, a Zillah Judge is not competent of his own motion to release the money and give it back. If he thinks the time for doing so has arrived, it is for him to report the circumstances to the High Court for orders. Security taken from the holder of a certificate of administration should not be returned till the time allowed for an opposing claimant has expired. *Gour Soondur Paray* v. *Kristo Kant Mahaton*, 15 S. W. R., C. R., 108.

In a suit for arrears of rent, where plaintiff holds a certificate under Act XXVII of 1860, and an intervenor appears under Section 77, Act X of 1859, the party who is in actual and *bona-fide* receipt of the rent is entitled to retain possession. *Shaik*

Mohamed Ennoos v. *Lallah Jamarad Lall*, 13 S. W. R., C. R., 356.

Act XXVII of 1860 does not contemplate a division of the certificate, or a power to collect fractional shares of debt. *Mussamut Bebee Rhoodun* v. *Jan Khan*, 13 W. N. R., C. R., 265.

(*e*) *Rulings under Act XXVII of* 1860.

An application by a daughter-in-law under Act XXVII of 1860 for a certificate as heiress, would be properly rejected upon the sole ground that the applicant was not the heiress.

If a Civil Court is proceeding under Section 8 of Act XXVII of 1860 to grant or has granted a certificate authorising a person to deal with Government Securities which are claimed by a third person as his property, that is a ground on which such third person may come into Court to oppose the grant of a certificate or to seek for its cancelment. *Bandum Settuh* v. *Bandum Muha Lakshong*, 4 Mad. Rep., 180.

A suit does not lie to annul a certificate for the collection of debts granted under Act XXVII of 1860, the mode of proceeding provided by the Act being the only remedy. *Payyaindu Avidatha Peringadi Ibrayi* v. *Pudiamadatamel Peringadi Amanathe*, 5 Mad. Rep., 283.

The provisions in the Code of Civil Procedure for review of judgment are not applicable to Act XXVII of 1860. Where the Civil Court granted a certificate under the Act to the petitioner, and subsequently made an order granting a certificate to the counter-petitioner, the High Court set aside the latter order. *Sivu and others* v. *Chenamma and others*, 5 Mad. Rep., 417.

A certificate of administration granted under Act XXVII of 1861 may be recalled, if it has been obtained by a false and fraudulent statement. *In the matter of the petition of Bhabada Dusi*, 8 B. L. R., Ap., 13.

Under Act XXVII of 1860, no question of title to any specific property can properly be tried. A party seeking to raise such a point should be referred to a regular suit. *Shaikh Imamun* v. *Musst Nunnoo*, 17 S. W. R. C. R., 193.

There is no appeal under Act XXVII of 1860 with reference to the amount of security which a Judge may think it right to demand from an applicant for a certificate under that Act. *Raj Mehinee Chowdrain* v. *Dino Bundhoo Chowdry*, 17 S. W. R., C. R., 566.

Held that the lower Appellate Court properly exercised its discretion in refusing to recall a certificate under Act XXVII of 1860, because there was an heir in a nearer degree to the deceased than the person to whom the certificate was granted; the object of that Act being to give facilities to debtors and not to assist parties in establishing a disputed right or title. *Kubur Chunder Bundoo* v. *Ram Kanhyo Doss Biswas*, 17 S. W. R., C. R., 174.

A certificate under Act XXVII of 1860 should be issued directly it is granted, provided the proper stamp prescribed for such certificate be furnished. *Dhunput Singh Dourg* v. *Government*, 17 S. W. R., C. R., 489.

An appeal will lie under Section 6 of Act XXVII of 1860, merely for the purpose of varying the Judge's order by reducing the amount of security required by him from the party declared entitled to have the certificate.

When an appeal has been properly instituted under Section 6, it has been ruled that the Court may alter or vary the Judge's order with respect to security. *Musumut Soonea* v. *Ram Sahu*, 2 N. W. R., 146.

Where there are rival claimants for a certificate to collect the debts of a deceased person, the Judge has, under Section 3, Act XXVII of 1860, a discretion to present it to such person as, under the circumstances of the case, shall appear best entitled to it.

Quære,—Has he power, under the Act, to grant them a joint or separate certificate? *Rani Raisunnissa Begum* v. *Rani Khujjunissa*, 4 B. L. R., A. C., 149.

Recall of certificate granted without jurisdiction. *Jageswar Dhur, in the matter of petition of*, 6 B. L. R., Ap. 128, 14 S. W. R., C. R., 464.

Act XXVII of 1860 does not provide for an adjudication of the rights of parties to succeed to property, or their actual title to it, its whole object being the security of debtors paying debts due to the estates of deceased persons. *Sheikh Mahomed Eunoos* v. *Lalla Jamarad Lall*, 13 S. W. R., C. R. 356.

5.—Executors and Administrators.

The widow of a legatee of one-half of the residue and the bulk of considerable estate sues to set aside alienations made by the widow of one of three executors, acting as managers; her husband, the deceased executor, being legatee of one-sixth. The alienations were made pending a suit by the same plaintiff in the Supreme Court to administer the entire estate, and to expose defalcations and frauds of the managers and executors also, after an injunction issued in that suit prohibiting alienation. Alienations set aside.

N.B.—This was the general subject and character of the suit, but there are specialities here not detailed as to the doctrine of *lis pendens*, &c. *Ex-parte Nilmadhub Mundel and Nilrutten Mundel*, 2 Ind. Jur., N. S., 169.

J. and M. were named executors of the will of H., who died in 1844. M. alone proved the will, but J. did not renounce probate until nine years after the death of H. and the commencement of litigation. The only act as an executor of H. proved against J. was that, in a deed executed by him for the conveyance of the share of H. in a certain estate in which J. was also interested in another capacity, he was described as executor of H., and the deed recited that probate had been granted to him. *Held* that he was by this reason, as well as on the ground of having an unfair advantage in respect of certain property in litigation, precluded from purchasing the interest of H.'s sons under a decree. *Dhonendro Chunder Mookerjee* v. *Motee Lall Mookerjee*, Cor. Rep., 57.

When, in order to save an estate from sale in execution of a decree against the testator, his executor raised a loan from the plaintiff giving him a mortgage of the testator's property,—*Held* that even if the executor had funds to pay the plaintiff the debt without raising a loan, that fact would not invalidate the plaintiff's claim against the estate

unless there was good reason to infer that he knew of those funds or might have known of them, if he had used ordinary diligence in making enquiries on the point. *Kalee Narain Roy Chowdhry* v. *Ram Coomar Chand*, W. R., 1864, 99.

An administrator holding a certificate under Section 7, Act XL of 1858, is not bound to file in Court periodical accounts of moneys realized and disbursed on account of the minor. *Mussamut Sonkally Koonwar, appellant*, 6 W. R., Mis., 53.

Although the executor defendants first gave orders for a third-class funeral for the deceased, yet, as they by their conduct induced the plaintiff to furnish a second-class funeral, they were held liable to pay for the same, whether they had assets or not. *L. J. Paul* v. *J. S. Donohoy and others*, 6 W. R., 27.

Without intending to rule that, in all cases, when an ordinary administration account has been directed, the value in money of a specific chattel shown to have been possessed by an executor, and not forthcoming, is to be charged against him. *Held* that, notwithstanding the language of the decree, it was in the undoubted circumstances of this case, within the competency of the master in taking the account, and within the competency of the Court upon the report, to charge the executor for the value of certain property, it being impossible to doubt that the original executor had possessed himself of the property, and that the property so possessed was not forthcoming and accounted for.

As to payments stated in the schedule and in the discharge, as made on account of just demands on the estate, it is competent to the executor to prove them as having been made on other dates than those stated in the schedule and discharge. *Aga Mahomed Rohim Sherazee* v. *Meerza Ally Mahomed Shoostry*, 4 W. R., P. C., 106.

An executor will not be held liable for devastavit, if the will was so framed as to mislead him, and he was not called upon to act differently from his own views, by any parties taking an interest under the will. *Hogg* v. *Greenway*, 2 Hyde's Rep., 3.

The admissions of the executors of a donor are treated as the admissions of the donor. *Dwarkanath Bose* v. *Chundee Churn Mookerjee*, 1 W. R., 339.

Where one son of a deceased party sued in the Recorder's Court another son who had obtained a certificate under Act XXVII of 1860, for his share of the deceased's estate, it was held that the Recorder had no power to transform the suit into a general administration suit. The Court may, under Section 73, Act VIII of 1859, order all necessary parties who claim a share in the subject-matter of the suit to be made parties. *Oh Singhbe* v. *Awkinisee*, 10 W. R., 86.

Act XII of 1855 does not apply to wrongs which do not survive to the representatives of a deceased person. A widow who is the heir of her deceased husband is liable to make good the wrong committed by the husband. The plaintiff's right of suit does not abate by the death of the husband, but survives against his heir. *Sreemutty Chunder Monee Dassee* v. *Santo Monee Dossee*, 1 W. R., 251.

An executor holding the estate in trust to pay the profits in certain defined shares to the heirs and their representatives, could not plead adverse possession against them, so as to bar their claim by limitation. *Ranee Khajoorunnissu* v. *Mussumat Roheemunissa and others*, 17 S. W. R., C. R. 190.

The testator by his will appointed Hamábái, his wife, guardian of his infant children, "in order that of all his property she should carry on the management (until his youngest son should attain twenty-two years of age), and in the testator's name the management of his firm." He appointed his brothers, R. and M. his vakeels to settle any quarrel that might arise, and directed them not to give unjust advice; but should the vakeels give unjust advice, Hamábái was not to act upon it. Upon certain contingencies Hamábái and the vakeels were to separate, and make over to the sons their shares.

Held that Hamábái was by implication appointed sole executrix, and that she alone, to the exclusion of the testator's brothers, was entitled to probate. *Hamábái* v. *Bumunji Nasarvanji*, 7 Bom. Rep., A. C. 64.

An executor of a will is not obliged in this country, as in England, to shed his character of executor before he can appear in the new character of legatee. *Mussamut Bugoo Jan* v. *Chowdey Zuhooent Hug*, 13 S. W. R., C. R., 69.

When a party is proceeded against as the representative of a deceased judgment-debtor, and it is proved that property which belonged to the deceased judgment-debtor has come into his hands, it lies upon him to account for such property and to include in his accounts mesne profits, whether accruing in the shape of rents or of interest. *Aseemoonissa* v. *Ameeronissa*, 15 S. W. R., C. R., 285.

In a suit brought against the representatives of a deceased Mahomedan, alleged to be in possession of his estate for recovery of the amounts of a bond-debt due by the deceased, the plaintiff should first be allowed to establish his right of suit against the estate, although the defendants plead that they possess no property belonging to the deceased to satisfy the claim. Such a plea, if established, is one to be regarded in framing the decree.

The decree in such a case should be for payment out of the property of the deceased.

And ordinarily the Court should not direct payment of the costs by the defendants personally, but out of the estate. *Madho Rum* v. *Dilbur Mahul*, 2 N. W. R., 449.

6.—Wills.

The Wills Act XXV of 1838 applies to the wills of East Indians, whether domiciled within or beyond the testamentary jurisdiction of the High Court. *Hogg* v. *Greenway*, 2 Hyde's Rep., 3.

The High Court has jurisdiction to hear appeals in testamentary cases. *Sarodasoondery* v. *Tincowry Nundy*, 1 Hyde's Rep., 70.

Regulation XVIII of 1827 does not require a will to be stamped during the testator's life-time. *Webbe* v. *Lester and others*, 2 Bom. Rep., 55.

The Indian Wills Act only applies where the High Court has an exclusive jurisdiction analogous to that of the Ecclesiastical Court in England. It does not apply in the case of a person who is not entitled by birth or domicile to have applied to him the actual law of England. In order to make one executor liable for devastavit committed by his

co-executor, there must be a distinct allegation in the plaint that the devastavit had been committed by the co-executor, to the knowledge of the executor. *Greenway* v. *Hogg*, Bourke's Rep., A. O. C., 111; S. C., 1 Cor. Rep., 97.

The plaintiff claimed under a will, and the subordinate Judge having found the will not bonâ-fide, ought to have decided the case on that issue only, instead of going into the other issues affecting the right of succession of the wife and sons of the testator. The judgment of the subordinate Judge was therefore declared conclusive as to the matter of the bonâ-fides of the will; and his award of one set of costs to all the defendants, although they appeared by separate vakeels, was upheld, the defence being a common and not a separate one. *The Rev. Francisco de Apis* v. *Louisa Des Aujes*, 17 S. W. R., C. R., 188.

An unprivileged will will not be recognised by the Court and admitted to probate unless executed in accordance with the directions contained in Part VIII, Act X of 1865; such directions being imperative and not merely declaratory.

Held that the words "in the presence of the testator," in Clause 3 of Section 50 of the Indian Succession Act, may receive the same construction that has been put upon them in the English Courts, but cannot receive a larger interpretation. *Esalas* v. *Gabriel*, 3 N. W. R., 32.

A decision under Act XXVII of 1860 does not in any way preclude the unsuccessful party from contesting the validity of the will in a regular suit. *Aunund Mohun Mullick* v. *Indro Monee Chowdrain*, 16 S. W. R., C. R., 214.

A petition was presented to the Collector by the proprietor of certain estates for the registration of the name of his son's widow in the mutation roll in place of his own name, in which petition petitioner declared the said widow to be his heir, and that her daughters and their children were, and would be, the heirs and maliks, and provided for the management being kept in his own hands as long as he lived.

Held (Bayley, J., dissenting) that the petition was a testamentary instrument disposing of the property to which it related, and that the daughter's children not being in existence at the death of the testator, could not take any interest under the will; but that the widow took the property for her life, and subject to that estate, the daughters took it absolutely as joint owners. *Syud Mahomed Shumsool Hodu* v. *Shewuk Ram*, 14 S. W. R., C. R., 315.

A testator made the following bequest in his will: "I give, devise, and bequeath to my dearly-beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and materials connected with my trade and business, and all my right and interest therein; and after payment of my debts and other expenses, I give, devise, and bequeath the rest and residue of my outstandings and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testator's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, &c., of the business during their marriage.

Held (reversing the decision of the Court below), that, on the true construction of the will, the stock in trade, &c., was not bequeathed to the wife for her sole and separate use independent of any future husband; her husband did not become a trustee for her in respect of such stock in trade or the profits of the business, and he was not bound to render an account. *Ord* v. *Ord*, 4 B. L. R., O. C., 53.

Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by principles of natural justice.

In such cases, in applying the rules of Hindu, Mahomedan, or English law to the wills of Hindus, Mahomedans, or East Indian Christians respectively, their particular habits and modes of life may be looked to as a guide to the interpretation.

From the context of the will and surrounding circumstances, "children" may be interpreted as illegitimate children.

Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants-for-life, was applied to the purchase of other estates;—*Held*, these estates did not pass to the remaindermen, but formed the absolute property of the tenants-for-life, and passed to their devisees. *Barlow* v. *Orde*, 5 B. L. R., 1; 13 S. W. R., P. C., 41.

N. E. I., a Hebrew merchant, domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after appointing his mother, K. E. I., and his brother, I. E. I., executrix and executor thereof, and making various bequests and provisions, he made the following bequest of the residue of his property:—"And what may remain after payment of the above-mentioned sums, as well as the debts, shall remain under the control of my brothers, S. E. I. and I. E. I., for the purpose of defraying therewith the expenses for the year, and making charitable distributions as commanded, and giving alms for my spiritual benefit according to their judgment." *Held*, assuming that the High Court should act in conformity with the English Court of Chancery in carrying out charitable bequests, that, as far as the bequest related to giving of alms for the testator's spiritual benefit, it was void for uncertainty. The "defraying expenses and making charitable distribution," were limited by the bequest to the year within which the testator died.

Semble,—The English rule of law which prohibits the bequest of money for superstitious uses, has no application in India. *Judah* v. *Judah*, 5 B. L. R., 433.

A testatrix, after appointing certain persons to be executors of her will in respect of the whole of her property, directed that they should "take possession of the whole of her property, and keep the same under their protection;" that they should pay out of her estate the charges of interment, &c.; that they should repair four houses annually out of the income thereof, having let them out to hire, and after paying taxes and ground rent, divide the proceeds every three months between the testatrix's two sons; that the executors should not give the rents to the creditors, because the bequest of the

income to the sons was "not an entire gift to them, but a mere provision for their support." The will proceeds as follows:—"Should my son M. happen to die before the decease of his wife, then I give the share of M. to his widow H. M., &c., and after the death of H. M., should my son M. not have left any legitimate male child, then I give the above share to my son J., &c. After the death of M. (and his wife), should he have left legitimate male children, such male children shall in the same manner receive the income once in every three months, till they attain the age of twenty-one years, and then the amount of their share shall be divided into equal portions, and each of them having become the owner of his portion shall receive the same from my executors; but if H. M. die before M., and M. die without having had legitimate male children, then I give and bequeath the shares of my son M. to my son J. as a provision for his support, &c. If my sons M. and J. die without having male issue, and if their wives, that is to say H. M. and C. J., die without having male issue begotten by my sons, then I give my garden, &c., actually and entirely to the sons and daughter of my daughter Goolsanum, begotten by her first husband, G. A., that is, to A. M. B. and N., or in case of their death, to their sons and daughters lawfully begotten, or to such of them as shall survive at the time. My said garden shall be divided into equal shares, and each of them having received his share in equal proportion as a legacy from me, shall enjoy the same."

M., and H. M., his wife, died without having left any children; J. died in the lifetime of M. A., and one of the sons of Goolsanum died without leaving children in the lifetime of H. M. *Held*, first, that the direction to the executors to lease the property indefinitely, and out of the income to make repairs, pay taxes and ground-rent, and apply the rent to the maintenance of the sons, was sufficient to vest the legal estate in the trustees.

Secondly, that such estate was an estate in fee.

Thirdly, that the children of Goolsanum took equitable estates in remainder in fee, defeasible in case of their death in the lifetime of the first taker for life, in which event there was substituted a devise to their children in fee.

Fourthly, that the children of Goolsanum took as tenants in common, and not as joint tenants, and therefore, that as there was nothing from which cross remainders between the children of Goolsanum could be implied, the share of A. reverted to the heir-at-law of the testatrix.

Fifthly, that wherever any estate in fee is devised to trustee in trust without any limitation of the estate of the *cestui que* trust, the latter takes the beneficial estate in fee. *Shircore* v. *The Administrator-General*, 1 Ind. Jur., O. S.

Construction of a will and the meaning to be attached to certain words used therein relating to real and personal property. *Meer Hoomayoon Jah* v. *Towfeekinnissa Begum*, W. R., 1864, 69.

The scope and intent of wills when disputed must be decided and interpreted by Courts of Law, and not by admissions made by unadvised persons through third parties. *Mary Pogose* v. *Mussamut Chamarinee Bibee*, W. R., 1864, 336.

Where there is an absolute bequest and power to executor to delay making over the legacy at discretion,—*Held* that, on attaining majority, the legatee should at once be put in possession. *D. J. De Silva* v. *M. D. De Silva*, 1 Ind. Jur., N.S., 16; Bourke's Rep., O. C., 281.

A testator nominated A. B., &c., "to be executors and trustees of this my will, and eventually guardians of my dear children and estate, until such time as my children shall severally attain the age of 25 years, when I request the aforementioned gentlemen (my wife being dead), their heirs or executors, will divide, or cause to be divided, into shares agreeably to the number of our surviving children, giving to the boys two shares and to each of the girls one, or to their lawful issue or husband, the whole of my estate, each child to be put in possession of his or her share when they shall respectively attain the age of 25 years; and whenever either of my daughters shall enter into the holy state of matrimony, I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, lineal descendants, his or her share shall be divided equally amongst our other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of their mother."

Held (reversing the decision of Phear, J.) that after the mother's death, each child took a vested interest on attaining the age of 25 years,—that is, at the time when possession is to be given,—and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue. *Taylor* v. *Phillott and others*; *Phillott* v. *Morris and others*, 1 Ind. Jur., N. S., 375.

A special case was stated for the opinion of the Court, as to whether S. M. took a vested interest in the sum of Rs. 6,325, under the following clause of will:—"I paid to the M. O. Soc. Rs. 6,000 for S. M., and invested Rs. 6,826, the interest on which I directed to be paid to the mother of S. M. Now I direct my trustees, after the death of the mother of S. M., to realise the latter sum and pay it to the M. O. Soc., for S. M., in terms of the regulations of the Society." *Held* that the bequest was *primâ-facie* for the benefit of the daughter.

That, having regard to the regulations of the M. O. Society, the bequest was a gift for the benefit of the society generally.

That if the will had given the mother the interest for life, instead of saying it had been given, it would have vested.

That the interest vested in S. M. at once, and formed part of her estate. *In the matter of the goods of Susan Collins, deceased*, Bourke's Rep., O. C., 104.

A testatrix bequeathed the interest of a Government Promissory Note to "The Calcutta Armenian Orphans' College Funds for the Relief and Enjoyment of the Poor Families, Widows, Orphans, and Schools of the Armenian Nation," to be received half-yearly by the wardens of the funds for the time being. Although there was a charity in Madras, called "The Armenian Orphans' College," there was none in Calcutta or elsewhere answering the description of the Calcutta Armenian Orphans' College, but there were two, and only two, charitable institutions in Calcutta which provided for the relief and enjoyment of the poor families, widows, orphans, and schools of the Armenian nation. Of these, one,

the Church of St. Nazareth, distributed money amongst, and gave relief to, the poor families, widows, and orphans of the Armenian community; and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community. The note was invested by order of the Court; and there had been a large accumulation of interest thereon. The governors of the two institutions concurred in asking that each should receive a moiety of the accrued and future interest of the fund. *Held* that the *cyprès* doctrine applied; that the accumulated interest should remain invested; but that the accruing interest on the accumulated fund should be paid half-yearly, one moiety to the wardens of St. Nazareth's Church, and the other to the managers of the Armenian Philanthropic Academy. *Longbottom* v. *Satoor and others*, 1 Mad. Rep., O. C., 429.

A testator after providing for payment of debts, &c., directed that the whole of his property should be disposed of and the proceeds placed in the Oriental Bank, with power to the executors to invest the same in mortgages, and to leave existing mortgages untouched. The will then contained this direction:—"That a monthly stipend of Rs. 15 be paid to my daughter E. S. for her own benefit, and Rs. 20 for the benefit of her two children (during their minority), and in the event of the demise of any of the said children occurring, the sum of Rs. 10 to cease rateably as being the allowance for each child. That on each of the children attaining their age of majority, I request that my executors pay to each of them severally and proportionably the full amount of interest accruing from my estate (the existing provision for my two daughters to continue during their natural life), and after their demise the said interest in like manner to revert to their heir or heirs in succession."

Held, first, that a direction to pay a monthly stipend to E. S. and M. D. respectively is simply a charge upon the testator's estate to pay the said stipends to E. S. and M. D. for their respective lives.

Secondly, that E. S. and M. D. were severally entitled during the life-time and minority of their children to a monthly stipend of ten rupees in respect of each child, such payment to cease upon the death of each child or on its attaining majority, till which latter event the said children take no interest under this will.

Thirdly, each child upon attaining its majority will take a share of the residue, proportioned to the number of children then living, and a contingent proportionate interest in the shares of each of the other children, which would become vested on the death of each one dying under twenty.

Fourthly, the limitation of the gift "during their natural life and after their demise, the said interest in like manner to revert to their heir or heirs in succession," does not prevent the children from taking their several shares absolutely under the will. *John Vans Agnew* v. *Mathews, Mathews, and others*, 1 Ind. Jur., O. S., 74; 1 Mad. Rep., A. C., 17.

When property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him, the *onus* of proving which is on the person alleging it. *Sreemutty Sursutty Dossee* v. *Poorno Chunder Roy*, 4 W. R., 55.

A military testament valid in its inception may be deprived of its privilege by lapse of time. *Re Godby*, 1 Hyde's Rep., 196.

A deed of gift such as a tumleeknamah, executed at a time when the grantor was labouring under a sickness from which she never recovered, can only operate as a will. Such death-bed gift or will made in favour of one who is an heir, will be, so far as it relates to that heir, inoperative without the consent of the other heirs. *Ashruffunissa* v. *Mussamut Azeemun; Ashruffunissa* v. *Mussamut Baroda Biswas Kooery*, 1 W. R., 16.

When a document propounded as a will is proved to have been executed and registered by the alleged testator, it is still essential to enquire into the circumstances connected with its execution and registration, when the will is inofficious and there are other suspicious matters connected with it. *Kisto Churn Mozoomdar and others* v. *Dwarka Nath*, 10 W. R., 32.

A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious use. *Des Merces* v. *Cones*, 2 Hyde's Rep., 65.

Quære,—Whether a Roman Catholic of Portuguese extraction can, under the law current amongst members of that church in Chittagong, take under a nuncupative will; and if not, to what is a wife entitled under the law regulating succession of intestates amongst members of that church? *Antony Rebeiro* v. *Sarah Rebeiro*, 3 W. R., 63.

A. being ill and away from home, wrote to his brother B. certain directions as to the management of his property, and concluded: "Brother, if I die of this sickness, and C. survive me, then whatever property I have you will give one-half to C.," &c. In another and subsequent letter, he wrote to B.: "I don't think that the illness I am now suffering from will terminate fatally; but in case I should die, then you will give to C. one-half of my company's papers," &c. "I appoint you turney (executor) in all matters relating to C.," &c. A. recovered from the fever, but died suddenly a year later, without having made any other testamentary disposition of his property. In a suit brought by B. as executor of A., according to the tenor of these documents, against the widow of A., for the purpose of having probate of them granted to him as of the will of the deceased,—*Held* (reversing the judgment of Macpherson, J.) that the documents were only intended to have a testamentary effect in the event of A.'s having died of the sickness he was suffering from at the time of writing, and therefore probate which had been granted by the Court at the original hearing was ordered to be brought in and cancelled. *Sreemutty Kameenee Dassee* v. *Bissonath Ghose*, 2 Ind. Jur., N. S., 6.

A bequest in a will of a sum of money for the performance of masses in Calcutta is valid. *Andrews* v. *Joakim*, 2 B. L. R., O. C., 148.

7.—Probates.

Probates may be granted of the will of a Bhuddist made after the 1st January, 1866. It is not necessary that the will of a Bhuddist should be executed according to the formalities required by the

Indian Succession Act. *In the matter of Kokya Dine, deceased*, 2 B. L. R., A. C., 79; 10 W. R., 417.

Letters of administration, with copy of will annexed, may be equivalent to probate, but neither is of itself sufficient to prove a will, the genuineness of which is contested. *Teen Cowree Dossee and others* v. *Hureehur Mookerjee*, 8 W. R., 308.

The High Court cannot compel a native to prove a will in solemn form, unless he have applied for probate, and thus submitted himself to the jurisdiction. *Tiruvalur Kirustuappa Mudali*, 1 Mad. Rep., O. C., 59.

In the case of a British-born subject dying and leaving assets in Moulmein, but no assets in Calcutta, and a will dated 5th August, 1865, before Act X of 1865 came into effect,—*Held* that the executrix could not obtain probate or letters of administration, with will annexed, from the High Court in Bengal. *E. Saunders* v. *Nga Shoay Guin and others*, 8 W. R., 3.

A bond is not to be taken from a person to whom probate is granted under the Indian Succession Act. *Anonymous*, 3 Mad. Rep., A. J., 10.

The High Court will grant probate of wills of British European-born subjects who have no assets within the local limit of the ordinary civil jurisdiction of the Court. *In the goods of Reed, deceased*, 1 Ind. Jur., N. S., 20.

Where a Hindu testator died out of the jurisdiction of the Court, but left effects within it, it was competent to the Court to grant probate, there having been no certificate applied for in the Zillah Court under Act XXVII of 1860. *In the goods of Tarachand Coondoo Chowdhry, deceased*, 1 Ind. Jur., N. S. 10; 1 Bourke's Rep. Test., 3.

Indian Succession Act (X of 1865), SS. 180, 181, 193, 210, 212, and 237. Practice. Probate of Exemplification of Will. Order to produce Testamentary Paper. *In the matter of the goods of William Newton, deceased*, 8 B. L. R., A. C., 75.

The stamp requisite for an application for a probate of a will, or letters of administration, is not required to be proportionate to the value of the property involved, as such applications come under the provisions made in Article 1, Schedule 2, Act VII of 1870, for common applications and petitions. *Indoomanth Sadhookhan, In the matter of*, 15 S. W. R., C. R., 40.

A person who is not the next of kin, and who has no interest in the estate of a testator, has no right to oppose the grant of the probate or dispute the validity of the will. *In the matter of Mee Tsee*, 15 S. W. R., C. R., 351.

A grant of probate of a will is not in the nature of a summary proceeding to be contested by a regular suit in the Civil Court.

The grant must be contested by a suit in the Court out of which such grant issued, and it must be contested before the Court sitting as a Court of Probate, and not in the exercise of its ordinary civil jurisdiction.

Persons who seek to contest a will must prove an interest to entitle them to a *locus standi* in Court, but the want of interest is an objection which should be taken at the earliest stage of the proceedings.

There is nothing in the Indian Succession Act to deprive a district Court, as a Court of Probate, of jurisdiction to hear and determine an application to revoke grant of probate of a will on the ground of the execution of such will having been obtained by force and coercion.

Semble,—That a legatee under a will has "an interest" sufficient to maintain a suit for the revocation of probate. *Mayho* v. *Williams*, 2 N. W. R., 268.

II.

ARBITRATION.

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1.—References in Suits.

When a suit is referred to arbitration, the order of reference should provide for the appointment of an umpire in case of any difference of opinion among the arbitrators, and should declare that the decision shall be with the majority.

When once a matter is referred to arbitration it can never again be dealt with by the Court, unless the reference be fruitless, in which case the suit may be brought back on the file of the Court without any reference to the arbitration proceedings. *Haradhun Dutt* v. *Radhanath Shaha and others*, 10, W. R., 398 ; S. C., 2 B. L. R., S. N., 14.

In a suit in which plaintiffs claimed a 6-annas share of certain land belonging to a mouzah, it was found on measurement that 262 beegahs of the land claimed belonged to that talook. Pending the suit, all the defendants except one (O.) agreed to a reference to arbitration, upon which it was found that 44 beegahs, in addition to the 262, belonged to the plaintiffs.

Held that the plaintiffs were entitled to recover as against all the defendants, including O., a 6-annas share in 262 beegahs ; and as against all, except O., a 6-annas share in the 44 beegahs awarded by the arbitrators. *Doorgachurn Thakoor and others* v. *Kally Doss Hazrah and others*, 10 W. R., 463.

The Judge intimated that he should refer the suit to arbitration, and allowed a certain time to the parties to object to that course. No objection was made within such time, and thereupon the Judge referred the cause to arbitrators named by him. After the day fixed the defendants objected. *Held* that the reference was not warranted, there having been no express consent by the parties. *Degumbur Chatterjee* v. *Mussamut Ram Prea Dabea and others*, Marsh., 517.

The Code gives no power to a Court to enforce arbitrators on an unwilling suitor. The award of arbitrators so appointed will not be enforced. *Sheonath*, alias *Burray Kala* v. *Ramnath*, alias *Chotay Kala*, 1 Ind. Jur., N. S., 161.

An arbitration on behalf of an absent plaintiff is not allowable without special authority. *Goor Chunder Pututundee* v. *Joogul Chunder*, alias *Shama Churn*, 1 W. R., 80.

The application for a reference to arbitration must be made in Court by an instrument in writing by the parties in person, or their Pleaders specially authorized in that behalf. *Bhrigoo Roy* v. *Bhogruth Upadhya*, W. R., 1864, Act X R., 41.

Before a Judge refers a case for arbitration he should ascertain whether the persons nominated are willing to accept the office, and till he has done so any nomination of an arbitrator by him, without the application or consent of the parties, is illegal. But when a case has once been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act. *Troyluckhonath Roy* v. *The Collector of Beerbhoom*; *Lockenath Roy* v. *The Collector of Beerbhoom*; *Huronath Roy* v. *Kasheenath Roy*, W. R., 1864, 388.

An order of reference to arbitration should provide for difference of opinion among the arbitrators and for authorizing a majority to decide the case. *Futteh Singh* v. *Gango*, 4 W. R., 4.

An application for arbitration, as provided by Section 313, Act VIII of 1853, is wholly invalid unless made by all the parties materially interested. *Bycunt Nath Chatterjee* v. *Sheikh Nazeroadeen and others*, 10 W. R., 171.

Section 313, Act VIII of 1859, does not apply to a reference to arbitration made at the hearing of a cause. *Jaysunker Davoy* v. *Nagananda Davoy* 1 Ind. Jur., O. S., 736.

Where reference to arbitration was made by Mooktears of the parties without holding special authority for that purpose as provided by law (Section 313, Act VIII of 1859) from their clients respectively,—*Held* that such reference to arbitration, being unauthorized and illegal, was not sufficient to remove the bar of limitation under the Presidents of the late Sudder Court. *Shunker* v. *Hur Narain*, 1 Agra Rep., R. A., 49.

Held that a Mooktear in a Revenue Court must be empowered by an instrument in writing to refer the matter in dispute to arbitration in the same way as a Pleader in a regular suit—Chapter VI. of the Civil Procedure Code being made applicable to suits under Act X by Section 14 of Act XIV of 1863. *Ram Pershad* v. *Nazeer Hossein*, 1 Agra Rep., R. A., 63.

Act VIII of 1859, Section 313, does not apply when a reference to arbitration is agreed to at and during the hearing. *Jeyasankira Devi* v. *Nagannada Debi*, 1 Mad. Rep., 106.

Where both parties could not agree in nominating an arbitrator, and the Judge nominated one under Section 314, Act VIII of 1859, and one of the parties, six weeks after the nomination, objected to the Judge's nominee, but could not show on appeal that he did not request the Judge to nominate some one, the appointment was held good and binding upon both parties. *Suroop Ram Deb* v. *Gobind Ram Deb*, 7 W. R., 13.

When an application for reference to arbitration is made in open Court at or during the final hearing of a suit, in the presence of all parties, and they consent thereto, a written authority, such as that referred to in Section 313 of Act VIII of 1859, seems not to be required. *Mirzu Akber Beg* v. *Bunda Ali*, 2 N. W. R., 419.

Quære,—Does Act X of 1859 empower a Judge to refer a case to arbitration?

In referring a matter to arbitration, all the parties to the suit must accord their written consent; the consent of the Pleaders is not sufficient. *Moonshee Gu Zee* v. *Hamud Buksh*, 16 S. W. R., C. R., 160.

A suit having been referred to arbitration, was dismissed by the arbitrators for default; whereupon the plaintiff objected to the award and charged the arbitrators with collusion. The Judge, finding that the charge was not made out, referred the matter back to the arbitrators for a proper award.

Held that the plaintiff's revocation of his consent to the reference did not put an end to the arbitrators' power. *Mussumut Ablakhee Kooer* v. *Oodun Singh*, 15 S. W. R., C. R., 331.

Whatever matters parties to a suit may agree to refer to arbitration, they can refer such matters, or any of such matters, as are in difference between them in the suit; and the Court in passing judgment on the arbitration award, must confine itself to the plaintiff's claim and give a decision thereon. *Trunath Chowdly* v. *Manick Chunder Dass*, 14 S. W. R., C. R., 469.

There is nothing in Act VIII of 1859 to prevent parties who have a suit pending in Court from submitting the subject matter of that suit and other matters in dispute to arbitration under Section 327. *Thakoor Doss Roy* v. *Hurry Doss Roy*, W. R., 1864, Mis., 21.

Where the parties to a suit come into Court and agree to a reference to arbitration, the case, when so settled, is not subject to appeal.

The mere absence of a clause in the order of reference providing for a difference of opinion between the arbitrators cannot vitiate the award where there is no such difference of opinion. *Gour Chunder Bhuttacharjee* v. *Soday Chunder Nunda*, 17 S. W. R., C. R., 30.

2.—References by Agreement.

An agreement between the parties to abide by the determination of a punchayet fixing the line of boundary and the determination of the punchayet, were held to be not conclusive evidence so as to bar either party from showing the determination of the punchayet to be inequitable. *The Mokuddims of Mouza Kunkunwadey in Pergunnah Jamucundi* v. *The Enamdar Bramhains of Mouza Soorpal*, alias *Moorgnoog, in Pergunnah Gotta*, 7 W. R., P. C., 8.

Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award, unless the submission to arbitration has been made a rule of Court under Section 326 of the Civil Procedure Court.

A revocation by deed can set aside a deed by which a person binds himself to abide by the decision of arbitrators. Revocation by parol may set aside a parol agreement. Notice is not necessary. *Alla Ayappa* v. *Nundula Peraiya*, 3 Mad. Rep., A. J., 82.

A submission of private arbitration may be perfectly valid though not put in writing, and a private award made in pursuance of such submission will be respected and treated as valid by the Courts if duly performed, and the possession of the contested property be held under them. The arbitrators may be competent to prove, as well the submission as the making of the award, though no ikrárnamah was ever executed. *Bahal Singh* v. *Shibo Ram Singh*, W. R., 1864, 76.

Section 326 of the Civil Procedure Code makes all submission to arbitration by an instrument in writing practically a rule of Court. *Pestonjee Nuserwanjee* v. *D. Manockjee and Co.*, 1 Ind. Jur., N. S., 69.

The Courts will not interfere to enforce performance of an award made under a submission to arbitration entered into by a few persons, without the consent of the entire community, in respect of a religious quarrel relating to a state of things which has been in force at a mosque for fifty years, by the common consent of all the worshippers having an interest therein. *Zahid and others* v. *Peera and others*, 3 N. W. R., 92.

3.—Procedure in Arbitration.

Where one of the arbitrators had been ill, and the time elapsed before they could make their award, the Court superseded the arbitration and recalled the suit. *Joseph* v. *Sreerker*, Bourke's Rep., O. C., 359.

In appealing to set aside an award of arbitrators, which the appellant contends is not binding upon him, he is not bound to appeal against every interlocutory order which was a step in the procedure that led up to the award. Both the Code of Civil Procedure and the Punjab Code require the consent of the parties to a reference to and the appointment of arbitrators. A party, by appearing before arbitrators appointed without his consent, and in spite of his repeated remonstrances, does not forfeit his right to question the validity of their award. *Sheonath* v. *Ramnath*, 5 W. R., P. C., 21.

Where some of the arbitrators named in an arbitration agreement refuse to act, and the parties do not agree to appoint others instead of them, it is not incumbent upon the Court to appoint other arbitrators, unless both parties agree, the provision of Section 319 being not obligatory, but simply permissive.

Held further that, under such circumstances, the refusal on the part of one party to nominate other arbitrators does not amount to a withdrawal from the agreement to proceed to arbitration. *Sada Sookh* v. *Shiva Dyal and others*, 1 Agra Rep., A. C.

Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award, unless the submission to arbitration has been made a rule of Court under Section 326 of the Civil Procedure Code. *Alla Aiyappa* v. *Nundula Perayia*, 3 Mad. Rep., A. C., 82.

No appeal lies from an order directing that an agreement to submit matters in dispute to arbitration should be filed under the provisions of Section 326 of the Procedure Code. The fact of one of the parties to the agreement revoking his submission is not a sufficient "cause" within the meaning of that Section. *Pestonjee Nusserwanjee* v. *D. Maneckjee*, 3 Mad. Rep., A. C., 183.

An arbitrator has full power to retract his resignation of office before it is accepted. *Maharajah Juy Mungh Singh* v. *Mohun Ram Marwaree*, 15 S. W. R., C. R., 38.

According to the proper construction of the Code of Civil Procedure (that is to say, construing it with reference to the constitution of the Civil Courts of India and the abiding direction to them to proceed in all cases according to equity and good conscience), when persons have agreed to submit the matter in difference between them to the arbitration of one or more specified persons, no party to the agreement can revoke the submission to arbitration, unless for good cause, and a mere arbitrary revocation of the authority is not permitted. Where no time was originally fixed within which the award was to be made, it is open to either party to hasten the proceeding by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but where the time elapses after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice. *Pestonjee Nusserwanjee* v. *D. Manockjee and Co.*, 10 W. R., P. C., 51.

4.—Powers and Duties of Arbitrators.

An arbitrator has no right to allow documents entrusted to him by the Court to be removed from the nuthee by any one; and when an award is returned to Court after remittal it should be accompanied by all books, exhibits, and proceedings pertaining to it. *Maharajah Sir Mungul Singh* v. *Mohun Ram Manawaree*, 12 W. R., 398.

Arbitrators ought only to take such evidence as is required by the terms of the agreement, referring the question in dispute to arbitration. *Krishnakanta Poramanick* v. *Bidya Sundaree Dassi*, 2 B. L. R., Ap., 25.

Where, by an order of reference made pending a suit, all matters in difference between the parties are referred to an arbitrator by the Court under Act VIII of 1859, section 317 *et seq.*, the arbitrator has power to deal with the costs of the suit. *Muddoosoodun Chowdry* v. *Koylas Chunder Shaw*; *Koylas Chunder Shaw* v. *Muddoosoodun Chowdhry*, 2 Ind. Jur., N. S., 12.

A suit was, by order of Court, referred to three specified arbitrators, who were to make an award within six months, and, in case of difference of opinion, all matters in dispute were to be referred to the decision of an umpire. The arbitrators had only one meeting, at which an agreement was come to by the parties to settle all matters in dispute among themselves, and withdraw the matters from arbitration, which was accordingly done, but nothing appeared to have been afterwards done. No award was made by the original arbitrators within six months from the reference. On application by the plaintiff to have the suit restored to the file of the Court. *Held*, that the suit was still pending, the arbitrators not having determined it while they had jurisdiction to do so, and it was ordered that it should be brought again before the Court. *Gopinath Nandi* v. *Shib Chundru Nandi*, 6 B. L. R. Ap., 74.

An award directed that the defendant should pay the costs of the suit, and of the reference, and of the award, without fixing the scale. On application to the Court to do so, the case was sent back to the arbitrator for that purpose.

Held that, when the order of reference gives the arbitrator full discretion over costs, he alone can fix the scale. *Barrut Chunder Doss* v. *Damjee Pittumber*, Bourke's Rep., O. C., 7; S. C., 1 Cor. Rep., 150.

A partial disagreement of two arbitrators does not nullify their award as a whole. *Sheikh Panaoolah* v. *Sheikh Tumeezooddeen*, 2 W. R., 32.

Where all matters in difference between the parties in the suit were referred to arbitration under an order of Court,—*Held* that the arbitrators had power to award interest after the date of the submission, and to deal with the costs of the reference and award. *Mohun Lall* v. *Nathu Ram*, 1 B. L. R., O. C., 144.

Arbitrators should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of mixing them all up and giving a general award. *Roghoo Nundun Lall Sahoo* v. *Bunwaree Lall Sahoo*, 3 W. R., Mis., 27.

The time for delivery of an arbitration award may be extended at the discretion of the Court.

The refusal of arbitrators to amend a clearly bad award is misconduct under Section 324, Act VIII of 1859. *Deb Narain Singh* v. *Rajmonee Koonwar*, 3 W. R., 168.

The neglect of some of the arbitrators to attend meetings of the arbitrators is misconduct within the meaning of Section 324, justifying the setting aside of the award by the Court which appointed the arbitrators, but not by a Court of Appeal. *Sreenath Ghose* v. *Rajchunder Paul and others*, 8 W. R., 171.

An award is not reversible, unless the provisions of Section 324, Act VIII of 1859 apply. An arbitrator is not bound by technical rules of Court. *Reedoy Kisto Muzoomdar* v. *Puddo Lochun Muzoomdar*, 1 W. R., 12.

An award made by private submission may be valid and binding though no proceedings under Section 327, Act VIII of 1859, have been taken to enforce it.

It is almost an universal rule that a submission to arbitration is revocable before award made.

Where several arbitrators are appointed, and the parties do not agree to be bound by the act of the majority, the award, in order to be valid and binding, must be concurred in and executed by all the arbitrators.

Arbitrators have no power to delegate their

authority to others. Thus, if some of the arbitrators are absent, those present cannot appoint others in their stead. *Baboo Surubjeet Narain Singh* v. *Baboo Gooree Narain Singh*, 7 W. R., 269.

The decision of arbitrators in a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction. *Moshuhel Singh* v. *Konomutty Bewa*, 15 S. W. R., C. R. 172.

By an order of Court, of January 17, 1867, a suit was referred to two arbitrators, under section 312, Act VIII of 1859, who were to make their award in writing, and submit the same to the Court within three months. No order for enlarging that time was made. The first meeting of the arbitrators was held on May 22nd, 1867, and four subsequent meetings were held, at which all the parties attended, and evidence was taken; at the last of which meetings, namely, on 27th July, an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired, but the arbitrators proceeded with the reference.

The award was made on the 12th August, 1867, and remained with one of the arbitrators until his death in August, 1868. Subsequently it was produced by the other arbitrator, on the application of the parties to the suit, and delivered to the successful party, by whom it was brought into Court on the 10th May, 1870, and judgment was moved for in accordance therewith. *Held*, that the arbitrators had authority to make the award. The award was properly submitted to the Court. Section 320, Act VIII of 1859, does not make it necessary for the arbitrators to submit the award to the Court personally; submission to the Court, under Section 320, is not necessary to the completion of an award under sections 315 and 318.

Although an arbitrator may deliver his award to one of the parties, he ought not to hand over with it the proceedings, depositions, and exhibits. *S. M. Jagat Sunderi Dusi* v. *Samian By Suk*, 5 B. L. R., 357.

5.—Award.

If a person was in fit condition to manage his affairs down to the time when the proceedings before an arbitrator in which he was interested were substantially concluded, the award will not be invalidated by reason of the person having become insane before the final publication of the award. *Gourenath and another* v. *The Collector of Monghyr and another*, 7 W. R., 5.

In a suit pending before arbitrators, an appellant who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award. *Shitanath Biswas* v. *Kishen Mohun Mookerjee*, 5 W. R., 130.

Where in a suit to recover a sum of money on an award, the five arbitrators came to a decision, and made, dated, and signed a rough draft of their award, and the defendant then withdrew from the submission, and a fair copy was then made, bearing the same date as that of the rough draft, but signed by only four of the arbitrators,—*Held* that the award was complete at the date of the rough draft, and that its validity was not affected by the subsequent occurrences. The validity of an award cannot be impeached because the arbitrators afterwards do an act required neither by the law nor by the terms of the submission. *Kula Nagabushanam* v. *Kulaseshachalam*, 1 Mad. Rep., 178.

Where parties do not give their consent to the appointment of arbitrators and the judgment proceeds on the arbitration award, the decree is not binding on those parties. Where four arbitrators had been appointed and only two acted, the award was held to be invalid. *Rash Beharee Roy* v. *Doorgadur Roy*, 14 S. W. R., C. R., 211.

Held that the parties, having signed the award of arbitration, must be bound by that until it is legally set aside, and the plaintiff's suit to enforce his right, irrespective of the award, was not maintainable. *Golam Ali Khan* v. *Imam Ali Khan and others*, 2 Agra Rep., A. C., 224.

Held that the award made by one of the arbitrators, and the umpire in the absence of second arbitrator who declined to attend, is not a valid award. *Busunt Rai* v. *Gridharee Singh*, 3 Agra Rep., 93.

An award of arbitrators, to be legal, must be completed and signed by each in the presence of the whole of them. *In the petition of Maharajah Sir Jai Mungul Singh Bahadur*, 3 B. L. R., A. C., 82; S. C., 11 W. R., 433.

Where no time is fixed for sending in an award in the order of Court referring a case to arbitration, the award itself falls to the ground. *Gungagobind Naek and others* v. *Kally Prosono Naek and others*, 10 W. R., 206.

Quære,—What is the effect of an award arrived at in a pending suit which was referred to arbitration by an order of Court otherwise than by consent of all the parties? *Doorga Churn Thakoor and others* v. *Kally Doss Hazrah and others*, 10 W. R. 463.

The decision of a Collector under the Butwarra Law is not an award within the meaning of Act XIII of 1848. *Pultoo Roy* v. *Greedharee Lall*, W. R., F. B., 12; S. C., Ind. Jur., 5.

Held that a verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order or award within the meaning of the term of Clause 7, Act XIV of 1859. *Hukeem Gunga Pershad* v. *Moulvee Mahomed Kootoob Alum*, 2 Agra Rep., 27.

An award made by the consent of the parties cannot be set aside merely by reason of its having been sent in a week later than the date appointed, when such delay is not owing to misconduct or corruption. *Held* further that, when an award has been made, no plea of jurisdiction on limitation can be raised before the Court which is to pass its decree according to the award. *Ameen Chund* v. *Mendhoo Khan*, 1 Agra Rep., R. A., 53.

An award of survey authorities adopting an Act IV order is not illegal, and consequently governed by limitation under Act XIII of 1848. *Ramgutty Nag Chowdhry* v. *Burodachurn Bose*, 1 W. R., 120.

An award under Act IV of 1840 does not relieve a party of the obligation to prove his right and title, when sued by zemindar as a trespasser. *Bydonath Sorbhon* v. *Kenooram Holdar*, 1 W. R., 211.

An award by a survey Court cannot over-ride the decree of a competent Court. *Shamkant Banerjee* v. *Gopal Lall Tagore*, 1 W. R., 328.

An award is illegal for more than is claimed. *Lulut Narain Singh* v. *Narain Singh*, 1 W. R., 333.

The representatives of a party to a survey award are entitled to the benefits thereof. *Rajmohun Mitter* v. *The Commissioner of the Soonderbuns*, 1 W. R., 344.

A Magistrate's award under Act IV of 1840 can only be set aside by proof of title. *Shibchunder Mullick* v. *Modhoosoodun Chatterjee*, 1 W. R., 349.

An award of arbitration cannot be set aside on the ground that it is erroneous, or that only two out of three arbitrators signed the award, when the parties agreed to abide by the decision of the majority. *Kazee Synd Naser Ali* v. *Mussamut Tinoo Dossia*, 6 W. R., 95.

When all the parties did not agree to an arbitration, the award is not illegal against those who did agree. *Ram Soonder Mookerjee add others* v. *Ram Shurun Mookerjee*, 6 W. R., 25.

An award of arbitration may be valid without being enforced by the Courts, as, for instance, where possession under the award is shown. *Mohesh Chunder Moiter and others* v. *Boloram Moiter and others*, 6 W. R., 94.

An award of arbitrators cannot be set aside on the ground of its being inconsistent because the plea of the defendant was proved as to part of the case, and not as to the other. *Debraj Roy* v. *Kartick Chunder Sircar*, W. R., 1864, 153.

Under the old law, previous to Act VIII of 1859, the summary refusal to enforce an arbitration award did not bar the use of the award as the basis of a regular suit. *Ramdhone Sircar* v. *Seetanath Sircar*, W. R., 1864, 283.

Where a suit is referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, by virtue of Act VIII of 1859, Section 325, and no appeal lies therefrom. *Brojolall Baj Pye* v. *Umritolall Baj Pye*, Marsh., 163.

Arbitration awards not brought into Court under Section 327, Act VIII of 1859, are not on that account necessarily invalid. *Ramyad Sahoo* v. *Doolar Sahoo*, 9 W. R., 441.

Section 9 of Regulation IX of 1833 refers only to decisions of punchayets, and does not bar a suit in the Civil Court to set aside an award of survey authorities as null and void. *Raj Kishen Roy* v. *Sarut Chunder Chuckerbutty*, 4 W. R., 79.

An arbitration award not being one which has been made upon a reference by all the parties to the suit is not capable of being converted into a final decree under the provisions of chapter 6, Act VIII of 1859, though it is evidence against any party who agreed to the reference. *Beejoy Chunder Bonnerjee* v. *Bhyrub Chunder Bonnerjee*, 15 S. W. R., C. R., 427.

An entry made in the settlement papers was objected to on the merits. The objection was disallowed summarily without enquiry, on the grounds that the papers had been drawn out more than a year before the objection was taken. *Held* that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the parties or on the question of possession, and therefore that it was not an order on which a Court could found its judgment rejecting the suit without disposal of the point at issue upon the evidence. *Mohunt Heera Dass* v. *Baboo Hurmoo Singh*, 1 N. W. R., Par. 2, p. 17.

A liability arising under an award is not one of such a nature as to fall within the terms used in the Small Cause Court Act to denote the claims cognizable by such Court.

An award should be construed, not by oral evidence given by the arbitrators, but by looking at the language of the award itself. *Musumut Guneshu* v. *Chetay Lal*, 3 N. W. R., 117.

Where, on a reference to arbitration, the case had been regularly heard by all the arbitrators sitting together, and an award been drawn up and signed by them, the mere omission of the arbitrators to sign the award at the same time and in each other's presence does not invalidate the award. *Bhubusandari Dusi* v. *Makhun Lal Dey*, 8 B. L. R., 128.

An arbitration award is not binding on an intervenor as a decree in a suit disposed of by a regular trial. *Haru Pershad Mundle* v. *Boishtub Dass Laga Bawajee*, 17 S. W. R., C. R., 233.

6.—Procedure after Award.

A case remanded by the High Court was referred by the Zillah Judge to two arbitrators, who went fully into the matter in dispute, and wrote and signed as their award separate papers, bearing different dates, which were filed in Court. The defendant then filed a petition of objections, after which the Judge returned the papers to the arbitrators, with an order that they should sign their award conjointly in a form which he prescribed. The award having been submitted, the Judge took up and disposed of the objections previously made, making a decree in accordance with the award. *Held* that the objections made to the two papers were not objections to the award, and that under Section 325 the Judge had no power to pass judgment till all objections to the award had been finally disposed of, or within ten days after the submission of the award. *Maharajah Sir Mungul Singh* v. *Mohun Ram Marwaree and others*, 12 W. R., 398.

A regular and not a summary appeal lies to set aside an award of arbitrators passed under Section 313, Act VIII of 1859. *Ram Coomar Chowdhry* v. *Nobin Chunder Chowdhry*, W. R., 1864, Mis., 33.

Where matters in dispute are referred to arbitration, and it is found that one question at issue is omitted from the reference, and that the award returned by the arbitrators contains no decision thereon, the party interested should bring the omission to the notice of the Court. If he fails to do so, the Court is not wrong in not passing any order or coming to any decision on that point. *Raj Naruni Roy* v. *Juggessur Mookerjee*, 14 S. W. R. C. R., 247.

A case having been referred to arbitration without provision being made for a difference of opinion, and the arbitrators having given in differing awards, the Court of first instance tried the case anew, and dismissed the suit. This decision was confirmed on appeal. In special appeal the plaintiff asked that the case might be sent back to the arbitrators with a provision for difference of opinion, and that they might submit their award a second time. *Held* that it was too late at this stage to allow such a course. *Thakoor Dass Chuckerbutty* v. *Ram Jeebun Chuckerbutty*, 14 S. W. R. C. R., 150.

The procedure provided in Section 327 is not

imperative upon a plaintiff who seeks to enforce an award made without the intervention of a Court of Justice. *Palauiappa Chetti* v. *Rayappee Chetti* 4 Mad. Rep., 119.

Where plaintiff applied that a private award by arbitrators might be enforced, and the first Court gave judgment in exact accordance with the award, it was held that that judgment was final, and that the lower Appellate Court acted without jurisdiction in entertaining an appeal therefrom. *Modoosoodhun Doss* v. *Odoito Churn Doss*, 12 W. R., 85.

Held that an award of arbitrators under Section 33, Regulation VII of 1822, cannot be set aside by the Courts of Judicature. *Furzund Ali* v. *Ahmed Hossein*, 1 Agra Rep., A. C., 267.

No appeal lies from an order rejecting an application to file an award (Mitter, J., *dubitante*).

Where the application was considered as a regular suit, the Judge was right in decreeing costs in a regular suit. *Roy Priyanath Chowdhry* v. *Prosonnochunder Roy Chowdhry*, 2 B. L. R., A. C., 249.

A judgment of a Court given in accordance with an award of arbitration is final, even if there has been corruption and misconduct on the part of the arbitrators. *Ramanoogra Chobey* v. *Mussamut Putmoota Chobegan*, 7 W. R., 205.

An arbitration award as to division of property left to minor sons alleged to give effect to the wishes of a father regarding a partial division of his property after his death, was set aside, so far as it affected those sons, on proof that the partition was injurious to them. *Ramnarain Poramanick* v. *Sreemutty Dossee*, 1 W. R., 280.

Held that the plaintiff having failed to set aside an award made by the Criminal Court, under Act IV of 1840, within the limitation period, his claim in opposition to that award was not maintainable. *Mohunt Gopal Nath* v. *Abdool Ghanee*, 1 Agra Rep., A. C., 120.

There is no appeal from a judgment given according to an award of arbitrators, even if there has been corruption and misconduct on their part. *Sreenath Ghose* v. *Rajchunder Paul and others*, 8 W. R., 171.

Where a Court's order declining to pass sentence according to an arbitration award is reversed in appeal, the lower Appellate Court's order is open to special appeal. Section 325 applies only to the Court which refers a case to arbitrators. *Pureshnath Dey* v. *Nobin Dutt*, 12 W. R., 93.

An award of arbitration cannot be enforced unless the application for enforcement is made within six months from the date of award. *Bhyrub Jha* v. *Hunoomaun Dutt Jha*, 5 W. R., 123.

An appeal lies from the order of a Court directing the enforcement of an award of arbitrators, when the matter was referred to arbitration without the intervention of a Court. *Anund Chunder Singh* v. *Gopal Chunder Dou*, 3 W. R., 154.

An appeal lies from a judgment given on an arbitration award, on the ground that the judgment is contrary to the award. *Deb Narain Singh* v. *Rajmonee Koonwar*, 3 W. R., 168.

The Court which refers a matter to arbitration cannot sit in appeal from the decision of the arbitrators; nor has a lower Appellate Court jurisdiction to go into the merits of the case. *Haradhun Dutt* v. *Radhanath Shaha and others*, 10 W. R., 398; S. C., 2 B. L. R., N. S., 14.

A Court has every power to look into the proceedings, depositions, and exhibits submitted by arbitrators under Section 320, Act VIII of 1859, and, if satisfied that the award is of such a character as to raise a reasonable presumption of misconduct on the part of the arbitrators, it may set aside the award. *Puresh Nath Dey* v. *Nobinchunder Dutt*, 12 W. R., 93.

A case remanded by the High Court was referred by the Zillah Judge to two arbitrators, who went fully into the matters in dispute, and wrote and signed, as their award, separate papers bearing different dates, which were filed in Court. The defendant than filed a petition of objections, after which the Judge returned the papers to the arbitrators, with an order that they should sign their award conjointly in a form which he prescribed. The award having been submitted, the Judge took up and disposed of the objections previously made, making a decree in accordance with the award. *Held* that the two papers originally sent in were not an award, which, under Section 320, Act VIII of 1859, should be a single instrument complete in itself; and that the Judge was right in sending back the papers directing the arbitrator to sign their award conjointly and in the presence of each other. *Maharajah Sir Joymungul Singh* v. *Mohun Ram Marwaree and others*, 12 W. R., 397.

An application that an award be remitted to the arbitrators, in order that the proceedings, depositions, and exhibits in the suit which have not been submitted with it to the Court under Act VIII of 1859, Section 320, should be so submitted, ought to be made within ten days after the award has been originally submitted; otherwise, if the award be good on the face of it, the Court will give judgment upon it. *Baney Madhub Roy* v. *Hurry Mohun Roy*, 2 Ind. Jur., N. S., 16.

Section 323, Act VIII of 1859, authorises a Court which refers a case to arbitrators to remand it to them for reconsideration when their award contains mistakes, omissions, or defects which cannot be amended by the Court under Section 322. Such award, on the refusal of the arbitrators to reconsider it, becomes null and void, without proof of corruption or misconduct under Section 324. *Mohun Kishen and others* v. *Bhoobun Shyaim and others*, 7 W. R., 406.

Where by the terms of a reference to arbitration all matters in difference are referred to the arbitrator, the Court will not modify (Section 322), remit (Section 323), or set aside (Section 324) the award, on the ground that the arbitrator in his discretion has awarded damages to the plaintiff, and at the same time make him pay all the costs, when it is not shown that he exercised the discretion given him improperly. *Mohendronath Bose* v. *Nussee Mangee*, 1 Ind. Jur., N. S., 224.

In an application to set aside an order made by a Judge in chambers, extending the time (of ten days) for making an application under Section 324 of Act VIII of 1859 to set aside an award on the ground of misconduct of one of the arbitrators and of the umpire,—*Held* that the words of the section being in their ordinary import obligatory, and there being nothing in the other parts of Code to show that such construction was at variance with the intention of the Legislature, and a similar provision having been held by the Courts in England to be

imperative that the application to set aside the award must be made within the ten days, provided the Court be then sitting, and if not, on the first day of its sitting after that time, and that there is no power to enlarge the time to make such application. *Edalji Shaporji* v. *Talsidas Sundardas*, 2 Bom. Rep., 285.

An application to set aside award, under Section 324 of Act VIII of 1859, must be made within ten days after the award has been submitted to the Court. The words of the Act are imperative. *Edulji Shaporji and others* v. *Tulsidas Sunderdas*, 1 Ind. Jur., N. S., 234.

It is no ground to set aside an award of arbitrators, under Section 324, Act VIII of 1859, that the arbitrators decided the case against the written statement of the defendant. *Gooroo Churn Dey and others* v. *Ramdhone Paul and others*, 7 W. R., 28.

An appeal lies from an order enforcing execution of an arbitration award, or from a decree under Section 325 of Act VIII of 1859. Where the appeal was brought on an insufficient stamp, the appeal was dismissed without prejudice to the appellant bringing a fresh appeal within 20 days on a full stamp. *Syed Wali Alum* v. *Bibee Nisran*, 3 B. L. R., Ap., 104; S. C., 12 W. R., 50.

A judgment in accordance with an arbitration award is, under the express terms of Section 325, Act VIII of 1859, final, if the reference to arbitration has been conducted pursuant to the provisions of the Code. And where the matter in dispute in a suit was referred to arbitration, and the provisions of Act VIII were not strictly complied with, —*Held* nevertheless that, as the appellants had consented to the arbitration and to the appointment of arbitrators, and took part in the proceedings, and after having made objections to the award (which objections were considered by the arbitrators), they assented to the award, the Principal Sudder Ameen was justified in passing a judgment in accordance with the award, and that the High Court would not interfere with that judgment. *Misser Deo Kishun and others* v. *Misser Bhugwan Doss*, 3 Agra Rep., 199.

An order rejecting an application to file an award under Section 327, Act VIII of 1859, is not a decree, and is therefore not appealable. *Baboo Chintamun Singh* v. *Roopa Kooer*, 6 W. R., Mis., 83.

An application was made, under Section 327 of Act VIII of 1859, to file an arbitration award, and the Court, after calling on the opposite party to show cause why it should not be filed, rejected the application. *Held* that the case did not come within the meaning of Section 325, and that the order being simply one "rejecting an application to file an award" was final. *Raj Kumar Singh* v. *Kallichurn Singh*, 2 B. L. R., App., 20.

An application to file an award under Section 327 of Act VIII of 1859 should be made to the Court of the lowest grade competent to receive it, and no appeal lies to High Court from an order by a District Court confirming on appeal an order of a subordinate Court declining to file such an award. *Ex-parte Balkrishna Bhasakar Gupto*, 2 Bom. Rep., 96.

An order refusing to enforce an obviously illegal award of arbitrators under Section 327, Act VIII of 1859, is not a decree, and therefore not appealable. *Digambori Dassia* v. *Poorna Chand Dey and others*, 7 W. R., 401.

Following a Full Bench Decision, 6 W. R., Mis., 83 (from which Dwarkanath Mitter, J., dissented), it was held that no appeal lies from an order of a lower Court rejecting an application for filing an award under Section 327, Act VIII of 1859, even though the order awards costs. *Preonath Chowdhry* v. *Ramdhun and others*, 11 W. R., 104.

An appeal, on the allegation of want of consent of parties, lies from the order of a lower Court, under Section 327, Code of Civil Procedure, directing a private award of arbitration to be filed and enforced. *Hulodhur Santal* v. *Gonesh Santal and others*, 6 W. R., 60.

An arbitration award should be filed in Court. Effect of not filing as defined in Section 327, Act VIII of 1859. *Soophul Singh* v. *Methoo Singh*, 1 W. R., 163.

No appeal lies against an order disallowing an application under Section 327 of Act VIII of 1859. *Vyankatesh Ramchundra Jogekar* v. *Balajerao Bin Anandrao and others*, 1 Bom. Rep., 184.

An arbitration award cannot convert into a simple debt cognizable by a Civil Court a claim for moneys collected by defendant as Tehsildar. Such a claim is cognizable under Section 24 of Act X of 1859. Under Section 327 of Act VIII of 1859, the Civil Courts have no jurisdiction to enforce the arbitration award. *Shoshee Mohun Shaha* v. *Sheer Sircar*, 5 W. R., Act X. R., 13.

When a matter has been referred to arbitration without the intervention of any Court, a Small Cause Court in the mofussil has jurisdiction to entertain an application under Section 327 of Act VIII of 1859 to file the award, provided it relates to a debt not exceeding the amount cognizable by such Court, and that the defendent resides within its jurisdiction. *Elam Paramanick* v. *Sojaitullah Sheikh*, 1 B. L. R., A. C., 43; and 10 W. R., 85.

In an arbitration case between a mahajun and his gomasta, an award was made to the effect that Rs. 725 were outstanding and due to the kuti, of which Rs. 483 were due to the mahajun, and Rs. 241 to the gomasta; that the gomasta should point out the parties owing the Rs 483, or in default make good the amount. The mahajun applied to the Subordinate Judge of Bhaugulpore, under Act VIII of 1859, Section 327, to file the award. The Subordinate Judge held that it was not proved that the gomasta had done as required by the award, and ordered him to pay the deficit. The gomasta appealed to the Judge, who held that no apppeal lay from the judgment of the Subordinate Judge enforcing the award.

Held, on special appeal, that the Subordinate Judge's judgment decided a question of fact not determined by the award, and that an appeal would lie. *Rambhunjun Bhukut* v. *Srikishen Bhukut*, 2 B. L. R., A. C., 260; S. C., 11 W. R., 140.

When complaint has been preferred to a Criminal Court, and the Magistrate has directed that the subject-matter of the complaint be referred to arbitration, if the parties consent and proceed to such reference, the award may be enforced under the provisions of Section 327, Act VIII of 1859. *Sheo Nund Rai* v. *Mahanund Ram*, 1 Agra Rep., A. C., 45.

Held that a suit for cancelment of the award

made under Sections 6 and 7, Regulation IX of 1833, where it was not alleged that the proceedings were contrary to law, but that the plaintiff did not consent to it, was not maintainable under Section 9 of the said enactment; the consent of the parties not being necessary under the provisions of those sections. *Ikramoollah and others* v. *Sheo Pershad*, 2 Agra Rep., 340.

A Court should make full inquiry into the objections made to an award before setting it aside; and should not hastily assume that the mere circumstance of the arbitrator having some interest in the matter at issue would necessarily bring the award within the provisions of Section 324 of Act VIII of 1859, and render it liable to be set aside. *Senuk Kuchee* v. *Oree Dobey*, 2 N. W. R., 241.

A suit lies to enforce an award made without the intervention of a Court of Justice.

The procedure provided in Section 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made. *Palanippa Chetti* v. *Rayappa Chetti*, 4 Mad. Rep., 119.

The Court to which an application should be made to enforce an award under Section 327 of the Civil Procedure Code is a Court having jurisdiction in the matter to which the award relates, that is in respect of the whole matter of the award. *Gangappa, M.* v. *Kupinappa M.*, 5 Mad. Rep., 128.

No appeal lies against a decree made in accordance with an award upon a submission to arbitration in the suit. *Ramireddy Narsareddy* v. *Mummareddy Papireddy*, 5 Mad. Rep., 404.

On the application of one party to a reference to arbitration, without the intervention of a Court, to have the award filed and for judgment thereon, an objection of the other party that the award had been come to after the arbitrators' authority had been repudiated, was overruled, and judgment was passed by the Moonsiff in accordance with the award. *Held* (Paul, J., dissenting) an appeal lay from the decision of the Moonsiff.

In another case the question was referred to a Full Bench whether when an award has been ordered to be filed, and judgment has been given in accordance with it, under Section 327 of Act VIII of 1859, is such judgment open to appeal? The answer given (Paul, J., dissenting) was: It is open to an appellant to show that the paper which has been filed is not an award. If it is an award, and judgment is given in accordance with such award, such judgment is final.—*Per* Paul, J., the judgment is final. *Sashticharan Chatterjee and others* v. *Taruk, Chandra Chaterjee and others, Lala Iswuri Prasad and others* v. *Bir Bhen Jan Tewari and others*, 8 B. L. R., 315; 15 S. W. R. F. B., 9.

The addition, in a judgment according to an award of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect the decision on the matter referred, was held to come within the concluding part of Act VIII of 1859, Section 325, and not to affect the finality of the judgment. *Hura Soonduru Dabee* v. *Sreedhur Bhuttacharjee*, 17 W. R., C. R., 352.

A reference to arbitration made under an order of Court cannot be revoked at the instance of a party. If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him in the course of the arbitration, and which might be material evidence. *Nilmonu Bose* v. *Mehima Chunder Dutt*, 17 S. W. R., C. R., 516.

An Appellate Court is competent to refer cases to arbitration.

Where a party contests the validity of an arbitration award, on the ground that it was not completed within the time fixed by the Court, he must show that the delay arose from corruption or misconduct on the part of the arbitrator, or that the award was made after the issue of an order of Court superseding the arbitration and recalling the suit. *Russool Bibu* v. *Shaikh Jan Ali Chowdry*, 17 S. W. R., C. R., 31.

A Moonsiff has no jurisdiction to entertain an application and keep an order on the enforcement of an arbitration award relating to the determination of rent. *Altal Hossein* v. *Greesh Chunder Roy*, 15 S. W. R., C. R., 556.

An appeal lies from an order made in execution of an arbitration award filed under the provisions of Sec. 327 of the Civ. Proc. Code. *Vasudeb Vishnu* v. *Nárá yun Juganmut Dikshit*, 5 Bom. Rep., A. C., 129.

A Judge is not bound to give costs at a certain valuation; and a suit to carry out an arbitratiom award need not be valued. *Khoda Buksh* v. *Mowba Buksh*, 14 S. W. R., C. R., 255.

"All matters in difference in the suit, including all dealings and transactions between the parties," having been referred to the arbitration and award of certain persons, the arbitrators should ascertain upon what points the parties are at issue, and upon each of these points come to a finding.

If a Court regards an award as not open to objection, such Court must deliver judgment in accordance with the terms of such award, and not modify the same.

An award, defective and illegal on the face of it, should be at once remitted to the arbitrators, under Section 323 of Cap. 6 of Act VIII. of 1859. *Luchmee Narain* v. *Pyle*, 2 N. W. R., 150.

A judgment given according to an award under Section 325 of Act VIII of 1859, without waiting the ten days prescribed by Section 324 of that Act, is illegal, and will be set aside.

After passing judgment according to an award, such award cannot be re-submitted to the arbitrator for reconsideration and correction. *Popkar Pershud* v. *Punchun Rue*, 2 N. W. R., 235.

Held (by Loch, J.) with reference to the Full Bench Ruling reported in vol. 5, Weekly Reporter, page 188, that an appeal lies, on the point of costs, from a decree enforcing an arbitration award. *Khoda Buksh* v. *Mowhi Buksh*, 14 S. W. R., C. R., 255.

An order of a Civil Court setting aside an arbitration award, being an interlocutory order, is not open to an appeal immediately, but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree. *Mothooranuth Tewaree* v. *Brindabun Tewaree*, 14 S. W. R., C. R., 327.

In order to the validity of a decree on an arbitration award, it is necessary that the award be filed, that the judgment be passed according to the award, and that the decree follow on the judgment and be carried into effect in the same manner as other decrees. *Himutoollah Chowdry* v. *Bibee Hirun*, 13 S. W. R., C. R., 62.

Two out of three arbitrators appointed in the case, submitted their award before the Moonsiff. The defendant, against whom the award had been made, applied to the Moonsiff to set aside the award on the grounds of corruption and misconduct, and that the award was a nullity, inasmuch as only two out of three arbitrators had made the award. The Moonsiff overruled the objections and passed a decree in terms of the award. On appeal to the Judge, the order of the Moonsiff was set aside on the ground that the award was illegal, as two only of the three arbitrators originally appointed had made the award, and that the evidence did not prove the plaintiff's case.

On an application to the High Court to set aside the order of the Judge,—*Held*, that under section 325, Act VIII of 1859, the Judge had no jurisdiction to set aside the award when the Court of first instance had passed judgment according to the award. *In the matter of the Petition of Sheik Habi Baz*, 5 B. L. R. A. P., 75; 14 S. W. R., C. R., 33.

7.—Miscellaneous.

Where certain arbitrators, summoned by the revenue authorities under the Regulations, investigated ancestral debts, and ascertained the amounts to be contributed by the other co-sharers to one who paid it, and they, accepting the award, promised to pay principal and interest on a certain date; and also further agreed that, if they failed to pay on the specified day, their shares should thenceforward become his absolute property,—*Held* that such an agreement amounted to a conditional sale, and was liable to the incidents which under the Regulations attach to such sales, and the suit for possession, without summary process of foreclosure, was not maintainable. *Ghosee Lall and others* v. *Gaind Lall*, 3 Agra Rep., 184.

This case having been withdrawn by the Judge, for trial in his own Court, from the Principal Sudder Ameen's Court, where it had already been referred to arbitration,—*Held* that the Judge was quite competent to decide the case himself, without necessarily being bound also to refer it to arbitration. *Aboo Mahomed and others* v. *Kissen Mohun Surma and others*, 6 W. R., 290.

When a person goes away from the country and remains away, and there is no evidence to show an intention to return, that person becomes incapable of acting as umpire within the meaning of Section 319 of Act VIII of 1859. *Gadadhur Moitry* v. *Ganga Prasad Moitry*, 4 B. L. R. O. C., 89.

III.

CAUSE OF ACTION AND PARTIES TO SUITS.

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1.—MISCELLANEOUS.

A plaintiff's cause of action is a very different thing from his title; the one being something done contrary to his interest, which obliges him to seek the aid of a Court of Justice, the other being the proof that that something affords him a valid ground for relief. *Brojo Lall Roy* v. *Khetter Nauth Mitter*, 12 W. R., 55.

When an agreement is entered into to pay off money due under a decree by monthly instalments, each monthly instalment becomes a separate cause of action, and limitation applies to each instalment separately. *Mussamut Khidu* v. *Kali Sahu*, 3 B. L. R., Ap., 112; 12 W. R., 71.

Where the plaintiff alleged that he was in possession of property, and prayed the Court to cause the registry to be altered into his name, without alleging that the proper authorities had improperly refused to make the entry, and without joining as a defendant the only person who had power to do so,—*Held* that the plaintiff's suit ought to have been dismissed. *Irreacbyari* v. *Rev. H. A. Kaundanya*, 2 Mad. Rep., 363.

To support a bill *quia timet*, the plaintiff must have a title in possession or expectancy, and the property must be in danger. *Latoor* v. *Latoor and others*, 2 Mad. Rep., 8.

Each instalment of a kistbundee, as it accrues due, constitutes a fresh cause of action. *Enaetoollah Chowdhry* v. *Hurro Chunder Da*, 2 W. R., 39.

A stranger having no interest in the matter, has no right, even with the consent of presumptive reversionary heirs, to sue for an order declaring an adoption to be valid. *Brojokishoree Dossee* v. *Sreenath Bose*, 9 W. R., 463.

Money paid under compulsion of law cannot be recovered back as money had and received. *Juggobundhoo Ghose* v. *Chowdhry Mumtaz Hossein*, W. R., 1864, 205.

Quære,—Whether a new suit will lie upon a decree pending an appeal. *Ranee Imamun* v. *Hurdyal Singh*, 5 W. R., 277.

In a suit to compel defendant to remove an embankment recently constructed on his own land, on the allegation that it infringed plaintiff's right of irrigation by a certain channel, where it was found that the embankment in question was no manner of obstruction to the water-course by that channel, —*Held* that, to entitle plaintiff to a decree, there must have been some actual infringement of his right by the defendant, and not merely some act whereby, as it were, that right was denied or questioned. *Shama Churn Chatterjee* v. *Boidonath Banerjee*, 11 W. R., 2.

A suit for a declaration of a right to receive marks of recognition and honour at idol-festivals, or for damages from priests for withholding the same, is not cognizable by a Civil Court. *Gepain Dup Ghese* v. *Gooroo Dup Chuckerbutty*, 16 S. W. R., C. R., 198.

2.—WHERE A SUIT LIES.

Wilful abuse of his authority by a Judge, who is wilfully acting beyond his jurisdiction, is a good cause of action by the party who is thereby injured. *Ammiappa Mudali, petitioner*, 2 Mad. Rep., 443.

Where a Statute imposes a duty, it without express words gives an action for the failing to perform that duty, and for wrongfully performing it. *Ponnusamy Tévár* v. *Collector of Madura*, 3 Mad. Rep., A. J., 35.

A suit will lie for the collections of a shrine, either in right of property in the place or of lawful

and established office attached to it. *Sheo Suhaye Dhance* v. *Bhoom Mahtoon*, 3 W. R., 33.

A suit will lie on a bond given for the purpose of securing money to be expended in carrying on law proceedings. *Nobeen Chunder Ghose* v. *Ramgogernath Gope*, W. R., 1864, 63.

A suit will lie by one priest for a share of offerings received by another, if there be a contract to pay over such share. *Jugdanund Gosamee* v. *Kessub Nund Gosamee*, W. R., 1864, 146.

The right to conduct a marriage procession along the public highway can only be questioned by the Magistrate; and an action will lie against private persons forcibly stopping such a procession even, *semble*, where it is unusual for persons of the plaintiff's caste to conduct one. *Sivapachari* v. *Mahalinga Chetti and others*, 1 Mad. Rep., A. C., 50.

A suit will lie to determine who are fit persons of right entitled to be appointed dharmakarttas of a pagoda. *Striman Sada Gopa* v. *Krista Vattachargar and others*, 1 Mad. Rep., A. C., 301.

Where A. was criminally prosecuted by B. for wrongful restraint, and he came to terms with B. to pay him for the withdrawal of the complaint, or to deposit money or property with C. to be paid over to B. on the disposal of the case according to B.'s petition of withdrawal, and the Magistrate, instead of allowing the withdrawal of the charge, punished A. criminally,—*Held* that A. could sue for the recovery of the money or property, as the charge was not one out of which it would have been illegal for A. to withdraw with the consent of the Magistrate, the offence charged consisting of an act for which B. might have sued for damages in the Civil Court. *Mathoora Nath Bhoomic* v. *Kenaram Kurmokar and Shib Nath Shaw*, 7 W. R., 33.

Plaintiff, to save the putnee from sale for an arrear of rent of a former year, which had been adjudged by an apparently valid decree to be due from the defendant, paid the money. *Held* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. *Andrew* v. *Larmour*, 2 Ind. Jur., O. S., 4.

A suit may be brought for the removal of an obstruction to the execution of a decree. *Takhurooddeen Mahomed Eshan Chowdhry* v. *Kurimbux Chowdhry*, 3 W. R., 20.

Semble,—A suit for the delivery of accounts under Act X of 1859 will lie against the heir of an agent, the Act being intended to facilitate the recovery of accounts by zemindars, and to make the heir of an agent equally responsible with the agent. *Gowhur Hossein and others* v. *Ram Coomar Chowdhry and others*, 8 W. R., 481.

A suit is maintainable under Act XII of 1855 against personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of a purely personal character,—as, for example, defamation. *Gopal Chunder* v. *Mussamut Beemah Begum*, Marsh., 344.

A member of a joint undivided Hindu family is not precluded from suing alone to obtain compensation in respect of a loss to himself personally caused by wrongful destruction of property in which he had a definite share. *Gopee Kishen Gossain* v. *W. H. Ryland and others*, 9 W. R., 279.

An action will lie to obtain a binding declaration of a person's right to perform the duties of poojaree, and to receive the proceeds of a mundar. *Pranshunker and others* v. *Prannath Muhanund*, 1 Bom. Rep., 12.

In a suit brought by M. against K. and others, certain lands belonging to G. were included, and G. was made a defendant; these lands, however, were released from the claim, and G. excluded from the decree obtained by plaintiff against the other defendants. In execution, however, M. had them measured as a part of the decreed lands; and G.'s petition of objection under Section 230 of Act VIII of 1859 having been struck off the file, G. brought a suit to have his title established.

Held that, though as a "party to the suit" brought by M. G. would have been bound by Section 11, Act XXIII of 1861, to seek his remedy in the execution department, yet, as he was released from the operation of the decree, he must be considered a stranger, and permitted to bring his present action. *Gour Kishore Chowdhry* v. *Mahomed Hossein Chowdhry and others*, 10 W. R., 191.

The defendant sued one J. H. P. in the Small Cause Court, and obtained a decree, in execution of which he caused a steamer to be attached, as being the property of J. H. P. Thereupon the plaintiffs, alleging themselves to be in possession of the steamer as mortgagors from J. H. P., in order to obtain its release, paid the amount of the decree against J. H. P. into Court, and the steamer was given up. Subsequently an order was made by the Court, on the application of the plaintiffs, that the money should remain in Court pending the result of a suit to be brought by them for its recovery. They accordingly brought a suit against the defendant. The Judge of the Small Cause Court found that J. H. P. had no attachable interest in the steamer, and that the plaintiffs had paid the amount of the decree on compulsion,—*Held* the plaintiffs could maintain the suit, although the defendant had not actually received the amount of the decree. *W. Moran* v. *Dewan Ali Shirang*, 8 B. L. R., 418.

Giving instructions to counsel in reference from the Small Cause Court is acting for the suitor within Clause 10 of the Letters Patent of the High Court, and can only be done by an Attorney of the Court.

Where the plaintiff had expended money at the request of the defendant in the purchase or settlement of Tazi Mundi Chittis,—*Held* he was entitled to recover. *Kanaylal* v. *Chagmul Buttia*, 8 B. L. R., 412.

The plaintiff executed a bond jointly with a servant of the defendant's on 10th July, 1861. The proceeds were expended for the defendant. On 30th August, 1864, the creditor obtained a decree upon the bond for principal and interest, which the plaintiff satisfied by two payments made on the 4th July, 1866, and 30th June, 1868, respectively. He brought a suit against the defendant for the amount on 22nd June, 1869. *Held*, that the plaintiff could maintain his suit against the defendant for the amount paid by him, and that the suit was not barred by the Law of Limitation. *Bhagirath Adhikuri* v. *Turini Chundra Pakrati*, 7 B. L. R., 35, and 15 S. W. R., C. R., 413.

3.—Where a Suit does not Lie.

In a suit for confirmation of possession of a hill, with the places of worship appertaining thereto, and the idols set up thereon, the alleged cause of action being that defendant intended to lay claim to the offerings made, and proposed to call in question plaintiff's possessory right,—*Held* that the plaint disclosed no cause of action whatever. *Poorun Chand Galeecha* v. *Paresh Nath Singh*, 12 W. R., 82.

Plaintiff having sued as the shebait of certain lands in defendant's talook, alleging that they belonged to his lakhiraj debutter, and asking to have a thak demarcation amended and his right declared, it was held that, as plaintiff had been present at the survey proceedings which were his own act, he had no cause of action; and that in his case, such an objection on the part of the defendant ought to be admitted even in special appeal. *Soodukhina* v. *Issur Chundra Mojoomdar*, 12 W. R., 25.

The property of the plaintiff having been included among the lands to which certain resumption proceedings between the Government and a third party related, the plaintiff preferred an objection, which was disallowed by the Collector. The Special Commissioner on appeal declined, for want of jurisdiction, to entertain the objection. *Held* that the order of the Special Commissioner could not constitute any cause of action, either against the Government or a third party. *Shiboo Soondery Debi and another* v. *The Secretary of State and others*, 7 W. R., 373.

Plaintiff owed defendant a judgment debt. He paid the debt, but not through the Court. Defendant then fraudulently applied to the Court to execute the decree, and the Court, being debarred by Section 206 of the Code of Civil Procedure from recognizing payments made otherwise than through it, executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid.

Held by the majority of the Court (Scotland, C. J., and Innes, J., dissenting) that such a suit is not maintainable. *Arunachella Pillai* v. *Appaun Pillai*, 3 Mad. Rep., A. J., 188.

A payer for honor, though entitled to the same remedies upon the bill as the party for whom payment was made, is not entitled to bring a suit in his own name and in his own behalf, for the value of the goods for which the bill was drawn. *Carmichael* v. *Brojonauth Mullick*, 1 Hyde's Rep., 274.

Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed in terms thereof. Under this decree, the elder was to hold possession of certain lands, the rents of which were to go to perform the worship of the family idol. The younger, however, kept the elder out of possession of the lands, who therefore, performed the worship at his own charges, and then took out execution for possession and mesne profits, in order to recoup his own expenditure on the family idols. The younger also took out execution, and objected that his brother had not performed his trust as family sebait, so that he had been compelled to perform the ceremonies at his own expense. His objection was overruled. The elder brother having died without executing his decree, his widow applied to execute it for the amount of the mesne profits due under it.

Held, on the appeal of the younger in his own case, that the non-performance of ceremonies by his brother gave him no ground of complaint, unless he could show that such failure was not caused by any default on his part. *Held* in the other case that the widow was entitled to execute the decree for mesne profits of the idol lands, without showing that the ceremonies had been performed by her husband out of his own private funds. *Radhajibun Mustafi* v. *Taramonee Dossee*, 2 B. L. R., P. C., 79; 11 W. R., P. C., 31.

Held that a claim to receive fees as Chowdhree from persons using a certain market-place, is not a right which can be enforced by the Courts of Law. *Bhinuk Chowdhree and others* v. *The Collector of Jounpore*, 2 Agra Rep., A. C., 271.

A suit will not lie for obstructing a public road, without showing any particular inconvenience to the plaintiff in consequence of such obstruction. A donor does not, by dedicating a thing to the public, necessarily become a guardian of the public *quoad* that thing. *Boroda Prasad Mostafi* v. *Gora Chand Mostafi*, 3 B. L. R., A. C., 295; S. C., 12 W. R., 160.

A civil suit will not lie to set aside an order of a magistrate for the removal of a local nuisance under Act XXI of 1841, or under Section 308 of the Code of Criminal Procedure. *Kedernath Mookerjee* v. *Parbutty Peishkar*, 2 W. R., 267.

A suit cannot be maintained to enforce the performance of certain services by barbers. *Rajkisto Majee* v. *Nobaee Seal*, 1 W. R., 361.

A. and B. borrowed money from D. with C. as their surety, mortgaging their house to C. to secure him from loss. The same house having been previously mortgaged by them to D., C. had to pay the debt to D.; but the house was attached by E. in execution of a decree against A. and B. C. sued D. and E. to raise the attachment. *Held* that the action did not lie. *Shivlall bin Khebchand* v. *Balvantrao Venayak*, 2 Bom. Rep., 75.

A widow cannot sue during the life-time of an adopted son who has arrived at majority. A petition of the adopted son withdrawing an objection previously made by him to the suit being brought, cannot cure the defect in her plaint. *Jannobee Chowdhrain* v. *Dwarkanath Roy Chowdhry and others*, 7 W. R., 455.

A benameedar has no right to maintain a suit in a Civil Court for property in which he has no beneficial interest. *Meheroonissa Bibee* v. *Hur Churun Bose*, 10 W. R., 220.

Suits to set aside improper alienations by a widow cannot be brought by those whose rights are only inchoate and remote, as are those of a minor who is only entitled in reversion after the life-estate of his mother and her sister, in the event of their surviving their mother, whose alienations he seeks to set aside. *Bama Soondery Dossee* v. *Bama Soondery Dossee*, 10 W. R., 301.

Held that, where a third party was recognized as joint proprietor, and the collections were made in the joint names of the plaintiff and herself, the mere payment of the rents to plaintiff's sircar could not entitle plaintiff to sue for the whole rent in his

own name. *Watson and Co.* v. *Nilcunt Sircar and another*, 10 W. R., 331.

A party has no right to bring a civil suit to get possession of land which has been taken from him, and awarded to his adversary in the execution of a decree in a boundary suit. *R. Watson* v. *Bejoy Gobind Bural; Rance Shoomasoondery Debia* v. *Bejoy Gobind Bural*, W. R., 1864, 331.

A person cannot sue to set aside an agreement under which he has lent money on security of a lease of land subject to extension in the event of deficiency in the assets, unless he shows such gross and excessive deficiency in the assets as amounts to a failure of the consideration and deprives him of the security for his money, and unless he also shows that this deficiency was caused by the representations of the party to whom he lent the money, and in spite of due care and diligence on his own part. *Syud Mahomed Hossein* v. *Rajah Okhoy Narain Paul*, 4 W. R., 70.

No cause of action to set aside illegal acts of an adopting mother arises to the adopted son, either from the date of his obtaining possession, or from the date of the final decisions in any case brought for him or against his mother, or by or against him, to prove or disprove the validity of his adoption. *Kishen Mohun Koond* v. *Muddun Mohun Tewaree*, 5 W. R., 32.

R. having executed two mortgages of the same share, his mortgagees obtained against him separate decrees, in each of which the property was declared liable to sale in satisfaction of the debt. Plaintiff first purchased under the decree obtained on the earlier mortgage, and defendant (who was the second mortgagee) himself purchased the same right, title, and interest at the second sale. The suit was brought for confirmation of plaintiff's possession of the estate, on the ground that his title was affected by the subsequent purchase of the defendant. *Held* that plaintiff had no cause of action, as his rights had not been disturbed by any act of the defendant. *Buddrenath Jha* v. *Amrit Sahoo and others*, 10 W. R., 126.

A putnee having been sold for arrears under Act VIII of 1859, was bought by one M., from whom B. purchased a portion. Not being able to get possession, B. sued the ryot for rent under Act X; but the putnee having been again sold for arrears, he gave up his claim to possession, and sued for the rents payable during the years he had been kept out of possession, less what was barred by limitation. His suit was dismissed on the intervention of an heir of the zemindar, who objected that the lands cultivated by the ryot were not within the portion bought by B. B. then sued the zemindar and ryot for the wasilat accruing during the years he had been kept out of possession. The Judge held that the plaintiff had established his claim, and remanded the case for enquiry as to the amount of wasilat, retaining it on his file pending the enquiry, and eventually decreed it in favour of the plaintiff.

Held that limitation as regards appeal would run, not from the Judge's order of remand, but from the final decision.

Held that the plaint was bad against the ryot, but it did disclose a cause of action against the zemindar, who was said to have kept the plaintiff out of possession of his purchased land.

Held that no difference should be made between wasilat paid in kind, and wasilat paid in cash; both should be calculated in specie, and bear interest at the usual rate. *Sreemutty Raye Kissoree Dossee and others* v. *Bonomally Churn Mytic*, 10 W. R., 209.

Unsuccessful intervention in a suit for rents against ryots, followed by no result operating injuriously on plaintiff's title or possession, can afford him no cause of action in a suit for declaration of right and confirmation of possession. *Juggut Chunder Roy and another* v. *Mohima Chunder Paul and others*, 11 W. R., 331.

Where a party residing on one side of a public lane encroaches on the lane by building, narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not so, he has no cause of action against the other. *Abdool Hye* v. *Ram Churn Singh and others*, 11 W. R., 445.

A mere notice that an adoption has taken place is not of itself a cause of action upon which a reversioner is bound to sue. *Huronath Chowdhry* v. *Hurree Lall Shaha and others*, 11 W. R., 477.

4.—Whole Cause of Action.

A., who resided and carried on business in the Upper Provinces, sent cotton for sale to B. in Calcutta, and drew hoondees against it upon B. payable in Calcutta. The hoondees were negotiated, and afterwards presented to B.s gomastah in Calcutta, and there accepted and paid by him for B. In a suit by B. against A. for balance of account,—*Held* that the whole cause of action arose in Calcutta within the meaning of Section 12 of the Letters Patent. *Dhanraj* v. *Gobindaram*, 1 B. L. R., O. C., 76.

An application was refused for leave to commence a suit in the original side of the High Court, to recover a sum which was made up of various items, with respect to some of which the cause of action arose in Madras, but as to the great bulk of the claim, the cause of action arose elsewhere. Upon appeal the decision was sustained.

Per Bittleston, J.—the High Court, especially when exercising its ordinary original jurisdiction, is bound to adopt the interpretation of the words "cause of action" and "part of the cause of action" laid down with general, if not complete, uniformity under the English County Court Act The cause of action means the whole cause of action. The whole cause of action includes every fact essential to the maintenance of the action, and each of these facts separately is but a part of the cause of action. The character of the High Court refers to a cause of action arising wholly or in part within the local limits. The cause of action spoken of may consist of several parts, which parts may arise in different places.

Per Holloway, J.—The High Court is not bound by the definition of cause of action derivable from the English cases. Irrespectively of the domicile of the defendant, there is a competent *forum*, wherever a place can be indicated to which the right and its infraction can both be referred, because

there is a cause of action and the whole cause of action. *De Souza* v. *Coles*, 3 Mad. Rep., O. A. J., 384.

Where plaintiff brought an action to recover money paid by him in Calcutta, on hoondees drawn by defendant beyond the local limits, but sent by him to Calcutta, and there accepted and paid by the plaintiff,—*Held* that the whole cause of action arose within the local limits of Calcutta, so as to give the High Court jurisdiction under the 12th Section of the Charter. *Joan Mull* v. *Munnoololl*, 1 Ind. Jur., N. S., 219.

Where a promissory note payable within the jurisdiction is also in the first instance delivered within it, the cause of action arises within the jurisdiction. *Isser Chunder Sein* v. *L. Cruz and another*, 9 Ind. Jur., N. S., 233.

A Hindu, whose share in an ancestral estate had been alienated by a co-proprietor, instituted simultaneously three different actions against the co-proprietor, and the persons to whom the alienations had respectively been made, to recover several distinct parcels of land which constituted his share, —*Held*, that as the plaintiff had but one single cause of action against the co-proprietor, he ought to have brought but one suit against him, and either included all the alienees in this suit, or brought separate actions against the alienees for the several pieces of land in their possession, and caused the proceedings in these suits to be stayed till the suit against the co-proprietor was determined.

The course of procedure last indicated is the more correct course. *Held*, further, that, as the separate suits against the co-proprietor were instituted simultaneously, the error in splitting up the claim against him did not affect the merits; and accordingly the decree was affirmed. *Vithu et al.* v. *Náráyan Dábhul Rue*, 5 Bom. Rep., A. C., 30.

The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat, and coming down himself by rail; he received his goods, and remained in Calcutta until he sold them. He had no place of business, nor any gomusta or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one ârut, sometimes at another. His stay in Calcutta varied from two to four months. He used to pay commission on the goods sold to the ârut where he put up, and he was in the habit of drawing hundis at Patna on himself at Calcutta, accepting and paying them in Calcutta. The plaintiff brought a suit on a hundi so drawn, and purporting to be so accepted by the defendant, of which payment was refused by the defendant. The defendant admitted the drawing of the note, but alleged that the acceptance was forged. The Judge found that the note had not been accepted by the defendant. The summons was served on the defendant in Calcutta. Leave to institute the suit had not been obtained under Section 12 of the Letters Patent.

Held, the whole cause of action did not arise in Calcutta. *Held* also, that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within Clause 12 of the Letters Patent. Leave to institute the suit under Clause 12 not having been obtained, the Court had no jurisdiction to entertain the suit. *Hurjibun Das* v. *Bhugwen Das*, 7 B. L. R., 102.

5.—When Cause of Action Accrues.

The right of action to a person who is restored to possession under a decree of the Privy Council, does not accrue before the decision of the Privy Council; and he is entitled to interest on mesne profits from the time of his ejectment up to one year after the decision of the Privy Council, that being held to be a reasonable time to be allowed to him for commencing his suit. *Ranee Asmoodh Kooer* v. *Joykuran Lall*, 5 W. R., 125.

In a suit by a sharer for reimbursement of payments made by her over and above her share to save the property from sale in execution of a decree for rent at the suit of the zemindar who had obtained a former decree, which, however, he was prevented by a subsequent order of the Court from executing,—*Held* that the date of payment by the plaintiff, and not the date of the original decree, furnished the cause of action from which limitation was to count. *Bunwaree Mohun Saha* v. *Prannath Saha*, 2 W. R., 159.

In a suit by the widow of one of three judgment creditors to recover the third part of a bond debt which had been decreed in their favour, and of which execution had been taken out,—*Held* that, as the entire sum due on the bond with penal interest to date of decree had been recovered, plaintiff's cause of action had fully accrued, though a balance of interest was still due. *Mussamut Buzmoonissa* v. *Bibee Rowshan Jahan*, 10 W. R., 397.

In a suit by the sons and grandsons of one N. to set aside a sale by N. of a part of the ancestral estate to S., whose rights and interest in the estate were purchased at auction by the defendant N. L., it was held that the cause of action to the sons would accrue, and limitation run from the date on which S. got possession from N. *Nuthoo Lall Chowdhry* v. *Chedee Sahee*, 12 W. R., 446.

In a suit for contribution by the manager of a joint family, on the ground that the plaintiff had borrowed money and applied it in the payment of certain joint family expenses, and that he had borrowed again to pay off the first loan, and had liquidated the second loan from his private funds, —*Held* that plaintiff's cause of action arose from the date on which he had made payments of accounts of the joint estate, and, not having sued within six years of that date, he was out of Court. *Ramkisto Roy* v. *Muddon Gopaul Roy*, 12 W. R., 194.

Where a party in permissive possession of land sets up his own absolute title by suing the tenant for rent, he converts his permissive possession into an adverse one, which, as wrongful possession, is a cause of action. *Khuruckdharee Singh* v. *Rewat Lall Singh*, 12 W. R., 167.

The plaintiff sued for confirmation of his title to and for possession of a jote in the Nowabad mehal, deriving his title under a pottah from the ijaradar. The defendant's case was that he had bought the lands as a talook, and been in possession accordingly; but finding that the lands had been surveyed as a part of the Nowabad mehal, he took a pottah from the ijaradar four years previous to the plain-

tiff's pottah. The defendant's pottah was found to be a forgery.

Held that the plaintiff's cause of action arose solely from the title set up by the defendant under the pottah derived from the ijaradar, and not from the date when the defendant purchased the lands as a talook. *Shahaboodeen* v. *Moulvie Nadoorujuma*, 12 W. R., 44.

Where the suit was for the recovery of certain sums advanced as a loan at different times, and the account entered was simply a statement of advance, repayment, and balance (which was adjusted, struck, and verbally admitted by the debtor), *Held* that the creditor's cause of action arose on the date he made the loans, and three years' limitation must be counted from that date, unless the original right has been kept alive by some written acknowledgment or new and distinct contract.

Held further, that the balance struck and orally admitted by the debtor does not amount to a written acknowledgment within the 4th section of Act XIV of 1859, or to a new contract so as to revive the old cause of action. *Kunhya Lall and others* v. *Bunsee*, 1 Agra Rep., F. B., 94.

In a suit for declaration of right and confirmation of possession by setting aside certain improper chittahs prepared by a Civil Court Ameen while deputed to deliver possession in execution of a decree,—*Held* that, when in execution the Ameen measured a portion of plaintiff's land as covered by defendant's decree, and delivered over possession to defendant, taking receipts and issuing proclamation as required by Section 324, Act VIII of 1859, a cause of action arose to plaintiff under the circumstances against defendant. *Gour Pershad Doss* v. *Sookdeb Ram Dob*, 12 W. R., 279.

Where one of two co-owners of a putnee fraudulently fails to pay his share of rent, and permits the putnee to be sold by the zemindar for arrears, the other co-owner's cause of action against him accrues at the date of sale when the fraud is consummated. *Bhugwan Chunder Roy and others* v. *Raj Chunder Roy*, 9 W. R., 553.

Where property lost in one district is found in another, in the possession of a party who refuses to restore it, the owner's cause of action arises from the date of such refusal; and a suit to recover possession of the property must be instituted in the district in which it is found. *Ram Pertap Singh* v. *Bholabutty Koonwar*, 9 W. R., 586.

In a suit to recover compensation for certain lands taken by the magistrate for roads, where plaintiff had applied for compensation in the usual course, but, after various delays on the part of Government, had been refused compensation, and referred to the Civil Court after the period of limitation had expired,—*Held* that the plaintiff's cause of action arose from the time when he was dispossessed, and not from the date when his application for compensation was rejected. *J. Hills* v. *The Magistrate of Nuddea*, 11 W. R., p. 1.

The principal acquires no fresh cause of action against the agent from the date on which the agent admitted the amount which was due from him and executed an agreement to pay it. *Maharajah Mahatab Chund Buhadoor* v. *Judoo Mohun Mitter*, 5 W. R., Act X R., 91.

A vakeel received money for his clients, and gave it to their agent for delivery to them; the agent did not deliver it accordingly, and the vakeel was compelled by the Civil Court to pay it over again. The vakeel thereupon sued the agent for the money. *Held* that the case fell under Section 16 of the Act of Limitation.

Held also, that treating the case as one of implied contract, the cause of action arose when the plaintiff was compelled to pay money which the defendant was legally bound to pay; and, thirdly, that, if the defendant was in truth the plaintiff's agent, but had induced the plaintiff to make him so by the fraudulent representation that he was the agent of the clients, the cause of action would have arisen at the discovery of the fraud. *Penuballi* v. *Vimaroja Ramaya*, 2 Mad. Rep., 211

Where a bond was given to secure a debt which was to be repaid by seven annual instalments, and the bond provided that upon failure to pay a single instalment the whole principal sum secured should immediately become due and recoverable with interest,—*Held* that the cause of action in respect of the principal and interest arose on failure to pay the first instalment. *Kuruppana Nayak* v. *Nallamma Nayak*, 1 Mad. Rep., A. C., 209.

B. advanced money to A. for the purchase of an estate. The estate was purchased by A., but it was conveyed to B. *Held*, that before A. could maintain a suit to obtain possession of the land, he was bound to pay or tender the money advanced by B. *Bhyrub Chunder Sein* v. *Annundmoye Chowdhrain* Marsh., 494.

The cause of action in respect of accretions accrues from their formation and delivery to the defendant. *Luchunaran Shaw and others* v. *Jatadharee Haldar and others*, 7 W. R., 89.

A zemindar, G., died in 1240, leaving a widow, B., and his mother, H., the latter of whom created a putnee pottah in 1241, under which B. received the rents from 1257 to 1273 from the principal defendants. Plaintiff, as adopted son of G. and owner of the zemindary, sues the putneedars to set aside the putnee.

Held that, if the creation of the putnee was illegal, B., as the widow and heiress of G., had an immediate right to set it aside; if she did not, and lost her right by lapse of time, plaintiff's right of action must have accrued on his adoption in 1252. *Shumbhoonath Shaha* v. *Bunwaree Lall Roy*, 11 W. R., 10.

Where no law, special custom, or agreement is shown, making the remuneration on a joint contract for labour to be done payable in advance, the cause of action accrues from the time when the labour was performed. *Rajah Perladh Sen Bahadoor* v. *Runjeet Roy*, W. R., 1864, 68.

Plaintiff executed a zur-i-peshgee lease to defendant for a term of years, and arranged with him contemporaneously that he (the lessee) was to make an annual payment (out of the rents payable to plaintiff) to a creditor of the plaintiff, with a view to clear off a debt. These payments, though made punctually for a time, were withheld while a balance of the debt still remained due, to recover which the creditor sued the lessor (plaintiff) and obtained a decree.

Held, that plaintiff's (lessor's) cause of action against the defendant (lessee) arose from the date of the latter's breach of contract,—*i.e.*, the date on which he failed to pay. *Zoolfee Begum and*

another v. *Ram Shurn Roy and others*, 10 W. R., 80.

R. purchased a putnee mehal and devised it to his son G. G. died after R., childless and intestate, and leaving a widow, S., who also died, neither of the three having ever taken possession of the mehal. Plaintiff, as G.'s nephew, sues to recover possession of the mehal. *Held*, that his cause of action did not arise until the death of S. (Markby, J. *dubitante*). *Ram Doollub Sandyal* v. *Ram Naran Moitro and others*, 7 W. R., 455.

In a suit to recover possession of lands which had been sold to plaintiff, but which had been subsequently taken back by one of the vendors under an agreement that he would make over other lands in exchange, plaintiff's contention being that he had been dispossessed of these other lands which were eventually decreed to another party,—*Held* that plaintiff's cause of action originated on the date of the decree depriving him of the lands last mentioned. *Kabul Krishna Doss* v. *Mohessuree Debia*, 16 S. W. R., C. R., 270.

The political department in Chota-Nagpore, as judgment creditors, took out attachment against a family estate in which the rule of primogeniture prevailed to meet ancestral debts, and appropriated the proceeds in satisfaction. Objection was made by a member of the family claiming ten of the villages as held by him and his ancestors under a mokurruree grant for maintenance. An answer was put in and litigation followed, resulting in a final decision by the civil authorities of the Zillah, that the claimant was not entitled to four out of the villages claimed, and the proceeds were diverted to the payment of debts which were not his. He then sued for a declaration of his right and title to the four villages.

Held that the possession of the political department had not been adverse to the plaintiff, and his cause of action did not arise till his title was devised and the proceeds diverted from his use. *Court of Wards* v. *Bunwaree Lall Thakoor*, 15 S. W. R., C. R., 102.

Certain landlords' suits to compel their lessee's tenants to clear certain lands of houses and trees, and to restrain them from building or encroaching in future, were held to be premature while the lease was running; their cause of action as regards any eviction subsequent to the date of the lease not arising until the lease had expired. *Lootf Ali* v. *Shib Dyal Singh and others*, 8 W. R., 512.

6.—Where Cause of Action Accrues.

A. who has no regular office, but comes once or twice a week from the mofussil to a friend's house in Calcutta, and sees people there on business, contracts with B. in Calcutta for the hire of certain cargo-boats. While being towed by a steamer, which A. had chartered according to agreement, the boats, when beyond the jurisdiction of the Court, sustain great damage by reason of gross negligence on the part of C., whom A. had placed in charge. *Held* (1) that the cause of action did not arise in Calcutta; (2) that A. "carried on business" in Calcutta within the meaning of Section 12 of the Charter; (3) that A. must be held responsible to B. for the negligence of C. *Greesh Chunder Bannerjee* v. *Collins*, 2 Hyde's Rep., 79.

The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose. *Ladd* v. *Parbutty Dassee*, 2 Hyde's Rep., 18.

A contract was entered into at Rutlam for the establishment of a partnership to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. *Held* that the cause of action in a suit for the balance resulting from these partnership transactions arose at Muttra. *Sets Luchmee Chand Radhakishen* v. *Sets Zorawar Mull*, 1 W. R., P. C., 35.

Where defendant, in an action for goods sold and delivered, pleaded want of jurisdiction, inasmuch as the whole cause of action did not arise within the jurisdiction, the Court found that a material part of the cause of action had arisen within the jurisdiction, and gave a decree for plaintiff, leaving it to defendant to dispute execution if so advised. *Doorgapersad Bose* v. *T. A. Waters*, 1 Ind. Jur., N. S., 191.

A suit to have certain lands declared liable for the satisfaction of an instalment bond is substantially a suit for an interest in land, and as such cognizable by the Courts within whose jurisdiction the property is situated, even though the cause of action has not arisen there and the defendants reside elsewhere. *Ram Lall Mookerjee* v. *Chittro Connaru*, 15 S. W. R., C. R., 277.

The defendant was appointed a Superintendent of two estates, one called Chulman, within the Sub-division of Diamond Harbour; and the other Alipore, within the Sub-division of Alipore. By his kabuliat he agreed to make good any retrenchments his employer, the zemindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due, the Zemindar brought this suit. *Held*, that as the defendant had agreed by his kabuliat to make the principal Kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant, and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. *Prossana Chundra Bose* v. *Prossana Chundra Raj*, 7 B. L. R., Ap. 35, and 15 S. W. R., C. R., 343.

The defendant at Purolá agreed to sell and deliver to the plaintiff certain goods, for which the plaintiff then paid in advance. By the terms of the agreement, the goods were to be measured at Mazrod and delivered at Pádshú. In default of delivery it was stipulated that the value of the goods should be paid for at the market rate at Purolá. The goods were not delivered in pursuance of the agreement. *Held*, in an action brought to recover their value at the market rate at Purolá, that the cause of action arose at Pádshú, where the goods ought to have been delivered. *Chunildl Manikldlbhai* v. *Mahiputrú* v. *Valad Khundu*, 5 Bom. Rep., A. C., 33.

If the cause of action is the taking of money, it arises at the place where the money is taken. *Trechurru Bukshu* v. *Gopaul Chunder Samaunt*, 15 S. W. R., C. R.

7.—Several Causes of Action.

Several parcels of land were held under one pottah, by which the ryot was bound to pay one lump sum as rent for all. *Held* that the landlord's having recently kept separate papers as to each parcel, and dealt with each parcel separately, does not amount to a departure from a waiver of the original contract contained in the pottah, so as to entitle him to split up his claim, and sue separately for the rent of each parcel. *Rajah Ozoodhearam Khan* v. *Nilkunt Mytee*, 2 W. R., Act X R., 36.

There is no misjoinder of causes of action in a suit for money contracted to be paid, and for the cancellation of a kistbundee, and for money deposited on the kistbundee. *Kinnoo Monee Debia* v. *Shohoram Sircar*, 3 W. R., 128.

Combined causes of action may be brought in the Court which has jurisdiction to the full amount of such combined causes of action. *Kinnoo Monee Debia* v. *Shohoram Sircar*, 3 W. R., 128.

Different suits may be brought on different causes of action, though the object to be gained in each may be one and the same. *R. Watson and Co.* v. *Pokhur Doss Paul; Mohinee Dossee* v. *Pokhur Doss Paul*, 4 W. R., 2.

Suits for possession of land in two districts should not be split, there being but one cause of action. *Jumoona Dassee Chowdranee* v. *Bamasoonderee Dassee Chowdranee*, 2 W. R., 148.

Where plaintiff claimed property which she alleged to have passed into the hands of different defendants by several acts of wrongful alienation at different times, and the Court of first instance tried the case as a whole, notwithstanding that it found the causes of action to be several and distinct against several defendants,—*Held* that the lower Appellate Court, when this objection was made before it, ought to have tried the case as made up of separate suits against so many different defendants. *Golam Mustafa Khan* v. *Sheo Soonderee Burmonee*, 10 W. R., 187.

Where the payee of a hoondee, in a suit to recover the amount of the same, made four persons defendants,—*viz.*, the drawer and the acceptor of the hoondee, his own endorsee, and a party whom plaintiff alleged to be the principal, whose agent was the drawer,—the suit was held to be a combination of four suits in one, not allowed by the Civil Courts. *Habee Beparee* v. *Choolmen Mah*, 10 W.R., 263.

Where a plaint containing separate causes of action on the part of distinct plaintiffs, though but one prayer—*viz.*, for the delivery up of certain nekasi papers—was filed and tried as a single suit, the Court trying the case was held to have committed not a mere technical irregularity, but an incorrect proceeding liable to lead to injustice. *Ramcoomar Sircar* v. *Kallycoomar Dutt and others*, 10 W. R., 279.

A claim for possession and a claim for mesne profits may be brought separately, or they may be united. When united, a separate stamp fee for mesne profits is not necessary. *Bebee Syidun* v. *Syad Allah Ahmed*, W. R., 1864, 327.

Where the claim of a brother's son in 1847 was that he had title as heir to the moiety of an estate, prior to the other brother's widow, in respect to the whole estate, on the plea that it was joint and undivided, and his claim now is that she has no title prior to him, but accepting the decision of 1847, and regarding the widow's title to be prior to his, and as holding a life-interest in the whole estate before him, he now claims as heir next in reversion after the widow, regarding her property as separate, with a view to a declaration of his right as such heir to have a certain alienation by the widow (alleged by him to be illegal under Hindu laws) set aside,—*Held* that the two cases and causes of action were essentially different. *Baboo Sunkur Dyal Singh* v. *Baboo Purmessur Dyal Singh*, 6 W. R., 44.

A separate cause of action arises as to each of several sums received as mesne profits in respect of the same property. *Ramun Doss Mookerjee* v. *Brojokishur Mitter Mojumdar*, 6 W. R., 130.

A claim for the money amount of a dower, and a claim to establish a lien on specific property in respect of that amount, constitute two distinct causes of action; and a plaint which sets up the first claim *simpliciter* cannot be treated as if it set up the latter. *Mussamut Wafeah* v. *Mussamut Saheeba*, 8 W. R., 307.

A claim for rent in respect of a jumma which has been divided into a 14-annas share and a 2-annas share is properly the subject of one suit, and should not be treated as two distinct causes of action for which separate suits are maintainable. *Ooma Churn Dutt* v. *J. Beckwith*, 5 W. R., Act X. R., 3.

In the Civil Court of Berhampore, plaintiffs sued defendants for money due by one S. deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased; 5th defendant, as having instigated the other defendants to withhold payment. 1st defendant resided at Vizagapatam, 2nd at Bimlipatam, 3rd and 4th at Madras. The 5th defendant resided at Berhampore. From the accounts produced, it appeared that there were, between the plaintiffs (merchants at Berhampore) and deceased (a merchant at Madras) a series of transactions of different kinds, in which they acted, sometimes as principal, and sometimes as agent, the one for the other. *Held* that, although in the account sued upon, there were some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berhampore Court, they could not be so separated, and that the intention was that the dealing should be continuous; that upon that footing the plaintiffs had properly sued for the balance of the whole account, but that they had brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court, and none of the defendants, who were properly joined in the suit, dwelt or worked within that district.

Held also that the wrongful addition of resident defendant could not bring the case under the operation of Section 4, Act XXIII of 1861, and that the cause of action against the 5th defendant was totally distinct from that alleged against the others, and the two could not be joined in one suit. *Atmakuri Bhavanna* v. *M. Sri Ramulu*, 3 Mad. Rep., A. C., 222.

A plaintiff is bound to include in his plaint all the grounds upon which his suit is based. A second suit upon a different ground, which existed before the commencement of the first suit, would not be

allowed, as it would be splitting the cause of action. *Abhiram Das* v. *Sriram Das*, 3 B. L. R., A. C., 421.

Each alienation by guardians constitutes a distinct cause of action, and a suit which combines several of them in one plaint ought not to be entertained. *Loolao Singh and others* v. *Rajender Laha*, 8 W. R., 364.

Where a plaintiff originally filed a plaint against the defendant and other persons, to invalidate a number of conveyances and sales, of which some had been confirmed by decrees, or had been made in execution of decrees, and which related to land in two separate zillahs, and the Subordinate Judge passed an order, purporting to be an order under Section 9 of the Civil Procedure Code, for the trial of the several causes of action separately, and directed the plaintiff to file several plaints, and there being no difficulty in respect of the stamp duty chargeable on the institution of the suits, from plaintiff suing in *formâ pauperis*, and the appellants having paid the proper stamp duty on the appeals,—*Held* that the results of such order and direction might be regarded as the institution of new suits, and that, as far as the suits were cognizable by the Court of the Subordinate Judge, or by the High Court in appeal, the High Court might, in the absence of any objection on the part of the parties, proceed to dispose of them.

The High Court accordingly dismissed the suits relating to property in a district not cognizable in the Court of first instance; and in those appeals in which, by the reason of the amount being less than Rs. 5,000, the appeal lay to the District Judge, returned such appeals to the appellant for presentation in the proper Court.

A direction in such a case to file separate plaints is not within the scope of Section 9 of the Civil Procedure Code. That section does not require the plaintiff to file separate plaints, but provides for the separate trial of the several causes of action contained in the one plaint filed on the institution of a suit.

Where several causes of action have been improperly joined in one suit, the plaint should be rejected on the ground of misjoinder. *Musumut Rutta Bebee* v. *Dumru Lall*, 2 N. W. R., 153.

A suit was brought against six defendants, the cause of action against five of them being unconnected with the cause of action against the sixth.

The Assistant Judge was bound to enter into the merits of the claim, over which the Court of first instance had jurisdiction.

The Assistant Judge, in whose Court the suit was brought, tried one of the causes of action, over which he had jurisdiction, but refused to try the other, over which he had no jurisdiction. In appeal, the District Judge refused to enter into the merits of either, on the ground of the misjoinder of the causes of action.

Held that the District Judge was bound to enter into the merits of the claim over which the Court of first instance had jurisdiction, it not being affected by the error in the misjoinder of the two claims. *Sayad Samsuddin Pirjade* v. *Gunpatra Jagannath et al.*, 7 Bom. Rep., A. C., 19.

Several causes of action against different defendants cannot be joined in one suit; therefore, where a suit was brought to set aside several transactions entered into by a guardian with different persons, and no relief was sought against the guardian, it was held that the suit was bad by reason of misjoinder. *Mata Pershad* v. *Musst Bhugmanee*, 14 N. W. R., 75.

It is not the title, but the infringement of it, which constitutes the cause of action; and two suits are not necessarily brought upon the same cause of action merely because the title relied upon in both cases is one and the same. *Jardine, Skinner & Co.*, v. *Ranee Shama Soonduree Debia*, 13 S. W. R., C. R., 196.

Several claims, each of which, separately, is within the Small Cause jurisdiction of a District Munsif, may be joined together, and form the basis of a suit in the Small Cause Court.

The plaintiff was the lessor, and the defendant the lessee, of certain land under an agreement, whereby the defendant agreed to occupy the land for two years, and to deliver a certain quantity of paddy at four specified periods. Defendant failed to deliver the paddy.

In a suit for rent, *Held*, that although the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed one cause of action. *Chockalinga Pillai* v. *Kumaya Viruthalem*, 4 Mad. Rep., 334.

Arrears of rent for successive years are several and distinct causes of action, and not parts of one cause of action. *Ram Soondun Sein* v. *Kristi Chunder Gooptu*, 17 S. W. R., C. R., 380.

The defendant, as broker for the plaintiffs, guaranteed all transactions entered into by the plaintiffs with native firms through the defendant. Some of these native firms, in respect of such transactions, became indebted to the plaintiffs, and the defendant wrote to the plaintiffs requesting them to sue such defaulting firms. The plaintiffs accordingly sued six of such firms, and sent a letter to the defendant claiming from him payment of the taxed costs incurred in all the suits, amounting to Rupees 7,553-10-6. The defendant having failed to pay, the plaintiffs sued him in the Small Cause Court, to recover payment of the taxed costs incurred in one of the suits, amounting to Rs. 433. *Held* that the plaintiffs, in doing so, were splitting their cause of action within the meaning of Sec. 34 of the Small Cause Court Act (IX of 1850). *Blackwall & Co.* v. *Sumar Ahmed*, 6 Bom. Rep., O. C. J., 88.

A putnee having been sold for arrears of rent, one of the co-sharers brought a suit and eventually obtained a decree setting aside the sale. As in the meantime, however, in consequence of the purchaser having defaulted in the payment of rent, the putnee had again been sold, the decree could not be executed by recovery of possession. Upon this, the decree-holder sued the purchaser at the first sale and others for surplus proceeds of the second sale, and recovered a portion of the surplus proceeds. He then sued for and recovered mesne profits. Subsequently he brought a third suit for compensation.

Held, that the whole claim which accrued under the first sale should have been included in one suit; and that, as the compensation was omitted from the first suit on the same cause of action, the plaintiff could not be allowed to claim it in a separate suit

Tarriney Persaad Ghose v. *Rughub Bonnerjee*, 13 S. W. R., C. R., 293.

Misjoinder of causes of action is not alone a valid ground of special appeal. *Shunkur Putuck* v. *Lulu Sheo Churn Lul*, 2 N. W. R., 443.

The mere claiming of three shares of money due under a bond executed in favour of plaintiff and others jointly, under different titles derived by plaintiff from different persons in different ways, cannot affect the unity of the cause of action on which the suit is brought. *Kalu Sunkur Bhadoora* v. *Eshan Chunder Bhadoora*, 17 S. W. R., C. R., 528.

Omitting to join causes under the provisions of Section 8, Act VIII of 1859, can be no ground for the infliction of the penalty prescribed by Section 7. *Jardine, Skinner & Co.* v. *Shama Soondoorey*, 13 S. W. R., C. R., 196.

In a suit where the plaintiffs collectively have the same cause of action against all except one of the defendants, and one alone of the plaintiffs has a cause of action different from the common cause against the same one defendant, the two causes cannot be joined together in the same action. *Mussamut Kamoola Khanum* v. *Khaja Mahomed Easa Rhun*, 13 S. W. R., C. R., 429.

The plaintiff sued in the Moonsiff's Court for possession of his house and for rent. *Held* that there were two causes of action which could be properly joined in one suit; and that although the amount of rent sued for was within the jurisdiction of the Small Cause Court, yet, as the Small Cause Court could not give all the relief sought, the suit was properly brought in the Moonsiff's Court. *Jagomohan Sahu* v. *Mani Lal Chowdhry*, 3 B. L. R., Ap. 77; S. C., 11 W. R., 542.

Work and labour, goods sold and debt, may be combined in one cause of action on one homogeneous account. *Rajah Perladh Sen Bahadoor* v. *Runjeit Roy*, W. R., 1864, 68.

A claim for a hoondee may be joined in one suit with a claim for the return of money paid in excess of rent due. *Brojokishore Chowdhrain* v. *Khema Soondery Dossee*, 7 W. R., 409.

In a suit to recover three sums of money,—one on a general adjustment of account, another on account of deposit, and the third as the amount of a bond,—the Court of first instance was held to have had a discretion to join the three causes of action in the same suit, and such joinder was held not to affect the jurisdiction of appeal. *Ruttun Chund Bysack* v. *Bocha Bibee*, 12 W. R., 529.

A suit to set aside two sale transactions of different dates and made to different vendees, will be dismissed for misjoinder. *Banee Krishun* v. *Koondun Lall*, 2 N. W. R., 221.

8.—Declaratory Suits.

Where B sued for a decree to declare that he should be heir to the property of the defendant, a Hindu widow, after her death, and for an injunction to restrain her from adopting any other than a member of his family, he being the nearest relative of her husband, and the fittest subject for adoption according to the Hindu law,—

It was *held* that the suit would not lie, as in the former case the right was contingent and defeasible by adoption, and in the latter the adoption of a stranger was not illegal. *Babaji Jivaji* v. *Bhajirthileai*, 6 Bom. Rep., A. C. J., 70.

The purchaser of property from a judgment-debtor, whose right, title, and interest have been subsequently sold to another party who desires to take possession, has a right to sue for a declaration of title and confirmation of possession for the purpose of clearing his title from the suspicion of its being founded on a collusive sale. *Goburdhun Dass* v. *Munnoo Lall*, 15 S. W. R., C. R., 95.

Plaintiff's right to a declaratory decree as to the erroneousness of the Magistrate's order passed under Section 321 Code of Criminal Procedure, permitting defendant to erect a drain-pipe to take water from plaintiff's reservoir, was held to be not affected by the fact that the Magistrate's order had not been put in force. *Meghraj Singh* v. *Rushdhurn Singh*, 17 S. W. R., C. R., 281.

Under Section 84 of Act XX of 1866, the District Judge ordered, without taking evidence, the registration of a document which had been opposed on the ground that the execution of it had been obtained fraudulently, and by putting the executant under duress. The executant brought a civil suit against the party in favour of whom the document had been drawn, for a declaration that the document was not genuine, and was invalid and inoperative.

Held, that the Civil Court had jurisdiction to try the genuineness of a registered document; that the registration of a document, the execution of which was obtained by improper means, affecting the property of the executant, is a good cause of action on which to ask for a declaratory decree. *Prassana Kumar Sandyul* v. *Mathurnath Bannerjea*, 15 S. W. R., C. R., 487, and 8 B. L. R., Ap. 26.

The plaintiff, claiming under a will of the deceased, applied for a certificate under Act XXVII of 1860, but the High Court on appeal refused the same. He now brought a suit alleging that he was in possession of the property of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held*, that Clause 3, Article 17, of Schedule 2 of Act VII of 1870, did not apply. This was not a suit to obtain a declaratory decree, where no consequential relief was prayed. *Dinabundhu Chowdry* v. *Rajmahini Chowdrain*, 8 B. L. R., Ap. 32, and 16 S. W. R., C. R., 72.

The plaint in this case having disclosed that certain thakbust proceedings were carried on by defendants in collusion with their co-sharer, and in fraud of the plaintiff,—*Held* that the plaintiff had made out a sufficient cause of action for a declaratory decree under Section 15, Act VIII of 1859. *Buroda Kant Bannerjea* v. *Koomodinu Kant Bannerjea*, 17 S. W. R., C. R., 467.

Suit brought by plaintiff against the first three defendants as his tenants on Kanam, and the fourth the representative of a rival Jenmi, to obtain a declaration of title as Jenmi. Plaintiff had previously sued the first three defendants to establish the relation of Jenmi and Kanomkar, and to recover the land. He failed, and then brought the present suit.

Held, that this was a case of the employment of the device of a suit for a declaration of title in order to get back land by a crooked, and not legal process, after failure to recover by proper legal means, the intention being to cut off the

defendants (the tenants) from the plea of *res judicata*.

The Court, which had a discretion as to whether such a suit should be permitted, ought at once to have said that it should not.

Where there are no interests to be protected, there is no foundation for a suit for a declaratory decree. *Shunguny Menon* v. *Kalampully Valla Nair*, 6 Mad. Rep., 117.

Plaintiff stating that he was obstructed in the cultivation of certain land which belonged to him, asked that the obstruction be removed and damages granted. The damages were disallowed; but the Civil Judge declared that plaintiff was entitled, basing that entitlement on the statute of Limitations. *Held* that where a man seeks a declaration of a title other than the possession which he has, mere possession for the period of the Statute will not justify the declaration, which, allowing it to be made, ought to be based upon a finding of the title alleged by plaintiff, and not upon the existence of a possession for the period required by the statute to bar the action of another. Accordingly, the Lower Appellate Court was required to return a finding on the issue "whether the title asserted by plaintiff is proved." *Sirumala Sámi Reddi* v. *Rama Sámi Reddi*, 6 Mad. Rep., 420.

The plaintiff, as the eldest surviving male representative of the Istimrar Zamindar of Shivaganga, sued for a declaratory decree establishing his right to succeed to the Zamindari upon the death of the first defendant, and for maintenance. Plaintiff was the eldest surviving son of the only daughter of the Istimrar Zamindar, by his senior wife. The first defendant, the Zamindarni, was the youngest of his two daughters by his third wife. He had also a daughter by his second wife, and another by his sixth wife. First defendant obtained possession of the Zamindari under an order of Her Majesty in Council, which established the right of the daughters of the Istimrar Zamindar to succeed to the Zamindari on the death of his surviving widow Augamuttu, without prejudice to the rights of the first defendant and her sisters, *inter se*. When first defendant obtained possession, she was the only survivor of the Zamindar's five daughters. The plaintiff's mother, and the daughter by the sixth wife, predeceased Augamuttu, and the daughter by the second wife, and the first defendant's uterine sister survived Augamuttu. Besides the plaintiff's mother, the first defendant's uterine sister was the only one of the deceased daughters who had issue, and her only child, a son, died issueless some years before first defendant had established her right to the Zamindari. Before Augamuttu's death the first defendant was twice married, and had issue by her first husband the third defendant, and by her second husband the second, fourth, and fifth defendants. The Civil Court made the declaratory decree prayed for, but refused maintenance. The defendants appealed upon the grounds—That the present was not a case for a declaratory decree; but, if it were, the decree should have declared either that the first defendant's son (second defendant) had the preferable right, or that the Zamindari was Stridhanam property of the first defendant, and that, therefore, her daughters were her rightful successors. *Held* that the plaintiff had a right to institute the suit; that the daughters of the first defendant were not her rightful successors to the Zamindari; and that the plaintiff, as the eldest grandson of the Istimrar Zamindar, was entitled to be, preferable to the second defendant, declared reversionary heir to the Zamindari on the death of the first defendant. *Strimuttu Muttu Vizia Ragunada Rani Kolundapuri Nachiar and others* v. *Dora Singa Tevar*, 6 Mad. Rep., 310.

Suits for a declaration of title to a divided share of ancestral property. The ground alleged in each case for seeking the declaration was that the representatives of the brothers of the plaintiff's father had refused to be parties to the registering of the property in plaintiff's name, and had executed a deed of sale of it to a third party (3rd defendant), and registered him as the purchaser. The Court of first instance in each case decreed for the plaintiff. The Appellate Court, following the case reported at 2 Madras High Court Reports, 333, dismissed the suits, on the ground that the plaintiffs were not in a position to maintain them. On special appeal,—*Held*, that the suits should be remanded for a declaration of the plaintiff's title, if established.

To maintain a suit for a declaration of title, some adverse act intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, cannot imperil the plaintiff's title, nor have any serious effect on the quiet enjoyment of his proprietary right, and is not sufficient to support such a suit. The principle upon which the decision reported at 2 M. H. C. R., 333, proceeds, is inapplicable to suits under Section 15 of the Civil Procedure Code. *Kuryan* v. *Peria Sidden*; *Ditto* v. *Linga Gaundan*; *Ditto* v. *Doddali*, 6 Mad. Rep., 307.

Where there is a dispute as to the shares of the several members of a family in a family property, the possession of which is undisturbed, a suit will lie to ascertain the shares of the different members. In a suit for a declaratory decree, it is not necessary to allege any overt act which may give rise to relief in the shape of damages or a decree for possession. *Baboo Bhugwan Singh* v. *Mitragit Singh*, 8 B. L. R., 382; and 17 S. W. R., C. R., 169.

In a suit for a declaration of right, a plaintiff ought on the face of his plaint to show not merely that he has a title, but that circumstances exist which necessitate his application to the Court for a declaratory decree.

It is discretionary with the Court to make a declaratory decree. *Syud Khadim Ali* v. *Musumut Nazir Begum*, 3 N. W. R., 262.

To entitle a plaintiff to a declaratory decree, he must show some cause of suit, something more than a wish to interfere with his rights.

Intention to interfere with such rights should be held to constitute a cause of action, if at all, only when it is clearly shown. *Musumut Iesimanu Kooer* v. *Debu Dyal Rai and others*, 3 N. W. R., 137.

A suit was brought against the plaintiff by his tenants, for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the

crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. On special appeal it was objected, for the first time, that the plaint disclosed no cause of action, and the objection was admitted and prevailed.

Per Paul, J.—A suit merely in anticipation of a threatened ejectment will not lie. There must be something in the case either in the nature of an invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief; but a mere allegation, or a mere threat without action taken or founded upon it, will not be sufficient to entitle a party to a declaration of his title. *Sheik Jan Ali* v. *Khon Car Abdur Khuma*, 6 B. L. R., 154; 14 S. W. R., C. R., 420.

The plaintiff built a bridge over a certain khal (canal), which was removed by order of the Magistrate under Chapter XX of the Criminal Procedure Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held*, that no such suit would lie. The Judge in the Court below held that the suit would lie to try the plaintiff's right to erect a bridge over the khal. *Held*, on appeal, the suit ought to have been dismissed. *Madhale Chundra Gupe* v. *Kamala Kant Chuckerbutty*, 6 B. L. R. 643, and 15 S. W. R., C. R., 293.

On attachment of certain property in execution of a decree, A. preferred his claim under Section 246, Act VIII of 1859, on the ground that he held a mortgage thereof from the judgment-debtor. Thereupon an order was passed for sale of the property subject to the mortgage. B. afterwards claimed the same property as his absolute estate, and his claim was allowed, and the property released from attachment. A. was not a party to these proceedings. *Held*, that A. could maintain a suit against B. for a declaration of his title as mortgagee. *Gobind Prasad Tewari* v. *Udai Chand Rana*, 6 B. L. R., 320.

A. brought a suit for a debt against B.; obtained a decree, and attached certain land in execution. C. intervened, claiming the property as his; but, on the 28th March, 1868, his claim was disallowed, on the ground that in two suits previously brought against C. and others for possession of the same property, on the 30th December, 1863, by X. and Y., whose interest had, pending the suit, been purchased by B., it had been decreed that the land belonged to B. The decrees in these suits were dated 13th and 19th January, 1864; they were in favour of B., and ran in his name alone. C. had purchased a moiety of the property at an auction sale on the 7th March 1859; X. and Y. claimed under a pre-existing mortgage over the same property, the equity of redemption under which had been foreclosed.

C. now brought a suit against A. and B. for confirmation of his possession, and a declaration of his title to the property. He alleged that B. was his servant, and had purchased the interest of X. and Y. in the property benami for him; that he (C.) had made the purchase with his own money in the name of B.; that the suits, originally brought by X. and Y., had really been compromised; that while the decrees of the 13th and 19th January, 1864, were nominally in favour of B., they were really in his (C.'s) favour; and that the suit brought by X. and Y. had been allowed to proceed in B.'s name, in order that C.'s title might be strengthened by a decree in his favour, B. being only nominally the decree-holder. C. also stated that, since his purchase on 7th March, 1859, he had always been in possession, and he dated his cause of action from the 28th March, 1868, when his claim to the property which had been attached by A. in his suit against B. was disallowed. The Subordinate Judge gave a decree in favour of the plaintiff C. B. alone appealed to the High Court. *Held*, that C., not having been disturbed in his possession, and seeking a declaration of his title only and no relief, should have stated clearly and precisely what that title was; that as against A., who had not appealed, the decision of the Subordinate Judge was final; that as between B. and C. the matter was *res adjudicata*; that C. could not go behind the decrees of the 13th and 19th January, 1864, which had been passed in favour of B., and show that the purchase by B. and subsequent decrees were really benami for C., and in his favour. A decree, until it is set aside, is, as between the parties to it, conclusive both as to the rights of those parties and the character in which they sue. *Bhawabal Singh* v. *Maharajah Rajendon Pratab Singh Bahadoor*, 5 B. L. R., 321, and 13 S. W. R., C. R., 157.

A suit will lie to set aside a registered deed on the mere allegation that it is a forgery. *Fa Rei Chand* v. *Thakur Singh*, 7 B. L. R., 614, and 15 S. W. R., C. R., 421.

A suit for a declaration that certain property which has been ostensibly held by one of the defendants, was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is not governed by Clause 3 Section 1 of Act XIV of 1859, but by Section 246 Act VIII of 1859. *Syud Abdoolah* v. *Shaik Shokoor Avli*, 14 S. W. R., C. R., 192.

When a person obliges the tenants of an estate to pay rent to him, his act may be treated as a dispossession of the party wronged, sufficient to entitle the latter to sue for declaration of title. *Radha Madhub Panda* v. *Juggernauth Dooab*, 14 S. W. R., C. R., 183.

B. mortgaged by deed certain premises to J. D., and at the same time delivered to him title-deeds comprising the said premises, and also other immoveable property of B. B. subsequently became embarrassed, and assigned all his immoveable estate to trustees for his creditors.

The trustees sued J. D., and alleged that he had refused to permit the sale by them of the said immoveable property, including the mortgaged premises (they offering to apply the proceeds of the latter in satisfaction of J. D.'s claim), and to hand over to them the said title-deeds, prayed for a declaration that the said immoveable property other than the mortgaged premises was vested in them, free from any lien on the defendant.

J. D., in his written statement, claimed a lien on all the title-deeds, and submitted that he was not bound (until his claim was satisfied) to hand them

over to the plaintiffs, or to produce the same, or his deed of mortgage.

Semble,—That on the authorities, J. D. was not bound to produce the title-deeds before satisfaction of his claim.

Quære,—Whether before such satisfaction he was bound to produce even his deed of mortgage?

Held that J. D. not having made any attempt or taken any active measures to enforce his lien, and no foundation having been laid by the plaintiffs upon which consequential relief could be granted by the Court, the latter were not, under Section 15 of the Civil Procedure Code, entitled to a declaratory decree. *Beattie* v. *Jettia Dungarsi*, 5 B. R. O. C., P. 152.

In a suit for establishment of lakheraj title to, and confirmation of, possession in land which was alleged to have been brought to sale and purchased in execution by the principal defendant, who had then sued some of the plaintiffs for a kubooleut,—*Held* that there had been no invasion of plaintiffs' title even if they had a lakheraj title, and that therefore they had no cause of action. *Ramgopaul Tewaree* v. *Goya Chund Poryal*, 15 S. W. R., C. R., 28.

A party is not entitled to ask for a declaration of right except as against a defendant in some degree hostile to him in respect of that right. *Promotho Nath Ghose* v. *Jodoo Nath Sen and others*, Ind. Jur., N. S., 293.

9.—Rulings under Sections of Act VIII of 1859.—*Section* 5.

In suits brought against the Government, *eo nomine*, under the Code of Civil Procedure, the local Government must be considered as the party sued.

Semble,—The jurisdiction to entertain suits against the Government under Section 5 of Act VIII of 1859 exists only where the cause of action arose. *Subbaraya Mudali and others* v. *The Government and Cuntliff*, 1 Mad. Rep., O. C., 286.

Where a District Court has jurisdiction, under Section 5, Act VIII of 1859, to try a suit, and defendant makes no application to the Judge, or communication to the plaintiff, with a view to its being tried in a different district, the case is not one for the exercise of any special power by the High Court for that purpose. *Kisto Dass Koondoo and others* v. *Issur Chunder Chowdry*, 11 W.R., 189.

Section 7.

A. sued B. for recovery of a receipt which had been deposited by the former with the latter as security for a certain advance of money. *Held* that he was not thereby debarred, under Section 7, Act VIII of 1859, from bringing a suit for the balance due on the whole account between them. *Nawab Medhi Ullee Khan* v. *Mahomed Wajid Ullee*, 1 N. W. R., Par. 2, P. 10.

Sections 2 and 7, of Act VIII of 1859, are not by express enactment incorporated in Act X of 1859; yet, inasmuch as the principles on which they are based are maxims of general equity, suits under Act X of 1859 should be governed by those principles. *Purbhoo Tewaree* v. *Ramjeewan Patuck*, 1 3, N. W. R., 65.

Section 7 of Act VIII of 1859 does not require a plaintiff who has separate and distinct causes of action against a defendant to include them in one suit, but prohibits the making one and the same cause of action the subject of several suits. *Dyaram* v. *Gouru Shunkur*, 3 N. W. R., 20.

Section 7, of Act VIII of 1859, applies whether the omission to sue has been the result of knowledge and intention or not. The test as to whether a suit is barred by Section 7 of Act VIII of 1859, is, whether the claim in the new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit. *Bulwunt Singh* v. *Chittan Singh*, 3 N. W. R., 27.

Where a mortgagor filed a suit to redeem mortgaged lands, alleging that the mortgagees in possession had been overpaid, but did not, in that suit, claim to recover the overpayments, which were therefore not awarded to him,—

It was *held*, that he could not recover such overpayments in a fresh suit brought for that purpose, as his claim was barred by Section 7 of the Code of Civil Procedure. *Baloji Tamaji Pothar et al.* v. *Tumangonda Leir Ghanasyam Gouda*, 6 Bom. Rep., A. C. J., 97.

At a sale for arrears of rent, A. became the purchaser of a certain putni talook. B., whose putni right had been sold, sued for and obtained a decree for reversal of the sale on the ground of irregularity. In the meantime, A. had committed default, and the putni was again sold for arrears of rent. The Zemindar drew out from the Collectorate the amount due to him. C., who had brought B.'s right, title, and interest in his decree, now sued A. for recovery of the surplus proceeds of sale in the hands of the Collector, and obtained a decree. He afterwards sued A. for mesne profits for the time during which he was in possession of the putni talook. This was a suit by C. against A. for recovery of the amount drawn out by the Zemindar, on the ground that, in consequence of A. having collected the rents from the talook, which were to go towards payment of the rent due to the Zemindar, and having fraudulently withheld such payment, he had sustained damage to the extent of the amount taken by the Zemindar.

Held that the suit was barred by Section 7, Act VIII of 1859. *Tarini Prasud Ghose* v. *Khudumani Dali*, 5 B. L. R., 184, and 13 S. W. R., C. R., 61.

The 7th Section of the Civil Procedure Code prohibits the splitting of a claim, but does not require that all remedies by suit on all the securities which a creditor may hold, be enforced together.

If a plaintiff, from negligence or other cause, omits to prefer a portion of his claim which seeks to charge the land, or, having preferred it, is content to accept an imperfect adjudication, or one which awards him only a portion of the relief claimed, he cannot afterwards bring forward in a fresh suit matter which might well have been then disposed of. *Muluk Fuqueer Buksh* v. *Laller Marchar Dass*, 2 N. W. R., 29.

The words of Section 7 of the Civil Procedure Code are inoperative against the splitting of a claim into parts.

The consequences of an infringement of that direction are not, that the suit which does not include the whole claim shall for this reason be barred.

The words "in bar of suit" refer to any subsequent suit brought for the portion of the claim omitted in the previous suit, and not to such previous suit itself.

A plaintiff who omits to sue for a portion of his claim, stating, that he does not relinquish it, but means to sue again for it, can gain nothing by such a statement.

Neither can such a statement furnish a reason for holding the first suit to be barred. *Mussamut Soondur Bibee* v. *Khillor Mull*, 2 N. W. R., 90.

Section 7 of Act VIII of 1859 does not authorize the taking a case in progress of trial off the file of a Subordinate Judge in order that it may be completed by the Judge himself, or some other Court.

It is clear that such transfer must take place on the institution of the suit. *Ram Nuth* v. *Gowhur*, 2 N. W. R., 230.

In a suit for demurrage, the cause of action being the detention of a boat, plaintiff is bound to sue for the whole of the demurrage due; failing to claim a portion, he is barred by Section 7, Act VIII of 1859, from suing subsequently for such portion. *Munghroo Manghee* v. *Gyarum Nundee*, 14 S. W. R., C. R., 253.

A person suing for the value of cattle illegally taken away, should include in his plaint whatever claim he wishes to make in respect of damages caused to him by the defendant's wrongful act, and cannot afterwards maintain a new suit for any damages which he might have claimed in the former suit. *Mohabut Mundul* v. *Soorendronath Roy*, 4 W. R., S. C. C. Ref., 20.

A suit by an heir on the same cause of action on which a suit was previously brought by his father, though for property different from that which was the subject of that suit, is barred by Section 7, Act VIII of 1859. *Sooruj Pershad Tewary* v. *Saheb Lall Tewary*, 3 W. R., 25.

Section 7, Act VIII of 1859, requires that, if all rights arising out of the same cause of action are not sued for together, the portion abandoned cannot be separately sued for afterwards; but it does not enact a similar penalty for all rights under the same or similar titles; the right to sue for which may require different issues to be tried, and may arise under different dates and different causes of action, and the defendants as to which different properties may be either only one party or different parties altogether. *Mothoor Mohun Mundul* v. *Khemunkuree Dossee*, 5 W. R., 182.

Section 7, Act VIII of 1859, does not require a plaintiff having several distinct causes of action against one defendant to comprise them all in one suit subject to the hazard of forfeiting all those not included in the first suit. The object of the clause is only to provide against *splitting a cause* of action.

Arrears of rent for successive years are several and distinct causes of action, in respect of which a plaintiff may institute separate suits. *Rajah Sutto Churn Ghosal* v. *Obhoy Nund Doss*, 2 W. R., Act X R., 31.

The words "if a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted shall not afterwards be entertained," in Section 7, Act VIII of 1859, plainly include accidental or involuntary omission, as well as acts of deliberate relinquishment. *Moonshee Buxloor Ruheem* v. *Shumsoonissa Begum*, 8 W. R., P. C., 3.

A widow of a deceased Mahomedan alienated her husband's property by two deeds to different persons at different times. Suit was brought by the heirs of the deceased, first to set aside the second alienation, and then a second suit to cancel the first alienation. *Held* that Section 7, Act VIII of 1859, does not bar the second suit. The heir's cause of action against different alienees, who have acquired possession under alienations made at different times and under different circumstances, was not one and the same, the question of right of succession to the deceased and widow's competency to alienate arising equally *in both* the cases notwithstanding. It was not obligatory on the heirs to make all the alienees parties to the first suit upon pain of forfeiting all future right of suit against them by reason of such omission. *Mussamut Jehan Bebee* v. *Saivuk Ram and others*, 1 Agra Rep., F. B., 109.

Where a suit was brought for a large amount of property, consisting partly of Government paper which, it was alleged, had been fraudulently appropriated by the defendant and the plaintiff obtained a decree,—*Held* that the plaintiff was not precluded by Section 7 of Act VIII of 1859 from afterwards bringing a fresh suit on a piece of Government paper which might have been, but by mistake was not, included in the previous suit. *Mussamut Shamssoonissa Begum* v. *Buzul Rohim*, Marsh., 286.

Quære,—Whether a relinquishment or omission under Section 7, Act VIII of 1859, extends to cases of omission to ask for any particular description of relief which a plaintiff may intend to seek against the parties to the suit in respect of his cause of action. *Sabeer Khan* v. *Kali Doss Dey*, 1 W. R., 199.

Plaintiff sued upon an instalment-bond as each successive instalment fell due, and the whole of his claim on each instalment was included in his suit. He recovered the full amount of the first instalment under the first decree, and a portion of the second instalment in execution of his second decree. He now sues for the unpaid portion of the second instalment, and for the whole of the third instalment, including the interest. *Held* that such suit was not affected by Section 7, Act VIII of 1859. *Bolakee Lal and others* v. *Chowdhry Bunsee Singh and others*, 7 W. R., 309.

Where the plaintiff claimed by right of inheritance for partition of one out of a number of villages left by his ancestor, and the Lower Court dismissed the claim as untenable under Section 7, Act VIII of 1859,—*Held* that that section, though it might operate as a bar to any future claim by plaintiff for partition of remaining villages by right of inheritance, cannot be held to bar the present claim. *Choe Singh* v. *Buhadoor Singh*, 1 Agra Rep., A. C., 55.

Held that Section 7 of Act VIII of 1859, which bars all future suit for the portion omitted or relinquished, has not the effect of prohibiting more than one suit to enforce satisfaction of a claim against the representatives of a deceased person. The creditor has a right to make all the property of the deceased debtor in the bonds of the several persons who may have succeeded it liable for the payment of his debt, but he is not bound to bring his suit in such a shape as to include the whole of the representatives and whole of the property at the risk of being precluded from all future suit. *Purumsookh*

and others v. *Soobhan and others*, 2 Agra Rep., 323.

In a suit by members of a Hindu family which had become separate in 1862, to recover certain moneys said to have been misappropriated by the defendant while manager of the joint estate, it appeared that the plaintiffs had previously sued him since the separation to recover certain other moneys belonging to the said joint estate, also said to have been misappropriated by him while manager, and obtained a decree.

Held that the present claim should have been included in the former suit; and whether the omission was by mistake or not, it must be taken to have been relinquished, and under Section 7 of Act VIII of 1859, could not now be entertained. *Ganesh Chandra Chowdhry* v. *Ram Kumar Chowdhry*, 3 B. L. R., A. C., 265; S. C., 12 W. R., 79.

An auction-purchaser of a zemindary being entitled to be paid his rents in Azeemabad rupees, and having sued for the same in Company's rupees (the former coinage being more valuable than the latter), his omission to sue for the difference of value was held to be an abandonment of claim under Section 7, Act VIII of 1859, and to bar his recovery of it in a fresh suit. *Meer Mahomed Soaduck Golestan* v. *A. J. Forbes*, 5 W. R., Act X R., 90.

A suit to recover possession of a house, as well as the rent due thereon, was held to be no misjoinder of causes of action, but warranted by Section 8, Act VIII of 1859. *Juggomohun Sahoo and others* v. *Monee Lall Chowdhry*, 11 W. R., 542.

Where one of several co-debtors satisfies the debt, his cause of action for contribution accrues against all at one and the same time, and under Section 8 of the Civil Procedure Code. The contributories may all be included as defendants in one plaint. The decree, if in favour of plaintiff, should order payment separately by each defendant of the amount only of his just proportion of the debt. *Tavasi Talavar* v. *Palaniande Talavar*, 3 Mad. Rep., A. C., 187.

Section 8.

Where, under Section 8 of Act VIII of 1859, causes of action have been joined in the same suit, the pecuniary limitation determining the jurisdiction of the Court must be calculated on the entire amount claimed. Therefore, where a suit was brought for land and mesne profits, and the whole claim was valued above Rs. 1000,—*Held*, that the Principal Sudder Ameen had jurisdiction although the value of the land standing by itself was under the value cognizable by him. *Luchmee Pershad and others* v. *Mussamut Kallassoo and others*, 2 Ind. Jur., N. S., 89.

The words "cognizable by the same Court" in Section 8, Act VIII of 1859, have reference to the nature of the claims to be joined in one suit, and not to the value of each claim. *Horo Chunder Turkochooramonee* v. *Issur Chunder Roy*, 6 W. R., 296.

One of three widows of a Mahomedan sued the other two, together with her deceased husband's sons and other heirs, for possession of 18 out of 96 sehans of property left by the deceased, to which she was entitled by right of inheritance under the Mahomedan law; and to set aside two deeds of bi-mukasa, or gift in lieu of dower, one dated 28th July 1842, granted in favour of one widow over a part of the property in suit, and the other dated 14th March 1847, in favour of the other widow, over other portions of the same property.

The Lower Appellate Court dismissed the suit, on the ground of a misjoinder of causes of action; and that there were two causes of action which could not be tried together under Act VIII of 1859, Section 8.

Held, per Kemp, J. (whose opinion as senior Judge prevailed), that there was no misjoinder of causes of action; that the case must be remanded to the Judge for trial on the merits.

Held, per Glover, J.—This was such a misjoinder as was provided against by Section 8 of Act VIII of 1859, and that the Judge was right in dismissing the suit. *Mussamut Amiran* v. *Mussamut Asihun*, 3 B. L. R., A. C., 190; S. C., 12 W. R., 11.

There is no suggestion in Act VIII of 1859 that causes of action between different plaintiffs and different defendants respectively should be united and tried at one trial. On the contrary, the express provisions of Sections 8 and 9 forbid, by implication, the larger and more extensive union of causes of action.

The Code of Civil Procedure assumes that the plaintiff always is single, and gives no warrant for two or more plaintiffs to make their separate claims in one action. *Romoona and another* v. *Manicko Moyee Chowdhrain*, 9 W. R., 525.

Held that no separate suit would lie for mesne profits accruing during the pendency of the suit and delivery of possession. Section 10, Act VIII of 1859, provides for mesne profits accruing before the suit. *Oonkur Dass* v. *Heera Singh*, 1 Agra Rep., A. C. 141.

Section 15.

Unless a plaintiff can show that there is some relief which a Court can give, no declaratory right can be made, and no suit will lie under Section 15, Act VIII of 1859. When a plaintiff in a suit asks for one thing (*e. g.*, exclusive possession), a Court ought not to give him a decree because he proves that he is entitled to another thing (*e. g.*, joint possession). *Beejoynath Chatterjee* v. *Luckhee Monee Dabee*, 12 W. R., 248.

When a plaintiff sues to declare that a deed is valid, and to confirm his possession under it, and fails to show sufficient cause for the Court's interference under Section 15, Act VIII of 1859, the Court ought simply to declare to that effect, and not to determine that the plaintiff has no right, and that the deed is void. *Phoolchunder Lall* v. *Sheoranee Koonwar*, 9 W. R., 104.

Where the defendant alienated property in which he had merely a life-interest,—*Held* that the alienation was invalid as against the plaintiff, who was entitled as reversioner. *Held* also that the plaintiff was entitled to a decree declaratory of his title under Section 15 of Act VIII of 1859. *Teramala Thamal* v. *Vencatarem*, 2 Mad. Rep., 378.

In order to entitle a plaintiff to a bare declaration of right under Section 15, Act VIII of 1859, he must make out, to the satisfaction of the Court, some act done by the defendant which is hostile to

and invades that right, and which would justify an injunction or a decree for damages, or a decree for delivery of possession being passed against the defendant, if the Court had so thought fit to exercise its discretion. *Kenaram Chuckerbutty* v. *Denonath Panda*, 9 W. R., 325.

In suits for declaratory decrees under Section 15, Act VIII of 1859, it is entirely in the discretion of the Court to grant or to withhold relief, and each case must be judged by its own particular circumstances. *Puree Jan Khatoon and others* v. *Bykunt Chunder Chuckerbutty*, 9 W. R., 380.

A suit for confirmation of possession by declaration of title was remanded to the Lower Appellate Court for enquiry whether the injury complained of was so recent and of such a nature as to entitle the plaintiff to a declaratory decree with reference to the terms of Section 15, Act VIII of 1859. *Held* that the Lower Appellate Court was competent, under the terms of the order of remand, to enquire into the question of possession. *Boykunt Chunder Chuckerbutty and another* v. *Puru Jan Khatoon and others*, 11 W. R., 77.

Suit instituted by a lineal descendant of Mahomed B. K., for a declaration of the Court, under Section 15 of Act VIII of 1859, that certain lands and premises in Calcutta were wuqf lands, under a certain towliatnamah executed by the said Mahomed B. K., the authenticity of which was admitted, and that the defendants who were in possession might be restrained by injunction from recovering the rents of, or intermeddling with, the said lands or premises, and that it might be referred to the Court in chambers to appoint a proper person to act as mutwallee under the said towliatnamah, and that such mutwallee, when so appointed, might be declared entitled to the said lands and premises. The causes of action were alleged to have arisen at various times within the last twelve years, and were distinct as to the several defendants who held by different titles.

On objection having been taken to the frame of the suit, the Court held that it was informal, as there was a joinder in one suit of several distinct causes of action, and no grounds were disclosed for relief in a suit in equity, and that the proceeding should have been by way of ejectment against each of the defendants. The suit was accordingly dismissed.

Held that the translation of a deed by the interpreter of the Court must be accepted *primâ-facie* as correct and as evidence of the contents of the deed; that the schedule appended to a plaint cannot disclose a cause of action not revealed in the plaint; that several actions cannot be included in one suit; that in a suit for declaration of trust, with reference to lands, it must be shown that the party against whom the trust is prayed must have obtained a more or less rightful possession of the lands, but impressed with the obligation of a trust; that in a suit such as last mentioned, it must be shown that some duty *primâ-facie* fell on the defendants, of which they are committing a breach; that, if the defendants in such a suit be intruders and strangers, there is no common cause against them, and they must be turned out by action of ejectment against each separately; that Section 15 of Act VIII of 1859 refers to declarations which are binding relatively to the parties before the Court, not to declarations of abstract right, or bare declarations of trust, exclusive of any practical equity. *Cazee Mushur Hossein* v. *Dinobundoo Sen and others*, Bourke's Rep., O. C. 8; 1 Cor. Rep., 94.

Suits by the guardian of a minor having a farming lease, which had nine years to run, to obtain a declaratory decree that certain pottahs put forth by defendants to protect themselves from enhancement of rent were spurious and calculated to injure the future interests of the minor, were held to be premature, and could not lie under Section 15, Act VIII of 1859. *Oomar Suhina Bibee and another* v. *Luckhee Prea Dabee*, 10 W. R., 47.

Parties not proving possession, and not entitled to consequential relief, may yet, under Section 15, Code of Civil Procedure, obtain a decree declaring them rightful owners. *Thakoordeen Tewaree* v. *Nawab Syud Ali Hossein Khan and others*, 8 W. R., 134.

A suit for a declaratory decree under Section 15, Act VIII of 1859, is premature on the part of a reversioner during the life-time of the widow, his right being contingent on her death. *Baboo Jodoo Nundun Pershad Singh* v. *Mussamut Nundo Kooer*, 1 W. R., 219.

Before the enactment of Act VIII of 1859, Section 15, a suit could not have been brought for a mere declaration of title without consequential relief. A suit cannot be brought against several defendants to eject one, and to obtain a declaration of title against the rest. *Nadn Mauni and others* v. *Goda Shangora*, 1 Mad. Rep., A. C., 252.

Under Section 15 of Act VIII of 1859, it is discretionary with the Court whether it will make a declaratory decree or not. In a suit brought for confirmation of possession by a declaration of right and determination of boundaries in respect of certain land of which the plaintiff was in possession, by setting aside a new Thakbust map, prepared by the Deputy Collector, and a proceeding before that officer to which the plaintiff was no party, the plaintiff not having gone before the Deputy Collector and pointed out to him the grounds upon which he contended the map was not correct,—*Held* that the plaintiff ought to have a declaratory decree. *Baboo Motee Lall and others* v. *Maharajah Bhoop Singh Bahadoor and others*, 2 Ind. Jur., N. S., 245.

In a suit brought, on the ground of an existing right of inheritance, for immediate possession and mesne profits, by setting aside an adoption, the Court will not allow the form of action to be changed, and proceed to decide whether (the claim for possession on the ground of an existing right being abandoned) a declaratory order may not issue for setting aside the adoption, but will, on failure of right to immediate possession, dismiss the suit. According to Section 15, Act VIII of 1859, declaratory orders can be issued only in suits brought to obtain such orders. *Ranee Rajessuree Koonwar and others* v. *Maharanee Inderjeet Koonwar and others*, 6 W. R., 1.

Act VIII of 1859, Section 15, does not give power to the Court to give a declaratory decree, unless the position of the parties is one of hostility to one another. The plaintiff must come into Court with some definite complaint against the defendant, which is such as admits of specific relief being afforded by the Court with regard to it. He cannot, irrespective of all behaviour on the part of the person whom he makes defendant, bring that

person into Court merely for the purpose of getting the Court to clear up difficulties, whether of fact or law, which may have arisen between himself and the defendant. He must generally allege and rely upon some cause of action against the defendant, except in that class of cases in which the Court gives its aids towards the fulfilment of trusts, and this principle is not affected by Section 15 of Act VIII of 1859. Therefore, where a plaintiff bought, at a sale in execution of a decree, the right, title, and interest of one defendant, a judgment-debtor, in a ship, and by his plaint sought to discover the *bona fides* of certain transactions by way of mortgage between the judgment-debtor and the other defendants, and asked a declaration that he, as purchaser, was entitled to the right, title, and interest of the judgment-debtor; or in case it should appear that, at the time of the attachment in execution, the ship was the property of the judgment-debtor, subject to any valid lien or charge in the hands of the other defendants or either of them affecting the same, then that the amount of such lien or charge might be ascertained, and the plaintiff as such purchaser might be declared entitled to redeem the same.

Held that the plaint was bad upon the face of it. But as it appeared, taking the plaint and evidence together, that there was some substantial dispute between the parties relative to the defendant's mortgage, the Court, to prevent further litigation, construed the plaint as having asked that the alleged mortgage might be set aside. *Lallah Bhugwan Doss* v. *Syed Akbar and others*, 1 Ind. Jur., N. S., 390.

Where the defendant alienated property in which he had merely a life-interest,—*Held* that the alienation was invalid as against the plaintiff, who was entitled as reversioner.

Held also that the plaintiff was entitled to a decree declaratory of his title, under Section 15 of Act VIII of 1859. Although the words of that section are nearly identical with those of Section 50 of the English Chancery Amendment Act, it does not follow that, in every case in which the latter section is held to be inapplicable by the Courts of Chancery in England, the former will be held to be equally inapplicable in India.

The application of Section 15 of Act VIII of 1859 must be viewed in connection with the system of procedure to which it belongs. *Terumalathamal* v. *Vencatara Manayau*, 2 Mad. Rep., 378.

II.—PARTIES.

10.—MISCELLANEOUS.

The purchaser of a decree is not a party to the suit within the meaning of Section 11, Act XXIII of 1861. *Kristo Monee Thakoor* v. *Bishumbhur Doss*, 5 W. R., 215.

Where land forms the subject-matter of the suit, the *lex loci rei sitæ* applies. This was a suit for foreclosure. The defendant had received a conveyance of half a certain piece of land from S. J. (S. J. having the right to convey only two-fifths of the said land, the remaining two-fifths and one-fifth belonging respectively to a brother and sister of S. J.) When S. J. gave the conveyance, it was endorsed by his sister. This endorsement amounted to an estoppel as against her, or any one claiming through her, against saying that S. J. had not a full right to convey.

Held also that it was not necessary to make the personal representatives of the mortgagor parties. He who has the equity of redemption is the only necessary party. *Blaquiere* v. *Ramdhone Doss*, Bourke's Rep., O. C., 319.

Where the Receiver of an estate appointed by the High Court on its original side, received permission to bring a suit on behalf of the parties interested in the estate, and brought the suit in his own name, it was held that, though the frame of the suit was erroneous, yet the error being one of form only, and no objection on the ground of that error having been taken in the Court below, such objection could not be allowed to prevail in the Court of Appeal, which might amend the proceedings without consent of the parties interested, or further notice of appeal. *Juggunnath Prosad Dutt* v. *C. S. Hogg and others*, 12 W. R., 117.

The Court will not, except for some very cogent reason, order principal parties to leave the Court during the hearing of a case. *Buddeereenauth* v. *Issureepershaud*, 2 Hyde's Rep., 249.

In a suit by a superior holder (representing the zemindar by whom certain pottahs were alleged to have been granted) for a declaration that the pottahs were forgeries, against a party holding a portion of land by a title derived from lessees under those pottahs, it was held that all the parties interested in and holding under the pottahs should be made parties to the suit, on the principle that all persons who are interested in the question must be made parties to a suit in a Court of Equity. *Dhuckinna Mohun Roy* v. *Ameegooden Mahomed*, 12 W. R., 247.

Wife made party to the suit, on the ground that a building on the estate was erected by her husband with money forming her separate estate. *Gourgopal Dutt* v. *Bishonath Ghose and Indromonee Dassee*, Cor. Rep., 41.

The representatives of a deceased partner are not necessary parties to an action for damages under a guarantee to the original firm. *Purkingyoung* v. *Bhoobun Mohun Banerjee*, Cor. Rep., 90.

A person cannot at one time set himself up as a substantial party in a suit, contesting it in both the lower Courts on the merits, and then turn round and say in special appeal that he has nothing to do with it, and has been unnecessarily brought in. *Kristo Gopal Shaha* v. *Kasheenauth Shaha and another*, 6 W. R., 66.

Where a party in the position of a mere stakeholder is made a defendant in a suit, his proper course, under the Civil Procedure Code, is to pay the money into Court and ask that the parties really interested may be substituted for himself as defendants. *Assaram Burlia* v. *The Commercial Transport Association*, 2 Ind. Jur., N. S., 113.

The firm of C., T. and Co. acted as agents for the trustees of G. D. It appeared, from entries in their books, headed "Account of the Trustees for G. D.," that the firm had in their hands Rs. 12453 to the credit of the trustees in 1848, at which time the firm stopped payment. D. T., a member of the firm of C., T. and Co., and W. S., were the trustees. In the earlier accounts the names of D. T. and W. S. both appeared; in the later one,

namely, from 1842 until they were closed in 1848, at the head of the account, there was a memorandum written in small letters, "D. T., trustees," but it did not appear that W. S. had ever renounced the trust, or conveyed the trust estate to D. T. In 1846 D. T. died, leaving G. and T., the surviving partners of the firm, the executors of his will. W.S. survived D. T. In 1867, the representative of G. D. brought a suit for an account against G. and T., as the executors of D. T. *Held* upon the facts that there was no proof that any specific property, the subject of the trust, had come to the hands of G. and T. as executors of D. T., and any other claim was barred by Section 2, Act XIV of 1859.

Semble,—No suit would lie in the absence of W. S., or his representative, as a party. *J. C. Michael* v. *D. M. Gordon and others*, 2 Ind. Jur., N. S., 271.

A party who had sued, on the part of himself and of his minor brother, to recover possession of ancestral property alleged to have been alienated, sold his rights and interests in the suit to a third party, whose name was accordingly substituted in the place of plaintiff. *Held* that the substitution of such party for the plaintiff, in respect of part of the latter's share in the subject-matter of the suit, did not make that party a party to the suit, and gave him no *status* which would enable him to appeal. *Saheb Roy* v. *Choonee Singh*, 2 W. R., 487.

Where the purchaser of a plaintiff's rights was substituted for the plaintiff, the irregularity was held to be cured by the consent of the defendant, implied in his offering no opposition, but appealing from the judgment on the merits, making the substituted plaintiff one of the respondents. *Beer Chunder Roy* v. *Sheikh Tumeezoodeen*, 12 W. R., 87.

In the case of an unincorporated or unregistered company, the plaintiff, if he does not know of what persons the company is composed, may sue the company by the name under which they are carrying on business, stating in this plaint his inability to describe them better. *Koylash Chunder Roy* v. *Edward Ellis*, 8 W. R., 45.

Where a person sues another as liable for the acts of the accredited agent of the latter, it is not necessary that the alleged agent should be made a party to the suit.

The *onus* lies on the plaintiff to prove that the alleged agent was the duly accredited agent of the defendants in reference to the transaction, the subject of the claim. *Hathe Ram and others* v. *Gobind Ram*, 4 Agra Rep., 131.

In a suit by A. on a bond in favour of B., the plaintiff may show by oral evidence that the money secured by the bond was his own; but where B. has died, A. must either entitle himself as B.'s personal representative, or make B.'s personal representative a party to the suit. *Deva Ram* v. *Venkatesa Achariyár*, 1 Mad. Rep., A. C., 452.

Convenience requires that in suits where there is community of interest amongst a large number of persons, a few should be allowed to represent the whole; and if the whole body be represented in the suit, then it is proper that the whole body should be bound by the decree, though some members of the body are not parties named in the record. *Srikhanti Narayinappa* v. *Indupúram Ramahugam*, 3 Mad. Rep., A. J., 226.

Plaintiff sued to recover possession of certain land said to have been included in a talooka pottah given him by the zemindars, alleging that defendants were obstructing his possession. For the defence it was averred that these lands fell within a nine annas share which belonged to one D., and that by process of sale they became the right of other parties under whom defendants held as lessees.

Held that it was unnecessary to make the lessors on either side parties in the case. *Nagur Chand* v. *Doorga Doss Chowdhry and others*, 11 W. R., 137.

Where a gross fraud is being practised on a Court, with the object of evading an order which the Court has made directing a minor's guardians to account, any person who appears before the Court and exposes the fraud, undertaking also to prove it, has a *locus standi* in Court, and has a right to be heard. *Hossein Ali Khan* v. *Syud Burkut Ali*, 10 W. R., 372.

An interpleader-suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter. *The Secretary of State* v. *Mir Mahomed Hossain and others*, 1 Mad. Rep., 360.

No appeal lies from an order passed under Section 21, Act VIII of 1859, declining to issue notice as against certain alleged legal representatives of an original party. *Bibee Sohudra* v. *Roy Kaliha Sahoy*, W. R., 1864, Mis., 23.

Exemption from arrest on process of execution under Section 21, Act VIII of 1859, does not extend to all women of rank, but is limited to the women therein described,—women, that is, "who, according to the custom and manners of the country, ought not to be compelled to appear in public." *J. Davis and others* v. *M. A. Middleton and others*, 8 W. R., 282.

One of several shareholders who obtained a decree for a kabooleut from several defendants, cannot sue for his individual and separate share of the rents, without making all the shareholders parties. *Hur Kissore Doss Bhoorjah* v. *Joogul Rishore Saha Roy*, 16 S. W. R., C. R., 281.

Where a minor and her father are made co-defendants, the latter, and not the minor's mother, is the proper party to defend the suit, even though he may have no personal knowledge of the facts. *Joobraj Chowkeedar* v. *Whelan, Rampiar* v. *Whelan*, 13 S. W. R., C. R., 399.

In a suit by putneedars for arrears of rent, where parties who had subsequently acquired an interest in the putnee appeared and petitioned the Court assenting to the suit being carried out in the names of the plaintiffs,—*Held*, that there was a sufficiently constituted suit and a sufficient array of parties to enable the Court to give a decree. *Sreenauth Mookerjee* v. *J. White*, 13 S. W. R., C. R., 126.

In a suit for declaration of right against a proprietor of an estate, it is necessary that the proprietor himself, and not his karindah only, be made a party to the suit. A decree against the karindah cannot bind the proprietor. *Madho Rao Apa* v. *Thakoor Pershad*, 3 Agra Rep., 127.

In a suit by A. against B. and C. in which a decree was given against B. alone,—*Held* that C. could not be made liable, either on the appeal of B., or on the cross-appeal of A. to B.'s appeal.

Greesh Chundra Singh v. *Gourmohun Banerjee and others*, 7 W. R., 49.

When an inhabitant of foreign territory sues within British territory, it is imperative on the Court to demand security from him for the payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. *Koronamoye Debia* v. *Oma Churn Dutt*, 12 W. R., 465.

In an action brought by the manager of a concern, on the basis of a contract executed by defendant, and addressed to a previous manager, now deceased, it was held that, as the plaint did not disclose that the plaintiff had any interest of his own in the suit, and as the contract was not in terms with him personally, he could not maintain the action in his own name. *C. Glascott* v. *Gopal Shaikh*, 9 W. R., 254.

To question an Act of State, directly or indirectly, the contention must be raised in a suit duly constituted, to which the Government must be made a party. *Nawab Umjid Ali Khan* v. *Mohumdee Begum and another*, 10 W. R., P. C., 25.

A plaintiff cannot be bound by a proceeding which was between other parties, and in which he had no opportunity of being heard. *Ranee Surut Soondery Debia and another* v. *Rajendur Kishore Roy Chowdhry and others*, 9 W. R., 125.

Incompetency to sue is a defect not admitting of cure or palliation, but that plea being of a material preliminary nature, and involving the plaintiff's *locus standi* in Court, was held to be admissible, though pleaded orally for the first time. *Radha Kishen* v. *Buktawur Lall*, 1 Agra Rep., A. C., 1.

In a suit by two plaintiffs for the value of personal property plundered, if the cause, time, place, and parties charged be the same in both instances, the fact that both plaintiffs have not a joint interest in the whole of the property plundered by the defendants is insufficient to put them out of Court. *Jugobundhoo Dutt* v. *C. B. Maseyk*, W. R., 81.

11.—Joinder of Parties.

Misjoinder of claims without proof of substantial injury sustained thereby, is no ground for special appeal. *Durshun Pandey* v. *Mussamut Saminah Bebee*, 1 W. R., 114.

Misjoinder of parties is not an objection which can be allowed to be taken in special appeal. *Tiluck Chunder Chuckerbutty* v. *Muddun Mohun Joogee*, 12 W. R., 504.

The provision of Section 9, Code of Civil Procedure, under which a Court has power to order separate trials of different causes of action if they cannot be conveniently tried together, applies only to causes of action mentioned in Section 8,—*i. e.*, by and against the same parties. *Kossella Koer* v. *Behary Patuck*, 12 W. R., 70.

A suit by a zemindar for possession of lands and for arrears of rent of those lands under a kubuleut given by the defendant, and to set aside a summary award of a Deputy Collector, and to have it declared that a *bhakee bist* tenure set up by the defendant is a fabrication and void, is not multifarious, or bad on the ground of misjoinder of causes of action. In such a case, all the distinct portions of the plaintiff's claim form, support, and have a relation to and connection with his proprietary title which he seeks to confirm, and which *primâ-facie* entitles him to the collections. *Maharajah Rajender Kishwar Singh* v. *Sheoprershun Missur*, 5 W. R., P. C., 5.

Courts should reject plaints against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned. *Motee Lall and others* v. *Ranee*, 8 W. R., 64.

In trying together two distinct suits turning upon entirely separate documents, a lower Appellate Court was held to have reversed the procedure indicated in Section 9 of the Code of Civil Procedure. *Ram Nidhee Koondoo* v. *Goluck Chunder Moshanto and others*, 11 W. R., 280.

The claims of different parties setting up different leases from A., and thus opposing the purchaser of the estate from A. in obtaining possession, may be joined in one suit brought to set aside their leases, and to recover the profits which they had misappropriated. *Shooroop Chunder Paul* v. *Mathoor Mohun Paul Chowdry*, 4 W. R., 109.

Lands were sold, and the purchase-money paid. The vendor was unable to give the purchaser possession, or to return the purchase-money, and gave him bonds for the amount. It afterwards appeared that others were jointly interested with the vendor in the land; and the Court below, on the ground of such joint interest, held that the vendor must be taken to have executed the bonds as their agent, as well as on his own account, and made a decree for the plaintiff in a suit on the bonds in which they were joined as defendants. *Held* that, whatever might be the liability as between the different members of the family *inter se*, the vendor alone was liable to be sued on the bond. *Ramlall Bhagut* v. *Mussamut Kullabuttee Koonwaree*, Marsh., 9.

The dismissal by the Judge, on appeal, of a suit for rent as multifarious, because brought against some forty tenants holding separately, was upheld in special appeal, notwithstanding the objection that the plea was not taken in the first Court. *Gunesh Persad* v. *W. Wilson*, W. R., 1864, Act X R., 86.

A village had been divided into four separate portions, with four different parties who were afterwards dispossessed under one and the same survey award which demarcated the village as appertaining to the defendant's estate. *Held* that the four parties could sue jointly. *Anund Chunder Ghose* v. *Komul Narain Singh*, 2 W. R., 219.

The Court should reject plaints against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned. *Raja Ram Tewary and others* v. *Luchmun Pershad and others*, 8 W. R., 15.

Only persons, whose claims must necessarily be taken into consideration before deciding on the plaintiff's title, should be joined as defendants in a suit. *The Government* v. *W. Fergusson*, 9 W. R., 158.

Where the plaintiffs in a suit put forward a joint claim, it is not enough that one of them makes out his title; the suit should be dismissed, unless the joint claim is established. *Ram Comul Chuckerbutty* v. *Nund Ram Coola and others*, 10 W. R., 261.

Where a kubuleut creates an obligation from a

tenant to two parties jointly, the obligation can only be properly enforced by a suit brought by those parties jointly. *Gopal Chunder Gooho* v. *Juggodumba Dossee*, 10 W. R., 411.

A suit to recover possession as cultivators, brought by two plaintiffs, whose holdings, although originally one, have for a long time been separated and held separately, will be dismissed for misjoinder. *Girwur* v. *Syud Nyaz Ali*, 2 N. W. R., 306.

The misjoinder of plaintiff, which does not produce error in the decision of the case on its merits, is not a ground for the reversal of a decree on special appeal.

Semble,—That such misjoinder is not a ground for the reversal of a decree in regular appeal.

Where the widow of H., a Muhamadan, and his two daughters, brought a joint suit for their respective shares of the estate of H., which were awarded to them jointly,—

Held that this was an error of procedure which did not affect the merits of the case. *Sayad Miyu Gulam Nabi et al.* v. *Khuranbibi*, 6 Bom. Rep., A. C. I., 177.

Held that there was no misjoinder of different causes in a suit including plaintiff's whole claim, where his cause of action was that the Revenue Commissioners had taken possession of his lands and given it in pottah to other people. *In the matter of Rutnessur Duss*, 14 S. W. R., C. R., 381.

Plaintiff having obtained a decree establishing his title to a number of villages constituting one talooqua, subsequently brought one suit against all the persons severally in possession of the several estates constituting the talooqua for mesne profits during their wrongful possession,—*Held* that there being no common liability, the suit must be dismissed for misjoinder. *Koondun Lal* v. *Rai Himmut Singh*, 3 N. W. R., 86.

A Lower Appellate Court has no power to reverse the decree of a Court of first instance on the ground of misjoinder of parties. *Ram Kunye Chuckerbutty* v. *Prossono Coomar Sein*, 13 S. W. R., C. R., 176.

In a suit for rent, as of a single howalah, where the defendants pleaded, and the Court found, that the lands constituted two howalahs,—*Held* that it would not be necessary to dismiss the suit; but on general principles, and for the comfort of the defendant, the Court might try the other issues, and do justice between the parties. *Suroop Chunder Chowdry* v. *Nimchund Chuckerbutty*, 13 S. W. R., C. R., 284.

J. L. and H. N., brothers, members of a joint Hindu family, subject to the Mitakshara law, borrowed money by absolute and conditional sales of their joint estate. After the death of J. L., his son, L. N., brought a suit against the aliences to recover possession of the lands by reversal of the deeds, as to one-half share thereof, which he claimed as the share of his father, J. L., on the ground that there had existed no legal necessity justifying J. L. and H. N. in alienating the property. Neither H. N., nor any one representing him, had been made a party to the suit. There was nothing to show that the family had been separated, or the property partitioned. *Held*, the suit should have been brought by all the joint members to set aside the deeds. If the other members refused to join as plaintiffs, they should have been made defendants. *Rajaram Tewari* v. *Lachman Persad*, 4 B. L. R., A. C. 118; and 12 S. W. R., C. R., 478.

Four plaintiffs sued as partners; but it was found, during the trial, that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners. And it being decided in the negative, the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and he gave a decree in favour of the other plaintiffs. *Held*, that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. Such an error is "an error in an interlocutory order not affecting the merits of the case;" and therefore under Section 350, Act VIII of 1859, not a ground for reversing the decree on appeal. *East India Railway Company* v. *F. J. Jordan*, 4 B. L. R., O. C., 97.

In a suit to recover property bought by one S. and his mother D. as guardian of his minor brother, where it was found that D. alone was entitled to the properties as heir to its owner, her late father,—*Held* that it was not necessary to dismiss the suit on account of its formal incorrectness, but the name of S. should have been struck off the record, and the suit allowed to proceed as that of D. alone. *Sreeram Hagrah and others* v. *Gyaram Hatee and others*, 11 W. R., 507.

The plaintiffs are three widows of three out of five sons, and sue for their husbands' shares of property, on the allegation that the five sons possessed property left by their father at his decease, that the three widows had, since their husbands' deaths, been holding possession of their husbands' shares in co-parcenery with the other two surviving sons; and that the said co-parceners in collusion with the other defendants contracted debts, and allowed them to purchase the property at auction, whereby the plaintiffs have been dispossessed.

Held that the finding that the husbands of two of the plaintiffs died before their father was fatal to the claim, not only of these two plaintiffs, but also of the third plaintiff who chose to join the other two in a suit of this sort.

Held, further, that the plaint in this suit was bad on the ground of multiplicity, and should not have been admitted, inasmuch as the acts of the purchaser defendants in taking possession being found to be separate acts, the suit was in reality three suits against so many different defendants. Even if the plaint was rectified, the Court at the hearing should have insisted on the plaintiffs making an election of a cause of action, and of a defendant, upon which and against whom they would proceed. *Hurro Monee Dossee and others* v. *Omookool Chunder Mookerjee and others*, 8 W. R., 401.

A plaintiff who with his co-sharers has given a joint lease to the defendant, is not competent to sue alone for his undivided share of the rent. *Ramjoy Singh* v. *Nagur Ghazee*, 5 W. R., Act X R., 68.

12.—Co-Plaintiffs and Co-Defendants.

When a third party's cause of action is different from that of a plaintiff in a suit, he cannot be made

a co-plaintiff. *The Government* v. *Bourie Bhoomiz*, 2 W. R., 280.

Where co-sharers who had paid their share of revenue assessments are made defendants in a suit for contribution, together with other co-sharers whose proportion was paid by the plaintiff, the defendants who have paid are entitled to their costs of appearing, and notwithstanding the plaintiff may have made no claim against them, but has joined them merely for the sake of conformity. *Golam Ahmed Shaw and others* v. *Behary Lall and others*, Marsh., 239.

A decision in a suit between a plaintiff and two defendants does not conclude any question between the two defendants. *Obhoy Churn Nundee* v. *Bhoobun Mozoomdar*, 12 W. R., 524.

It was considered, under the circumstances of this case, not consistent with the principles of equity and good conscience, to refuse a clearly proved right on the technical ground that on one co-defendant's appeal no decision adverse to another co-defendant can be come to. *Oodey Singh* v. *Paluck Singh*, 16 W. R., C. R., 271.

In a suit by A. against B., in which C. intervened and was made a co-plaintiff with A.,—*Held* that the Court ought only to have decided the controversy between the co-plaintiffs on the one side and the defendant on the other, and (instead of declaring the respective interests of the plaintiffs in that stage of the case) to have left them, if they disputed as to their shares in the amount of their decree, to make that the subject of a fresh suit between them, the money being brought into Court and impounded on the application of either party. *Luchmun Persaud* v. *Dabee Persaud*, 6 W. R., 90.

A Civil Court's expression of opinion as to the title of one of two co-defendants in a suit for mesne profits, is not a binding declaration of right as between them. *Lallah Bholonath* v. *Bechoo Koonwar*, 1 W. R., 50.

The decision of a Court as between co-defendants in a suit in which the title of the plaintiff was the only question at issue, cannot operate as an estoppal, or bind those co-defendants in a suit subsequently instituted to try their title. *Ram Chand Somadar* v. *Kallchand Chuckerbutty*, 1 W. R., 287.

It is not competent to a Court in dismissing the suit of a plaintiff to adjudicate on the rival claims of two co-defendants. *Reedoy Kristo Mozoomdar* v. *Puddo Lochun Mozoomdar*, 1 W. R., 12.

13.—Appearance of Parties.

Where a case had been struck out for non-attendance of the parties, an order was made for its restoration on an affidavit that the absence of the parties was owing to an understanding between them for an adjournment, and that the plaintiff had a case on the merits. *Damoodur Doss* v. *Choonee Bibee*, Cor. Rep., 120; S. C., 2 Hyde's Rep., 216.

The personal attendance of either party to a suit is not to be insisted upon if he live more than fifty miles from the place where the Court is held. *Sheikh Golam Bukshee* v. *Pulton Singh*, 3 W. R., Act X R., 162.

A Rajah instituted a suit under Act X of 1859 through an agent appointed in that behalf. The Deputy Collector cited the Rajah himself to appear and be examined. He excused himself on the ground of the privilege under Act VIII of 1859, Section 22, and at the same time petitioned that the evidence of his general agent might be taken. The Deputy Collector, without examining the general agent, dismissed the suit, on the ground that the suit ought to have been instituted by the general agent; and that the Rajah himself was bound to obey his citation. *Held* that the Deputy Collector was bound to receive the evidence of the general agent and to decide the case upon the evidence which was tendered; and that the refusal of the Rajah, who had the privilege which he claimed, and his appointment of a special agent or mookhtear for the purposes of the suit, instead of his general agent, were no grounds for dismissing the suit. *Maharajah Juggud Indur Bunwaree and others* v. *Soorcoomar Chowdhry and another*, Marsh., 627.

A Court is justified in declining to summon a plaintiff when defendant has failed to give any kind of proof. *Chytunno Chunder Roy* v. *Kedarnauth Roy*, 14 S. W. R., C. R., 99.

A defendant who has appeared on one or more occasions, and contested the suit up to a certain point, is not a defendant who has not appeared in the sense of Section 58, Act X of 1859, because at some subsequent stage of the proceedings he was not present when the suit was heard. *Radhapersand Singh* v. *Sansar Roy*, 14 S. W. R., C. R., 27.

Under Section 45 of the Code of Civil Procedure, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader."

What may be "sufficient time" in a particular case, can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an Appellate Court will interfere. *Khadar Bhi* v. *Rahiman Bhi*, 3 Mad. Rep., A. C., 167.

Where defendants, summoned under Section 41 of Act VIII of 1859, did not appear on the day fixed for them to appear and answer, and their reasons for non-attendance not being considered sufficient, they were not allowed to appear in the case,—*Held* that the lower Appellate Court was right in refusing to hear an appeal from that decision. *Joy Prokash Singh* v. *Megraj Singh*, 12 W. R., 208.

14.—Addition of Parties.

The plaintiffs having filed their plaint against parties *primâ-facie* liable to them upon the contract, and having opposed a claim made by the original defendants to have the suit dismissed as against them on their paying money into Court, and to have third parties added as defendants,—*Held* that the plaintiffs having succeeded against the third parties ordered to be added as defendants, the added defendants were liable for the whole costs. *Assaram Burtiah* v. *The Commercial Transport Association*, 2 Ind. Jur., N. S., 113.

In a suit for establishment of title to a portion of land with which defendants repudiated all connection, alleging the land to be in the possession of third parties, who were in consequence made defendants by an order of the Court, under Section 73, Civil Procedure Code,—*Held*, that these parties

were rightly made defendants, as having been interested both in the subject-matter and in the result of the suit; and, even if they had been wrongly made defendants, the *onus* would, under the circumstances, remain on the plaintiffs. *Ram Taruck Ghopul* v. *Rudha Bullub Sircar*, 15 S. W. R., C. R., 97.

In a suit against a co-heir, who had obtained a certificate under Act XXVII of 1860, for an account of the estate of the deceased proprietor, a third party was added as a defendant under Section 73 of Act VIII of 1859, "it appearing from the accounts put in that a large portion of the assets had been disposed of by him as agent" of the holder of the certificate. On appeal, held that a co-heir is entitled to follow property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate. Therefore any person who, with the consent of the holder of the certificate, has improperly possessed himself of property belonging to the deceased, and misappropriated it, may be joined as a co-defendant. The third party was rightly so joined in this case.

The words in Section 73 of Act VIII of 1859, "who may be likely to be affected by the results," construed to mean, "likely to be affected, if added as parties." *Nyu Thu Yu* v. *Mi Khun Mhaw*, 5 B. L. R., 371; 13 S. W. R., C. R., 443.

After the dismissal of the plaintiffs' suit, and pending a regular appeal to the High Court, the plaintiffs applied for leave to add the name of a party to whom a share of their right in the subject-matter had been assigned subsequently to the dismissal of the suit in the Court below. The Court refused the application. *Mussamut Jamulee and others* v. *Mahomed Hossein*, Marsh., 251.

When a party is substituted or added as a defendant, under Section 73, Code of Civil Procedure, the suit is commenced as against him from the time he is made a defendant, and not before; and limitation runs in his favour up to the date of his admission into the suit. *Eshan Chunder Banerjee* v. *Kristgulty Nag*, 14 S. W. R., C. R., 377.

Plaintiffs having succeeded in a suit for a foreclosure of a mortgage, by a conditional bill of sale, of a share of two mouzahs, then sued for possession and registration of names as proprietors. Whilst this suit was pending, certain parties intervened and asked to be made parties under Section 73, Code of Civil Procedure, on the ground that plaintiffs' vendors were not entitled to the full share claimed, as they themselves had purchased a portion thereof.

Held that the Court exercised a wise and proper discretion in allowing the intervenors to be made parties, for a decree in plaintiffs' favour, though not legally binding on them, would, nevertheless, have caused them great difficulty in all matters of rent. *Saligram Singh* v. *Ghenro Singh*, 16 S. W. R., C. R., 1[illegible].

The object of Section 73, Act VIII of 1859, is to prevent needless litigation, and there are cases, *e.g.*, as when it is necessary to make plaintiff's co-parceners defendants, when a Judge should exercise the discretion vested in him by that section, even if the plaintiff omits to ask him to do so. *Motu Chund Dass* v. *Mooenhe Dhur Dass*, 15 S. W. R., C. R., 432.

An order adding a party to a case is not one affecting the merits in the sense of Section 363; but where such order is made without postponing the case (Section 73) for a reasonable time, it is a very important matter. *Koomara Oopendra Krishna Deb* v. *Nobin Krishna Bose*, 15 S. W. R., C. R., 370.

Where a corporate body, *e.g.*, the East India Railway Company, is sued, not in its corporate capacity, but through an agent, the suit is brought in a wrong form.

As, in such a case, the corporate body is not likely to be affected by the result of the suit, a Court is justified in refusing an application to make such corporate body a party in the suit under Section 73, Act VIII, 1859. *Nobun Chunder Paul* v. *C. Stephenson, agent of the East India Railway Company*, 15 S. W. R., C. R., 534.

In a suit to enforce the performance of a contract on the allegation that defendant had received the consideration money, but refused to execute the conveyance, a third party intervened alleging a subsequent conveyance of the same property by an instrument which had been registered. The First Court dismissed the plaint, but the Lower Appellate Court gave plaintiff a decree against both parties,—*Held* that it was irregular to place an intervenor upon the record and decide an issue between him and the other parties to the suit. *Gurdadhur Chatterjea* v. *Raj Kisto Roy*, 13 S. W. R., C. R., 73.

In a former suit by A. against his agent for an account of the collections of a certain share in land, B. intervened and was made a party. In that suit the Court declared A. to be the zemindar, and as such entitled to the rents and to an account,—*Held* that that finding was binding against B. in a subsequent suit against him by A. for recovery of the same share. *Sheo Suru Singh* v. *Ram Khelawan Singh*, 14 S. W. R., C. R., 165.

In a suit for confirmation of possession and registration of names on the allegation that plaintiffs' possession had been disturbed by defendant's interference in the collection of rents, a third party intervened stating that he was in possession, and that the parties through whom plaintiffs claimed had no right or interest in the property. *Held* that the intervenor was rightly made a defendant under Section 73 of the Civil Procedure Code,—*Held*, also, that this did not shift the burden of proof from the plaintiffs, who were bound to prove their own case. *Kinjul Sahoo* v. *Gooroo Buksh Koocr*, 13 S. W. R., C. R., 362.

15.—RULINGS UNDER SECTION 73 OF THE CODE.

When a co-defendant (a co-sharer with the plaintiff in the property in dispute) was thought by the Judge to be a necessary party as respondent in the appeal,—*Held* that the Judge should, under Section 73, Act VIII of 1859, and otherwise, have caused him to be made a respondent, instead of dismissing the appeal. *Achumbah Paurey* v. *Ramsahoy Paurey*, W. R., 1864, 136.

Where a plaintiff is admitted as a co-plaintiff, under Section 73, Act VIII of 1859, limitation will count against him, not up to the date of his own admission, but up to the date of the filing of the original plaint. *Kalee Kishore Chatterjee* v. *Luckhee Debea Chowdhrain and others*, 6 W. R., 172.

When a party is substituted or added as a defendant, under Section 73 of Act VIII of 1859, the suit is commenced against him at that time, and not before; therefore, where A. sued B., as representative of C. for land, and more than twelve years after the cause of action accrued found that B. was not in possession, but D., and by order of Court D. was substituted as defendant,—*Held* the claim against D. was barred. *Raj Kishoree Dossee* v. *Budden Chunder Shaw and others*, 2 Ind. Jur., N. S., 49; S. C., 6 W. R., 298.

An intervenor claiming under a title adverse to that set up both by the plaintiff and the defendant, may be made a defendant, under Section 73, Act VIII of 1859, if his interest in the subject-matter of dispute is likely to be affected by the decision between them as in a suit for possession by foreclosure of a mortgage, in which the defendant admitted the fact of the mortgage, but the intervenor came in declaring the mortgage to be false and collusive between the alleged mortgagor and mortgagee for the purpose of depriving him of a mokurruree tenure which he held in the alleged mortgagor's estate. *Sharoda Persad Mittra* v. *Koylas Chunder Banerjee*, 7 W. R., 315.

Held that it is opposed to the spirit of the Civil Procedure Code to dismiss a suit merely on account of there being defect of parties,—the Court, under Section 73 of the Code, being vested with the power of making the persons who seem to be interested in the subject-matter parties to the suit. *Ruchpaul* v. *Johuree*, 1 Agra Rep., A. C., 147.

Where one son of a deceased party sued in the Recorder's Court another son, who had obtained a certificate under Act XXVII of 1860, for his share of the deceased's estate, it was held that the Recorder had no power to transform the suit into a general administration suit. The Court may, under Section 73, Act VIII of 1859, order all necessary parties who claim a share in the subject-matter of the suit to be made parties. *Oh Singhbe* v. *Awkinifee*, 10 W. R., 86.

It is discretionary with a Court to add defendants under Section 73, Act VIII of 1859. The exercise of such a discretion cannot be interfered with, unless it is manifestly unjudicial and wrong. *Dyaram Seal* v. *Issur Chunder Chuckerbutty*, 2 W. R., 158.

Section 73, Act VIII of 1859, is permissive, not imperative. Discretion is vested in a Court to make persons not before it parties to a suit. *Poran Mundul Mollah* v. *Sham Chand Ghose*, 1 W. R., 228.

Where a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband, and then adopted a son,—*Held* that, under Section 73 of the Code of Civil Procedure, the adopted son might be made a co-plaintiff. *Pervartani* v. *Ambalavana Pillai*, 1 Mad. Rep., A. C., 197.

A Court may, under Section 73, Act VIII of 1859, add parties to a suit, as well as transpose a party from his position as *pro formâ* defendant, and array him amongst the plaintiffs after amendment of the plaint under Section 29. *Pitambar Pyne* v. *Toolsee Dossee*, 7 S. W. R., 39.

No person ought, under Section 73, to be added as a plaintiff whose right of action is barred by the Law of Limitation. *Kishen Lall Chowdhry* v. *Chunder Coomar Roy*, W. R., 1864, 152.

A person cannot be made a party to a suit under Section 73, Act VIII of 1859, unless he is likely to be affected by the result of the suit. The title of the plaintiff only will form the subject of the decree. *Joygobind Doss* v. *Gourcepersaud Shaha and others*, 7 W. R., 201.

An application made in due time by a person who has an interest in the result of the suit praying to be added as a defendant under Section 73, Act VIII of 1850, ought to be granted. *Koylashnath Roy* v. *Nurendur Koomar Dutt Chowdhry*, 5 W. R., 109.

A suit having been instituted by a guardian in the name of an infant, without a certificate under Act XL of 1858, was dismissed by the lower Apellate Court. The minor on coming of age applied to have his name substituted on the record. The High Court, under Section 73, Act VIII of 1859, ordered that his name should be added as plaintiff, and that the suit should be proceeded with. But as the dismissal by the lower Court was correct so far as the materials before the Court enabled it to deal with the suit, the order of remand was not to take effect until all the costs of the defendant had been paid by the plaintiffs. *Madhubchunder Chowdhry* v. *Buktesuree Debea*, 12 W. R., 102.

Plaintiff sued to recover possession of a share of an estate which he alleged he purchased from the principal defendant, who denied plaintiff's title on the ground that the purchase-money had not been paid. Subsequently certain persons prayed to be made defendants, as they held a durmokurree, and were not liable to be turned out. They were accordingly added as defendants under Section 73, Civil Procedure Code. It then appeared that the possession sought by plaintiff was khas possession. *Held* that although it was *primâ facie* necessary for these intervenors to be made defendants, yet, after the intention of the plaintiff became apparent, nothing would be gained by removing them from the record, even if the Court had power to do so in special appeal. *Kewul Sahoo* v. *Issun Dyal Roy*, 12 W. R., 334.

In a suit brought on the allegation that defendant had sold to plaintiff certain talooks, but had not put him in possession, in which defendant pleaded that he had put plaintiff in possession, and in which a third party petitioned, stating that defendant had only been joined owner of the talook with a co-heir, whose right, title, and interest petitioner had purchased,—*Held* that it was irregular to make this petitioner defendant, and that Section 73 of the Code of Civil Procedure does not enable parties, who are not likely to be affected by the result, to come into the suit and raise new questions which do not properly arise. *Puddolochun Sein* v. *Lalchund Goopta*, 10 W. R., 283.

In a suit to recover possession of a certain mouzah, claimed by the plaintiff as a portion of his dur-putnee talook, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed, and on the proofs which they adduced the plaintiff's claim was dismissed. The plaintiff's claim, as against the original defendants who made no opposition, was decreed in special appeal, on the ground that they

should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit,—*Held* that Section 73, Act VIII of 1859, leaves to the Courts of original jurisdiction a discretion in such cases; that the section is not limited entirely to cases where the suit as framed cannot proceed; that the words "persons who may be likely to be affected by the result" do not mean persons on whom the result would be legally binding. *Held* also that, upon the one issue common to all the defendants, *viz.*, whether the property claimed was in the plaintiff's talook or in that of the defendants, the Court could only come to one consistent finding; and that on the finding of the facts in the Court below the suit should be dismissed against all the defendants. *Kaliprasad Singh* v. *Jainarayan Roy*, 3 B. L. R., A. C., 24.

It is the duty of every Court to pass distinct orders upon all petitions and applications properly presented to it in connection with any suit pending before it.

When an application is made in due time by a person who has an interest in the result of the suit, praying to be added as a defendant under Section 73 of Act VIII of 1859, the application ought to be granted. *Koylashnath Roy* v. *Nurendur Koomar Dutt Chowdhry*, 5 W. R., 109.

The action of the Court under Section 73, Act VIII of 1856, is a matter of discretion, and, upon a true construction of Sections 363 and 350, not a matter of appeal; but an appeal will lie after decree against interlocutory orders, if they affect the decision on the merits or the jurisdiction of the Court. *Ridhnath Sahoy* v. *Gopee Sahoy*, 14 S. W. R., C. R., 90.

IV.

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I.—PLAINTS.

(a) *Miscellaneous.*

The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the Circular Order of the Board of Revenue such day is an authorized holiday, is not illegal. There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. Suits for arrears of rent are to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due. *Gobind Kumar Chowdhry* v. *Hurgopal Nag*, 3 B. L. R., Ap., 72; S. C., 12 W. R., 537.

Where an appeal had been compromised before a Bench of the Sudder Court, and in the presence of the parties, before it had been entered in the cause list hung up in the Court-room,—*Held* that appellant was entitled to a refund of the full amount of stamp duty paid by him. *In the matter of Gugender Naran Roy*, 11 W. R., 158.

After service of the plaint, and on the day the defendant was required to appear, the parties filed in Court deeds containing terms of compromise. *Held* that the plaintiff was entitled to a return of the entire amount of the stamp duty, there having been no settlement of issues. *Bhistoo Chunder Roy Chowdhry* v. *Parbutty Dabea*, Marsh., 274.

The correct test when a second suit is brought for something omitted to be sued for in a previous suit, is whether the claim in the new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit. *Judoonath Bose* v. *Shumsoonnissa Begum*, 8 W. R., S. W., P. C., 3.

Where a suit, cognizable by the High Court by reason of the testamentary and intestate jurisdiction of the Court, was wrongly entitled as being brought in the ordinary original civil jurisdiction,—*Held* that the Court had jurisdiction to entertain the suit. It was a mere blunder which the Court could correct. *Toyluck Nauth Dass* v. *Megnauth Dass*, 2 Ind. Jur. N. S., 245.

When from press of business or any other cause a plaint cannot be registered on the day it is actually presented, it should still be entered under that date. *Jugobundhoo Dutt* v. *C. B. Maseyk*, W. R., 1864, 81.

A suit must be considered to have commenced on the day when the original plaint was filed, and not on the day when the plaint was returned after amendment. *Ram Coomar Shaha* v. *Dwarkanath Hazra*, 5 W. R., 207; *Husrutoolah* v. *Aboo Mahomed Abdool Kader*, 6 W. R., 39; *Greesh Chunder Singh* v. *Prankissen Bhuttacharjee*, 7 W. R., 157.

It is only at the time of presentation of the plaint that the plaintiff in a suit which has been brought in a Court, in which, with reference to its proper valuation, it should not have been brought, can claim the benefit of Sections 30, 31, and 32 of the Code of Civil Procedure. *Sheikh Mushur Ali* v. *Mussamut Basoo and others*, 8 W. R., 47.

Where what a plaintiff substantially asked for was to have his right of pre-emption declared, on the ground that he was a partner in the thing sold, a mistake in the wording of his claim—*viz.*, the use of the words "shuffa khullut" (which means a partner in the commensality and appendages of the land), instead of "shuffa sharik"—was held not to prejudice his *status* in the suit. *Wahed Ali Khan* v. *Hunoman Pershad*, 12 W. R., 484.

The law does not declare that the date of registry of the plaint shall be taken to be the date of institution of a suit. A plaintiff who has *bonâ-fide* instituted his case within time, will not be prejudiced by delay in registration. *Juggobundhoo Bose* v. *Gour Monee Dassi*, 3 W. R., 1.

The lower Court dismissed the suit for want of jurisdiction on the ground that the suit was one for money had and received, the cause of action having arisen in Calcutta.

Held by the majority of the Court (*dissentiente* Jackson, J.,) that the lower Court had jurisdiction; that the object of the suit was in fact to obtain from defendant L. a share of the mesne profits which L. had without authority (as alleged by plaintiff) paid to a third party; that if L. has so paid them to a wrong party, he is liable to pay them again to the party entitled to receive them, he himself being left to any remedy which he may have against the person who has wrongly received them; and that the mere fact of the sum now sued for being identical in nature with that paid by L. to defendant R. did not make this an action against R. for money had and received from L. to his use.

Held also by the majority, that the Judge's order of dismissal was equivalent to a non-suit under the old Code of Procedure; and by the new Code of Procedure (Section 33, Act VIII of 1859), if it appears to the Court that it has not jurisdiction, the plaint should be returned for presentation to the proper Court; and that an appeal from such an order is not an appeal contemplated by Section 348. *Kameekhapershad Mookerjee* v. *Lannour*, W. R., F. B., 86.

When a suit, the subject of which is partly without the jurisdiction of the Court in which it is instituted, is registered before the permission required by Section 11, Act VIII of 1859, has been obtained, there is no good reason why the requisite sanction should not be applied for after the error has been discovered. *Gour Soondaree Debia* v. *Sumbhoo Mojoomdar*, 12 W. R., 328.

A plaint drawn up in what is, practically, Persian, ought not to be admitted on the file, but should be rejected or returned for amendment and presentation in Urdu, the ordinary language of intercourse and business in use in the district (Patna). *Mirza Ameer Koolee Kahn* v. *Rassick Lall Singh and others*, 8 W. R., 495.

Where a suit was, by the Collector's order, instituted at the Sudder station, instead of at the Sub-Division Deputy Collector's office,—*Held* that it was a case in which the plaint might have been returned to the plaintiff to file it in the Sub-Division Deputy Collector's office. *Kalee Churn Chowdhry* v. *Ram Gobind Mozoomdar and others*, 6 W. R., Act X R., 104.

Upon the presentation of a plaint, a Judge should cause the date of presentation to be noted on the petition. *Sreenath Churn Nundee* v. *Moyna Kumaree Beebee*, 3 W. R., Mis., 29.

A plaintiff's suit should not be dismissed because, in describing his cause of action, strictly accurate language has not been used. A plaint should be construed literally, but according to the plaintiff's real meaning, unless such meaning is inconsistent

with the words used in the plaint, so as to deceive the defendants and prejudice his defence. *Saphia Inglis* v. *Ram Singh Rajah*, W. R., F. B., 159.

Where a defendant admits the execution of a document upon which he is sued, the *onus* lies on him to get rid of the effect of such admission.

A defendant must be taken to admit all material allegations in the plaint which he does not traverse.

In an action against a firm, the names of the partners should be specified in the plaint, and a summons served on one or more of its members if resident within the jurisdiction. *Yeknath Bapajee* v. *Goolab Chand Canjee*, 1 Bom. Rep., 85.

Where the amount to which the plaintiff would be entitled on the evidence exceeds that specified in the plaint, plaintiff is restricted to the amount so specified. *Nathooram* v. *Jardine, Skinner, and Co.*, Cor. Rep., 118.

A plaint specified one piece of land as sought to be recovered. The written statement set out title to two separate pieces. A decree was made for possession of both pieces. *Heeraloll Shaha and another* v. *Jadub Chunder Chenchey*, Cor. Rep., 119.

A plaintiff is not to be prejudiced by reason of his plaint demanding less rent than that specified in his notice to enhance, when such notice has not been disputed until after action brought. On the other hand, the plaintiff cannot recover higher rent than that demanded in the notice of enhancement. *J. Hills* v. *Panch Couree Sheikh*, 1 W. R., 3.

Held by a majority that the Code of Civil Procedure does not require the dismissal of a suit by reason of any variance in the plaint. *Sheikh Mahomed Reezaoodeen* v. *Hossein Buksh Khan*, 1 W. R., 300.

Plaintiff purchased, at advertised Government sale by auction, certain felled trees then lying in the forest of K. He also contracted for the delivery to Government of certain "sleepers" to be cut in the said forest. The Government refused to admit plaintiff's agent to the forest, and thereby prevented him from completing his contract. The remedy for such loss is by a common law action, and not by bill in equity, and a bill for the purpose ought consequently to be dismissed with costs. Court, notwithstanding such opinion, discussed the suit upon its merits. *Ross Johnson* v. *Secretary of State*, Cor. Rep., 71; S. C., 2 Hyde's Rep., 153.

Where a plaint was filed in the name of a deceased party, of whose death the person filing the plaint was ignorant, and the heir and representative of the deceased was at once put upon the record as plaintiff in his room, the irregularity (if any) was held in special appeal to be immaterial. *Goluck Chunder Dutt and others* v. *The Court of Wards*, 10 W. R., 127.

Where a plaint charged the defendants with having put plaintiff's title in jeopardy, merely by reason of having procured a decree in the Collector's Court, and the lower Appellate Court found that the decree of the Collector did not damage the plaintiff's rights in any way,—*Held* that the lower Appellate Court should not have dismissed the suit, simply with reference to the deficiencies of the plaint, without entering upon the merits of the real issue between the parties, for the conduct of the defendants in the course of the suit in the Collector's Court did put an obstacle in the way of plaintiff's enjoying them, and justified the plaintiffs in bringing the present suit. *Golam Aly Chowdhrain* v. *Futtic Chundra Banerjee and others*, 10 W. R., 460.

A plaintiff must state clearly in his plaint the substance of his claim,—*i.e.*, the particular mode in which his claim arose, as well as the amount of that claim. Thus, where a plaintiff allowed the Court below to decide the case as if his contention was an ordinary case between a landlord suing to enhance and a tenant resisting his claim, and the statement of the defendant divulged the material circumstance of the case, that the plaintiff's estate was let in farm, the High Court refused to allow the plaintiff in appeal to rest upon an alleged stipulation in a farming lease, the existence of which he altogether suppressed in the Court below, reserving to him the right of collecting from the tenantry an enhanced rent during the currency of the farming lease. *Hurro Soondery* v. *Muddun Mohun Dutt*, W. R., 1864, Act X R., 34.

Where a plaint alleged that A. and B. carried on business in partnership at Calcutta, Jessore, and other places; that A. had instituted a suit in the Zillah Court of Jessore against B. for an account and division of the partnership estate; that a decree had been passed in terms of a petition of compromise come to between A. and B.; that B. failing to fulfil the terms thereof, A. petitioned the Zillah Court for leave to withdraw the petition of compromise, and to have the decree set aside, but the Court rejected the petition; that A. therefore brought his action in the High Court for specific performance of the terms of the compromise; an application by B. to have the plaint struck off the file, as disclosing no ground of action, was rejected. *Kally Nauth Shaw* v. *Rajeeb Lochun Mookerjee*, 2 Ind. Jur., N. S., 122.

A. cannot have an order of Court in favour of B. reversed by filing a plaint against B. There is no ground of action against B., and such a mode of procedure for the purpose of getting an order of Court reversed is not allowed by law. *Narrotum Sikdar* v. *Jugger Nath Shaw*, Bourke's Rep., O. C., 371.

The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure. *Bhugoban Chunder Poddar* v. *Mohun Chuckerbutty*, 12 W. R., Cr., 49.

A petition for administration summons may be ordered to be taken as a plaint, and as the foundation of an admistration suit. *In the matter of the estate of Samuel Fenn*, 3 B. L. R., Ap., 3.

A suit should not be dismissed for want of jurisdiction by reason of the plaint having been presented to the wrong Court, but the plaint should be returned for presentation to the right Court. *Maharajah Dheraj Mahatab Chand Bahadoor* v. *Damoodur Singh*, W. R., 1864, 65.

Where a plaint asks for more than the plaintiff is entitled to, the Court may give him such relief as is within the Court's jurisdiction and as the Court may decree him entitled to. *Pitambur Shaha* v. *Ramjoy Ghose and others*, 7 W. R., 92.

A Court ought not to decide a case merely upon the ground of variance between the allegation in the plaint and the proof. Thus, if a plaintiff fails to prove a contract as alleged, the Court, instead of deciding that he cannot recover arrears on that

contract, ought to find how much is due from defendant to plaintiff, either for rent or interest, and in respect of what premises. *Maharajah Rajendur Kishore Singh* v. *Karummun Singh*, 5 W. R., Act X R., 62.

All suits should be brought by the person or persons in whom the legal right of suit is vested, and not by agents in their own names.

The objection that a suit is not so brought is an important one, materially affecting the regularity of procedure. *Lala Manchur Dass* v. *Kisher Dyal*, 3 N. W. R., 175.

The date of a suit must be taken to be that on which the plaint was originally filed, and not that on which it was filed in another Court, either as an amended plaint or as a plaint returned to be filed in that Court. *Khellat Chunder Ghose* v. *Nusseebunnissa Bibee*, 16 S. W. R., C. R., 47.

A plaint may be received and admitted by a Moonsiff on a Sunday of other holiday. *Unemtorum Chatterjee* v. *Protab Chunder Shironunee*, 16 S. W. R., C. R., 231.

Upon a prayer for general relief, a plaintiff is not entitled to any relief which is inconsistent with his plaint; therefore, where a plaintiff brought a suit to set aside his father's will, on the ground that he had no power to dispose of his property, but that the plaintiff was entitled as eldest son and heir-at-law according to Hindu law, the suit should have been dismissed with costs, and no account should have been decreed to the plaintiff in respect of his interest in a portion of the property, the bequest of which was, in the opinion of the Court below, void for remoteness. *Hiralall Mallick* v. *Matilall Mallick*, 5 B. L. R., 682.

Bengali mortgage. Plaint. Money decree. *Srimati Umasundari Dusi* v. *Uma Churn Sadkhan*, 6 B. L. R., Ap. 117.

Taking plaint off the file. *Sanamall* v. *Sudaram Retti*, 7 B. L. R., Ap. 23.

Plaint must state the relief sought for, the subject of the claim, the cause of action, and when it accrued; and in suits for damages for injury done, the nature of the injury ought to be set out. The strict rules of English law do not necessarily apply to plaints in this country. *Mohesh Chunder Moskeya* v. *Rumdhun Paul*, 13 S. W. R., C. R., 248.

In a suit to have certain properties declared liable for the amount of certain decrees, plaintiff's case being that the properties were those of his judgment-debtor, and had passed, in fact, to his admitted representative—the other defendants being men of straw, fraudulently set up as ostensible purchasers,—

Held, that plaintiff had in reality but one cause of action against one party; that even if his suit had been multifarious, the defect or irregularity was not, under the circumstances, such as to warrant his being put out of Court. *Wise, J. P.*, v. *Gurrub Hossein Chowdry*, 13 S. W. R., C. R., 271.

Where a plaintiff presented a plaint to the District Court, the Moonsiff's Court, in which he ought to have presented it, being then temporarily closed, it was held that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper Court. *Gunesh Sadhasiv*, 5 Bom. Rep., A. C., 117.

A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of Appeal and Special Appeal.

Held that the objection was a valid one.

Also that the defect of jurisdiction could not be cured by the production of a written authority in the Court of Special Appeal. *Shivram Vithal* v. *Bhugirthibui*, 6 Bom. Rep., A. C. J., 20.

Where a plaint was presented to a Kurkun left in charge of a Court during vacation, and the cause of action on which the suit was brought became barred before the vacation ended, it was held that, as the Judge was the proper person to receive plaints, the presentation to the Kurkun was invalid, and did not prevent the period of limitation from running. *Nandvallabh* v. *Allibhui J. Syajani*, 6 Bom. Rep., A. C. J. 254.

The munim of a firm is not, for the purpose of presenting a plaint, the recognized agent (under Section 17 of the Civil Procedure Code) of a partner who is present within the jurisdiction. The munim and such partner should join in presenting the plaint, or appointing a pleader.

The partner's not so joining is not a ground on which an Appellate Court should reverse the decree of a Lower Court, unless the irregularity affects the merits of the case or the jurisdiction of the Court. *Bisandás Valad Magnirám et al.* v. *Lakmichund Kisanchund*, 6 Bom. Rep., A. C. J. 159.

By Section 32, Act VIII of 1859, a plaintiff is bound to satisfy the Court that his right of action is not barred by lapse of time. *Rajah Saheb Barlad Sen* v. *Baboo Budoo Singh*, 12 W. R., P. C., 6.

A suit cannot be dismissed merely on the grounds, that the plaint did not contain a specification of the land in the defendant's possession, and that there was an error in the plaint in the description of the defendant's residence. *Syur Rezu Ali* v. *Puranund Chuckerbutty*, 6 B. L. R., Ap. 84, and 14 S. W. R., C. R., 474.

Held, that it is not competent to the Judge of a Small Cause Court in the Mofussil to set aside an order which he has made respecting a plaint. *Jitmul Valad Bahiravdas* v. *Ramchunder Jagrupetal*, 5 Bom. Rep., A. C. 97.

(*b*) *Rulings under Section 14 of the Code.*

When a survey award is contested by a plaintiff within the proper time, and the accuracy or otherwise of the same is the very question to be tried, it cannot be held to be the award of a "competent authority" within the meaning of Section 14, Act VIII of 1859. *Anund Chunder Mitter* v. *Doorga Doss Roy*, 2 W. R., 213.

The finding of a Survey Deputy Collector that a party has been in possession of certain land for more than a year, where the fact is not disputed, is not a "summary award" under Regulation VII of 1822. An award supposes a contention between parties, and a decision after proper investigation into the points at issue. The adjudication by Revenue authorities of the boundaries of two districts is not an effectual settlement of the question of jurisdiction, which must be tried by the Civil Court itself under Section 14 of the Code of Civil Procedure. *Radhapershad Singh* v. *Ramjewan Singh and another*, 4 W. R., 389.

An award by a Deputy Magistrate under Section 318, Act XXV of 1861, is not an award of a competent Court under Section 14, Act VIII of 1859 *Issur Chunder Sein* v. *Kalee Doss Hajrah*, 3 W. R., 95.

An award of the survey authorities is an award within the purview of Section 14. *Radhamadhub Banerjee* v. *Rajah Damoodur Singh Audhaj*, W. R., 1864, 369.

Where a plaintiff sued in the Court of B. for the recovery of certain lands, and the defendant objected that the lands in question were not in the district of B.,—*Held* that the Court had power, under Section 14, Act VIII of 1859, before it proceeded to try the suit, to enquire and determine whether the lands were in B. or not.

The rejection of a plaint under the same Section cannot give jurisdiction to a Court which does not otherwise possess it. *Hurro Nath Roy and others* v. *W. Scott and others*, 7 W. R., 200.

The final order of a Commissioner of Revenue in the department of resumption, settlement, and assessment, is not that of a competent authority within the meaning of Section 14, Act VIII of 1859. *G. N. Pogose and others* v. *The Collector of Sylhet and others*, 12 W. R., 150.

The adjudication contemplated by Section 14. Act VIII of 1859, is an adjudication which is effectual till reversed by a competent Court. Consequently, when a summary adjudication of a revenue officer charged with the settlement of boundaries, declares certain land to belong to a certain district, the land is *de facto* placed in the jurisdiction of that district; and while it so remains, all actions regarding it must be brought in the Courts of that jurisdiction. *Sreenath Dutt Chowdhry* v. *Daorga Doss Roy Chowdhry*, W. R., 1864, 360.

Held that reports and proceedings of Deputy Collectors or other revenue officers appointed by the Governments of Bengal and the North Western Provinces to investigate the matter of the definition of boundary by a revenue officer under Act L of 1847, are in no way adjudications by competent authority as contemplated by Section 14, Act VIII of 1859. Whether the Court enquires into and determines the preliminary question of jurisdiction or rejects the plaint, the proceeding is open to appeal; and if it appears that jurisdiction has been unduly assumed, the subsequent enquiry of right must be set aside as carried on without jurisdiction. *Maharajah Moheshur Buksh Singh* v. *The Collector of Ghazeepore*, 2 Agra Rep., A. C., 214.

(*c*) *Rulings under Section 26 of the Code.*

In a suit to recover possession, plaintiff is bound, under Section 26, Act VIII of 1859, to give the date on which he was dispossessed as accurately as possible, especially where one of the issues is whether he has been in occupation of the land within twelve years of suit. *Boidonath Surmah and others* v. *Ojhan Bibee and others*, 11 W. R., 238.

Under Section 26, Act VIII of 1859, the plaint is intended to be a statement of facts, and not merely a prayer for relief.

To set aside an award, there must have been some fraudulent suppression of evidence or other malpractice of the successful party, which should be definitely stated in the plaint. *Hur Churn Dass* v. *Hazaree Mull*, 1 Ind. Jur., O. S., 42.

The intent of Section 26 of the Civil Procedure Code is to secure the definite statement of the subject and object matters of the litigation, and the words "so far as they can be ascertained" were not intended to compel a plaintiff to insert every name and title to which the defendant may conceive himself entitled.

The omission of the titles "Honourable" and "Sultan" does not constitute such a misnaming of the defendant as to justify the dismissal of the plaint. *Sri Raja Jeta Rama Kristna* v. *Sri Raja Vijoya Rama Gajopati*, 3 Mad. Rep., A. J., 31.

A plaint was presented to the Court on the day previous to the expiration of the time limited for suing, but it was returned to the plaintiff for the purpose of being amended by the insertion of the particulars required by Act VIII of 1859, Section 26; and on the second day after (the intermediate day being Sunday), it was again presented, amended as required, and received. *Held* that the suit was commenced, for the purpose of saving the Statute of Limitations, when the plaint was first presented to the Court, and that it was therefore within time, notwithstanding the day when it was presented after amendment was beyond the period of limitation. *Sham Chand Koondoo* v. *Kally Kunth Roy and others*, Marsh., 336.

The object of Section 26, Act VIII of 1859, is to identify the parties to the suit; and the term "description" applies rather to the patronymic than to a title such as Roy Bahador. *Kishen Chund Guleecha* v. *Meghraj Kobhrai Roy Bahadoor*, 12 W. R., 450.

A statement of dispossession made in a petition preferred under Section 26 of Act VIII of 1859, by a person claiming land sold in execution of a decree, and ordered to be put in possession of the auction-purchaser, cannot operate as an estoppel in a suit subsequently brought by the claimant to "establish her right" on the allegation of her being in possession of the land in question. *Mussamut Bibee Khanum Jan* v. *Rutton Lal and others*, 8 W. R., 95.

(*d*) *Verification of Plaints, &c.*

A plaintiff is not necessarily guilty of fraud if he omits to state in his plaint that he had formerly sued for a portion of the rent now sued for, but had failed for want of evidence. Nor can he be punished for false verification under Section 37, Act X of 1859, in respect of a plaint verified by his agent. So much of the lower Court's judgment as declared the plaintiff guilty of fraud, and deserving to be punished for false verification, and as amounted to an order in view of criminal proceedings being taken against him, was cancelled in the exercise of the High Court's general powers of superintendence and revision. *Tarapersaud Roy Chowdhry* v. *Gopal Doss Dutt*, W. R., F. B., 24.

It is incumbent on all Courts, without regard to rank or station, to see that plaints and written statements are subscribed and verified by the parties in person, except when unable to do so by reason of absence or other good cause, when they may be allowed to be subscribed and verified by competent persons only. *Keenoo Singh Roy* v. *Eshan Chunder Roy and others*, 6 W. R., 213.

A plaintiff may be excused from verifying his plaint, not only by reason of his absence, but also for any other good cause to the satisfaction of the Court. *Rajah Lela Nund Singh, petitioner*, 7 W. R., 168.

The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. *Finlay, Campbell, and Co.* v. *J. Steele*, 1 Ind. Jur., N. S., 40.

When a plaint has been verified by a person who has not shown to the Court that he is a person competent to verify it, the Court will order the plaint to be removed from the file. *Overend, Gurney, and Co.* v. *Steele*, 1 Ind. Jur., N. S., 39.

A mere paper of exceptions to a plaintiff's statement does not require verification, and even if it does, the defendant should be so informed at the time of filing, and should be allowed time to verify the same if necessary. *Rajah Punchanon Doss* v. *Unnopoorno Daye*, 1 W. R., Mis., 6.

It is not competent to a Judge of a Small Cause Court to raise any objection to the verification of a plaint by an agent, after such verification has been expressly sanctioned by him at the commencement of the suit. *Rajah Suttochurn Ghosaul* v. *Surroop Chunder Doss*, 12 W. R., 465.

Act X of 1859 does not provide for the verification of written statements. When the first Court goes into the merits of a case, irrespective of the omission to verify the written statement, it is not competent to the Judge on appeal to make such an omission a ground for throwing out the appeal. *G. Clerke* v. *Sreenath Singh*, 1 W. R., 132.

The plaintiff brought a suit for rent claimed to be due for three years; he failed to prove his claim, and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge, on appeal, reversed the decree, and made an order remitting the case to the Deputy Collector to enquire under Act X of 1859, Section 37, whether the plaintiff had committed perjury in the first suit, the plaint in which was verified by his agent. The 37th Section of the Act requires that the statement of claim shall be verified by the plaintiff or his agent, and enacts that if the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

Held that there was no foundation for the order, the averment having been made by the agent, and not by the plaintiff; and besides, there was no evidence that it was untrue, there having been no finding in the first suit that the rent was not due. *Tarapersad Roy Chowdhry* v. *Gopal Doss Dutt*, Marsh., 72.

M. S. sued for money lent by the plaintiff to the defendant, the defence being that the defendant's gomasta, who accepted bills for the amount, had not authority from the defendant to do so. Several preliminary objections having been overruled, a decree was passed for the plaintiff.

Held that, if there be an informality in the verification of a plaint, the case may proceed on the written statement, if it contain the same allegations as the plaint.

That all written documents on which the plaintiff relies need not be filed with the plaint, but only those on which the cause of action is grounded. *Manooram Shaw* v. *Hurrypersaud Roy*, Bourke's Rep., O. C., 162.

Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. *Finlay, Campbell, and Co.* v. *J. Steele*, 1 Ind. Jur., N. S., 39.

In a suit for possession after foreclosure, defendants urged that C. (and not A. and B., the plaintiffs) was the actual mortgagee. This was denied by A. and B., who obtained a decree. In a subsequent suit brought by the representatives of A. and B. for mesne profits, they, in conjunction with C., urged that C. was the real mortgagee; and C. was made a co-plaintiff, but he did not verify the plaint. A decree was given for mesne profits in favour of C., the plaintiff,—*Held* that the fact that C. had not verified the plaint was no sufficient ground for dismissing the suit. Decree affirmed. *Ruy Muhanlall Mittra* v. *Bishnu Chundra Chatterjee*, 1 B. L. R., A. C., 100.

The Judge on appeal dismissed a suit on the ground that the plaint was verified by an agent, when it might and ought to have been verified by the plaintiff himself,—*Held* that the plaint having been admitted, the suit ought not to be dismissed for this defect, but the Judge might properly have required the verification of the plaintiff to be supplied. *Gokul Chunder, agent for R. Solano, Mussamut Buruk Bagum, and after her death, Hamat Bahadoor and others*, Marsh., 344.

When a plaint is subscribed and verified by a person other than the plaintiff, notice should be given to the defendant; nothing more formal need be done by way of notice to support an application for the admission of the plaint, if the person verifying is qualified in other respects according to the provisions of the Code of Civil Procedure. *Sreemutty Puddomoney Dossee* v. *Shama Churn Chuckerbutty*, 1 Ind. Jur., N. S., 226.

The verification of a plaint signed with the name of the plaintiff by her mookhtear, and which does not aver what is false, but attempts to do what the law estops her from doing, is not a false verification within the meaning of Section 24, Act VIII of 1859.

If a plaint not only asks for relief which a Court can afford, but seeks to open up matters already adjudicated upon in another suit, the Judge (instead of rejecting the plaint for prolixity under Section 29) should entertain the suit and adjudicate upon the matters not adjudicated upon in the former suit, amending the plaint by striking out the issues relating to the matters adjudicated upon. *Ranee Roshun Jehan* v. *Syed Enayut Hossein*, W. R., F. B., 41; and Marshall, 127.

Generally, plaints should be verified by the plaintiff. The exception under Section 28, Act VIII of 1859, in favour of persons unable to verify, should be separately pleaded and considered in each case. *Maharajah Muhessur Buksh Singh Bahadoor, petitioner*, 5 W. R., Mis., 33.

The Zillah Courts ought never to allow a person other than the plaintiff to verify the plaint, save strictly under the exception which the law permits, —namely, where the plaintiff, by reason of absence

or other good cause, is unable to subscribe it. See Act VIII of 1859, Section 28.

Whenever the plaint is not presented by the plaintiff in person, the Court should satisfy itself that the verification is actually signed by the plaintiff.

Where the case of the plaintiff rested upon an imputation against the defendant of having forged the plaintiff's name to a deed, the Court gave the plaintiff, a Rajah, an opportunity of appearing and giving evidence, which he failed to do upon the professed ground that persons of his station had a prejudice against appearing and deposing in a Court of Justice. The Court discredited the imputation, and dismissed the suit. *Rajah Nursing Deb* v. *Rammohun Mookerjee and another*, Marsh., 176; W. R., F. B., 45.

When an application is made to a Court to permit a plaint to be subscribed and verified on behalf of the plaintiff by a person other than the plaintiff, the Court must exercise the power vested in it by Section 28, Act VIII of 1859, and must decide whether or not the plaintiff, by reason of absence or other good cause, is unable to subscribe and verify the plaint himself. *Maharajah Mohessur Buksh Singh Bahadoor* v. *Seo Narain Singh and others*, 6 W. R., Mis., 59.

Where the plaintiffs described themselves as lately carrying on business under the name of C. and Co.,—*Held*, that there was no irregularity in the plaint being signed by C. and Co., and verified only by A. B., one of the partners. *Robert Lachlan* v. *Shaikh Abdulla*, 5 B. L. R., Ap. 89.

(*e*) *Amendment of Plaint.*

The plaintiff brought a suit against the Secretary of State, which the Judge dismissed; on the petition of the plaintiff, he allowed the plaints in the suit so disposed of to be amended, and the name of a new defendant to be substituted, and a different cause of action to be stated. *Held*, that the Judge acted illegally, and that the plaintiff should have been referred to a new suit.

The Secretary of State is only responsible for the acts of public servants done within the scope of his authority. *Seth Dhunraj* v. *Major J. C. Hankin and Her Majesty's Secretary of State*, 1, 7, N. W. R., 118.

Plaint, Amendment of, by substitution of Parties. *Delhi and London Bank* v. *Miller*, 7 B. L. R., Ap. 65.

The Court has power to amend a plaint after it has been filed, although no express power to do so is given by Act VIII of 1859. Under Act VIII of 1859, the Court has power to make all such amendments, first in the plaint, and afterwards in the issues, as may be necessary in order to bring about a fair and proper trial of the matter which the plaintiff comes into Court to have tried. *Gobind Chunder Dutt* v. *Ganga Dhye*; and *Nabit Mohun Das* v. *Ganga Dhye*, 7 B. L. R., 333.

Sections 29 and 31 of the Civil Procedure Code empower the Court to permit such amendment in the plaint as may enable the Court to give relief in respect of the wrong originally complained of, but not to allow totally new causes of action to be added by a supplemental plaint. *Railoo Mull* v. *Nanuk*, 1, 11, N. W. R., 171.

Where the plaint does not sufficiently disclose the cause of action, the plaintiff should have been allowed to amend it under Section 32, Code of Civil Procedure; not being so allowed, he is at liberty to prove any cause of action which is not inconsistent with the plaint. *Luckhee Pread Debia* v. *Brindabun Dey*, 12 W. R., 313.

A plaint which is unnecessarily prolix, or argumentative, or which contains irrelevant matter, ought to be rejected by the Court to which it is presented, or ought to be returned to the plaintiff for amendment. A plaint which contains a prayer that the defendant may be criminally prosecuted for forgery should be rejected. *Bishen Suhaye Singh* v. *Beer Kishore Singh and others*, 8 W. R., 295.

Where a plaint alleges the cause of action to be the prosecution of a false charge of forgery, and the statement of the subject-matter imports that the charge was false to the knowledge of the defendant, the omission to allege expressly malice and the absence of reasonable and probable cause is no good ground of objection to the hearing of the suit.

Semble,—A defect which appears on the face of the plaint, which would have rendered it inadmissible, is not a matter for amendment at the final hearing of the suit. *Ramasami Ayyan* v. *Ramu Mupan*, 3 Mad. Rep., A. J., 372.

A plaint that is bad on the face of it ought not to be admitted, nor ought it to be amended after the issues have been fixed. *Amur Narain* v. *Mussumut Rughoobunsee Koonwar*, 5 W. R., 234.

The plaintiff having failed in an application, under Section 441 of the Penal Code, brought a suit in a Civil Court for possession and for the demolition of a wall or fence put up by the defendant, dating his cause of action from his failure in the Criminal Court. In the Court of first instance, he obtained a decree for possession. The Judge on appeal dismissed the plaintiff's suit on the ground that he had no power to set aside a Magistrate's order under the law cited.

Held that, if the Judge was of opinion that the plaintiff had misstated his cause of action, he ought to have directed him to amend his plaint. *Daboo Jha* v. *Luwa Jha and others*, 11 W. R., 223.

The power of the lower Courts to amend a plaint extends by a *vivâ-voce* examination to the elucidation of what is ambiguous in the claims of the contending parties to the amendment of what is erroneous, and the supplying what is defective, but not to the conversion of a suit of one character into another, inconsistent with and opposed to it, —*e.g.*, of a suit for possession with mesne profits into a suit for resumption. *Gobind Mohapattur and others* v. *Madhub Persaud Pundit*, 6 W. R., 211.

The Court has power to strike out of a plaint parties improperly introduced. *Bhoirub Chunder Dass* v. *Madhub Chunder Poramanuck*, 1 Hyde's Rep., 281.

A plaint wanting in precision, or defective in form, should be returned for amendment, and not rejected. *Pitambur Mookerjee* v. *Huree Narain Thakoor*, W. R., 1864, 50.

Amendment of a plaint is not allowable after issues are fixed. *Amur Narain*, alias *Nurput Suhaye*, v. *Mussamut Rughoobunsee Koonwar*, 5 W. R., 234.

A plaint cannot be amended in an Appellate Court. *Abdool Guffoor* v. *Mussamut Nur Banu*, 1 B. L. R., A. C., 78.

A paper referred to in a plaint is not a part of the plaint. A plaint may be amended upon subsequent application, with reference to an objection taken when it was filed. *Toulton* v. *Gwyther*, Bourke's Rep., O. C., 273.

A lower Court has discretion to permit, or not, the filing of a petition to amend a plaint, and its refusal is no ground for special appeal. *Messrs. R. Watson and Co.* v. *Nidhoo Digwar*, 10 W. R., 87.

A putneedar, in execution of a decree for rent against his mouraseedar, attached certain property belonging to the latter, including a parcel of land belonging to plaintiff, who, in order to save the parcel from sale, paid the whole amount due under the decree, and then sued the mouraseedar to recover the amount. The suit having been dismissed on the ground that there had been no obligation on plaintiff to pay the amount, she appealed, alleging that the parcel was within and subordinate to the holding of the mouraseedar, and the sale would possibly have jeopardized her right. *Held* that if the plaint did not sufficiently disclose the cause of action, the plaintiff should have been allowed to amend it under Section 32 of the Civil Procedure Code: not having been so allowed, he was at liberty to prove any cause of action which was not inconsistent with the plaint. *Luckhee Prea Debia* v. *Brindabun Dey*, 12 W. R., 313.

Plaintiff sued one M. M., overseer for the municipal office, for the recovery of money due on a contract under which plaintiff had done certain work, defendant contracting for the municipality, and for the performance of work known by plaintiff to be municipal work.

The municipality having ignored the contract, it was held that the contract being a *quasi* contract, defendant could not be held personally liable in the present action of contract.

Plaintiff could not be allowed to amend his plaint so as to make defendant liable in the present action of contract. *Mohendronath Mookerjee, overseer*, 9 W. R., 206.

Where a plaint is returned for amendment, under Section 29 of the Code of Civil Procedure, the order of return should specify a time for such amendment. *Ismail Sahib* v. *Aranuega Chetti and another*, 1 Mad. Rep., A. C., 427.

(*f*) *Rejection of Plaint.*

A plaint which in the first count did not sufficiently disclose the subject of claim, without reading the schedule annexed as part of the plaint, or when the action accrued, and in the second count did not show any right to sue in the plaintiff, was rejected by the Court as irregular, but with liberty to the plaintiff to bring a fresh suit.

Semble,—The Court will not make the payment of costs, in respect of the former plaint, a condition precedent to filing a fresh plaint, where there is no suggestion of *mala fides*. *Luckey Money Dossee* v. *Khetter Coomary Dossee and others*, 2 Ind. Jur., N. S., 117.

A plaintiff's omission to insert in his plaint the words "Roy Bahadoor," though ordered to do so, in describing the person sued, was held to be no sufficient reason for the rejection of his plaint. *Kishen Chand Guleecha* v. *Meghraj Kobhria Roy Bahadoor*, 12 W. R., 450.

Held that the Court to which a plaint is presented has no authority to reject it merely because the document upon which the plaintiff sues is not produced with the plaint, as directed by Section 39 of Act VIII of 1859, and that the High Court has power to set aside such an order of rejection, as well as the decision of the District Court confirming it in appeal, and to direct that the plaint be received. *Ex-parte Raychand Amichand*, 2 Bom. Rep., 391.

Where the lower Court rejected a plaint on the ground of an improper joinder of causes of action, and also that the suit was not sufficiently valued, and the High Court was of opinion that there had been no improper joinder of causes of action, the order of the lower Court was reversed, and the Civil Judge directed to deal with the case in accordance with Section 31, Act VIII of 1859. *Kristna Aiyangar* v. *Perumal Nadu and others*, 2 Mad. Rep., 436.

Though a plaint has been registered, the Court may reject it under Act VIII of 1859, Section 32, as barred by the Act of Limitation. *Chetti Gaundan* v. *Sundaram Pillai and others*, 2 Mad. Rep., 51.

A plaint will not be rejected under Section 32 of Act VIII of 1859, if the subject-matter alleged raises a fair question of claim or right for trial and determination between the parties. The mere unlikelihood of the plaintiff's success is not enough to justify the rejection of his plaint. *Lakshmi Ammal* v. *Tikaram Tovaji*, 1 Mad. Rep., A. C., 240.

Where the plaint, in a suit to establish a right to landed property and to recover arrears of rent, alleged no specific acts of ownership since 1845, but contained a statement general enough to let in evidence of such acts, and it did not appear that the plaintiff had been questioned,—*Held* that the plaint should not have been rejected under Section 32 of Act VIII of 1859, on the ground that it appeared to the Court that the right of action was barred by lapse of time. *Udaya Verma and others* v. *Naisya Chambittia and others*, 1 Mad. Rep., A. C., 322.

A suit was brought in the Civil Court of a Moonsiff, who gave judgment for the plaintiffs, but his decree was reversed by the District Judge, on the ground that the claim was improperly valued. A second suit, on the same cause of action, was then brought in the Court of the Moonsiff, who again decided for the plaintiffs; but his decree was reversed by the District Judge, on the ground that the suit was prohibited by Regulation II of 1827, Section 21. The High Court, on special appeal, reversed that decision, and remanded the suit; and the District Judge then threw out the claim, under Section 2 of Act VIII of 1859, on the ground that the cause of action had already been heard and determined. In a second special appeal against this decision,—*Held* that the plaintiffs were not precluded from presenting a fresh plaint in respect of the same cause of action; and that the case came within the spirit of Section 36 of Act VIII of 1859; as there being no express power given by the Code to reject a plaint after it had been registered by reason of the claim being improperly valued, the doing so

ought to have only the same effect as if the plaint had been originally rejected. *Dullabh Jogi and others* v. *Narayan Lukhu and others*, 4 Bom. Rep., A. C., 110.

Where a plaint is rejected under Section 32, Act VIII of 1859, the plaintiff can bring a suit on the same subject-matter, provided he is not barred by lapse of time. *Kadumbinu Dassee* v. *Unnopoorana Daye*, 14 S. W. R., C. R., 289.

(*g*) *Multifariousness.*

In a suit by a son against a father and certain purchasers to obtain a declaratory decree in respect to certain property, the fact of each purchaser being concerned only in a portion of the case does not render the suit multifarious. *Kanth Narain Singh* v. *Prem Lall Paurey*, 3 W. R., 102.

In a case in which several causes of action had been joined together which should not have been included in one plaint, the High Court in appeal declined to dismiss the suit on that account, as it had been fully tried below, and there would be no object now in dismissing it. *Nujmoodeen Ahmed* v. *Bebee Zuhoorun and others*, 10 W. R., 45.

A suit against five defendants, including claims of the most miscellaneous character against each defendant, was dismissed by the first Court on the ground of multifariousness. The Subordinate Judge, on appeal, held that plaintiff was in any case entitled to a decision on one of his claims; and further held that the suit was not multifarious. *Held*, on special appeal, that the Court could not select one claim on which to proceed, when plaintiff insisted on pressing all. *Held*, further, that the plaint was multifarious; and though it would not be permissible for defendant to take that objection for the first time after the case had been fully gone into on the merits, yet, as the objection had been taken originally, the suit was properly dismissed by the first Court. *Munsi Maniruddeen Ahmed* v, *Ram Chand and others*, 2 B. L. R., A. C., 341.

A claim for rent in arrear and a claim to remove clouds on the title to demise raised by the tenant are not objectionable on the ground of multifariousness, and may therefore be included in the same plaint. *Maharajah Rajender Kishwur Singh* v. *Sheopurshun Missur*, 1 Ind. Jur., N. S., 273.

Where there has been a misjoinder of causes of action against different persons, and the proper stamp fee in the plaint having been paid, plaintiff prays for leave to withdraw his suit against all except one defendant, or one set of defendants, the Court may perhaps permit the suit to proceed against such defendant or defendants alone, but it cannot exercise that option for plaintiffs who insist on their right to proceed against all the defendants. *Ram Doyal Dutt* v. *Ram Doolal Deb and another*, 11 W. R., 273.

A plaintiff may maintain separate suits for partition of immoveable family property where the property is situate within the limits of different districts, and is not bound to try to proceed in one suit in the manner pointed out in Section 12, Act VIII of 1859. *Subba Ram* v. *Rama Rau*, 3 Mad. Rep., A. J., 376.

When a plaint discloses different causes of action against different parties, it is bad in law, and the suit is not maintainable. *Rani Sarat Soondery Debi and others* v. *Surja Kant Acharji Chowdhry and others*, 2 B. L. R., Ap., 53; S. C., 11 W. R., 397.

(*h*) *Valuation of Suits.*

In a suit in a Moonsiff's Court, it was found, after issues had been fixed, and some evidence recorded, that the claim had been under-valued, and that the proper valuation would carry it beyond the jurisdiction of the Moonsiff. The plaint was accordingly returned, and additional stamps having been filed, the case was tried by the Principal Sudder Ameen. The Judge on appeal held that the plaint had been illegally returned by the Moonsiff, and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal. He accordingly dismissed the suit.

Held that the Moonsiff was right, under Section 31, in not dismissing the suit, but rejecting the plaint; and that, when the same plaint was filed with the proper amount of stamp duty in the Court of the Principal Sudder Ameen, that Court had jurisdiction to try the case. *Ram Gutty and others* v. *Goonomonee Dabee and others*, 11 W. R., 177.

In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value for which it would sell, and not at ten times the value of the sudder jumma. *Anjud Singh* v. *Depun Singh*, 3 B. L. R., Ap. 143.

In a suit for possession of a share of an undivided estate, and to set aside a kobala by which the estate had been illegally alienated, plaintiff is not bound to value his claim according to the price stated in the kobala. *Augopura Chowdhry* v. *Meah Bibee and others*, 10 W. R., 207.

An error in the valuation of a claim is not an error, defect, or irregularity, which affects the merits of the case, and an Appellate Court is restrained by Section 350 of the Code of Civil Procedure from ordering the reversal of a decree on account of any such error, which does not also affect the jurisdiction of the Court which originally tried the suit. *Nansa Bin Biba* v. *Baba Bin Bahiru and another*, 1 Bom. Rep., 63.

Instead of dismissing a case on account of under-valuation, the Judge should try it on the merits, on the plaintiff putting in a sufficient stamp to make up the proper valuation. *Gooroodass Roy* v. *Chunder Coomar Roy*, 1 W. R., 135.

Section 350, Act VIII of 1859, does not prohibit a Court of Appeal from modifying or reversing a decision of a lower Court, on the ground of under-valuation of the suit, if the proper valuation would have taken it beyond the jurisdiction of the Court. *Huree Pandey* v. *Bassoo and others*, 11 W. R., 257.

In a suit to recover damages on account of the value of crop cut and carried away, where defendant denied plaintiff's title to the land, and an adjudication on this point became necessary to enable the Court to decide the claim for damages,—*Held* that the Moonsiff's order was erroneous by which he compelled the plaintiff to put in an additional stamp to represent the value of the land, and that the character of the suit was not changed by the payment of an additional stamp duty. *Ram Dyal Gangooly and others* v. *Hurrosoondery Dossia and others*, 10 W. R., 272.

When a plaintiff only sues for declaration of his title to certain lands on reversal of the kobalas

said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds. *Sheo Gholam Singh* v. *Bejoyram Protab Singh*, W. R., 1864, 317.

Where the appeal by the mortgagee was not with reference to property, but to mortgage lien,—*Held* that the valuation for the purpose of stamp in such appeals should be with reference to the value of the lien for the mortgage debt of incumbrance; and not with reference to the value of mortgaged property. *Bheeka* v. *Mund Kishore*, 1 Agra Rep., F. B., 158.

A suit to set aside a false sale-deed was sufficiently valued at the sum mentioned in that sale-deed. And even if this were not so, it was the duty of the Court in which such suit was preferred to give the suitor the option of supplying such additional stamp as was thought necessary before ejecting the plaint. *Thakoor Patuck* v. *Ramsoomrun Lall*, 1 N. W. R., Par. 1, P. 17.

A Lower Appellate Court was held to have done right in dismissing a suit on the ground of under-valuation, although the plaint had been admitted and acted on by the first Court without objection by the parties. *Mewa Lall* v. *Beharee Lall*, 14 S. W. R., C. R., 195.

Where a plea of under-valuation of the suit was not pressed in the first Court by the defendant's pleader, it was not suffered to be raised in special appeal, although previously urged in the Lower Appellate Court. *Soorjee Kant Bannerjee* v. *Kristo Kissore Poddar*, 14 S. W. R., C. R., 423.

Where a pre-emption suit was valued at Rupees 31, though the consideration was Rupees 2,000, the High Court, in special appeal, refused to remand the case to enable plaintiff to make up the deficient stamp duty. *Merva Lall* v. *Behuru Lall*, 14 S. W. R., C. R., 195.

Where excess stamps had been filed in consequence of an over-valuation of the appeal, the surplus amount was ordered to be refunded. *In the matter of G. H. Grant*, 14 S. W. R., C. R., 47.

Where a plaintiff includes a suit for mesne profits in a suit for possession, he is bound to value his claim at what he knows to be its real amount, and cannot be allowed, in the course of a mere enquiry into the amount of damages after decree, to depart from the claim made by his plaint, and set up what is substantially a new and distinct claim. *Gooroo Doss Roy* v. *Bungshee Dhur Sein*, 15 S. W. R., C. R., 61.

In a suit for possession by an auction purchaser, where plaintiff valued his claim at what he paid for the property, held that the valuation was *primâ-facie* not incorrect, and until rebutted by evidence and the result of a proper enquiry, should be accepted as correct.

If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867. *Mussamut Soobudree* v. *Rajah Ram Prokash Singh*, 16 S. W. R., C. R., 5.

Where a Court is satisfied that the market value of the subject of a suit or appeal presented to it is of such an amount as to bring the suit or appeal within its jurisdiction, it is bound to receive it.

The Court will generally assume that the value of the property in suit is that arrived at by the computation for the purposes of ascertaining the stamp duty where the Stamp Act prescribes arbitrary principles of calculation; but where it is asserted and shown to the satisfaction of the Court that the market value is in excess of the amount computed for such purposes, the Court must take notice of the actual market value.

Respondent is at liberty, if he think fit, to question, at the hearing of an appeal, the appellant's estimate of the value of the subject of the appeal. *Mussumut Dhunoo* v. *Damodur Dass*, 2 N. W. R., 177.

In a suit to annul a sale-deed which prejudices the title of the plaintiffs to immoveable property, a stamp calculated on the consideration money mentioned in the sale-deed is sufficient. *Thakoor Pathick* v. *Ram Namren Lal*, 2 N. W. R., 433.

The law which provides that the decision of a Court as to the market value or annual profits of property in suit shall be final, repeals by implication the provisions in Sections 31 and 36 of Act VIII of 1859, whereby an appeal is allowed from the order of a first Court rejecting a plaint for improper valuation. *Modhoosoodun Chuckerbutty* v. *Ryemonee Dassee*, 13 S. W. R., C. R., 415.

Where a plaint is rejected under Section 30 of Act VIII of 1859 by the first Court, on the ground that it is undervalued, an appeal lies from such order under Section 36 of Act VIII of 1859, and this appeal was not taken away by the note to Article II, Schedule B to Act XXVI of 1867, the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. *Collector of Sylhet* v. *Kuli Kumar Dutt*, 7 B. L. R., 663, and 16 S. W. R., F. B., 10.

An Appellate Court has no power to set aside a decision arrived at by the Court of first instance as to the valuation of the property in suit. *Mafizuddin* v. *Kurimunissa Bibee*, 6 B. L. R., Ap. 11, and 14 S. W. R., C. R., 381.

Under Act XXVI of 1867 the decision of a Court of first instance as to the valuation of the subject-matter of a suit is final. *Ishun Chundra Mookerjee* v. *Lokenauth Roy*, 6 B. L. R., Ap. 12, and 14 S. W. R., C. R., 451.

Held in special appeal that the Lower Appellate Court was right in setting aside the proceedings of the Moonsiff, on the ground that the property in suit was valued at an amount beyond his jurisdiction; but the plaintiff was entitled to have the plaint returned to him, that he might present it with the proper additional stamp before the proper Court. *Mussamut Jadu* v. *Sheikh Hifazat Hossein*, 13 S. W. R., C. R., 358, and 5 B. L. R., Ap., 15.

When a suit has been admitted upon a certain stamp, tried, and decreed for the plaintiff, "under valuation" is no ground for dismissing the defendant's appeal. *Emauddin Khan* v. *Ramkissore Kowar*, 5 B. L. R., Ap., 30.

When it appears, on appeal, that the suit has not been rightly valued, and, if rightly valued, the Court of first instance would not have had jurisdiction to try it, the Appellate Court may entertain the objection, though it had not been raised in the Court below. *Sheo Gobind Rawut* v. *Abhai Narayan Singh*, 5 B. L. R., Ap., 17.

On a dispute arising as to the proper valuation of a suit, the Court may, on the application of either party, issue a commission and make an enquiry into the market value or the nett profits of

the property in dispute. The final decision as to the proper valuation is vested in the Court which hears the suit.

When the defendant asserts that a suit is over-valued, the *onus* of proving the truth of his assertion lies on him. *Uma Sunkar Roy Chowdry* v. *Syud Mansur Ali Khan Bahadur*, 5 B. L. R., Ap. 6; 13 S. W. R., C. R., 326.

II.—SUMMONS.

Held that, when the omission of the first Court to summon the plaintiff was brought to the notice of the lower Appellate Court, the latter Court did not err in law in directing the first Court to entertain the application, and to consider whether or not it ought to be granted. No special formalities are required to be observed in making such an application.

Held that, when the plaintiff absented himself on being summoned, the Judge was perfectly justified in taking his neglect into consideration, even though the summons was not legal. *Bonomalee Churn Mytee* v. *Sheikh Hafezooddeen*, 12 W. R., 217.

An application for a fresh summons to appear, &c., should be issued on petition showing that a fruitless endeavour had been made on the part of the plaintiff to serve the first summons, and that it was not by any default of his that he had failed. *Urquhart* v. *Gilbert*, 1 Ind. Jur., N. S., 224.

A written summons distinctly describing the nature of the document required must be issued on a party to a suit required to produce a document. A verbal order to his pleader is not sufficient, and is not such a summons as is contemplated by law. *Doorgamonee Dossee* v. *Benode Monee Dossee*, W. R., 1864, 164.

For the purposes of summons, a Railway Company must be deemed to dwell at its principal office. *Hanlon* v. *India Branch Railway Co.*, 1 Hyde's Rep., 197.

Where an appellant delayed to give in the names of his witnesses, but would yet have been within reasonable time to secure their attendance on the day of hearing if summonses had been sent through different peons by the railway,—*Held* that the lower Appellate Court was bound to have directed the issue of the summonses, and to have given every assistance to the party asking for them, all additional expenses being paid by such party. *Pearee Mohun Mookerjee* v. *Madhub Chunder Ghosal and others*, 9 W. R., 489.

Section 42 (prohibiting the summoning of a plaintiff or defendant, residing more than 50 miles from where the Court is held, to attend in person, unless he is within the jurisdiction of the Court) is applicable to suits for rent under Act X of 1859. *Sheikh Golam Bukshee* v. *Pulton Singh*, 3 W. R., Act X R., 162.

Plaintiff is entitled at any stage of a case before hearing to a summons, without reference to the number of applications which he may have previously made; and it is the duty of the Court to comply with such application, if any time be left before the hearing of the case. *Onooroop Chunder Mookerjee and others* v. *Heeramonee Dassee and another*, 11 W. R., 418.

(a) *Service of Summons.*

Where an appellant to the High Court was unable to serve notice on the plaintiff (respondent), because of inability to trace the plaintiff in the place given as his place of residence, when he (plaintiff) commenced the suit and in his petition of appeal to the Zillah Court,—*Held* that the case might be dealt with in analogy to the procedure in respect to summons under Section 57 of the Code of Civil Procedure. *Bedhoo Koolanee* v. *Bonomalee Gurain*, 11 W. R., 496.

Failure to prove service of summons on the defendants who did not appear, is no reason for dismissing the suit as against the defendant who did appear. *Soogundamoyee Debea* v. *Azeemooddeen*, W. R., 1864, 33.

The lower Court should itself carefully see that due and reasonable time is given in all cases for the service of notices on defendants. *Lokhenath Thakoor* v. *Sobonath Misser*, 5 W. R., Act X R., 39.

A summons cannot be sent by post to any place to which letters are not registered by a post-office. A special bailiff cannot be sent to serve civil process in a foreign territory. *Kasim Ajim Deeplay* v. *Kasim Mohammed Baracha*, 2 B. L. R., A. C., 59.

Service upon an attorney's clerk of an order directed to be served upon an attorney is not good service. *Emritlall Saligram* v. *Kidd*, 2 Hyde's Rep., 116.

The defendant, an officer in the Bombay Staff Corps, holding an appointment in Scinde, came to Bombay on leave, and remained about ten days. During his stay in Bombay, he was served with a writ of summons on a cause of action arising in Scinde. *Held* that the defendant did not "dwell" within the local limits, so as to give the Court jurisdiction under Clause 12 of the Letters Patent. *Cowasjee Tranee* v. *Wallace*, 1 Bom. Rep., 113.

Every summons not actually served on a defendant or respondent, or his recognized agent, must be stuck up on the house in which the defendant or respondent is dwelling. If the defendant or respondent cannot be found, the summons should be returned to the Court, and an order obtained from the Court as to the mode of service.

Remarks on this case, in which a decree was passed against the defendants of the second part, making them liable to the costs of the defendants of the first part, when the former probably never had been summoned, or had any notice of the suit. *Gopaul Doss* v. *Greedharee Doss and others*, 6 W. R., 14.

A mofussil Judge stated, in his return to the Sheriff of Calcutta, that substituted service had been effected by fixing a copy of the summons to the "house" of the defendant. *Held* that the return was insufficient, and that the word "dwelling-house" must be expressly mentioned. *Buddro Baboo* v. *Labodur Mullick*, 1 Hyde's Rep., 132.

A fresh writ of summons will not be granted till the old one is returned into Court. *Issurchunder Sein* v. *Aushotosh Chatterjee*, 1 Ind. Jur., N. S., 283.

Where a summons on a witness is returned, with the endorsement that the witness could not be found, on the very day fixed for the hearing of the case, the party on whose application the summons

was issued cannot be expected on that day to be prepared to show that the witness was material, or had absconded.

A summons on a witness ought not to be affixed upon his residence; the proper course is that prescribed in Section 156, Code of Civil Procedure. *Prem Chand Roy* v. *Becharam Mookerjee and others*, 6 W. R., 126.

Substituted service, under Section 57 of Act VIII of 1859, having been effected on one of the defendants in a suit, he applied to have an *ex-parte* judgment set aside as against him, on the grounds that he had no notice of the suit, and had a good defence on the merits. Application dismissed.

Held that a substituted service having been effected under Section 57 of Act VIII of 1859, an *ex-parte* judgment will not be set aside on an allegation of no notice, and of good defence on the merits. *Kissur Chund and others* v. *Bhoobunessur Chunder and others*, Bourke's Rep., O. C., 25; 1 Cor. Rep., 151.

The actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient to give jurisdiction to a Small Cause Court.

Service of a copy of the summons on the door of the house in which the defendant is dwelling is one of the modes of service provided in lieu of personal service, but it is necessary that the defendant should be residing in the house in such a manner as to make it probable that knowledge of the service of the summons will reach him. There may be a dwelling sufficient to give jurisdiction, and yet not the kind of dwelling necessary to make a good service. *Ananthu Narayanu* v. *Periyanu Rene*, 5 Mad. Rep., 101.

Persons merely looking after the affairs of a defendant are not agents on whom service of summons will be sufficient under Section 49, Act VIII of 1859. *Ram Soonduru Dossia* v. *Ranee Sureet Soonduru Debia*, 17 S. W. R., C. R., 33.

When there is no return of service to a summons, the law gives a Court full discretion either to issue a second summons or to take, or not take, stronger measures. It is not imperative on one Court to take measures to expedite the service in another Court; but it is the business of the party interested to move the Court to do what is necessary. *Dowlut Mundur* v. *Omrao Singh Ranee*, 14 S. W. R., C. R., 336.

Where an *ex-parte* decree was passed against the defendant, and it appeared that the writ of summons had not been served upon him in sufficient time to enable him to appear and answer, the Appellate Court, reversing the order of the Court of first instance, directed the *ex-parte* decree to be set aside and ordered a new trial.

Quære,—Whether the affixing of a summons to the outer door of the place of business of a defendant is good service upon him under Section 55 of the Code of Civil Procedure. *Chunbassáppa bin Sanguppuital* v. *Mainábu bin Mahúdshet*, 7 Bom. Rep. A. C. J., 138.

The mere showing to a witness of a summons issued under Section 186 of the Criminal Procedure Code is not sufficient service. Either the original should be left with the witness, or it should be exhibited to him, and a copy of it delivered or tendered. *Reg.* v. *Dar Sanlal Danutrum*, 5 Bom. Rep., Cr., 20.

Service of summons on one partner for co-partner. *Lutchneput Dogare* v. *Sibnarain Mundle, dissented from in Ramchandru Bose* v. *G. T. Snead*, 7 B. L. R., Ap. 528.

The evidence of the serving peon, that he endeavoured to serve the summons on the defendants, and that not being able to serve them personally he affixed a copy of the summons on the outer door of their dwelling-house, if believed by the Judge, is perfectly legal evidence of the fact that these defendants were served. *Ramcoomer Singh* v. *Ramsoondur Singh*, 17 S. W. R., C. R., 362.

(*b*) *Service of Notice.*

Where a judgment-debtor appears and contests the decree-holder's right to execute his decree, he cannot object that no notice was served as required by law. *Grish Chunder Banerjee* v. *Bhanoo Motee Chowdhrain*, 11 W. R., 329.

A general notice by advertisement to persons carrying on a noxious trade is not sufficient. Such persons should be directly informed, not only that their trade is noxious, but also that their business must be removed. *Aucheen and Bungloo (appellants)*, 1 Ind. Jur., N. S., 59.

Notice to a purchaser's agent is held to be constructive notice to his principal, so as to fix the latter with a trust, or a burden relative to the subject of purchase which without notice he would have escaped. *Nawab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 S. W. R., 399.

Service of notice on the parties, and not on their pleaders, is not barred by Section 18, Act VIII of 1859. *Ram Lall Chowdhry* v. *Soondery Jah*, W. R., 1864, Mis., 21.

Service of a notice of application for execution of a decree served by affixing a copy of it on the wall of the house in which the defendant (who was absent from his village) was then residing, is sufficient; and the defendant, not having appeared upon the notice, will not be allowed, on a subsequent application for execution of the decree, to object to the reception of the application and the proceedings upon it. *Rajah Chilicany Baskarayeningaru* v. *Pillary Setty Rujavulu Naidu*, 5 Mad. Rep., 100.

Where the sudder cutchery of the Zemindar was beyond the jurisdiction of the District Court, the publication of the notice of sale at one of the inferior cutcheries was held to be legal and sufficient. *Hubeebool Hossein* v. *Land Mortgage Bank*, 14 S. W. R., C. R., 44.

Where a respondent resides in Chandernagore, *i.e.*, out of British territory, the notice of appeal should be forwarded to him by post, under a registered cover, and if he does not appear, a verified statement should be put in to show that he is at present or has recently been residing there. *Sonatun Bukshee* v. *Gopaul Chunder Shumants*, 15 S. W. R., C. R., 31.

Service upon a respondent's pleader is good service upon himself, so far as notice of the appeal is concerned. *Ishur Dutt Mundle* v. *Shib Pershad Thakoor*, 15 S. W. R., C. R., 290.

After a list of witnesses has been filed and the

tullubana paid, the Court's officers, not the applicant, are responsible for the service and return of notice. *Mussamut Mussitu Khanum* v. *Mussamut Hockoern Bibee*, 15 S. W. R., C. R., 88.

A person refusing a registered letter sent by post, cannot afterwards plead ignorance of its contents. *Loolf Ali Meah* v. *Pearu Mohun Roy*, 16 S. W. R., C. R., 223.

(c) *Rulings under Section* 17 *of the Code.*

Where a lower Appellate Court threw out a case on the ground that the plaint had not been filed by a recognized agent within the meaning of Section 17 Act VIII of 1859, though that point had been disposed of by the Court of first instance,—

Held, that the case should not have been thrown out on such a technical objection not affecting the merits of the case. *Mannoo Dossee* v. *Ishan Chunder Bonnerjea*, 15 S. W. R., C. R., 245.

Service of a summons intended for one partner upon another partner of the same firm is not a sufficient service. Partners are not the recognized agents of each other within the meaning of Clause 2, Section 17, Act VIII of 1859. *Luchmeput Dogare* v. *Sibnarain Mundle*, 1 Hyde's Rep., 97.

A "recognized agent" described in Section 17, Act VIII of 1859, has not the option of addressing the Court, as the suitor himself may do. *Vide* Section 10, of the Charter of the High Court. *Prannath Chowdhry* v. *Ganendro Mohun Tagore*, 3 W. R., 108.

A recognized agent, under Clause 2, Section 17, Act VIII of 1859, cannot prosecute or defend a suit in his own name.

A gamasta of a firm ceases to be a recognized agent under Clause 2, Section 17, Act VIII of 1859, when the business of the firm ceased before the institution of the suit. *Mokha Harakroy Joshi* v. *Bisewar Doss*, 5 B. C. R., Ap. 11, 13 S. W. R., C. R., 344.

III.—ARREST BEFORE JUDGMENT.

(See also *Arrest in Execution.*)

Applications under Sections 74 and 75, Act VIII of 1859, on the ground first mentioned in Section 74, must show at least that defendant is about to leave the jurisdiction, with a view to avoid process, or to delay the plaintiff in the prosecution of his suit. Evidence sufficient to support this must be adduced in all cases. *Teenaram* v. *Ramruttan*, 2 Hyde's Rep., 181.

It is not necessary for the plaintiff to show that the defendant intends to obstruct or delay the plaintiff in execution of his decree, in order to justify an application to the Court for his arrest before judgment under Act VIII of 1859, Section 80: it is enough if his going away will have that effect. *Agra and Masterman's Bank* v. *Minto*, 1 Ind. Jur., N. S., 265.

Where a defendant is arrested prior to decree under Act VIII of 1859, Section 78, and a decree is afterwards obtained against him in the suit, the plaintiff, if he wishes to detain the defendant in prison, must have him brought before the Court, and his subsistence money fixed, in the same way as in the case of an arrest in execution of a decree; and if he fails to do so the defendant is entitled to his discharge from prison. *In the matter of Kallachund Dass*, 1 Ind. Jur., N. S., 327.

A creditor is not entitled, merely because he has a just demand against his debtor, to move the Courts to put in force the extraordinary processes of arrest or attachment on mesne process; he must also have good reason to believe that his debtor is about to depart from the jurisdiction of the Court, or to deal with his property in such a manner that it will be unavailable for satisfaction of the claim against him. *Goutiere, A. F.* v. *Robert Emile and others*, 1 N. W. R., Par. 2, p. 32.

IV.—ATTACHMENT BEFORE JUDGMENT.

(See also *Attachment in Execution.*)

No appeal lies to the High Court, under Section 27, Act XXI of 1863, from an interlocutory order of the Recorder of Rangoon passed before judgment in the suit,—*e.g.*, one passed under Section 83, Act VIII of 1859, directing a defendant to furnish security.

Quære,—Whether, under Act VIII of 1859, there is any appeal from an order to furnish security under Section 83. *Ahmed Ally Mahomed* v. *Gladstone, Wyllie, and others*, 7 W. R., 508.

Certain property was attached before decree under Act VIII of 1859, Section 83. On the 11th of May the plaintiff obtained a decree in the suit against the person whose property had been attached. On the same day the judgment debtor filed his petition in insolvency, and the usual vesting order was made.

Held that the official assignee was entitled to the goods, notwithstanding the attachment before decree followed by the decree. *Rampersaud and others* v. *Kallachund Dass*, 1 Ind. Jur., N. S., 325.

In attachment before judgment under Sections 83 and 84 of Act VIII of 1859, the Court does not interfere with the legal disposal of the property attached beyond declaring that possession shall not be taken without its previous sanction, undertaking only that, if no subsequent order to the contrary be made, the property shall be forthcoming at the time of pronouncing the decree to abide whatever order it shall make about it. *Savá Ramji* v. *Jadhavji Nathu; ex-parte Gamble, Official Assignee*, 2 Bom. Rep., 150.

Where moveable property of defendants in certain suits in Civil Court in the Mofussil had been attached before judgment under Sections 83 and 84 of Act VIII of 1859, and so continued until decrees and orders for execution had been made in those suits, and warrants for such execution had been lodged with the Nazir of the Court,—*Held* that those warrants at the latest, on their delivery to the Nazir, bound the property without re-seizure by him; and that accordingly the execution creditors were entitled to preference as regarded the attached goods over the Official Assignee, in whom the estate of the defendants had become vested by the orders of the Insolvent Debtors' Court at Bombay, made before sale by the Nazir of the attached property, but subsequently to the delivery to him of the warrants for execution.

Held, however, also, that mere attachment before judgment does not so bind the property attached as to give to the attaching creditors priority over the official assignee, in whom the estates of the

defendants had been vested by orders of the Insolvent Debtors' Court, made subsequently to such attachment, but before decree and warrant for execution. *Gamble* v. *Bholagir and others*, 2 Bom. Rep., 150.

The omission to apply for compensation under Section 88, Act VIII of 1859 (assuming that section to be applicable to the present case), does not bar a regular suit for compensation for illegal attachment; and the fact that security was not given, by which release of property might have been obtained, does not affect the right of suit for the improper attachment. Further, that, under the circumstances, the attachment being needless and unjustifiable, and without due authority of law, the award of damages was fair and unquestionable. *Daniel* v. *Mohun Bibee*, 1 Agra Rep., A. C., 104.

Compensation under Section 88, Act VIII of 1859, can only be awarded, on the application of the defendant, by the Court which disposes of the case, and cannot be given by another Court in whose custody certain property belonging to the defendant has been found and attached at the instance of the plaintiff. *Huro Soondery Dossee* v. *Bungsee Mohun Doss*, 3 W. R., Mis., 28.

Section 88 of Act VIII of 1859 is not applicable to an attachment made previous to that Act coming into operation. *Kishen Chunder Singh Roy* v. *G. M. Gasper*, W. R., 1864, 224.

No appeal lies from an order refusing to grant compensation under Section 88, Act VIII of 1859. *Huro Soondery Chowdhrain* v. *Bungshee Mohun Dass and others*, 8 W. R., 332.

In an application made under Section 81, Act VIII of 1859, the Court must be satisfied that a removal of goods is being made or about to be made, with a view to evade the execution of a decree in a specific suit, though it is not necessary that the suit should be actually commenced at the time of their removal. *Ramnarain Poddar* v. *Ezkiel Levy*, 2 Hyde's Rep., 183.

N. S., and subsequently J. S., filed plaints and obtained attachment orders against J. P.'s property. J. S., who got a decree on the 13th and an order for sale on the 16th of February, claimed priority. Claim disallowed.

Held that of several creditors who have attached a debtor's property under Section 81 of Act VIII of 1859, the one who first obtains judgment is entitled to priority. *Juggurnauth Shaw* v. *Issurchunder Roy and others*, Bourke's Rep., O. C., 146.

In a suit by a landlord against his ryot for rent, in which he attached certain growing crops, under Section 16 Act VI (B. C.) of 1862 (the attachment being before judgment, and therefore according to Section 86, Act VIII of 1859), the claim of an intervenor ought to be investigated in the same manner as a claim to property attached in execution of a decree. *Kartic Churn Mookerjee* v. *Moorta Ram Sircar*, 10 S. W. R., 21.

R. R. filed a plaint against I. R. on the 15th, and obtained a decree on the 27th of February, and a prohibitory order was made against I. R.'s property on the 18th of March, subject to three prior attachments; one by J. S., whose plaint was filed on the 30th of January, and obtained a prohibitory order on the 13th and a decree on the 16th of February; a second by N. S., who filed his plaint and obtained a prohibitory order on the 30th of January, and obtained a decree on February 22nd; and a third by K. S., who also filed his plaint and got a prohibitory order on January 30th, and a decree on February 28th for an order for the sale of the goods on notice to the other three plaintiffs; and the Court ruled that N. S. and K. S. were entitled to priority over R. R.

Held that the process in attachment before judgment is in all respects the same as in cases of attachment after judgment, and the effect in binding the property attached, so as to prevent alienation, is the same. That of several creditors, he who first attaches is entitled to priority; but if the title of the first attaching creditor is not supported by a judgment at the date of the second attachment, the second attachment will have priority over the first. That an attachment, whether before or after judgment, places the property in the custody of the law. That if property have been attached before judgment there is no need of a second attachment in the same suit after judgment. That the words "attachment before judgment," in Section 89 of Act VIII of 1859, must be read as equivalent to "attachments in pending suits;" or, in other words, the phrase "before judgment" must be read as meaning "until after judgment." *Rajchunder Roy* v. *Isserchunder Roy and others*, Bourke's Rep., O. C., 139.

Section 89, Act VIII of 1859, is applicable only to Mofussil Courts, and a Judge exercising the ordinary original jurisdiction of the High Court has no power to remit fees under any circumstances. *F. Barrow* v. *Hugh Trevor Pollock*; 1 Ind. Jur., O. S., 57; 1 Hyde's Rep., 149.

The words in Section 81 of Act VIII of 1859, "where the defendant is about to dispose of his property, or any part thereof," refer only to property within the jurisdiction of the Court where the suit is pending; therefore, where an order under that Section by the First Subordinate Judge of the 24 Pergunnahs in respect of property in Calcutta was sent up to the High Court, in order that it might be endorsed in accordance with the provisions of Section 1 of Act XXIII of 1840, the High Court refused to endorse it. *Balaram Mullick and another* v. *E. R. Solano*, 8 B. L. R., 335.

Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. *Referred Case No.* 11 *of* 1871, 6 Mad. Rep., 135.

V.—PRACTICE.

(a) *Miscellaneous Rules.*

The practice of the High Court at Calcutta in its original side in the case of decrees by consent, is to require the defendant in person, or some one instructed by him, to appear in Court to consent. *Saunders* v. *Romanauth Paul*, 1 Ind. Jur., N. S., 395.

An objection which, if taken, might have been cured, and which has not been taken in the Court below, cannot be taken in the Court of Appeal. *Dhurm Dass Pandey and others* v. *Mussamut Shama Soondery Debia*, 6 W. R., P. C., 43.

An appeal from an order of the lower Appellate

Court, declaring that a party who claimed to be in possession of property taken in execution of a decree to which he was no party, and with which he had no concern, had no *locus standi* in the execution case, is in the nature of a miscellaneous appeal, and should be on a stamp for an ordinary petition. *Mohesh Chunder Banerjee* v. *Chunder Monee Dabee and another*, 9 W. R., 139.

Where the Statute of Limitation was pleaded for the first time in a petition for review of the judgment of the lower Appellate Court,—*Held* that the review being part of the proceedings in regular appeal, the question was whether the Statute might be pleaded for the first time in regular appeal; and that when, upon the admitted facts, it is clear that the Statute is a bar, it may be pleaded for the first time in regular appeal. *Sarasvati* v. *Pachanna Setti*, 3 Mad. Rep., A. J., 258.

Where, in the course of the hearing of an appeal, the appellant desired to withdraw, in order to avoid the decision of a question raised by the respondent at the hearing,—*Held* that, under Section 348 of the Civil Procedure Code, the respondent was entitled to have the case heard and determined. *Venkataramanayia* v. *Kuppi*, 3 Mad. Rep., A. J., 302.

In cases where, for the purpose of stamping an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market value and the data on which it has been calculated. If the Registrar consider the estimate clearly insufficient, the Court will issue a commission to ascertain the proper market value.

The provisions of Schedule B. of Act XXVI of 1867 considered. *Moonee Rangappen, ex-parte*, 3 Mad. Rep., A. J., 352.

An appellant has no right to withdraw an appeal which has been regularly registered without the permission of the Court.

Where the appellant had given notice of the withdrawal of the appeal before the day of hearing, and notice of withdrawal had been given to the respondent, but not until costs had been incurred, —*Held* that the appellant was not at liberty to withdraw the appeal, and the Court ordered that the appeal be set down for hearing. *Kareem Bee* v. *Begam Bee*, 3 Mad. Rep., O. A. J., 368.

Where an appellant had been heard at length and the respondent heard partly in answer, and the Court came to a conclusion after research into the record without any new matter being brought forward by the respondent, it was considered unnecessary to hear the appellant in reply. *Rousseau* v. *Nuboo Kishore Bhuddro*, 12 W. R., 302.

In a suit for confirmation of possession of an estate under a bill of sale, by setting aside a bond in favour of a third party, and a sale in execution of a decree of the Small Cause Court upon the bond, the first Court found that plaintiff's bill of sale was fraudulent, and that he was not in possession.

In appeal the Judge, on an objection taken for the first time in his Court, held that the Small Cause Court had no jurisdiction to try a suit on a bond in which land was hypothecated, and, without going into plaintiff's case, gave him a decree.

Held that the Judge ought to have tried first, not the defendant's case, but the plaintiff's, who was bound to prove his possession and the genuineness of his bill of sale. *Rash Behary Roy* v. *Sheikh Ezud Buksh and others*, 11 W. R., 276.

The Court will not make a rule absolute obtained by a person who is not a party to the suit. *Grant, Smith, and Co.*, v. *James Steel*, 1 Ind. Jur., N. S., 60.

An irregularity in a trial is no ground of complaint to the party at whose instance it was caused. The suspicion that a party who has failed to prove his case may prove more successful on a second and fuller investigation is no sufficient ground for directing a new trial. *Maharajah Koonwur Nitrasur Singh* v. *Nund Lall*, 1 W. R., P. C., 51.

In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief, or public rumour, and without sufficient legal evidence. *Meethun Bibee* v. *Busheer Khan and others*, 7 W. R., P. C., 27.

A Deputy Collector having died before giving his reasons for a decree said to have been made by him the whole of the subsequent proceedings were held to be bad, and the case was remanded to the Collector to be tried *de novo* upon the evidence upon the record. *Nubo Chunder Banerjee* v. *Issur Chunder Mitter*, 12 W. R., 254.

Every reference in a suit to law officers, likely to bind a right, should embrace all important facts proved or admitted in the cause which may affect the conclusion, and it is the duty of the Court itself so to frame the questions as to elicit an opinion upon the very facts on which the legal title depends. *Myna Boyee* v. *Oottoram*, 2 W. R., P. C., 4.

The rule of Circular No. 31, dated 3rd October, 1864, that the time allowed for obtaining a copy of judgment or decree shall not begin to count till the whole of the requisite pieces of stamp paper are put in, extends also to plain paper filed under the general rule at end of Schedule B., Act X of 1862, when the copy cannot be comprised within the stamp paper put in. *Chumun Chowdhry* v. *Sheikh Ali Azim*, 9 W. R., 138.

Motion to compel the execution, by an infant, of a conveyance of land, refused on the ground that such an order on such motion was virtually a decree for specific performance. *Monomathnath Day* v. *Aushootosh Day*, Cor. Rep., 8.

A motion was on summons that a suit, seeking a declaration that defendants had forfeited their right to a lease by reason of non-payment of rent, be discontinued or dismissed. Defendant entitled to have the forfeiture set aside, but not on motion. Costs reserved till the hearing. *Prince Gholam Mohamed* v. *The Calcutta Club*, Cor. Rep., 67.

It is not the practice to hear more than one counsel or vakeel in support of *ex-parte* motions. *Baroda Soondery Dossee* v. *Hurry Hur Mookerjee*, 6 W. R., Mis., 114.

A case entered on the undefended Board can only be transferred to the defend Board on payment of the costs of the adjournment, if any, thereby occasioned. *Bindoomadhub Mitter* v. *Woomes Chunder Paul*, 2 Hyde's Rep., 86.

Translations of papers, if required, should be applied for before the case is posted. *Kondyya Gaundan* v. *Ramasvu Gaundan*, 1 Mad. Rep., 130.

Where a defendant shows *bonâ-fides*, by offering

to pay anything like a fair proportion of his debts, a reasonable time will be granted to enable him to pay the residue. *Sabatoola Sircar* v. *Thompson*, 1 Ind. Jur., O. S., 93; 1 Hyde's Rep., 98.

In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence; and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. *Ramrutton and Goberdhone Dass* v. *Oriental Inland Navigation Company Limited*, 2 Hyde's Rep., 89.

The Court will not press hardly upon a defendant who tenders a reasonable substantial payment. *Grant* v. *Radhakant Sen*, 2 Hyde's Rep., 249.

Where a decree is passed *ex-parte* in an original suit the defendant has no right to a special appeal, even though his appeal have been entertained by the Civil Court. *Chidambara Pillai* v. *Kaman*, 1 Mad. Rep., 189.

One co-defendant, whose interests are separately represented, may cross-examine another. *Narasima* v. *Kistnama and others*, 1 Mad. Rep., 456.

Before a notice on a respondent can be reissued an application must be made to the Court detailing the grounds on which it is preferred. *Ram Lochun Sircar Surburkar* v. *Prithee Ram Chowdhry*, 2 W. R., Mis., 37.

When a party applies to have his case revived, alleging that no notice was served upon him as the law requires, the Judge ought to examine on oath the officer by whom that service was reported to have been made, and ought not to be satisfied with the formal report of the Nazir. *Sreenath Thakoor* v. *R. Watson and Co.*, 4 W. R., Mis., 4.

In a case of default, when a defendant admits liability, the case should not be dismissed, but should be decided according to the defendant's admission. *Lekhraj Roy* v. *W. Buckland*, 5 W. R., Act X R., 65.

Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only sued upon it,—*Held* that the non-joinder of the other was a ground of non-suit, and that the objection might be taken at any stage. *Issur Chunder Mundul* v. *The Heirs of Nawab Golam Ali*, 1 Ind. Jur., N. S., 249.

Proper procedure pointed out in a suit for recovery of possession of certain lands on an allegation of illegal dispossession, where defendant sets up a superior title as proprietor against the allegation of a similar title on the part of plaintiff. If defendant in such a case established his better title as a landlord, then plaintiff cannot, in a Civil Court, succeed on the title of an under-tenant. *Kobeeroodden* v. *Nyan Bibee and others*, 8 W. R., 354.

There is no law which prevents a lower Appellate Court from looking into all the facts of a case before coming to a conclusion on the point of limitation. *Kedarnath Ghose* v. *Kasim Mundul and others*, 8 W. R., 364.

Where the application of a party to a suit to have the evidence of witnesses residing beyond the British territories taken under a commission failed, owing to circumstances beyond his control, a subsequent application to have other witnesses examined within the British territories ought to have been complied with. *Mullick Ali Shah and others* v. *Mussamut Meher Banoo*, 8, W. R., 448.

Satisfactory proof of service of summons is necessary before the rejection of an application for re-hearing by a party against whom a decree was passed *ex-parte*. *Kashee Kant Chowdhry* v. *Beejoy Gobind Chowdhry*, 2 W. R., Mis. 24.

A Recorder refused an application for execution against certain defendants who came in and confessed judgment before any issue of summons in the suit. The plaintiffs then appealed to the High Court, by petition, for an order that the Recorder should issue execution against the defendants, or that he should show cause for not doing so. The affidavit did not state whether any decree had actually been made.

Held that the affidavit was insufficient; the Court cannot grant a rule to show cause, unless it is satisfied that the rule should be made absolute, if no cause be shown. *In re Comptoir D'Escompte de Paris* v. *Currie and Co.*, 3 B. L. R., Ap., 153; 12 W. R., 413.

A party must show due right or interest in the subject-matter of the suit to entitle him to complain of any acts injurious thereto, and a mere stranger without interest cannot maintain any suit.

Such a right for the purposes of a suit to close a new door alleged to have been opened with a design to assert (injuriously) rights over adjacent lands, may be shown without paying the stamp necessary in a suit directly for the land itself. *Chundun* v. *Talib Ali*, 2 N. W. R., 41.

Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. *Syud Mohamed* v. *Ooomdub Kkumem*, 13 S. W. R., C. R., 184.

When the time for doing an act expires whilst the Court is closed, the act, if done on the day on which the Court is next open, will be held to be done within time. *Musumut Muchul Kooerr* v. *Lulger and others*, 2 N. W. R., 112.

The Sudder Court, being equally divided, referred a case for the opinion of the High Court of Calcutta. The High Court at Agra having been established in the meanwhile,—*Held* that the Chief Justice of that Court had power to hear and determine the case.

A widow, being old, presented a petition in a suit by her daughter-in-law, as guardian of the former's infant son, relinquishing all her rights in the property to the daughter-in-law herself, and as guardian of the infant. The son died, and the mother now sued her daughter-in-law for possession as heiress of her son. *Held* that, by the petition, the mother had transferred no rights to the daughter-in-law as proprietor, but that the mother, as heiress of her son, was entitled to the estate. *Mussamut Udey Kunwur* v. *Mussumut Ludu*, 6 B. L. R., 283, and 15 S. W. R., P. C., 15.

The Court has power to order a case to be set down at once in the General Cause List, if the defendant enters appearance by his attorney before the time for appearance fixed in the summons has expired. When a defendant so appears the Registrar ought so to set down the case, as a matter of course, or at least ask the Judge in Chambers whether he should do so or not. *Cumming* v. *Green*, 4 B. L. R., Ap., 75.

Where property is seized and retained by a Collector in his capacity of Receiver, his acts cannot

be disputed by way of motion to discharge or get rid of the attachment. *Bissessuree Debia* v. *Sookram Dass Mohunt*, 15 S. W. R., C. R., 347.

A number of cases having been instituted against the same defendant, and relating to the same matter, the plaintiff in one of them applied to both the lower Courts to have them all tried together, pointing out particularly that the documentary evidence in one of the other cases was necessary, and should be made use of in the trial of his case.

This application was refused by the first Court, and the lower Appellate Court decided the case of the applicant upon evidence recorded with it, and disposed of the others as governed by that judgment.

Held, that all the cases should have been tried together; but as the Judge failed to comply with the application to do so he should have tried each case separately on its merits. *Nehal Singh* v. *Syud Ali Ahmed*, 15 S. W. R., C. R., 110.

Right of Reply. *Jardine* v. *Sarini Mohausen*, 8 B. L. R., Ap., 44.

When a day is fixed for the settlement of issues in a case, the Court ought not to proceed to dispose finally of the case except with reference to the specific circumstances detailed in Section 145, Act VIII of 1859. *Sheikh Jecawan* v. *Goolab Khan*, 15 N. W. R., 97.

Directly an intervenor's name has been struck off on the ground that he has no interest in the case, all the evidence he had put in should be removed from the record. *Bucha Singh* v. *Mirza Mashook Ali Bey*, 15 S. W. R., C. R., 572.

In a suit for a declaration that certain property, which plaintiff as decree-holder attempted to sell, belongs to his judgment-debtor, where the opposite party claims to have been in possession of the same under an alleged hibba, and plaintiff gives sufficient evidence to raise a reasonable presumption that there has been fraud and collusion in the case, it becomes the duty of the Court to go on to the evidence on the other side, and ascertain whether the transactions which are the subject of enquiry are fraudulent or valid. *Kudumbinu Dossee* v. *Thuropoorna Dass*, 14 S. W. R., C. R., 289.

Where a plea of *res judicata* is set aside and a suit admitted by a Judge, his successor has no authority to re-open the question, but should, under any circumstances, record his opinion on the merits. *Salabmunissa Khatoon* v. *Moheschunder Roy*, 16 S. W. R., C. R., 85.

A Judge has no power to keep a case on his own file and refer the witnesses to be examined, some by the Moonsiff and some by the Subordinate Judge, and then to decide it himself. *Gujendro Chunder Sandyal* v. *Wooma Moyee Debia*, 16 S. W. R., C. R., 176.

Every Court has power to recall its own order on being satisfied that the order was obtained through fraud or misrepresentation or suppression of facts. *Sheo Purshun Chobey* v. *Collector of Sarun*, 13 S. W. R., C. R., 256.

A regular suit to set aside a summary order is against general principles, and only lies when the power to bring such a suit is expressly conferred, as under Section 246, Code of Civil Procedure. A party who is unsuccessful in his attempt to obtain execution against any particular property has only the remedy provided in Section 246, and failing to take advantage of that, his only alternative is to make a fresh application for execution. *Mussamut Phoolbas Kooer* v. *Lall Juggessur Sahi*, 14 S. W. R., C. R., 340.

(*b*) *Withdrawal, Striking off, Abatement, and Revival of Suits.*

The death of an appellant was held to be no reason for the abatement or postponement of a case which was being conducted by an agent of the deceased defendant, and was not in any way prejudiced. *Jugomohun Singh* v. *Dabee Pershad*, W. R. (1864), Act X R., 47.

In a suit to recover possession of timber, the first defendant had ceased to have any interest, and after the settlement of issues he died. *Held* that the cause of action against the other defendants survived, and that the first defendant having no interest in the subject of the suit, it was not necessary that the suit should be revived against his representatives. *Moung Khine and others* v. *R. C. Burn and others*, 6 W. R., 2.

A suit for possession with mesne profits does not abate by reason of the lands having since been washed away. *Unno Poorna Debia* v. *Ram Lochan Ghose*, 5 W. R., 227.

A Court is not bound to dismiss a case on account of the non-appearance of a plaintiff summoned by the defendant to attend as a witness, when the defendant did not petition for attachment or other legal process to be made by the Court to compel the plaintiff's appearance. *Bustee Narain Roy* v. *Sham Soonder Nundee*; *Sodanund Roy* v. *Sham Soonder Nundee*, 2 W. R., Act X R., 43.

Following the procedure of Act VIII of 1859, a suit ought not to be dismissed because it was instituted before the Collector, instead of in a Sub-Division Court under Section 20, Act VI of 1862 (B. C.), but the plaint should be returned to the plaintiff, with a view to its being filed in the proper Court. *Ranee Shurnt Soondery Debia* v. *Khemun Kuree Debia*, 5 W. R., Act X R., 87.

No appeal lies from a Collector's order dismissing a suit for default on the non-appearance of the plaintiff after being summoned. The proper course for the plaintiff is to apply for the revival of his suit, showing cause why he should not have been summoned, and why the Collector's order was defective. *Sheikh Golam Bakshee* v. *Pulton Singh*, 3 W. R., Act X R., 162.

The judgment of a first Court passed on the default of a party summoned to attend as a witness is a judgment open to regular appeal. *Chunder Mohun Mozoomdar* v. *Teetooram Bose*, 4 W. R., Act X R., 19.

On the day fixed for the hearing of a suit in a Court of Small Causes, the plaintiff's vakeel appeared and stated on behalf of his client that the defendant had satisfied him in respect of the matter of the suit, which he prayed might be dismissed. The defendant did not appear. *Held* that the Judge was right in dismissing the suit, but that he should have recorded an order under the first provision in Section 98 of Act VIII of 1859. *Held* also that, in such a case, when the plaintiff applies for a return of stamp duty, he must strictly bring himself within the subsequent part of the same section as modified by Section 26 of Act X of 1862. *Anonymous*, 1 Mad. Rep., 127.

A plaintiff who is permitted to withdraw from his suit under Section 97, Act VIII of 1859, must pay the defendant's costs. On such withdrawal, the proper order to be recorded is not one of dismissal, but one simply permitting the plaintiff to withdraw the suit, with liberty to bring a fresh suit for the same matter on payment of costs or otherwise as the Court may direct. *J. R. Dowcett* v. *J. P. Wise*, 1 W. R., 322.

J. C. sued W. N. W. for specific performance of an alleged agreement, on the faith of which J. C. had withdrawn, a suit instituted by him against W. N. W., and for the repayment of Rs. 10,000 due on account stated and for other relief. The suit was withdrawn without leave of the Court. It also appeared that W. N. W carried on his business with the money of R. P. S., and bound himself not to sell, buy, pay, or receive money without the consent of R. P. S., who was to receive back his money with 20 per cent. interest.

Held that if a suit be withdrawn under Section 97 of the Civil Procedure Code, a new suit cannot subsequently be instituted for the same matter, unless leave to do so were granted by the Court on the withdrawal of the first suit. That so much of a second suit as is based on the same cause of action as that of a former suit so withdrawn, is *primâ-facie* not maintainable under that section. That specific performance cannot be granted with reference to such portion of a suit. That the above relations between W. N. W. and R. P. S. constituted a partnership. *Juggobondoo Chatterjee* v. *W. N. Watson, T. O. Watson, and Rajah Pertaub Chunder Singh Bahadoor*, Bourke's Rep., O. C., 250.

Under the new Procedure, the Court will not entertain an application on summons for the discontinuance of a suit. *Prince Golam Mahomed* v. *The Calcutta Club*, 2 Hyde's Rep., 184.

The Courts have no power to reserve permission to a plaintiff to bring a fresh suit for the same matter, except under Section 97 of Act VIII of 1859, and that section applies only to cases where a plaintiff, before final judgment, is permitted by the Court to withdraw from his suit, with liberty to sue again. *Gobind Chunder Paul Chowdhry* v. *Ramkishen Paul Chowdhry*, 2 W. R., 297.

A suit founded on a compromise, which was entered into when special appeal was withdrawn, is not barred by Section 97, Act VIII of 1859, as it is not a suit for the same matter within the meaning of that section; but if the compromise was duly made by the parties thereto, and if its terms have been broken, a party to it is entitled to maintain a suit to enforce it. *Golab Singh and others* v. *Cheda Singh and others*, 3 Agra Rep., 135.

The prohibitory clause of Section 97, Act VIII of 1859, does not apply to cases under Act X. *Ramanath Dutt and others* v. *Joykissen Mookerjee*, 11 W. R., 3.

A plaintiff filed a plaint for an account to be taken. The plaintiff withdrew the plaint, without the permission of the Court to withdraw from the suit, with liberty to bring a fresh suit. This was done for the purpose of a submission to arbitration under a deed mutually executed between the plaintiff and defendant. The deed was not acted upon.

Held, reversing the decision of Macpherson, J., that the plaintiff was not debarred by Section 97 of Act VIII of 1859 from bringing a fresh suit to establish the agreement for reference to arbitration, and also for the account, which was a relief to which he was entitled. The section only applies to cases where the plaintiff withdraws from the suit without the consent of the defendant. *Juggobondoo Chatterjee* v. *W. N. Watson and Co.*, Bourke's Rep., A. O. C., 162.

There is nothing in Section 97, Act VIII of 1859, to prevent a suitor from instituting a claim for possession, and afterwards bringing one for rent. *Ramkishom Mundle* v. *Moorad Mundle*, W. R., 1864, Act X R., 67.

A. and B., as joint owners of certain land, brought an action for damages on account of trespass. B. died after action was brought. *Held* that the cause of action survived to A.

Semble,—The words "cause of action" in Section 100 of Act VIII of 1859 mean right to bring an action. *Chundermohun Dutt* v. *Biswambhur Lahu*, 1 B. L. R., O. C., 42.

Where the special appellant died after the High Court had referred for trial to the Court below an issue based upon objections taken by the respondent under Section 348 of Act VIII of 1859,—*Held* that the appeal must abate in accordance with Section 102 of Act VIII of 1859, and Section 37 of Act XXIII of 1861; and that the respondent cannot require that it should proceed, in order that he may have an opportunity of taking objections to the decree of the Court below.

If the respondent desires to secure the right of asking for decision on his objection, he must file a separate appeal. *Jaetubir Kalu* v. *Balubin Raghu*, 3 Bom. Rep., A. C., 81.

Section 102, Act VIII of 1859, does not bar the right of heirs to proceed with an appeal as against joint heirs. *Mussamut Luteefoonissa Bibee* v. *Syud Rajaoor Ruhman and others*, 8 W. R., 84.

Where a suit is dismissed under Section 110, Act VIII of 1859, upon default in appearing made by both parties, no appeal lies from a refusal by the Court to issue a fresh summons upon the plaint already filed. *Lokenath Sahoo* v. *Tukeer Singh and others*, Marsh, 630.

The claim of a petitioner to represent a deceased person for the purpose of executing a decree made in favour of the deceased, ought not to be rejected, but the Judge should, in accordance with the principle of Section 103, Act VIII of 1859, call upon the plaintiff to establish his right to represent the deceased. *Wooma Churn Mookerjee* v. *Luckhee Narain Roy Chowdhry*, 1 W. R., Mis., 10.

A party having died while a suit against him was pending, his widow was brought upon the record as defendant, and judgment was given against her, which was subsequently affirmed by appeal. The original decree embraced an award of certain wasilat (accruing after the husband's death) for which the widow was personally liable. Between the original and final judgments she married again, and execution of the decree was accordingly sought against her second husband.

Held that he was not liable to summary proceedings in execution, and that the term "judgment" in Section 105, Act VIII of 1859, did not include the

judgment in appeal. *Bindabun Chunder Sircar* v. *A. B. Mackintosh*, 9 W. R., 442.

A suit having been dismissed, plaintiff appealed from the decision; and although the defendant's death was notified to the Court and the plaintiff did not attempt, under Section 104, Code of Civil Procedure, to bring in the heirs of the deceased in any way represented, the Court tried the appeal and passed a decree,—*Held* that the decision of the Lower Appellate Court was incorrect in law. *Monee Lall* v. *Ku Zee Feuzul Hossein*, 143 W. R., C. R., 337.

Where a plaintiff asks for permission to withdraw his plaint, saying that it will be out of his power to adduce the evidence, which he points out as existing in certain records, within the period fixed by the Court for hearing the case, the Court is competent, under Section 97, Act VIII of 1859, to grant him permission to withdraw the suit. *Koomer Poresh Narain Roy* v. *Ranee Surut Soonduree Dabee*, 16 S. W. R., C. R., 100.

Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. *Huro Mohun Mookerjee* v. *Mohendronath Ghose*, 16 S. W. R., C. R., 135.

A plaintiff without leave of the Court withdrew from a suit in 1853. He filed a fresh suit in the same cause of action in 1866. *Held* that he was not debarred from doing so, as the provisions of Section 97 of the Code of Civil Procedure did not apply. *Vináyak Joshi et al.* v. *Janárdun Joshi et al.*, 7 Bom. Rep., A. C., 23.

A suit "number Khurif or struck off" is not a passing of judgment against the plaintiff by defendant under Section 114, Act VIII of 1859, precluding him from bringing a fresh suit in respect of the same cause of action. *Khoob Lall Singh* v. *Toolsee Singh*, 17 S. W. R., C. R., 219.

A lower Appellate Court has no power to interfere with the discretion of a first Court under Section 97, Act VIII of 1859, in allowing a plaintiff, whether before or after the settlement of issues and before or after the acceptance of evidence upon the issues, at any time before final judgment, to withdraw from the suit with liberty to bring a fresh suit in the same matter. *Ram Kanye Dutt* v. *Haroo Chunder*, 17 S. W. R., C. R., 229.

The plaintiff having sued, and the issues having been laid down as though the suit was for separate possession, the decree of the Lower Court for joint possession was set aside, with leave to plaintiff, under Act VIII of 1859, Section 97, to bring a fresh suit for joint possession. *Juggernauth Deb Nazir* v. *Meheeboollah*, 17 S. W. R., C. R., 164.

The dismissal of a suit for the plaintiff's non-attendance is a highly penal matter, and the punishment ought not to be inflicted unless after a distinct order to attend, and upon proof that the plaintiff has deliberately disobeyed the Court's order. *Pearee Mohun Bose* v. *Hurrish Chunder Ghose*, 17 S. W. R., C. R., 141.

During the pendency of a suit brought by a Hindoo widow to recover possession of her husband's estate, the widow died, and two claimants (first a female on the strength of a will executed by the widow, and afterwards the heir of the deceased husband) were made co-plaintiffs. *Held* that the cause of action was one which from its very nature survived upon the death of the plaintiff, and that, therefore, the suit would not abate; that although it was not strictly regular or usual to allow the two claimants to come upon the record as co-plaintiffs, the irregularity had been cured by the consent of the parties, it being for their advantage that the trial should proceed, and that the co-plaintiffs should be left in possession of any decision which they might obtain against the defendants, and allowed to settle the question arising between themselves in other proceedings.

A judgment is not impeachable on the ground that, though written by the Judge who heard the case, it was not pronounced by him, but by his successor in office. *Mussumat Parbutty* v. *Mussumut Higgin*, 17 S. W. R., C. R., 475.

In a suit to recover the possession of land of which the plaintiff had been dispossessed in execution of a decree against the first defendant, it appeared that the plaintiff had applied within one month from the date of his dispossession to the Court from which the process of execution had issued under Section 230 of the Code of Civil Procedure, setting up his title, and it was numbered and registered as a suit under the section. Before the claim came on for hearing the plaintiff was allowed by the Court to withdraw the proceeding, with liberty to bring a fresh suit upon the claim set up. The plaintiff subsequently brought the present suit.

Held, that the former proceeding was a suit within the meaning of Section 97 of the Code, and liberty having been given on its withdrawal before decree to bring another suit, the present suit was well brought. *Subaramien* v. *Pennusánnry Chetty*, 5 Mad. Rep., 298.

An appellant having died, and no application having been made before the lapse of two months to enter appearance on behalf of his representatives, the appeal was held to have abated. *Khetronath Dey* v. *Gossein Dass Dey*, 11 W. R., 543.

Where a suit under Act X of 1859 was decreed by the Collector on the ground of an *ex-parte* enquiry and report, the admission of which as evidence was opposed by the defendant, and the Judge in appeal reversed the decision,—*Held* that plaintiff might have withdrawn his suit with permission to sue again under Section 97, Code of Civil Procedure; but that having chosen to rely on the Collector's opinion he had no right, after the Judge had decided against him, to supplement his case by other evidence. *Woomanauth Roy* v. *Sreenauth Singh*, 15 S. W. R., C. R., 260.

(c) *Postponement, Adjournment, and Compromise of Suits.*

The plaintiff's attorney being under the misapprehension that one of the plaintiffs, who was a material witness, was in Bombay, when in fact he was in England, and an application to consent to a commission have been made to the defendant's attorney, and refused on the eve of the hearing, an application was made to the Judge in Chambers on the morning of the day fixed for the hearing, and supported by an affidavit for the issuing of a commission and for an adjournment of the suit; and the Judge declining to make an order in Chambers, the application was renewed in Court, when the Judge refused to take notice of what occurred before

himself in Chambers, and made note that the application for a commission was made upon no affidavit; and as the affidavit (presented in Chambers) having been sent to the office of the plaintiff's attorneys for a copy to be made and served upon the defendant, was not then in Court, the application for a commission and to adjourn the hearing was refused, and plaintiff's counsel not being instructed to proceed with the hearing, and leave to withdraw the suit having been also refused, the suit was dismissed.

Held that the Judge was wrong in refusing to postpone the case for the production of the affidavit in Court, and that there was no legal ground whatever for the refusal to withdraw the suit, which was accordingly restored to its place in the list, and remanded in order to be tried. *Dadábhai Naoroji and Co.* v. *Sorabji Cowasji*, 3 Bom. Rep., O. C. J., 55.

Although a case may have been set down for final disposal, if it be a case in which further evidence is required, the Judge is bound, under Section 145, Act VIII of 1859, to adjourn the case, unless he is satisfied that the plaintiff has, without sufficient cause, failed to produce his evidence. *Moonshee Syud Ameer Ali* v. *Baboo Ram Bahadoor Singh and others*, 7 W. R., 84.

A suit was postponed on the application of the defendant's pleader; but on his applying for further adjournment at the time fixed for hearing, the application was refused; the Court tried the case, the defendant not appearing and not being represented, and gave a decree for the plaintiff. An appeal was allowed, and the case was sent back for re-trial. *Amritnath Jha* v. *Baboo Roy Dhunput Singh Bahadur*, 8 B. L. R., 44, and 15 S. W. R., C. R., 503.

The adjournment of a trial by public proclamation is irregular and objectionable. 6 Mad. Rep., Rul. XXIX.

Where an appellant is refused postponement and his appeal is dismissed in his absence, the case is one of default. *Buldeo Misser* v. *Syud Ahmed Hossein*, 15 S. W. R., C. R., 143.

An agreement to take an oath by the parties to a suit filed in Court is not an adjustment by mutual agreement of compromise within the meaning of Section 98 of the Civil Procedure Code.

The defendants agreed that a decree should be passed against them if they failed to perform an agreement by which they bound themselves to take an oath, the terms of which were set forth in the agreement, and one of them failed to take the oath. The lower Court thereupon passed a decree for the plaintiff.

Held by the High Court that the procedure of the lower Court was not sanctioned by law. *Konnapalen Uthat Chaduyan Huge* v. *Perotta Meloden Ramen Namtiar*, 4 Mad. Rep., 422.

Civil Courts have no power to sanction the bringing of a fresh suit, except under Section 97, Act VIII of 1859. *Argoon Singh* v. *Huru Hur Singh*, 14 S. W. R., C. R., 472.

Where a compromise of a suit is made it ought to be carried out by proper deeds and filed in Court, particularly where infants are concerned, so as to have the assent of the Court at the time, instead of its being totally concealed from them. *Moulvie Abdool Ali* v. *Moguffur Hossein Chowdhry*, 16 S. W. R., P. C., 22.

Held, in accordance with a ruling of the Calcutta High Court, and in contravention of a ruling of the late Sudder Court in 1850, that, when a compromise has been effected, and a party allowed to withdraw his suit under the provision of Section 98, Act VIII of 1859, if the compromise has not been acted upon, the plaintiff is restored to his original right of action. On the contrary, if acted on, either in whole or in part, the plaintiff cannot be restored to his original right of action, but may bring a suit for the performance of the condition uncomplied with.

Held also, where a compromise is filed in Court, and a decree passed in accordance therewith, such decree must be first set aside before a second suit can be brought on the original cause of action. *Ameer Begum* v. *Noor Begum*, 1 Agra Rep., F.B., 2.

(*d*) *Practice in Ex-parte Cases.*

Where, in the absence of a plaintiff's pleader, the case was decided *ex-parte*, his proper course was held to be an application for review, not a special appeal. *Beejoy Gobind Sicar* v. *Radha Benode Misser and others*, 10 W. R., 348.

Where defendants against whom an *ex-parte* decree has been passed by a Collector apply to his successor, under Section 58, Act X of 1859, for a revival of the suit, showing good and sufficient cause for their non-appearance, and that there has been a failure of justice, the successor is competent to alter or rescind his predecessor's decree according to the justice of the case. *Kashee Nath Roy Chowdhry and others* v. *Shabritree Soonderee Dossee and others*, 10 W. R., 156.

No legal decree can be passed *ex-parte* without a Court being satisfied of the due service of the summons. *Ram Lochun Soor* v. *Nittya Kallee Dabia*, 12 S. W. R., 210.

N. sued his gomastah (M.) and M.'s surety (C.) under Section 24, Act X of 1859, and got a decree *ex-parte* as against the surety. Upon N.'s proceeding to execute the decree, C. applied for a revival of the suit, which was granted, and a rehearing was appointed for the 4th May 1869, but subsequently postponed to the 8th, on which date the case was struck off by the Deputy Collector, under the provisions of Section 54. Subsequently N. applied for a fresh execution of his original decree to the Collector, who sent the record to the Deputy Collector, with instructions to carry out the execution. Thereupon C. obtained a rule from the High Court calling on N. to show cause why the Collector's order should not be set aside. *Held* that the Deputy Collector's order striking the case off the file annulled the decree so far as C. was concerned, and that the Collector's order directing execution was without jurisdiction. *Guddadhur Chatterjee* v. *Nundolall Mookerjee*, 12 W. R., 406.

The fact of a decree in a rent suit having been given *ex-parte* does not detract from its value as evidence of the relationship of landlord and tenant between plaintiff and defendant, provided due notice has been served on the latter; and such a decree may be filed as evidence without the judgment on which it was founded. *Toomij* v. *Durrup Singh*, 12 W. R., 473.

Held that that the hearing of a suit in which a pleader was duly appointed on behalf of the defendant, but not instructed to answer, or instructed not

to answer at all, was an "*ex-parte* hearing," and that no appeal lay from a judgment passed in such suit. *Bhimacharja bin Vyanukatacharja* v. *Fakirappa bin Aanandappa*, 4 Bom. Rep., A. C., 206.

W. obtained a decree against D. and others, founded upon a Solehnamah said to have been put in by them. Certain property belonging to D. was attached in execution, and a notice of sale proclaimed. Thereupon D. came into Court alleging that she had never had notice of the original suit, and that the Solehnamah put in, as far as she was concerned, was a cheat and a forgery, and asked for an enquiry, and to be relieved from the execution.

Held that the decree was not an *ex-parte* decree, and could not therefore be disturbed by a resort to the provisions of Section 119, Act VIII of 1859. *Hannoo Magee Dugee* v. *Watson and Co.*, 14 S. W. R., C. R., 299.

A Moonsiff entertained a petition by a defendant under Section 119 of the Civil Procedure Code, and set aside his former judgment given *ex-parte* in favour of the plaintiff, and dismissed the plaintiff's suit. The plaintiff, on appeal before the Judge, did not raise the objection that the Moonsiff ought not to have entertained the petition of the defendant, as it had not been presented in due time. It was held to be too late to raise the objection on special appeal. *Boro Khasia* v. *Jata Sirdar*, 8 B. L. R., 78.

An application was made, on the 14th March, 1870, to the District Moonsiff to set aside a decree passed *ex-parte* against the defendant under Section 119 of the Code of Civil Procedure.

The Court declined, on appeal from an order rejecting an application under Section 119, Act VIII of 1859, to set aside an *ex-parte* decree, to receive an affidavit which had not been previously tendered, and held that Section 355 was not meant to have application to such a case as this, but to empower the Court of Appeal, at its discretion, to receive evidence upon issues of facts which had been tried in the Court of first instance. *S. J. Leslie* v. *W. O. Allender*, 17 S. W. R., C. R., 390.

The judgment debtors having appeared and raised objections to the execution of a decree, the Court after investigation proceeded to pass judgment in the absence of the decree-holder. *Held* that the action of the Court was taken under Section 114, Code of Civil Procedure, and that the decree-holder had no right of appeal, but if aggrieved might apply for a re-hearing. *Kalee Kristo Thakôor* v. *Mohamed Kadar*, 12 W. R., 428.

Where a commission is issued for a local investigation under Section 180 of Act VIII of 1859, and the Commissioner requires the attendance of the parties, should the defendant appear before the Commissioner, and the plaintiff make default in appearing on the day appointed, the proper course is for the Commissioner to dismiss the suit with costs under Section 114.

An appeal does not lie from a judgment by default for non-appearance before a Commissioner. The proper course for a party dissatisfied is to apply for an order to set aside the judgment under Section 119 of Act VIII of 1859; and if that application be refused by the Judge, to appeal against the order of refusal. *Essen Chunder Chuckerbutty and another* v. *Soorjo Lall Gossain*, Marsh., 139.

In a case in which one of many defendants, who was made a party to the suit, did not appear, and a decree for possession was passed without any such special orders regarding that defendant as might have been passed under Section 116, Act VIII of 1859,—*Held*, that no *ex-parte* judgment was passed against her, and she could not re-open the suit under Section 119, Code of Civil Procedure. *Sheelabutty Debia* v. *Tarinee Churn Chuckerbutty*, 9 W. R., 597.

Where parties who have been made co-defendants do not appear, and the Court deals with the case under Section 116, Civil Procedure Code, the decree given is not in the nature of an *ex-parte* decree even as against the absent defendants; and proceeding as it does on a ground common to all the defendants, the decision may, under Section 337, be modified in appeal even in favour of defendants not before the Appellate Court. *Doorga Churn Sett* v. *Shamanund Gossain*, 12 W. R., 376.

An appeal from the rejection of an application made, under Section 119 of Act VIII of 1859, to set aside a judgment by default. *Held*, that in order to satisfy the Court, "that the plaintiff was prevented by any sufficient cause from appearing," it was enough to show that there had been a *bonâ-fide* mistake, which was not unreasonable. *Hardatrai Shrikisandas* v. *Victoria France and Bullion Association*, 3 Bom. Rep., O. C. J., 60.

On an application made, under Section 119 of Act VIII of 1859, to set aside a judgment by default,—*Held*, that the words "prevented by any sufficient cause from appearing," should be read so as to include the case of the absence of the plaintiff's counsel or attorney, when such absence has been caused by a *bonâ-fide* mistake.

Under such circumstances a judgment by default under Section 114 was set aside, upon payment by the attorney of the plaintiff of the costs of the hearing. *Oriental Finance Corporation Limited* v. *Mercantile Credit and Finance Corporation Limited*, 2 Bom. Rep., 282.

A suit having been decreed *ex-parte*, defendant applied for a revival thereof, under Section 119, Code of Civil Procedure. The application having been rejected, defendant appealed, and the first Court was directed to enquire whether there was sufficient cause for the non-appearance of the defendant. This was done, and the defendant was allowed to defend the suit. The plaintiff then appealed to the Judge, who reversed the last order. Both parties then went back to the Moonsiff, who, on 26th April, 1867, recorded a proceeding that the original *ex-parte* order was to stand. In the meantime the defendant appealed to the High Court, which reversed the Judge's order.

Held, that the effect of the High Court's order was to render valid the Moonsiff's order admitting the defendant to defend the suit, and that no application for review was necessary on the part of the defendant.

Held, that the High Court's order being a final decision by way of appeal on a question which arose in the suit, could not be interfered with, except by the Privy Council. *Nubo Kristo Mookerjee* v. *Nuduir Chund Hattee*, 12 W. R., 374.

Process of execution is executed within the meaning of Section 119, Act VIII of 1859, when an attachment of the property takes place; and if a

party means to contest the validity of the decree, on the ground that he had no notice of the summons, he must come in within 30 days from that time, and not from the time that the property is actually sold in cases under Act VIII of 1859, and within 15 days in cases tried under Section 58, Act X of 1859. *Nund Kishore Doss Mohunt* v. *The Maharajah of Burdwan*, 9 W. R., 236.

A party to a suit against whom a judgment *ex-parte* has been passed, cannot prefer a special appeal from that judgment. He must proceed, under Section 119 of the Civil Procedure Code, to get rid of the *ex-parte* judgment against him. *Devappa Setti* v. *Ramanadtha Bhatt*, 3 Mad. Rep., A. C., 109.

Section 119, Act VIII of 1859, does not apply to cases in appeal. *Anonymous Case*, 1 Ind. Jur., O. S., 68.

Section 119, Act VIII of 1859, does not apply to a defendant who is only absent on an adjourned hearing. It relates only to one who has never appeared. *Gorachand Goswami* v. *Raghu Mandal*, 3 B. L. R., Ap., 121; S. C., 12 W. R., 169.

The effect of granting an application under Section 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid.

A. obtained a decree *ex-parte* against B. Property belonging to B. was attached in execution. While under attachment, B. sold the property to C. Afterwards B. applied for and obtained an order, under Section 119 of Act VIII of 1859, to set aside A.'s decree and for a new trial.

Held, that C.'s purchase was not null and void, under Section 240 of Act VIII of 1859. *Lala Jagut Narayan* v. *Tulsiram*, 1 B. L. R., A. C., 71.

The object of Section 119, Act VIII of 1859, is to make it imperative on a defendant against whom an *ex-parte* decree has been passed, and who desires to come in and set aside that decree, to apply to the Court as soon as possible after he has notice of the passing of the decree,—*i. e.*, within a reasonable time not exceeding 30 days from the first actual execution of process to enforce the judgment. *Shaikk Golam Ahyah* v. *Sham Soonder Koonwaree*, 7 W. R., 375.

Process of enforcing a judgment (within 30 days from which a defendant may apply to set aside an *ex-parte* decree) has not been executed within the meaning of Section 119, Act VIII of 1859, until the proceedings in execution have been brought to a termination by a sale of the property attached. *Radha Binode Chowdhry* v. *Mudhoo Soodun Sircar and others*, 7 W. R., 198.

The stamp required for a petition of appeal from an order rejecting an application to set aside an *ex-parte* decision under Section 119, Act VIII of 1859, is a Rs. 2 stamp. Such an appeal should be treated as a summary and not a regular appeal. *Parbutty* v. *Greedharee Lall*, 4 W. R., Mis., 15.

In regular suits, where a Court of first instance refuses to re-admit a suit, there is an appeal under Section 119, Act VIII of 1859; but there is no provision under Section 347 for an appeal where an Appellate Court has refused to re-admit an appeal struck off for default. *Anonymous*, 1 Ind. Jur., O. S., 49.

A suit having been decreed against a number of defendants, some of whom did not appear, one (R.) of the latter applied for a new trial under Section 119, Act VIII of 1859, and the case was remanded by the Judge to the Sudder Ameen. On the last day of the new trial, another (K.) of the defendants against whom judgment had been given *ex-parte*, tendered a written statement in which it was alleged that summons had not been duly served upon her. The statement was received, and the suit was dismissed *in toto*. In appeal, the Principal Sudder Ameen reversed that part of the decree which related to K., on the ground that she had presented no petition in conformity with Section 119 of the Code.

Held that K. was properly before the Sudder Ameen's Court, and was entitled to the benefit of the order of dismissal, and that the Principal Sudder Ameen went on too narrow a ground, and should have tried the case on its merits. *Kooroonamoye Dabee* v. *Nobokissen Mookerjee*, 11 W. R., 18.

The thirty days "after any process for enforcing the judgment has been executed," within which a defendant may apply under Section 119, Code of Civil Procedure, for an order to set aside an *ex-parte* decree, mean thirty days after the execution of any process against the person or property of the defendant. *Shib Chunder Bhadooree and others* v. *Luckhee Debia*, 6 W. R., Mis., 51.

When a suit has been decreed against several defendants, and one of them, who was not present at the hearing, obtains a rehearing and files a written statement in which for the first time the objection is taken that the suit could not have been proceeded with, inasmuch as plaintiff had improperly joined two distinct causes of action against two different individuals, the Court is not justified in reopening the whole case. Section 119, Act VIII of 1859, does not contemplate the setting aside of that portion of the decree in such a case, which refers to the other defendants. Section 58, Act X of 1859, treated as an authority by analogy in such a case; and Section 119, Act VIII of 1859, interpreted. *Huro Krishno Dass* v. *Moteechand Baboo*, 1 W. R., 260.

Section 119, Act VIII of 1859, will not apply to a decision passed on appeal against a respondent. *Omda Bibee* v. *Acowri and others*, 7 W. R., 425.

A party to a suit against whom a judgment *ex-parte* has been passed in regular appeal cannot prefer a special appeal from that judgment. He must first proceed under Section 119 of the Civil Procedure Code to get rid of the *ex-parte* judgment against him. *Devappa Setti* v. *Ramanadha Bhatt*, 3 Mad. Rep., A. C., 109.

Restoration of case struck out for non-attendance, Section 119, Act VIII of 1859. *Damoo Dur Doss* v. *Choonee Bibee*, Cor. Rep., 123; 2 Hyde's Rep., 216.

Section 119, Act VIII of 1859, refers only to original suits, and is not applicable to the re-admission of an appeal struck off for default of prosecution. *Ram Lall Chowdhry* v. *Surdaree Jah*, W. R., 1864, Mis., 21.

An appeal will lie from an order of the Lower Court admitting an application made (after the time allowed by law) for an order to set aside an *ex-parte* decree under Section 119, Act VIII of

1859. *Radha Binode Chowdhry* v. *Juggut Surnokar*, 6 W. R., 300.

An application, under Section 119, Act VIII of 1859, to set aside an *ex-parte* judgment decreeing possession of a putnee, &c., if made within thirty days from the date of the process enforcing the judgment, ought to be disposed of according to that section, and not rejected on the ground that, as the ancestors of the applicants were parties to the original suit, their application could not be entertained under Section 230. *Doorgaranee Dossee* v. *Jadub Chunder Nakoor*, 5 W. R., Mis., 11.

An appearance in person, or by pleader, without putting in any answer or written statement, is an appearance within the meaning of Section 119 of Act VIII of 1859, and the judgment pronounced thereafter is not an *ex-parte* judgment, and therefore an appeal will lie. *Galluckbur* v. *Bishonath Geeree*, Marsh., 32.

Where defendants summoned under Section 41, Act VIII of 1859, did not appear on the day fixed for them to appear and answer, and their reasons for non-attendance not having been considered sufficient, they were not allowed to appear in the case,—

Held that the Court of first instance was justified in disposing of the case in their absence, and that Section 125, Act VIII of 1859, contemplates a case in which a party appears by pleader who has appeared at the proper time. *Joy Prokash Singh* v. *Meghraj Singh*, 12 W. R., 207.

A defendant filed a written statement in a suit, and when the case was called on for final disposal an application was made by counsel on his behalf for an adjournment, but the application was refused, and, no one appearing for him, the case was proceeded with, and a judgment was obtained by the plaintiff. The defendant afterwards applied for an order setting aside the judgment, on the ground that he was prevented from appearing when the suit was called on. *Held*, that the application was within Section 119 of Act VIII of 1859, and the Court had no power in granting the order to impose terms as under Section 111. *Administrator-General of Bengal* v. *Lalu Dyaram Doss*, 6 B. L. R., 688.

Section 119 of the Civil Procedure Code (Act VIII of 1859) is made applicable to rent suits under Act VIII of 1869 (B.C.) by the provisions of Section 34 of the latter Act.

Section 103 of Act VIII of 1869 (B.C.) does not apply to applications for a re-hearing after an *ex-parte* decree on the ground of ignorance of the suit. *Musst Drabumayi Guptia* v. *Tarachurun Sein*, 7 B. L. R., 207, and 16 S. W. R., C. R., 17.

If a Judge makes an *ex-parte* order, unless in cases in which he is expressly empowered to make such an order, the party who has not been heard has a right to apply to the Judge to set it aside, and if the Judge finds that such order was wrong he is at liberty, on hearing both parties, to recall it. *Sheo Prossunno Sing* v. *Buldharee Lall*, 13 S. W. R., C. R., 232.

No appeal lies from an *ex-parte* judgment where the reasons assigned for the absence of the defendant are wholly unsatisfactory. *Nuscele Singh* v. *Ranee Sooneet Kooer*, 14 S. W. R., C. R., 349.

Where after an *ex-parte* decree defendant appeared earlier than fifteen days after service of process, and swore that no summons had been served on him in the case which led to the *ex-parte* decree, and that the contract under which the case had been decreed against him had been broken by the plaintiff himself, it was held that good and sufficient cause was shown for defendant's previous non-appearance, and a *primâ-facie* case had been made out to lead to the conclusion that there had been failure of justice. *Aunund Moyee Dassee* v. *Aunund Soondur Messourdu*, 13 S. W. R., C. R., 237.

It is not necessary that the judgment debtor should have special notice of any process for enforcing an *ex-parte* decree; he is bound to seek the remedy provided by Section 119, Act VIII of 1859, within 30 days after execution of any process to enforce the judgment. *Shumboo Chunder Holdar* v. *Ram Lall Ghose*, 13 S. W. R., C. R., 436.

Where the Lower Appellate Court admitted an application under Section 119, for re-trial of a case which had been decided *ex-parte* by the Moonsiff, it was held to have done right in sending for the record, in order that the case as a suit should be heard and tried by the Appellate Court; the object of the law being that a suit should assume a complete form and go to a full trial, and not be divided between different Courts. *Khoole Lall Sahoo* v. *Shaikh Kudir Buksh*, 15 S. W. R., C. R., 431.

A plaintiff having taken out execution of an *ex-parte* decree, the defendant applied under Section 119, Act VIII of 1859, to have it set aside, and eventually succeeded. After this the case came on for hearing, and the suit was dismissed both by the Court of first instance and the Appellate Court. The plaintiff then came up in special appeal, contending that sufficient enquiry had not been made before the application for re-hearing was admitted.

Held (by Jackson, J., whose opinion prevailed), that it would not be doing justice, which the Court is bound to do in administering the law, to restore an *ex-parte* decree which the two Courts had, on subsequent trial on the merits, found should not be renewed; and that the Moonsiff's order admitting the case to a re-hearing was not open to appeal. *Boro Khosiah* v. *Jata Sirdar*, 15 S. W. R., C. R., 315.

In an application for a re-hearing under Section 119, Act VIII of 1859, made after the time allowed by that Section, where applicant alleged that the property which had been attached in execution was not her property, and that she had no notice of either suit or decree,—*Held* that she was entitled to an enquiry into the truth of the allegation as to attachment, and that if her whole plea were made out she would be entitled to a re-hearing of the case. *Sookh Magee Dossee* v. *Nurmoodu Dossee*, 15 S. W. R., C. R., 210.

An order setting aside an *ex-parte* judgment is final where the defendant proves that he was prevented from appearing by sufficient cause, and applies within 30 days after attempt to execute process. But an appeal will lie if the order has been made without jurisdiction, or if the application was admitted after the prescribed time. *Toolsee Dossee* v. *Doorga Churn Paul*, 15 S. W. R., C. R., 175.

The parties to a suit appeared on the day fixed for the first hearing. On the application of the defendants' vakeel the hearing was adjourned in order to enable them to obtain certain documents from the Collector's office, and afterwards put in written

statements. This they failed to do on the day to which the hearing was adjourned, and when the suit came on for final hearing they were still in default, and also failed to appear in person or by vakeel. A decree was given for the plaintiff.

Held, that the decree of the original Court was not an *ex-parte* decree under Section 147 of the Code of Civil Procedure for non-appearance, but a decree under Section 148, and was therefore appealable. *Rangavanny Mudelliar* v. *Sirangan; Kandriaya Gounden* v. *Sithuiyan*, 4 Mad. Rep., 254.

The first hearing of a suit took place on the 16th November, when issues were settled, and the final hearing of the suit was fixed for the 22nd January following. On the 22nd of January the plaintiff changed her vakeel, and applied by the new vakeel for a summons for a witness, and on the 23rd, the new vakeel stating that owing to the absence of his witnesses he was not prepared to go on with the case, the Judge dismissed the suit.

Held, that under Section 148 of the Civil Procedure Code the Judge was justified in dismissing the suit.

Section 119 of Act VIII of 1859 does not empower a Judge to set aside a decree passed under Section 148 of the same Act.

Semble,—Section 114, as well as Sections 110 and 111 of the Code, have reference only to the first hearing of the suit, which may be either on the day named in the summons or on a subsequent day to which such hearing may have been adjourned. *Comalammal* v. *Rungaswamy Iyengar*, 4 Mad. Rep., 56.

(*e*) *Right to Begin.*

There being no distinction made under the Procedure of Act VIII of 1859 between suits in the nature of common law actions and those in the nature of equity suits, and the common law practice in respect of the right to begin having been hitherto followed by this Court, the common law practice is to prevail. *S. M. Rungunmoney Dossee* v. *Brojo Lall Day*, Cor. Rep., 25.

Where a claim was made under Section 246 of Act VIII of 1859, by a third party, to some timber which had been attached by a prohibitory order under Section 234,—*Held* per Peacock, C. J., L. S. Jackson, Phear, and Macpherson, JJ. (Mitter, J., dissenting), the claimant must begin. The *onus* is on him to prove that the goods attached were his property, and therefore not in the possession of the judgment debtor. His evidence must be confined to proving his own claim, and he cannot be allowed to show a title in a third person with whom he has no connection.

Held (per Mitter, J.) that on the proper construction of the words, "proceed to investigate the same with like powers as if the claimant had been originally made a defendant," the *onus* of proof as against the claimant is on the decree-holder. *Nga Jha Yah* v. *F. N. Burn*, 2 B. L. R., F. B., 91; S. C., 11 W. R., F. B., 8.

(*f*) *Production and Inspection of Documents.*

S. K. D. sued to recover certain jewels, and one of her witnesses being examined by her counsel, with reference to a list of the jewels which was in his possession, the defendant's counsel objected to the document being referred to at all, as it had not been filed with plaint in compliance with Section 39 of Act VIII of 1859; and also that the document could not be used as evidence, because it had not been translated. Both objections were overruled.

Held that Section 39 of Act VIII of 1859 refers only to promissory notes, bills of exchange, and such documents as are in their nature the very essence of the case. That, by Section 128 of Act VIII of 1859, it is not necessary to file with the plaint all the documents that the plaintiff intends to give in evidence. That a document which is to be given in evidence need not be translated previous to the hearing of the case. *Sreemutty Kameenee Dossee* v. *Sreemutty Hurromoney Dossee*, Bourke's Rep., O. C., 91; 1 Cor. Rep., 151.

The terms of Section 39, Act VIII of 1859, that, on the plaint being presented, any written document relied on by the plaintiff as evidence of his claim must be produced, are imperative, and not permissive. Where, however, a plaintiff can satisfactorily show at the hearing that a document on which he desires to rely was not presented with the plaint, because he was ignorant of its existence at that time, it is discretional with the Court to admit it or not. *Ritchie, Stuart, and Co.*, v. *Gladstone, Wyllie, and Co.*, 1 Ind. Jur., O. S., 125.

According to Section 39, Act VIII of 1859, a lower Court may receive, in evidence from the plaintiff, a document (*e. g.*, a pottah on which he relies) not filed with the plaint on being satisfied of its *bona-fides* and reliableness. The pottah being on plain paper does not render it invalid. *Atta Oollah Mundle* v. *Sakeeooddeen Tarupdar*, W. R., 1864, 271.

Act VIII of 1859 gives a discretionary power to receive documents after the filing of the plaint. *F. A. Lopez* v. *J. H. Driberg*, W. R., 1864, Act X R., 67.

A document given to a witness as a script to refresh his memory is not "received in evidence" within the meaning of Section 39 of Act VIII of 1859, and need not therefore have been produced when the plaint was filed. *Ramji Mudali* v. *Rangoppa Chetti*, 1 Mad. Rep., A. C., 168.

The Lords of the Privy Council do not, as a rule, disturb the concurrent decision of both the Courts below upon a question of facts, unless it very clearly appears there has been some miscarriage of justice, some mis-trial, or that the conclusion is very plainly erroneous.

Reception of documents under Section 39, Act VIII of 1859, by the Court of first instance cannot be a ground of appeal. The sanction of the Court receiving the documents clears the defect of their not having been tendered with the plaint. *Gosain Tota Ram* v. *Raja Rukiniballab*, 3 B. L. R., P. C., 34; S. C., 12 W. R., P. C., 32.

In a suit for wrongful dismissal of a servant of a gas company, in which the plaintiff alleged that the motive for dismissing him was his discovery of certain irregularities of the manager with regard to money matters,—*Held* that he was entitled to inspect the accounts which had been checked by himself while in the company's service, the press copy letter-book containing copies of correspondence regarding his own conduct while in the company's service, and the account of a particular item in respect of which he alleged he had made discoveries

that he imputed to the manager as the cause of his dismissal. *Mitchell* v. *The Oriental Gas Company*, 1 Ind. Jur., N. S., 323.

Under Section 128, Act VIII of 1859, the parties, though not entitled as of right to adduce fresh documentary evidence after the issues in the case are settled, may yet tender such evidence, stating the grounds upon which it was not tendered at an earlier stage; and the Judge may receive or reject such evidence, but the grounds on which he acts should be stated on the record. *R. Watson and Co.* v. *Kunhye Bahadoor and others*, 9 W. R., 294.

Assuming that Section 128, Act VIII of 1859, is applicable to cases under Act X of 1859, it was held in special appeal that there appeared no reason why the lower Appellate Court should have thrown out, as evidence, a kubuleut admitted after the first hearing and considered by the first Court. *Bhoom Narain Singh* v. *Kurmoon Ali*, 1 W. R., 198.

A Court cannot be said to have received documents as admissible in evidence when, for want of time to inspect and consider them, it orders them to be filed; nor would it be wrong in law in rejecting or returning them after proper inspection; the object of Section 129, Act VIII of 1859, being that papers should be produced in a regular manner, and inspected by a Court at its convenience. *Soodukhina Chowdhry* v. *Raj Mohun Bose and another*, 11 W. R., 350.

The mooktearnamah upon the authority of which this suit was brought being impugned by the defendant as a forgery, and as not executed by the party alleged to have granted it, the Court held that, notwithstanding its attestation in due form by the Moonsiff of Muttra, the parties charged were bound to prove its genuineness; and as they failed to do so the suit was dismissed, and the parties in whose favour it was drawn, and who declined to appear in Court to prove it, were directed to be sent to the Magistrate to be placed on their trial for forgery. Exhibits produced in Court ought to be endorsed with the name of the person who produced them, as required by Section 132, Act VIII of 1859.

During the existence of a near heir, a more distant heir cannot sue. *Baboo Bisram Singh*, alias *Bishen Singh and others*, v. *Maharanee Inderjeet Coonwar and others*, 6 W. R., 2.

The special appellant (plaintiff) applied to add two grounds to his petition of special appeal: 1st, that material witnesses had not been examined; and, 2nd, that certain documents filed in another pending case had not been sent for and inspected by the Appellate Court.

Kemp, J., thought that the permission should be refused, because the plaintiff had nowhere stated to the lower Court that the witnesses in question were material witnesses, or insisted on their being examined; and that he had never applied to the Court for the production of the documents, and that, even if he had, it was in the discretion of the Court to send for the documents or not.

Steer, J., thought that the Court had acted improperly in discharging the witnesses till they had been examined by the plaintiff; and that though the Court was not bound to send for the documents, it was unfair not to do so.

Norman, C. J., held that the lower Court was justified in discharging the witnesses. As to the documents, he held that when a proper application was made to a Judge under Section 138, Act VIII of 1859, to send for, from the records of his own Court, papers which would be evidence in the case before the Court, the Judge had no discretion in the matter, but that the section must be treated as giving a power which the Judge was bound to exercise,—the principle being that where a Statute confers an authority to do a judicial act in a certain case it was imperative on those authorized to exercise the authority when the case arose. *Rughoonath Bose* v. *Oomed Ali*, W. R., F. B., 177.

Held that declarations made in pleading, in suits instituted before the Code of Civil Procedure came into operation, are inadmissible as evidence of the facts stated therein.

Held also that a Civil Court which inspects the records of another case under Section 138 of Act VIII of 1859, can only use as evidence such documents as are otherwise unobjectionable and admissible for or against either of the parties to the suit. *Narappa Hegdi* v. *Gapayabin Kapaya*, 2 Bom. Rep., 361.

A Judge is not bound under Section 138, Act VIII of 1859, upon the application of any of the parties to a suit to send for the record of any other suit. *Heeramun Roy and others* v. *Kasee Tabour Enam and others*, 7 W. R., 109.

Under Section 138 a Court is not bound to send for the whole record, but only for such papers as may be specially mentioned in the application. *Mussamut Janokee Beebee* v. *Shah Habeebul Hossein*, W. R., 1864, 272.

A Court ought to send for papers filed in another Court under Section 138, Code of Civil Procedure, instead of recording the objectionable and meaningless order, "Nutti shamil pesh." *Romunkissen Dey* v. *Shaikh Kadir Buksh*, 6 W. R., 79.

Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons. *Anonymous*, 15 S. W. R., C. R., 237.

A cazee's book is not strictly an official record within the meaning of Section 355 of the Code of Civil Procedure. Before a document can be inspected under the provisions of Section 138, Code of Civil Procedure, the Court must see whether it comes under the description of a public record. *Juggernath Sahoo* v. *Syud Mahomed Hossein*, 15 S. W. R., C. R., 173.

The great object of the Procedure Code in requiring a day to be fixed for the hearing of a case and all the evidence to be adduced on that day, is that parties may thus be confronted with each other, and the whole evidence on either side be at one and the same time before the Court. Where a party fails to produce his documents at the proper time, a Court commits no error in law in refusing to send for them subsequently, if not satisfied that they are necessary for the ends of justice. *Sobber Jhu* v. *Soshunath Jhu*, 15 S. W. R., 150.

In a suit to recover the balance alleged to be due on a partnership transaction, the first defendant who was examined as a witness for the plaintiff refused to produce certain accounts relating to the partnership which he was directed to produce by the civil Judge. Thereupon judgment was given against the first defendant under Section 170 of the Civil Procedure Code.

On appeal, the High Court, holding that the accounts were relevant and material evidence in the suit, and that the civil Judge was justified in requiring the first defendant to produce them, and being satisfied that the accounts were in possession or control of the first defendant, affirmed the judgment of the civil Judge. *Kutakum Ven Kaiyu* v. *Bhupaleem Pedda Mullasappah*, 4 Mad. Rep., 142.

Held that the subordinate Judge was quite justified in citing a decree between other parties to explain an apparent inconsistency between certain statements in the plaint and in the evidence of the plaintiff's witnesses, on the ground of which inconsistency the Moonsiff had rejected that evidence; and that the non-filing of this decree in the first Court was a matter entirely within the discretion of the Judge, and ought not to be made a ground for reversing a judgment. *Radhananth Dass* v. *Khellut Chunder Ghose*, 17 S. W. R., C. R., 558.

The Court will not order a defendant to furnish the plaintiff with a list of documents till after the plaintiff shall have filed his written statement. *John Ogle* v. *Kunas*, 2 Hyde's Rep., 279.

(g) *Local Investigation.*

A judgment debtor who fails to appear before an Ameen deputed to make a local enquiry as to the mesne profits, is not precluded from objecting to the Ameen's report, on the ground that the investigation was erroneous. *Karoo Lall Thakoor* v. *A. G. Forbes*, 7 W. R., 140.

Where a local enquiry is necessary, a Collector should cause such enquiry to be made by a properly constituted officer, according to Section 73, Act X of 1859. *Shaik Bahadoor Ally and another* v. *Domun Singh and others*, 7 W. R., 27.

It is within the discretion of a Judge to order or refuse a local enquiry. When in the exercise of a reasonable discretion he refuses such enquiry, his order should not be interfered with, unless very strong grounds are shown for the necessity of the enquiry. *Rash Behary Singh* v. *Saheb Roy*, 12 W. R., 76.

In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local enquiry, merely because he incidentally states such an enquiry to be the best source from which to obtain reliable evidence upon the point of rates. Nor will a special appeal lie on the subject of the Judge exercising a discretion as to ordering or not ordering such an enquiry. *Heralall Seal* v. *Gungadhur Sunnaputty*, W. R., F. B., 19.

A taid-nuvees, or apprentice, who does occasional work as a copyist, is not an officer of Government who should be entrusted with the making of a local enquiry, and report under Section 73, Act X of 1859. *Doorga Doss Chatterjee* v. *Gooroo Churn Mistree and others*, 6 W. R., Act X R., 81.

It was not the intention of the Legislature to allow witnesses to be examined out of Court by Ameens, except with reference to points for the determination of which local inspection is required. *Shadhoo Singh* v. *Ramanoograha Lall*, 9 W. R., 83.

In a former suit the ryot failed to set aside a notice of enhancement, it being held that the productive power of the land had increased; but it was left to a future suit to decide what those rates should be. This suit having been brought for that purpose, the plaintiff declined to adduce any further evidence than the judgment in the former suit, which being no evidence at all, both the lower Courts dismissed the suit. *Held* that the lower Courts were not bound of their own motion to order a local investigation. *C. McDonald* v. *Munar Roy*, 3 W. R., Act X R., 153.

Under Section 73, Act X of 1859, a Collector may, at any stage of the case, depute an Ameen to make a local investigation. *Roghoonath Panjah and others* v. *Sreejeeb Ghosal and others*, 6 W. R., Act X R., 11.

The Judge reversed the decision of the Principal Sudder Ameen, and ordered a remand and a fresh local investigation by the Moonsiff. The Moonsiff, being unable to go himself, was subsequently authorized by the Judge to appoint a suitable officer, and he accordingly appointed his Sheristadar to conduct the investigation. The Principal Sudder Ameen acted upon the report of the Sheristadar; and on appeal to the Judge the plaintiff objected to the report on the ground of partiality. *Held* that he could not now object to the report, on the ground that the Judge had no authority to remand the case, or that the Moonsiff had no authority to substitute the Sheristadar for himself, or that the report of the Sheristadar was invalid and illegal. *Mahomed Aujob* v. *Goaree Pershad Shah*, 6 W. R., 62.

A party who refuses to appear before an Ameen at the time he holds his local investigation, is not at liberty afterwards to take any objection to the Ameen's report. *Rumon Doss* v. *Brojo Kishore Mitter Mojoomdar and others*, 6 W. R., 130.

The ordering of a local investigation is purely a matter of judicial discretion. The refusal to order a local investigation is not a defect in law. *Raj Kishen Mookerjee* v. *Huro Mohun Mookerjee*, 5 W. R., 248.

It is wholly in a Judge's discretion to make further local enquiry. His exercise of that discretion cannot be interfered with in special appeal. *Poorna Persad Roy* v. *Chunder Nath Chatterjea*, 1 W. R., 249.

There are no limits to the powers conferred by Act VIII of 1859 on a Civil Ameen for the purpose of making an investigation. *Mohun Lall Roy* v. *Urnopoorna Dassee and others*, 9 W. R., C., 566.

Where clear instruction as to a local enquiry ordered by the Court is given to an Ameen in the presence of both parties, and no objection is made to it by either party then and there, they have no ground of complaint, after the Ameen has carried out his instructions, if the Court acts upon his report. *Bissessur Roy and others* v. *Kanchun Roy and others*, 11 W. R., 155.

The report of an Ameen as to a local enquiry upon a matter which no personal inspection on his part could decide, and in regard to which the depositions of parties acquainted with the place could afford proper information, was held to be in no way irregular, simply by reason of his having examined witnesses on the spot. *Sheo Naran Bhuggut* v. *Boodh Singh and others*, 11 W. R., 423.

Charges against a Civil Court Ameen (such as can be readily enquired into, and their truth either disproved or proved) ought to be fully enquired

into. *Abdool Kureem Biswas and others* v. *J. D. Campbell*, 8 W. R., 173.

It is not necessary that oral testimony should be taken in order to effect a measurement, or that an Ameen's report must have depositions attached to it to make it legal evidence. *Chunder Mony Dassee* v. *Ambur Mustofee*, 7 W. R., 44.

The report of an Ameen may be partially adopted. *Peres Nath Mookerjee* v. *C. Martin*, 1 W. R., 93.

A Civil Ameen's report, and the depositions of the parties and witnesses examined by him, must be considered, even though the Court exercised its discretion unwisely and wrongly in giving him too extensive powers. *Umbica Churn Dey and others* v. *Goluck Chunder Chuckerbutty*, 9 W. R., C., 596.

The proceeding of a Court Ameen in a subdivision where he has no jurisdiction cannot be a legal proceeding or legal evidence. *Nidhoo Sircar and another* v. *Clement John Phillippe*, 19 W. R., 153.

Where parties have, before the Deputy Collector, withdrawn their objections to an Ameen's report, the Lower Appellate Court should not allow the same objections to be revived before it. *Bhugabutty Burmonee* v. *Gour Chunder Mundul*, 9 W. R., C., 267.

Where local enquiry is ordered by a lower Court, and evidence is taken by an Ameen and a report made, the return made by the Ameen becomes legal evidence under Section 180, Act VIII of 1859, which the Appellate Court is not justified in refusing to consider. *Rajnath Pandah and others* v. *Doorga Lall*, 12 W. R., 136.

Section 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local enquiry; but non-compliance with this requirement of law is not *per se* a ground of special appeal. *Ramdoss Koondoo* v. *Nilkanto Dhur and others*, S. W. R., 6.

Though there is no express direction to that effect in Section 180, Act VIII of 1859, yet it is necessary to give notice to parties of the time when a local investigation ordered by the Court is to be held. *Kistomonee Debia* v. *H. Eglinton*, 12 W. R., 139.

Witnesses are to be weighed, not numbered. The report of a Civil Ameen, and the deposition taken by him, are admissible as evidence under Section 180, Act VIII of 1859. *Shah Nuthoo* v. *Ghunessam Singh and others*, 8 W. R., 267.

Where an Ameen who had been deputed to make a local enquiry took the depositions on oath of several witnesses on both sides, and afterwards for further satisfaction recorded the statements of certain persons whose religious prejudices stood in the way of their giving evidence on oath,—*Held*, that his reports and the original depositions on oath were receivable in evidence under Section 180 of the Code of Civil Procedure. *Dole Gobind Singh* v. *Chamu Singh*, 10 W. R., 312.

Section 180, Code of Civil Procedure, as applied to cases under Act X, by Section 73 of the latter law, allows the widest discretion to Courts of first instance with regard to making local investigations, and a Deputy Collector was held to have done what the law allowed him in deputing a Civil Ameen to examine witnesses in a suit for enhancement of rent. *Gour Chundra Roy* v. *Rash Behary Dutt*, 10 W. R., 43.

The Judge is bound, under Section 180 of Act VIII of 1859, to take notice of, and pronounce an opinion upon, evidence taken by an Ameen as to possession. *Jannobee Chowdhrain* v. *The Collector of Mymensing and others*, 8 W. R., 287.

When a Commissioner, appointed under Section 181 of Act VIII of 1859, to investigate the state of accounts between a debtor and a creditor, made his report, on which the judgment appealed against was founded, the High Court, on a regular appeal, refused to take a fresh account.

The Appellate Court will not enter into the details of the account of a Commissioner appointed under Section 181 of the Code of Civil Procedure.

A party cannot be heard in the Appellate Court upon items to which he took no objection in the Court below. But where there has been error in the principle upon which such account has been taken, the Appellate Court will correct such error, if excepted to in the Court below. *Chinnamallayar* v. *Venkataryam and others*, 1 Mad. Rep., A. C., 418.

An Omedwar, or candidate for office, not being an officer of the Court, cannot be deputed for a local enquiry under Section 73, Act X of 1859, nor can his report be properly received as evidence. *Teeluckdharee Roy* v. *Mooraleedhur Roy*, 13 S. W. R., C. R., 285.

Clause 3, Note (*b*), Article 11, Schedule B of Act XXVI of 1867, which authorizes a Court to direct a local or other investigation as to the market-value or annual profits of any property, does not restrict the Court to an Ameen's report in the matter, but allows the Court the benefit of an Ameen's investigation, as is provided for in other matters in the Code of Civil Procedure. *Modhoosoodun Chuckerbutty* v. *Ryemony Dassee*, 13 S. W. R., C. R., 415.

An error in the principle on which an account is taken is not the only ground on which a Court should enquire into the correctness of a report of a Commissioner appointed under Section 181 of the Code of Civil Procedure.

It is competent to an Appellate Court, under the powers conferred by Section 37 of Act XXIII of 1861, to examine the accounts, even if no exception has been taken to them in the Court appointing the Commissioner. Madras rulings dissented from. *Ahmed Valad Nathubai* v. *Khusuji Valad Kurimbhai*, 6 Bom. Rep., A. C. J., 149.

In a case in which plaintiff sued to recover some land, and in which defendant denied the power of plaintiff's vendor to sell the land claimed or a part of it, a local enquiry was ordered, to ascertain the boundaries of the land in dispute. Judgment of the High Court, upholding the decision of the lower Court, which dismissed the suit because plaintiff failed to appear or take proper steps before the Ameen at the local investigation, and because he omitted to give formal proof of his deed of purchase confirmed. *Meer Mahomed Tuque Chowdry* v. *Judenauth Jhu*, 16 S. W. R., P. C., 28.

An Ameen, when directed to make enquiry as to mesne profits, ought not, in the execution stage of a suit, to enter into enquiries as to dates of dispossession, which must be taken to have been determined by the decree. *Bijoy Gobind Naik* v. *Kulu Prossono Naik*, 16 S. W. R., C. R., 294.

In a case where the issue is whether two persons bear the relation of man and wife, a Judge is not justified in going himself to the village where the parties live, in order to make enquiries among their neighbours; much less in holding such local investigation on a Sunday, and without due notice to one of the parties. *Jubhoo Sahoo* v. *Mussamut Jussoda Kooer*, 17 S. W. R., C. R., 239.

Section 189, Act VIII of 1859, does not warrant a Civil Court in deputing its functions to an Ameen, whom it sends to make a local investigation.

Specification of the points to which the Ameen's investigation should be directed.

An Ameen's report based on a copy of a kubooleut is little or no evidence of title. *Ishur Chunder Dass* v. *Joogul Kishore Chuckerbutty*, 17 S. W. R., C. R., 473.

When an Ameen's map is received in evidence by consent, and admitted by both parties to be topographically correct, the Court is entitled to look at the Ameen's report as explanatory of the map. *Mahomed Anwar Chowdry* v. *Raj Chunder Ghose*, 17 S. W. R., C. R., 522.

An Ameen has no power to try the question of title or possession. *Shibo Soonduru Debia* v. *Ram Chunder Sircar*, 17 S. W. R., C. R., 469.

Held that the Ameen's enquiry ought not to have been ordered in this case, where the question to be decided was one of disputed boundary, which turned chiefly on possession before the date of suit, and that the subordinate Judge would have been justified in disregarding the Ameen's report, and trying the appeal on the recorded evidence.

Held also, that the subordinate Judges having weighed the evidence with some indirect reference to probabilities was not an error of law. *Kalee Dass Acharje* v. *Khettro Pal Singh Roy*, 17 S. W. R., C. R., 471.

An Ameen should be appointed to hold a local investigation only when it is necessary to inspect the land which is the subject of dispute, to take maps of localities, to obtain information with regard to the physical features of the place, to identify the land in maps with parcels which are the subject of the suit, and to identify the maps with one another with the aid of objects to be found in the land; and for these and similar purposes an Ameen may examine witnesses when the evidence which they have to give is of such a nature that it ought to be taken by him on the spot. Where, however, any fact can be proved by evidence taken otherwise than on the spot, that evidence ought to be taken by the Court itself in a regular manner, and not by an Ameen.

Quære,—Whether, where an Ameen has in fact been, though improperly, deputed, and has examined witnesses, that evidence ought to be totally rejected. *Bindabun Chunder Sircar Chowdry* v. *Nobin Chunder Biswas*, 17 S. W. R., C. R., 282.

The report of an Ameen in a proceeding to make a partition, which is a judicial proceeding under Section 180, Act VIII of 1859, must be treated in the same way as the report of an Ameen in an ordinary suit. The report and depositions are to be taken as evidence in the suit, and to form part of the record. The Court is not bound by the report, but ought to enquire further into the matter if there is any necessity for so doing, and to examine witnesses *bona-fide* tendered for execution. *Azim Sarung* v. *Alimooden*, 17 S. W. R., C. R., 270.

(*h*) *New Trials.*

A judgment-debtor in a Small Cause Court on the day (28th July) of her arrest in execution of an *ex-parte* decree deposited the amount claimed, and gave notice under Section 21, Act XI of 1865, that on the next day of the sitting of the Court she would file her grounds for a new trial. The Court next sat on the 1st August, and she filed her application on the 2nd.

Held that the Judge of the Small Cause Court was right in proceeding to hear the application, instead of going through the formality of telling her to first give notice and apply again. *Vaughan, L.*, v. *Lall Chund Ghosé*, 15 S. W. R., C. R., 281.

A party who applies for a rule for a new trial and obtains it on particular materials, ought not to be allowed to go into fresh evidence with a view to strengthen his case when the rule comes on for hearing. If on hearing both parties the Court thinks further enquiry necessary, it can of course make such enquiry in such manner as seems most fit to it.

When new trials are moved for an allegation of facts, it would be very convenient that a practice should be introduced of requiring the facts to be stated by affidavit, and in like manner the answer to be supported by affidavit. *Modhoosoodun Koondoo* v. *Madhubrum Sewlall*, 15 S. W. R., C. R., 161.

VI.—Pleadings.

(*a*) *Miscellaneous Rules.*

Under the Civil Procedure Code parties are not bound so strictly to the pleadings as in an equity suit under the old procedure, if their being so bound would work injustice. *Sreemutty Dossee* v. *Tarrachand Coondoo Chowdhry and others*, Bourke's Rep., A. O. C., 48.

The Courts in India are not governed by the technical rules of pleading which obtain in Courts administering English law. *Pitumber Pyne* v. *Toolsee Dossee*, 7 W. R., 39.

A party may have subordinate rights awarded when they arise out of the principal right which he pleads. But when a defendant pleads distinctly a jagheerdar's proprietary right against a malik's proprietary right, a Court cannot award a subordinate right of occupancy in no way arising out of a jagheerdar's proprietary right, but out of a ryotee right never pleaded by the defendant, and in fact incompatible with his case. *Pandy Bishonath Roy* v. *Bhyrub Singh*, 7 W. R., 145.

Where, from the way in which the issues were framed and the pleadings worded, it was clear that there was no contention on the part of the defendant as to whether the terms of the deed on which the suit was based had been strictly complied with or not, but the *factum* of the deed itself was only put in issue by the defendant,—*Held* that this was not a case in which the defendant was entitled to fall back upon an alternative plea and raise the question of compliance. *Shuhochuree Dossee and another* v. *Showdaminee Dossee*, 7 W. R., 306.

The mere omission of a defendant, on first starting his case, to specify the lands in dispute as an accretion, does not affect his right to them, when the fact of their being an accretion comes out in

the course of the case. *Oodo Poramanick* v. *James Simson and others*, 6 W. R., 162.

When a defendant fails to establish a bigh-bito tenure as his title to certain land, he must not be allowed to set up another title not depending on any deed, but derived from a 12 years' occupancy of the land as a ryot within the meaning of Section 6, Act X of 1859. *Maharajah Woodoy Narain* v. *Durriaho Roy*, W. R., 1864, 187.

In a suit to recover possession against an auction purchaser at a sale in execution, when the plaintiff fails to prove his special plea of a mourosee title supported by a pottah, he cannot be allowed to fall back upon his general rights as a kudeemee ryot. *Ram Naffer Khara* v. *Degamber Chatterjee*, W. R., 1864, 259.

The rule that when an admission is relied upon by a party to a suit as against his opponent it must be taken in its entirety, does not apply to pleadings. *Brojo Raj Kishoree* v. *Bishonath Dutt*, W. R., 1864, 305.

A defendant impliedly admitting a liability if a fact is proved, must, if that fact is proved, be held liable. *Gour Kishore Potedar* v. *Sheikh Chitoo Bepary*, 3 W. R., 28.

Where a decree for wasilat was given against the manager of an unregistered trading company, and the plea that the company was not a corporate body, and therefore not liable without a disclosure of the names of the parties constituting the company, was not taken until the execution stage,—*Held* that the plea was a technical one, and taken too late to be of any weight in a court of equity. *D. R. Tripp* v. *Nursing Chunder Mitter*, W. R., 1864, Mis., 7.

Payment by a tenant under the landlord's directions to another, or for a special purpose, of a sum equivalent to the amount claimed as rent, is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent. Such a defence, being rather one of payment than of a set-off, is open to a defendant in a suit under Act X of 1859. *Mussamut Joy Kooer* v. *J. Furlong*, W. R., 1864, Act X R., 112.

In a suit for land the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then first obtained, to show that the land had in 1814 been mortgaged to, and in 1831 bought by, his father. *Held* that the evidence was receivable, notwithstanding the erroneous plea. *Rangasami Ayyangar* v. *Kristna Ayyangar*, 1 Mad. Rep., 72.

Where the Statute of Limitations was not pleaded in the original Court,—*Held* that it might be set up in the Appellate Court if evidence could be taken there in reply to such plea. On special appeal the Statute of Limitations cannot for the first time be pleaded, unless where the facts which raise the plea are admitted. *Marusee Reddi* v. *Krishna Padayache*, 1 Mad. Rep., 358.

Where a plaintiff on certain alleged facts seeks relief, and is unable to obtain a trial of the facts by reason of certain conclusions of law which the Judge forms on the case in its then condition, the Courts are bound to proceed upon the facts as they are stated by the plaint, and upon the assumption of the truth of those facts. *Nawab Sidhee Ali Khan* v. *Oyoodhyaram Khan*, 5 W. R., P. C., 83.

Where a suit at the time of institution within the jurisdiction of the Court in which it is brought has undergone a substantial change, and become a suit which by law requires the order of a superior tribunal for its hearing in the original Court, and such order has not been obtained, plaintiff cannot subsequently on appeal be allowed to revert to the original form of the suit for the purpose of upholding the lower Court's judgment as far as regards the original defendant. *Buldeo Dass and another* v. *Buldeo Dass and another*, 3 N. W. R., 199.

Where a plaintiff sued alleging that a certain deed of mortgage was executed by M. B. benamee for the benefit of H. B. through whom the plaintiff claimed, and also alleging that H. B. had advanced the money for the mortgage out of her own moneys, it was held that if it could be shown that the money advanced was the money of M. B., who executed the mortgage, it was immaterial to consider who was the nominal mortgagee, as the plaintiff could not set up a title inconsistent with the title set up in the lower Courts. In the absence of proof sufficient to establish the title of H. B., and to show that the money was advanced by H. B., the plaintiff's suit was dismissed. *Bhowun Doss* v. *Shaikh Mahomed Hossein*, 13 S. W. R., P. C., 38.

Where a judgment-debtor desires to plead the coverture of decree-holder by purchase, he should do so when she first seeks to execute the decree. *Kirkby* v. *Luke Dillon*, 1 N. W. Rep., Par. 9, p. 163.

A plaintiff can be allowed to amend his case only when he has an honest case; but either through mistake, or some misapprehension, he has not placed the real facts before the Court. *Bhyro Dutt* v. *Mussamut Lekhranee Kooer*, 16 S. W. R., C. R., 123.

It is not competent to a Court to set up a defence not only not made by the defendant, but inconsistent with his own statement. *Ranee Shurrut Soondery Debia* v. *Koomer Puresh Narain Roy*, 13 S. W. R., C. R., 464.

A plaintiff has no right to change the character of his pleading, and to obtain a decree on a cause of action not originally contemplated. *Dhunput Sing Roy* v. *Vellayet Ali*, 15 S. W. R., C. R., 211.

A deposit of costs, accompanied by a prayer that they should be enquired into upon a particular principle, does not imply an admission on the part of the depositor of his obligation to pay costs to the extent of the deposit. *Rajah Leelanund Singh* v. *The Court of Wards on behalf of the Rajah of Durlhunghu*, 14 S. W. R., C. R., 387.

The mere fact of non-traverse of the plaintiff's allegation of heirship was held not to amount to an admission of title, especially (as in this case) where there was a general denial of the plaintiff's allegations including that of plaintiff's title, and where the real question at issue was to the share to which plaintiff was entitled. *Shaikh Hameedoollah* v. *Genda Lall*, 17 S. W. R., C. R., 171.

(*b*) *Waivor.*

The defendant objected to the jurisdiction in the first Court, but took no objection to the jurisdiction before the lower Appellate Court. *Held* that that objection to the jurisdiction was waived. *Mahommed Hossein* v. *Raja Akhaya Narayan Pal*, 2 B. L. R., Ap., 42.

A defendant is entitled to take in the Appellate Court an objection which he had no opportunity of taking until the case was heard in appeal. *Lowa Jha and others* v. *Bisseshur Singh*, 11 W. R., 6.

It is too late for defendants to object with effect to a suit on the ground of multifariousness after it has been fully tried and decided on the merits; but the objection is one which a defendant has a right to raise on the settlement of issues, or on a motion to take the plaint off the file. *Ram Doyal Dutt* v. *Ram Doollal Deb*, 11 W. R., 273.

A plaintiff obtained a decree to set aside an alienation of ancestral property effected by his father during his minority. Defendant objected in special appeal, first, that the suit was barred by lapse of time since plaintiff attained his majority; and secondly, that, under the Mitackshara law, the father had a right to alienate a share of the property.

Held, that as the first of these objections was entirely a matter of fact, and as the second, though essentially a matter of law, went to the substance of the plaintiff's claim, they should have been urged in the lower Courts, and could not be admitted for the first time in special appeal. *Benode Putnaik* v. *Doyanidhee Bullior Singh*, 9 W. R., 493.

Held that, where the question whether the alienation of certain property by the father without the son's consent was valid under the Mitackshara law was not raised in the lower Courts, such invalidity could not be admitted as a ground of objection in special appeal, for it necessarily involved an issue of fact. *Puriag Dutt* v. *Brojo Koonwar*, 9 W. R., 503.

An objection to the effect that the Court of first instance had given judgment on the strength of a document which ought to have been registered, was not admitted in special appeal, as it had not been raised either in the first Court or in the lower Appellate Court. *Joygopal Mozoomdar* v. *Thakomonee Dabee*, 11 W. R., 381.

Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father, it was held, first, that it was too late in special appeal to raise doubts as to his mother having been plaintiff's guardian when the objection had not been taken below at any stage of the proceedings; and secondly, that there was such an apparent necessity as would justify the purchase, and that the mere fact of the widow having been able to make a more advantageous arrangement would not nullify a sale to a *bonâ-fide* purchaser for value. *Pool Chundra Surmah* v. *Ram Joy Surmah*, 10 W. R., 9.

Held that an objection that, as the plaintiff had not proved his claim to a kubuleut at enhanced rates, no decree for a kubuleut could be given which is founded upon law only, may be made by a party to the suit in the Court of Appeal, although it has not been made in the Court below. *Deen Dyal Puramanic* v. *Surendra Nath Roy*, 10 W. R., 77.

In a case in which plaintiff claimed, as lakheraj, certain land situated within the share of his co-sharer, and, though his claim was dismissed in the first Court, obtained a decree in the lower Appellate Court, it was held that, as defendant did not object in the lower Court to the admissibility as evidence of certain khusrah butwarra papers on which that Court relied, he could not be allowed to take that objection in special appeal. *Chadee Singh and others* v. *Beharee Tewaree*, 10 W. R., 91.

A plaintiff who had purchased a factory from the Official Assignee sued for the recovery of money on a bond alleged to have been an asset of his purchase, and obtained a decree. In appeal it was objected for the first time that plaintiff had not filed any evidence to prove that the bond formed part of the assets of the factory, and his suit was dismissed. *Held* that plaintiff ought to have an opportunity given him of adducing the requisite proof. *Chunder Coomar Roy* v. *Kubeeroodeen and others*, 10 W. R., 332.

An objection to the decree of a subordinate Court, founded on the improper valuation of the suit, is not such an objection as may be entertained when raised for the first time in special appeal. *Kaladingooroo Bakus* v. *Raghoojee and another*, 1 Bom. Rep., 62.

Where a deposition made in another suit, to which special appellant was not a party, was admitted and used by the first Court without any objection on the part of the special appellant, it was held that he could not be allowed to object to it in special appeal.

Where the lower Appellate Court's judgment is good, and its adjudication of a plaintiff's right has been based on a sound principle, the High Court will not allow a new point to be taken in special appeal which was not taken in either of the Courts below. *Wazeer Jemadar* v. *Noor Ali*, 12 W. R., 33.

When an objection is preferred and takes the shape of a suit under Section 230, Act VIII of 1859, the question for determination is whether the objector has a better right to the possession of the property in dispute than the decree-holder who is executing his decree. The objector may be entitled to hold as dur-putneedar, and yet may not be entitled to khas possession of the property. *Sheero Koomaree Debia* v. *Kissub Chunder Bose*, 5 W. R., 224.

Held, that as no objection to the omission of any of the usual ceremonies of adoption or the age of the adopted was taken before the lower Court, its decision was not open to those objections when taken on appeal. *Koonwar Dury Singh* v. *Koonwar Kurin Singh*, 1 Agra Rep., A. C., 31.

Where an objection taken in the grounds of appeal is not pressed at the hearing of the case, it cannot be raised again in special appeal. *Nobokristo Sircar* v. *Kalchand Doss*, 12 W. R., 470.

An objection to the reception of secondary evidence is properly made in the Court of first instance, but cannot be allowed in any Appellate Court. *Kissen Kamenee Dossee* v. *Ram Chundra Mittra and others*, 12 W. R., 13.

A decree-holder ought to urge before the lower Court, or make it a distinct ground of special appeal, that it is too late to take objection to the execution after the property has been sold. *Tarinee Churn Gangooly* v. *Tiluck Chunder Ghose*, 6 W. R., Mis., 63.

The receipt of rent for fifteen years by the purchaser of a putnee talook sold for arrears of rent under Regulation VIII of 1819, was held to be a waiver on his part of his right to evict the tenant under Clause 2, Section 11 of that regulation. *Woomanath Roy Chowdhry* v. *Roghoonath Mitter*, 5 W. R., Act X R., 63.

By the terms of a kubuleut, rent not paid when due was to bear interest. The zemindar received rent for a period of ten years, without making any demand of interest in respect of arrears, and without claiming to apply any portion of the payments towards the discharge of interest. Having subsequently brought a suit for interest, the Courts below were of opinion that the zemindar had waived his claim to interest, and dismissed his suit. *Held* that there were facts justifying such an inference, and that their finding could not be reviewed in special appeal. *Dindoyal Poramanick* v. *Pran Kissen Paul Chowdhry and others*, Marsh., 394, W. R., F. B., 117.

In 1267 the plaintiff obtained a decree in a suit to enhance the defendant's rent. *Held* that the acceptance by the plaintiff of the old rent from 1268 to 1271 was no waiver of his claim to the higher rent decreed to him. *Lander* v. *Benode Lall Ghose*, 6 W. R., Act X R., 37.

(*c*) *Written Statements.* (See PLAINTS, *Verification.*)

Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited to a statement of the merits of the case, an application to raise an issue as to jurisdiction was granted on payment of the costs of the adjournment to enable the plaintiff to meet the case set up. *Sheikh Rohimollah* v. *Palmer*, Cor. Rep., 8.

The plaintiff in a suit went on a pilgrimage after he had been ordered to file a written statement, but without having filed it. Not having returned when the case was on the board, his son applied for leave to file a statement, alleging himself to be interested in reversion. The application was refused.

Held, that a third party will not be allowed to file a written statement for a plaintiff who had culpably neglected to file one himself. *Sreemutty Denomoye Dassee, heiress of Rajmohun Roy, deceased*, v. *Tarrachurn Coondoo Chowdhry*, Bourke's Rep., O. C., 153.

Where there was in a written statement matter irrelevant and improper, the Court on application ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bonâ-fide* nature of the defence, and nothing else. *Kasablal Day* v. *C. E. Tremearne*, 3 B. L. R., Ap., 12.

In a suit by A. against B. for recovery of ancestral jummai lands, of which he alleged that he had been dispossessed by B., B. stated in his written statement that A.'s ancestor having relinquished the land, the zemindar had leased the same to him, B., and he had been in possession since. He also stated how A.'s ancestor relinquished, and that he, B., had thereupon obtained a pottah. He denied that he had dispossessed.

Held that B. having admitted the possession of A.'s ancestor, it lay upon B. to prove his title.

Per Macpherson, J.—The opinion of the Full Bench in *Pulin Beharee Sen* v. *Watson* was that, if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those statements cannot be used against him. That case goes no further than to lay down that an unfair use is not to be made of a man's written statement, by trying to convert into an admission by him that which he never intended to be an admission. *Baikuntanath Koomar* v. *Chundramohun Chowdhry*, 1 B. L. R., A. C., 133; 10 W. R., 189.

A. sued B. on a bond in which it was recited that B. had received the amount. B., in his written statement, admitted execution, but stated that he had received the amount mentioned therein, not under the bond, but on the pledge of certain jewellery. *Held* that, on the admission of the execution of the bond which contained the recital of payment, the *onus* was upon B. to prove that payment had not been made under the bond. *Manick Lall Baboo* v. *Ramdass Mozoomdar*, 1 B. L. R., A. C., 92; 10 W. R., 132.

Where a defendant appears in person or by pleader, the fact that the defendant is not prepared to put in a written statement does not warrant the trial of a suit *ex-parte*. *Sivarajadhani Pillai* v. *Kuppa Gantulu Puntabi*, 2 Mad. Rep., 311.

It is not the written statements of parties, but the issues framed under the Code of Civil Procedure, which ought to be the index of what has been and has to be adjudicated. *J. P. Wise* v. *Juggobundoo Bose*, 12 W. R., 229.

A written statement is not a pleading in confession and avoidance whereby a defendant is bound by the confession, and so compelled to prove the avoidance. If used as evidence against a defendant, the whole statement must be taken together. *Soollan Ali* v. *Chand Bibee and others*, 9 W. R., 130.

Under the Code of Civil Procedure, a plaintiff cannot file a written statement after having seen that of the defendants, and by way of rejoinder thereto. *Jadub Ram Deb Ram* v. *Lochun Muduck*, 5 W. R., 56.

An application for leave to file an additional written statement allowed, and distinction made between such an application by a plaintiff and one made by a defendant. *Sree Mutty Dasmoni Dasi* v. *Sreenath Ghose*, 3 B. L. R., Ap., 11.

Where a plea of limitation was set up in the defendant's written statement, and the first Court, considering the written statement to be prolix, directed the pen to be run through a large part of it, the defendant, dissatisfied with this proceeding on the part of the first Court, appealed to the Judge complaining that no adjudication had been given on the plea of limitation. *Held* that the power of a Court to deal with written statements which appear to contain irrelevant matter, or to be argumentative or unnecessarily prolix is regulated by Section 124, Act VIII of 1859; and that as the plea of limitation must be assumed to have been properly before the Judge, he was bound to adjudicate upon it. *Boolee Singh and others* v. *Hurobuns Naran Singh and others*, 7 W. R., 212.

Objections to the written statement on the ground stated in Section 124 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. *Smallwood* v. *Parry*, Cor. Rep., 39.

Mere argument is (under Section 124 of Act VIII of 1859) inadmissible even in a written statement. *Bishen Sahayee Singh* v. *Beer Kishore Singh and others*, 8 W. R., 296.

A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under Section 122, Code of Civil

Procedure, and which did not add to or vary the plaintiff's claim. *Jehangir Buksh* v. *Bhikaree Lall*, 11 W. R., 71; *Boli Singh* v. *Huro Bunshi Naran Singh*, 7 W. R., 212.

A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleading, when the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of one party, if used as evidence against him by the other, must be taken altogether, and not in part. *Lallah Probhoo Doss* v. *Sheonath Roy*, W. R., 1864, Act X R., 27.

The admission of written statements of the parties on various dates, unless expressly called for by the Court, is contrary to the provisions of Sections 120 and 122. *Mirza Ali Nukee* v. *Mirza Torab Ali*, W. R., 1864, 44.

A written statement filed by the defendant should be verified, but if admitted on the record without verification its allegation should be noticed and issues framed accordingly. *Radhachurn Roy* v. *Moran and Co*, 13 S. W. R., C. R., 342.

(*d*) *Set-off.*

Sections 121 and 195 of the Code of Civil Procedure (Act VIII of 1859) have not the effect of enlarging the right of set-off.

In a suit against the acceptor to recover the amount due upon several bills of exchange, the defendant sought to set-off a claim for unliquidated damages unconnected with the bills of exchange,—*Held* that defendant has no right to set-off his claim against the debt due to the plaintiffs.

Semble,—The right of set-off will be found to exist not only in cases of mutual debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant be driven to a cross-suit. *Stephen Clark and others* v. *Ruthnavaloo Chetti*, 2 Mad. Rep., 296.

A. by deed of zuripeshgi let certain lands to B. to secure a sum advanced by him to her and interest thereon, B. covenanted to pay certain dues annually to A. On failure by B., A. obtained a decree against him for the amount. In execution of a decree against B., C. purchased his interest in the sum secured by the deed of zuripeshgi, and sued A. to recover the same. *Held* that A. was entitled in such suit to set off the amount of the decree obtained by her against B. *Bhagawani Kunwar* v. *Lala Baijnath Prasad*, 2 B. L. R., A. C., 85.

Under Section 121, Act VIII of 1859, a defendant cannot claim a set-off for damages in respect of an alleged breach of contract which have not been ascertained in a suit brought against him to recover the amount due on certain dishonoured hoondees. *Ram Dayal and others* v. *Ramdhun Dass and others*, 4 Agra Rep., A. C., 43.

A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognizable by it. When a defendant pleads a set-off and claims a decree, the subject-matter of the suit is no longer the mere claim of the plaintiff, but the cross claim of both parties. *Ram Lal* v. *Lancaster*, 3 N. W. R., 114.

Held, that a defendant may deny the plaintiff's claim, and also plead a set-off, and obtain a decree for it, although no sum may be found to be due to the plaintiff. *Hayatkha* v. *Abdulakha*, 6 Bom. Rep., A. C. J., 151.

Under Section 121, Act VIII of 1859, a defendant desirous of setting off against the claim of the plaintiff the amount of any payment made by him on plaintiff's account, is bound to tender a written statement containing the particulars of his demand. *Poorno Chunder Roy* v. *Beharu Lall Mookerjee*, 14 S. W. R., C. R., 473.

(*e*) *Issues.*

Plaintiff sued to recover possession which he described as "maâfee." Defendant denied the grant, and pleaded his right by inheritance from the original owner. The Court below found that the defendant's taking possession eleven years since was tantamount to resumption of the grant which defendant as zemindar was competent to do,—*Held* that the Court was not on its motion competent to determine a question which was not alleged, nor raised by the pleadings of the parties. But if the question was raised even on the day of the hearing of the case at any time before the decision of the case, the Court ought not to have rejected it because it was not raised by the written statement, but ought to have framed issues to determine the question. *Dewan Dyashunker* v. *Mahomed Ameeuood-deen Khan*, 4 Agra Rep., 246.

Semble,—The Court will not add an issue or amend the plaint so as to raise a wholly different question to that upon which the parties have come into Court. *Bizjee Bibee* v. *Monohur Doss*, 2 Ind. Jur., N. S., 118.

A question not raised by the plaint ought not to be decided by the Court. *Lalli Ratana* v. *Gungaram bin Tullaram*, 2 Bom. Rep., 184.

When the plaintiff's mooktear is unable to answer certain questions necessary for the statement of the proper issues, and the plaintiff himself refuses or fails to appear personally and reply to the Court's queries, the Court is competent to dismiss the suit. *Maharajah Nilmonee Singh Deo Bahadoor* v. *Ram Huree Misser*, 1 W. R., 161.

Where the Judge finally disposed of the case on the day fixed for the settlement of issues, without allowing the parties the opportunity to adduce evidence and fully ascertaining the facts,—*Held*, that his judgment was illegal and defective. *Goolzar Shah* v. *Mehtab Singh*, 1 Agra Rep., 38.

All that can be done under Section 130, Act VIII of 1859, must be done at the settlement of issues; Section 141 gives the Court discretion to amend or add issues only if some new matter should turn up in the course of the case. *Aga Syud Saduck* v. *Hadjee Jackariah Mahomed*, 2 Ind. Jur., N. S., 308.

A distinct suit for the recognition of an adoption having totally failed, the plaintiff is not entitled to fall back on his right by descent. *Sreegobind Lall* v. *Odit Narian Singh*, W. R., F. B., 4.

A plaintiff will not be allowed to set up one case, and, having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues, and to give the relief thereon to which

the plaintiff is entitled. *Obhoychurn Mullick* v. *Woomes Chunder Paul*, 2 Hyde's Rep., 263.

A Judge ought not to import his own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him. *Meheroonissa* v. *Bhashaye Merdha*, 2 W. R., Act X R., 29.

The issues fixed by the Court, and not the pleadings, ought to be the guide to the parties as to production of evidence. *Huro Soondery Debia* v. *Ameena Begum*, 5 W. R., Act X R., 72.

A. sued B. for enhancement of rent at a rate specified; but at the trial, failing to prove that proper notice had been served upon B., he claimed only rent at the rate formerly paid. No issue was recorded as to what the former rate had been until the last day of the hearing, after both parties and several of the witnesses had been examined in respect of the issues originally recorded; and the Collector, without adjourning the case for trial upon such issue, having examined two witnesses who remained for examination, gave judgment in the case.

Held, that under Section 65 of Act X of 1859 the case ought to have been adjourned, and a convenient day fixed for trial upon the new issue. Case remanded accordingly. *Srihri Mundul* v. *Jadunath Ghose*, 1 B. L. R., A. C., 110; S. C., 10 W. R., 169.

A suit having been decreed in favour of plaintiff in the Court of first instance, where it was tried on a certain issue, the decree was reversed in the Appellate Court, where it was tried on a different issue. Plaintiff upon this objected in special appeal that he had been misled by the issue framed in the first Court, and, but for it, would have adduced evidence to prove his case.

Held, that if plaintiff had any evidence to offer upon the issue tried in the Appellate Court, he should have moved the Judge to allow him the opportunity of offering it, and that there was no error of law in the proceedings of the lower Appellate Court. *Eshan Chundra Sein* v. *Sheikh Dhonye and others*, 11 W. R., 61.

Plaintiff's suit for rent against the ryots of certain land alleged to belong to a mouzah (Baboolee) which they had bought at an auction sale, having been dismissed in consequence of defendant's intervention, under Section 77, Act X of 1859, they brought an action against her to recover possession. The defence was that the land in dispute did not belong to plaintiff's mouzah, but to defendant's mouzah, Gyrutpore. Both lower Courts found that Mouzah Gyrutpore had been washed away some time ago, and decreed plaintiff's suit.

Held that, though plaintiffs were bound to prove their own case, and to show that the land belonged to their purchased estate (Baboolee), yet, as both parties had consented to have the case decided on the question whether Mouzah Gyrutpore was or was not in existence, the defendant could not make out a new case in special appeal. *Moodur Bibee* v. *Honooman Pershad and others*, 11 W. R., 277.

A ryot cannot raise a direct issue as to the title of his zemindar. An issue between two co-defendants is also contrary to practice. *Degumber Mitter* v. *Khettur Mohun Mitter*, 2 W. R., 45.

The issues of limitation and title should be tried separately, and not mixed up together. *Umbika Soondaree Dossee* v. *W. Woodin*, 3 W. R., 326.

When a plaintiff comes into Court relying on a pottah, the genuineness of which is disputed by the defendant, the Court is bound to adjudicate the issue, and to decide whether the lease is valid or invalid. *Thakoorance Dossee* v. *Goluck Chunder Biswas*, 5 W. R., 157.

In a suit to recover a quantity of land alleged to have been a part of a joint estate which had descended to plaintiffs and his brothers, and which was subsequently divided into separate shares,—*Held* that, on failure of proof of the allegation of partition, the plaintiff might obtain relief upon the first allegation; and the Court below was not debarred by law from framing an issue as to whether the plaintiff was entitled to recover to the extent of the interest which he had in the land, if found to be joint property. *Fukeer Doss Pooroheet* v. *Gopaul Mookerjee*, 12 W. R., 107.

Where a defendant in the lower Court pleaded limitation, but placed that issue upon the simple fact that he himself had possession for twelve years and upwards, which issue was found against him,—*Held* that it was too late for the defendant in special appeal to object that that finding did not dispose of the issue of limitation. *Kisto Mohun Kurmokar* v. *Nayan Tarn Dossee and others*, 10 W. R., 389.

Held that, as defendant's plea of purchase from the alleged shareholders of the putnee, in satisfaction of their ancestor Gobind Ram's lien, had proved unfounded, if they were permitted to fall back on their title as girurdars, the plaintiff must be allowed to show that the debt "was realized from the usufruct of the tenure," even though this had not been "established in a suit instituted for the purpose." *Boistub Chund Bhudroo and others* v. *Tara Chund Banerjee*, 11 W. R., 357.

In a suit for a kubuleut of twenty-five parcels of land, where the defendant alleged that he only held three, and that he was not the tenant of the plaintiff, but of a third party who intervened claiming the land as included in his half share of a part of a talook as being the person in receipt of the rents, the lower Appellate Court declared that as neither party had given any conclusive evidence of actual possession, and as the ryot's holding had been found to appertain to the half share of which the intervenor had proved possession, the plaintiff was entitled to a kubuleut for a moiety of the plots held by the defendant.

Held that the ryot was entitled to be heard whether he paid the rents to the plaintiff, and whether he was bound to give the kubuleut asked for, and plaintiff was entitled to be heard whether the ryot held three parcels or twenty-five. *Radhakishore Talookdar* v. *Goluk Chandra Roy and others*, 11 W. R., 366.

In a suit for possession, where a second defendant is admitted (though improperly) upon the record, and both defendants claiming under different titles, issues are raised between the plaintiff and each of them, and the suit is dismissed, the decision on these issues cannot be regarded as a decision between the rival defendants. *Kalee Kinkur Bachusputty* v. *Kisto Mungle Bhuttacharjee and others*, 11 W. R., 462.

Held, in contravention of various rulings of the

late Sudder Court, that a suit brought on alleged settlement of accounts, and balance struck and admitted, should not be dismissed merely on account of the plaintiff's failing to prove the alleged settlement and admission of balance by defendant; but that the Court, being competent under Section 141 of the Civil Procedure Code to amend or frame additional issues that may be necessary to determine the real question or controversy between the parties, ought to enter into evidence regarding the items composing the account, and decree the claim regarding such items, if they are found to be due and not otherwise barred. *Kishen Pershad* v. *Bhawanee Deen and another*, 1 Agra Rep., F. B., 47.

Where both parties are at issue on any question upon which it is necessary to hear further evidence, the Collector is bound, under Section 65, Act X of 1859, to declare and record such issue. *Shookoomar Singh* v. *H. Cruise*, 6 W. R., Act X R., 105.

The issues are to be framed from all questions of law or fact upon which the parties may be at issue, and are to be collected, not merely from the plaint, nor from the written statements, but may also be taken from the oral statements of their pleaders. *Mussamut Kowsullya Dossee* v. *Ram Juggurnath Dey Sircar and others*, 8 W. R., 162.

The reasons for their decisions must, in all cases, be recorded by the Judges of the High Courts in India. In a suit for maintenance, where the objection was taken on appeal to the Privy Council, that no issues had been directed in the Courts below,—*Held* that an order of the High Court, referring the matter to the lower Court for enquiry, "to ascertain the amount of maintenance which might appear to be justly and properly payable, with reference to the means of the defendants and the other facts of the case, and to proceed to decisions in the manner indicated in Section 351 of the Civil Procedure Code," was equivalent to a direction of issues, and rendered any further issues unnecessary. *Kachekalyana Rungappa Kulakka Tola Udiar* v. *Kachivigajaya Rungappa Kulukku Tola Udiar*, 2 B. L. R., P. C., 72.

The plaintiffs, the cultivators of certain lands yielding rent to a pagoda, of which first defendant was the recently appointed dharmakarta, claimed to be declared proprietors of the said lands, to be exempted from the payment of rent, at the rate of two-thirds of the gross produce, to be declared liable to pay a certain lower rent set forth in the plaint, and to obtain a refund of the amount paid under an order of the Sub-Collector in 1863 passed without jurisdiction in excess of the rent justly payable.

The issue given by the Principal Sudder Ameen was "whether the first defendant is entitled to rent at the rate specified in document A."

Held that this issue was in too general terms, and only embraced a part of the matter in dispute, and the issue "What is a fair and reasonable rate of rent" directed to be sent down to the lower Court. *Kutty Surramaniya* v. *Chinna Muttee Pillai and others*, 3 Mad. Rep., A. J., 25.

It is the duty of the Court to elicit, by examination of the parties, all the material facts which do not appear in the plaint and the written statements, to frame distinct issues, and to dispose of them precisely. *Dhun Singh Roy* v. *Chunder Kant Mookerjee*, 4 W. R., Act X R., 43.

In a suit to recover a quantity of land alleged to have formed part of a joint estate which had descended to plaintiff and his brothers, but which was subsequently divided into separate shares,—*Held* that, upon failure of proof of the allegation of partition, plaintiff might obtain relief upon the first allegation; and the Court below was not debarred by law from framing an issue as to whether plaintiff was entitled to recover to the extent of the interest which he had in the land, if found to be joint property. *Fukeer Dass Pooroheet* v. *Gopal Mookerjee*, 12 W. R., 107.

The plaint and written statements constitute the pleadings in a suit under the Code of Civil Procedure, Act VIII of 1859, and issues may be framed upon them. *Kissen Lall and others* v. *Lalljeemul and others*, 1 Ind. Jur., N. S., 364.

When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in evidence, and materially affecting the decision of the case, that is such a defect (Section 372, Act VIII of 1859,) as the High Court will remedy on special appeal by directing an issue. *Nilatatchi* v. *Venkatachala Mudali*, 1 Mad. Rep., 131.

Where an issue has been directed, and the finding and evidence returned, a special appellant cannot take an objection going to the merits which otherwise would not properly be open upon special appeal. *Nilayatatchi* v. *Venkatachalam Mudali*, 1 Mad. Rep., 250.

The plaintiff sued to recover possession of certain lands said to have been included in a talooka pottah given him by the zemindars, alleging that the defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9-annas share which belonged to one D., and that by process of sale they became the right of other parties under whom defendants held as lessees. *Held* that, notwithstanding the parties to this suit held under a superior land-holder, plaintiff was entitled to have his title put in issue and determined. *Nagur Chand* v. *Doorga Doss Chowdhry and others*, 11 W. R., 137.

Under Section 139, Act VIII of 1859, the Court may frame the issues from the oral examination of the parties or their pleaders, notwithstanding any difference between the allegation of facts contained in those examinations and the allegations contained in the written statement. *Saheb Zadee Begum* v. *Mirza Hummut*, 12 W. R., 513.

The Civil Procedure Code neither expressly nor impliedly declares that witnesses must be summoned before the day fixed for the first hearing of the suit. So long as the hearing merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is bound to summon them, unless it appears that the application is made so late that the witnesses cannot be reasonably expected to attend in time to be examined before that party's case closes. *Indro Chunder Baboo* v. *Hamilton Grant Dunlop*, 9 W. R., 530.

Where no issues have been settled in a suit, the High Court will remand the case for re-trial. *Jageshur Rai* v. *Doolun Rai*, 2 N. W. R., 183.

It may be laid down as a general rule, that only such averments should be made the subject of issues as are essential to support the cause of

action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff.

Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment, ought not to be made the subject of a separate issue.

A plaintiff may have been actuated by ill-will in instituting a suit, and may have done so out of pique; but if he establish that he had a cause of action, his motive in bringing the suit will not be an answer to it; although, where the evidence in support of his case is doubtful, the Court, in weighing that evidence, may properly take into consideration the motives imputed to the plaintiff as having induced him to sue. *Birch* v. *Furzindesli*, 3 N. W. R., 303.

A suit will lie for instituting a prosecution against the plaintiff maliciously and without probable cause. The issues fixed to be tried in such a case. *Ram Buddun Singh* v. *Sirdal Dyal Singh*, 17 S. W. R., C. R., 101.

Plaintiff having sued two mooktears for money received by them as rent due from plaintiff to their principals, and defendants having admitted receipt of the money, but alleged payment thereof to their principals, the real issue to be tried in the case was, whether the mooktears had actually paid to their principals the money which they had admitted to have received as rent from plaintiff. *Bykunth Nath Sandyal* v. *Kalee Churn Paul*, 17 S. W. R., C. R., 149.

In answer to a suit for the rent of a jote, defendant denied that he held under plaintiff, and alleged that the jote belonged to two persons, R. and M., and that a decree having gone against M., his rights were sold and purchased by him, defendant; that he subsequently got a pollah or sub-lease from the remaining tenant R., and that he was therefore liable to pay rent to the plaintiff. *Held* that the Lower Appellate Court, instead of deciding that defendant was not liable because his name was not recorded in the sheristah, should have found whether defendant held the jote (as alleged by plaintiff) in succession to the previous tenant, or whether the jote really belonged to two persons; and if so, whether any decree had been obtained against one of them, and whether consequently defendant had acquired the entire jote, or a portion of it only; and if he held the entire jote under the plaintiff, he would then be liable to pay him the whole rent. *J. Misselbach* v. *Luchmee Narain*, 17 S. W. R., C. R., 504.

In a suit in which plaintiffs sued as partners for damages for non-delivery of certain goods, and in which it was found on the evidence that two of the plaintiffs were not partners at the time the cause of action accrued or when the goods were delivered, the Lower Court ordered that the names of the two plaintiffs who were not partners should be struck out of the plaint, and gave a decree to the rest of the plaintiffs. *Held* that the Judge was right in amending the issue, and that that was the correct mode of amending errors in a plaint. *East Indian Railway* v. *Jordan*, 14 S. W. R., A. C., 11.

Issues are to be fixed under Section 138, Code of Civil Procedure, when both parties appear and the Court can ascertain from them what are the points upon which they are at issue. The Court is not bound to fix any issue when the defendant does not appear, but ought to proceed under Section 111 to hear the case *ex-parte*. *Ameer Ali Sowdagur* v. *Imamoodeen*, 15 S. W. R., C. R., 145.

Where a Court shortly before decision recorded a proceeding declaring its intention to frame additional issues, and reserved the actual framing of the issues for the time of giving judgment, its procedure was held not to be warranted by Section 141 of the Code of Civil Procedure. *Kamul Kaminee Dassee* v. *Obhoy Churn Ghose*, 15 S. W. R., C. R., 151.

Matters in dispute should be ascertained not only from the plaint and answer, but also at the hearing of the suit; and any indistinctness in the form of the plaint does not require that a decision come to upon issues fixed in the Lower Court between the parties should be set aside. *Moulvie Abdoollah* v. *Shaho Mujussoodun*, 15 S. W. R., C. R., 286.

When a suit is brought against two persons, it is competent to the Court to raise an issue whether one of them is solely liable, and on finding that one only is liable, to pass a separate decree against that person. *Banee Madhub Lahooree* v. *Bipro Dass Dey*, 15 S. W. R., C. R., 69.

In a suit for possession on a piece of land where defendant pleads limitation, and his witness unexpectedly discloses that his possession is that of a mortgagee,—

Held that it was impossible for the Court to overlook that testimony, and that it was its duty to frame an issue, find expressly on the fact of the mortgage, and provide for the rights of the mortgage; for if the mortgage was found to subsist in defendant, the plaintiff could not in this case recover a decree for possession, but should be referred to a suit properly framed for redemption. *Muzhoot Singh* v. *Mussamut Chunder Mushu Kooer*, 16 S. W. R., C. R., 44.

Where a plaint discloses no cause of action, a Court is justified in examining the pleaders on both sides, and from their examination eliciting and fixing the real issue and determining the case in the trial of such issue. *Man Gobind Sircar* v. *Umbica Monee Dossia*, 16 S. W. R., C. R., 218.

An appeal lies from the decree and not from the decision of the Court of original jurisdiction. Where the decree was absolutely in the defendant's favour, but some of the issues were decided against him,- *Held* that the defendant had no right of appeal against that portion of the decision of the Lower Court which was against him. *Shama Soonduree Debia* v. *Digamburee Debia*, 13 S. W. R., C. R., 1.

Where the parties to a suit accept issues wrongly laid down by the Court, they must be held to be bound by them. *Shew Su Roy Lall* v. *Syud Wajid Ali Khan*, 13 S. W. R., C. R., 205.

Where the only question raised by the parties in a suit, is whether an alleged sale by a Hindu widow is valid as against the reversionary heir, the Court ought not to go behind that question and enquire whether there was a sale or not. *Doorja Chumsaka* v. *Ram Narain Doss*, 13 S. W. R., C. R., 172.

Where, on an appeal, the counsel for appellant admitted he could not succeed on the merits, as the evidence stood on the record, and their lordships were of opinion that substantial justice had been done the more omission to settle issues by the

Court of first instance, which was not made a ground of appeal to the first Court of Appeal, but was noticed and commented on by that Court, was held not to constitute a fatal mistrial of the cause so as to render a new trial necessary. *Baboo Sewan Pershad* v. *Janku Pershad* commented on. *Mussamut Mitna* v. *Soya Fuzlrub*, 6 B. L. R., 148, and 15 S. W. R., P. C., 15.

The plaintiffs sued the defendants for damages for breach of contract, alleging in their plaint that they had agreed to sell, and the defendants to purchase, certain indigo seed, but that the defendants had refused to take delivery, although the plaintiffs were ready and willing to deliver the same. Upon the evidence of the plaintiffs, it appeared that there was no contract as alleged in the plaint, but the contract, as stated by them, was that they (the plaintiffs) were to purchase seeds as agents for the defendants.

The Judge dismissed the suit on the ground that the plaintiffs were bound to prove their case as stated in the plaint. *Held* that the suit ought not to have been dismissed on that ground. The issues raised admitted of the true question being tried, *viz.*, whether under the circumstances the defendants were liable to pay the price of the seed; and if they did not, the Court ought to have amended the issues, or framed additional ones. The object of the plaint is merely to bring the matter in dispute before the Court, but it is for the Court, upon the statements before it, to determine the real issue between the parties. *W. R. Arbuthnot* v. *C. D. Betts*, 6 B. L. R. 273, and 14 S. W. R., C. R., 181.

VII.—Costs.

(*a*) *Miscellaneous.*

There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of the lower Court as to costs. To assess the defendant in a suit with the plaintiff's costs, when plaintiff's suit is dismissed for want of any cause of action, is irregular and unreasonable. *Sri Dantuluri Narayana* v. *Suruppa Raju*, 3 Mad. Rep., A. C., 113.

Though the distribution of costs is, under the Civil Procedure Code, a matter within the discretion of the Court, yet there may be circumstances which will justify an appeal upon a mere question of costs. *Chithayel* v. *Immurumum*, 3 Mad. Rep., S. J., 279.

A suit cannot be maintained for costs incurred by the plaintiff in registering a claim made by the defendant, under Section 246 of the Code of Civil Procedure, the greater part of which was disallowed. It is only when the costs are made a part of the order, and then by execution under it, that a party can in such cases enforce the payment of costs. *Anonymous*, 3 Mad. Rep., A. J., 341.

An improper exercise of discretion in awarding costs against which a regular appeal would lie, is no ground for allowing a special appeal, unless the award is contrary to some particular law on the subject. *Amirsaheb Habizulla* v. *Jamshedjee Rustumjee*, 4 Bom. Rep., A. C., 41.

Held, in conformity with a Full Bench Ruling of the late Sudder Court, that special appeal lies from the order of the lower Courts in matters relating to costs, and that there is nothing in the law limiting or taking away the right to appeal specially from that part of a decree which relates to costs in any case where any legal ground for special appeal is shown to exist. *Apa Ram and others* v. *Koshmeeree Doss*, 1 Agra Rep., F. B., 90.

The decision of a Deputy Collector for rent below Rs. 100, involving no question of title, was reversed on appeal by the Judge. On special appeal, the Judge's decision was reversed as made without jurisdiction; but as this point was not taken before the Judge, the reversal was made without costs in either Appellate Court. *Puddomonee Dossee* v. *Krishnendro Roy Chowdry*, 5 W. R., Act X R., 94.

Where a plaint had been rejected as having been filed against several persons who had different defences, it was held to be within the discretion of the Judge, in appeal, to dismiss the suit and saddle the plaintiff with the costs of all the defendants, notwithstanding that all the latter, except one set, admitted the claim, and retired from the contest. *Kossella Koer* v. *Behary Patuck*, 12 W. R., 70.

In the lower Court, vakeel's fees are allowable only once for all, whereas in the Appellate Court separate costs are allowable for every time that appearance is entered on behalf of the winning party on remand or in review. *Nawab Hajee Mahomed Khan* v. *Allanowazee Begum*, 2 W. R., Mis., 29.

An order decreeing to plaintiff his costs in proportion, must be taken to mean as if costs were given in proportion to the amount decreed and dismissed; so that, except when there is a distinct order restricting costs to the plaintiff, the defendant is entitled to his costs on the portion of the claim dismissed, although the order does not in words provide for it. *Bykuntnath Chowdhry* v. *Mohessuree*, 4 W. R., Mis., 9.

An objection as to costs is a matter which should be raised in the shape of an application to amend or review the original decree, and failing that, by way of regular appeal against the decree, but not in the execution of the decree. *Kureenath Banerjee* v. *Doybo Chunder Banerjee*, 5 W. R., Mis., 4.

When a discretion is vested in a Court as to costs, the Privy Council will not allow any appeal against the exercise of that discretion, because no appeal lies against a mere decree as to costs. But when a Court has no discretion to exercise in the matter (as when a suit was instituted by parties who had no right to institute it, as the person in whose name and on whose behalf they instituted it was dead at the time), costs must follow the decree according to Section 7, Regulation 11 of 1800 of the Bombay Code. *Mussamut Keemee Bee* v. *Luchmun Das Narain Das*, 5 W. R., P. C., 59.

In taxing the costs of an appeal from India, the Privy Council will disallow all such costs and expenses as may have been unnecessarily occasioned by the inclusion, in the transcript sent from India, of matters which have been improperly introduced therein. *Tarakant Bannerjea* v. *Puddmonee Dossee*, 5 W. R., P. C., 63.

Case in which the Privy Council affirmed the decision of the Sudder Court; but, as there had been delay in suing, and as the case was attended with a considerable degree of suspicion, refused to the respondent before it all costs, and decreed further that the cost of the appeal to the Sudder Court should be disallowed. *Baboo Ubruk Singh* v. *Bany Persad*, 5 W. R., P. C., 77.

A. having brought an action against B., was allowed to withdraw, with leave to bring a fresh suit, and was also ordered to pay the costs. *Held* that the payment of the costs not having in terms been made a condition precedent to bringing a fresh suit, the Court had no power to stay proceedings, on the ground that the costs had not been paid. *Held* further that the Court of Appeal had no power to entertain the question, as the order was in the nature of an interlocutory one, and therefore not within its jurisdiction. *Chuttoo Sheikh* v. *Kuju Majur Hossein*, 2 Hyde's Rep., 212.

In a suit to set aside a settlement, two accountants were employed at the plaintiff's instance, and not by order of Court, to examine the settler's books and give evidence. *Held* that the investigation being most useful to the Court, and adapted to the ends of justice, the Taxing Master was right in allowing their expenses. *MacNair* v. *Hogg*, 2 Hyde's Rep., 89.

When a suit is brought for the principal sum and interest due on a mortgage, the High Court will give costs, although the decree be for less than Rs. 1,000, as the Small Cause Court has no jurisdiction. *Mirtunjoy Dutt* v. *Kameenee Dossee*, 1 Ind. Jur., N. S., 95.

Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by Section 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. *Cappaoosmiyan* v. *Nanuvayan*, 1 Mad. Rep., A. C., 74.

Where a plaintiff is entitled to save part of his claim, he ought not to be deprived of the benefit of the decree by such an order as to costs as would make him liable to the defendant for more than he would himself recover. *Ram Chunder Chowdry* v. *Capt. Mariott*, 15 S. W. R., C. R., 465.

An omission to award costs cannot be considered merely as a clerical error, but must be rectified by way of review within the prescribed time. *Ram Sahey Singh* v. *Bhokoo Singh*, 15 S. W. R., C. R., 414.

Where a suit was decided after trial, and the decision being reversed by the High Court on appeal, the case was remanded with orders allowing the plaintiff to amend his plaint, but requiring him to pay all the costs of the first two hearings.

Held that the stamp for the plaint was properly included in the costs of the second hearing in the Court below, and that, as the case was sent back for re-trial and not as a mere remand, the whole of the pleader's fees should be paid for the second trial. *Madhub Chunder Bera* v. *Ram Lochun Bera*, 14 S. W. R., C. R., 143.

Quære,—Whether the High Court can give costs in a case in which it has declined jurisdiction. *Jardine Skinner* v. *Money*, 14 S. W. R., C. R., 312.

Where the Privy Council reversed the decrees of three Courts in India with costs in each, and dismissed the suit with costs, specifying a sum as the costs of the appeal to itself,—*Held* that such sum did not include the costs of translation, &c., incurred in the High Court. *Mussamut Oomatool Fatima* v. *Azhur Ali*, 15 S. W. R., C. R., 356.

The mere specification of costs in a decree without an allotment of responsibility, is not a sufficient compliance with Section 189, Act VIII of 1859. *Janokee Nath Mookerjee* v. *Joykishen Mookerjee*, 15 S. W. R., C. R., 4.

A decree which contains a distinct specification of costs, whether rightly or wrongly calculated, cannot be amended in appeal. *Bijoy Gobind Naik* v. *Kalee Prossunno Naik*, 16 S. W. R., C. R., 294.

Semble,—When an Appellate Court decrees an appeal and gives costs of its own Court, the costs of the first Court should be included in the decree. *Sheikh Mahomed Busseeroollah Chowdry* v. *Ram Kant Chowdry*, 16 S. W. R., C. R., 266.

A set-off cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the lower Appellate Court, but omitted to award the costs of the first Court. *Huro Pershad Roy* v. *Fool Kisshoree Dossee*, 16 S. W. R., C. R. 308.

A Court executing a decree has no jurisdiction to order a judgment-debtor to pay as costs any sum not mentioned in the decree which is in course of execution, or in any decree in force. It is a convenient practice for a Court to annex to every decree the costs incurred by both parties. *Nobo Kristo Mookerjee* v. *Parbutty Churn Bhuttacharjee*, 13 S. W. R., C. R., 23.

In a suit against 34 defendants to recover 3,820 beegahs of land, 13 came in and defended separately, each in respect of his own portion of the land claimed. The suit was dismissed for multifariousness. Fixing a certain valuation (Rs. 5,440) for the suit so far as it was dismissed, the Judge allowed each defendant full costs upon that valuation, or a vakeel's fee of Rs. 257 to each defendant, being in many instances greater than the value of the property in dispute.

Held that this could not be a just and equitable way of awarding fees, and that the best plan in the present case was to allow each defendant in respect of a plot exceeding 20 beegahs and not exceeding 40 beegahs, three gold mohurs; and of a plot less than 20 beegahs, two gold mohurs. *Rajah Roodur Narain Roy* v. *Coomar Narain Patnuin*, 13 S. W. R., C. R., 320.

(*b*) *Liability to Costs.*

The estate, and not the manager thereof, is held liable for the costs of a suit instituted in perfect good faith by the manager for the benefit of the property. *Ram Kishore Acharjee Chowdhry* v. *Luckee Dabea Chowdhrain*, 1 W. R., Mis., 1.

Where a party is made a defendant, without a cause of action being alleged, his co-defendant should not be made to pay his costs, which should be paid by the plaintiff. *Ram Chundra Mittra* v. *Kisto Comuree Dossee*, 10 W. R., 194.

A defendant who colludes with the plaintiff, and induces him to bring a suit for his benefit, may be ordered to pay the costs of his co-defendants in the Court below. It seems that he may also be ordered to pay the costs of an appeal by the plaintiff. *Bhyroo Ruoot* v. *Baboo Anouroodep Deo Narain Singh and others*, Marsh., 608.

Government is not liable for costs when it has been made a defendant by the plaintiff in a suit for a certificate under Act XXVII of 1860, though it did not apply for such a certificate, nor oppose the suit. *The Government* v. *Mussamut Sanoola*, 3 W. R., 23.

Where a special appellant to the High Court failed as to a portion of his appeal, the costs of that Court were decreed against him. *Heera Ram Buttacharjee* v. *Ashruf Ali*, 9 W. R., 103.

One of several judgment debtors jointly liable under a decree, having paid a larger amount than was due as between himself and his co-defendants, brought a suit to recover from them the excess paid by him. One of the defendants having paid more than his share, the claim against him was dismissed by the Principal Sudder Ameen, who, nevertheless, on the ground that it was necessary to make him a party, awarded him no costs. *Held* that it was not necessary to make this defendant a party, and that costs should not have been refused. *Held* also that the scale on which costs should be awarded to him, depends on what plaintiff claims against him, and that he is entitled to costs on the usual scale on the amount for which the suit was brought. *Kasheenath Sein* v. *Chundermonee Debia*, 9 W. R., 288.

Where the widow of a deceased proprietor, as the guardian of his minor son, put in a petition for a certificate under Act XL of 1858, in which she represented that she was in possession of the whole of the deceased's property, specifying a particular pergunnah and its appurtenances,—*Held* that, though she did not expressly ask for a certificate to manage the particular pergunnah named, as her petition was so worded as to obtain, and had the effect of obtaining, a certificate of that tenor, she must be held liable for the costs of a party entitled to object to the grant of such a certificate, and appealing with a view to its amendment. *Feda Hossein* v. *Runee Khajoorounissa*, 9 W. R., 459.

In a suit against several defendants to recover possession of land, one of them stated in defence that he had nothing to do with it, and made good his defence. The other defendants claimed to be entitled to the land, and proved their title. The disclaiming defendant appeared by a separate pleader, and incurred a separate set of costs. *Held* that the Sudder Ameen rightly awarded a separate set of costs to him, and the Judge had not exercised a sound discretion in modifying the Sudder Ameen's decree, by awarding one set of costs only to all the defendants. *Ramchandra Goswami* v. *Matilal Bagchi*, 2 B. L. R., A. C., 169.

A. sued B., C., and D. for possession, and obtained a joint decree, and in satisfaction of his costs, attached B.'s property. B., in order to save her estate, paid the demand in full, and now sues C. and D. for contribution.

Held that, though the decree was jointly and equally against all three, yet C. and D. were liable to B. for a rateable amount of costs in proportion to what was their interest in the property decreed to A. *Kristo Coomar Chowdhry* v. *Anund Moyee Chowdhrain*, 7 W. R., 300.

Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. *Nobeen Kishen Mookerjee* v. *Shib Persaud Puttuck*, 7 W. R., 490.

Where if a decree, or half of the decree, had been enforced against a defendant, such defendant should be held liable for the costs of the enforcement, the defendant's surety is also liable for the costs of such enforcement. *Thakoor Deen Tewaree* v. *Boolakee Lal and others*, 6 W. R., Mis., 35.

Under Section 360, Act VIII of 1859 (which must be construed strictly) a judgment-debtor is only liable for the amount of costs which are specifically attached to the Judge's order. Thus, where certain suits were decreed with costs in the first Court and dismissed with costs on appeal, but there was no specification in the Appellate Court's decree that the plaintiff, the losing party, should pay the costs incurred by the other party in these suits in the first Court, it was held that the decree-holder could not take out execution for these costs. *Huree Kishore Roy* v. *Muthoora Mohun Roy*, 17 S. W. R., C. R., 445.

Where co-sharers were made consenting defendants only in order to plaintiff's obtaining a complete decree for partition, it was held that plaintiff ought to pay the co-sharers' costs, which, however, should be a small sum, sufficient to cover the costs of their appearing. *Ramputty Kooer* v. *Kalee Churn Singh*, 14 S. W. R., C. R., 94.

M. C. M. and others took a share of a turuff in putnee by executing a kubooleut towards R. L. D. and others, which contained a stipulation that if a suit brought by certain parties against the former, and then pending in the High Court, were decided against the lessors, the lessees would pay whatever costs of suit might be payable by the lessors, and if decided in favour of the lessors, the costs awarded would go to the lessees. The case was decided against the lessors.

Held, on the construction of the kubooleut, that the lessees were liable to pay the whole of the costs paid by the lessors,—not only the costs to which they were justly liable on account of their own share, but also all costs that might be recoverable from them; but *quære*, whether the Small Cause Court Judge should provide for the lessees being enabled to use the rights which the lessors would have for recovering in a suit for contribution the costs which they had paid on behalf of the other parties to the suit. *Raj Luckee Debia* v. *Mohesh Chunder Mojoomdar*, 14 S. W. R., C. R., 191.

A suit for possession of land having been dismissed with costs, a motion was made on the part of the defendants, asking the Court to make A. and B., strangers to the record, pay the costs, on the ground that they were the real though hidden plaintiffs, and had executed a false lease in favour of the nominal plaintiff, who had brought the suit on the strength of such false lease.

Held by Phear, J., that the Court could not make the order applied for under Act VIII of 1859, as that Act does not authorize a Court to deal by its judgment in any suit directly with persons not before it in that suit; but that the High Court has the same equitable jurisdiction which the Supreme Court had to entertain an application of this kind, and that as the facts showed that A. and B. were the real plaintiffs in the suit and that the conveyance to the nominal plaintiff was fictitious, the order directing them to pay the costs of the suit should go.

Held by Peacock, C. J., and Norman, J. (confirming the order of Phear, J.), that A and B. were guilty of a contempt and abuse of a process of the Court when they put forward a sham plaintiff and a deed which they knew was fictitious, with a view to impose upon the Court; and that the Court had power to compel them, as the real plaintiffs, to pay the costs of the suit, although they were not named

as parties in the original proceedings. *Jointee Chunder Sein* v. *Anundo Lall Das*, 14 S. W. R., A. O., 1.

(*c*) *Security for Costs.*

An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain sum of money for decree, costs, &c., including a sum of money for costs to be incurred on appeal. On an application by the plaintiff that the case be struck off for default of deposit, and that the defendant pay costs already incurred at the time of the application, it was ordered that the defendant should deposit a sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect. *Elias* v. *Chuckerbutty*, 1 Ind. Jur., N. S., 223.

On application for an order that a defendant, whose suit had been dismissed, should furnish security for the costs of an appeal which he had instituted, the Judge, considering the merits of the case, made the order. *Held* that a single Judge has full power to make such an order; and that, if the merits of the case seem to be in favour of the respondent in an appeal, he is entitled to get security for costs of the appeal from the appellant. *Cazee Mushur Hossain* v. *Denabundo Sen and others*, Bourke's Rep., O. B., 119.

Cause being shown on a rule *nisi* for an order for security to be given by an appellant for the costs of an appeal (similar orders having been previously made in the application of other defendants), it appeared that an unusual number of defendants had been joined in the suit, which had been withdrawn on a previous occasion when nearly tried out; and that the plaintiff, who sued as a relator, was poor and resided out of the jurisdiction, and had not paid interlocutory costs, for which an attachment had issued. The rule was made absolute.

Held that an appellant will not be ordered to give security for costs previously incurred. That the fact of similar applications having been granted in the suit, the poverty of the appellant, and the fact of his dwelling out of the jurisdiction, as well as the peculiar circumstances of the case, non-payment of interlocutory costs, a former withdrawal of the suit, and the joining of an unusual number of defendants, are grounds for granting an order for security to be given by an appellant for the costs of an appeal.

That a relator suing to enforce a public right must give security for the costs of those against whom he proceeds. *Cazee Mushur Hossdin* v. *Dinobondoo Sein and others*, Bourke's Rep., A. O. C., 40.

On a rule *nisi* for security for the costs of an appeal to be given by a defendant, five twenty-fourths of the property in dispute having been decreed to him, but subsequently attached under a prohibitory order, cause was shown that the Court had not jurisdiction, and that no reason for the application had been given. Rule made absolute.

Held that a single Judge is vested with all the powers of an Appellate Court, with reference to the costs of an appeal; that, when an appellant resides within the jurisdiction of the Court, he is amenable to its orders as to the costs of an appeal; that an appellant who has no available property must, if required, give security for the costs of an appeal before proceeding with it. *Monohur Doss* v. *Khodrum Begum*, Bourke's Rep., O. C., 110.

The Court has no power to order a plaintiff resident in another presidency to give security for costs. *Gahan* v. *Owen*, Cor. Rep., 11.

When it appears *primâ-facie* that the defendant is going to leave India with intent to remain absent so long that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant, he will be ordered, unless he show good cause, to find security for the amount of the claim and the costs of the suit.

And "good cause" must be either (1) that he is not going to leave India, or not for so long a time as will obstruct, or be likely to obstruct, the plaintiff, should he succeed; or (2) that the suit is not a *bonâ-fide* one; or (3) that even if it is, the institution of it has been vexatiously delayed till the defendant is about to depart from India, in order to embarrass or coerce him. *Spence's Hotel Company Limited* v. *Anderson and others*, 1 Ind. Jur., N. S., 294.

Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the Court to take security for costs before the case is decided, and if no security be furnished, the Court will pass judgment against the plaintiff by default. But if the defendant allows the case to go to judgment, the Court on appeal cannot pass any order calling for security for the costs of the lower Court which must be left to be realized in execution. *Re Calcutta and South-Eastern Railway Company*, 8 W. R., 217.

Quære,—Whether, in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons—*i.e.*, notice of the appeal. *Hufazut-toolah Chowdhry* v. *Humedhur Rohman*, 6 W. R., Mis., 123.

A security voluntarily signed existing upon the record, and even taken off the file, is a valid and subsisting security. The intentions and motives of the obligor in giving the security must be judged by what is mentioned in the instrument. The acceptance of the separate security of one surety is not invalidated by the acceptance of separate securities of five other sureties. *Rajah Gopal Inder Roy* v. *Rajah Jogor Nath Gurg*, 5 W. R., P. C., 129.

Under Section 342, Act VIII of 1859, the High Court has discretion to demand security for costs from an appellant, if it sees fit to do so, at any time before the hearing of the appeal. If an assignee who has been substituted for the plaintiff under Section 106 declines to furnish security for the costs within such reasonable time as the Court may order, the defendant may within eight days after such neglect or refusal plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. *Heeralall Seal* v. *A. Carapiet*, 13 S. W. R., C. R., 431.

Order made requiring security for costs of appeal to be deposited under Section 342 of Act VIII of 1859—Right of Reply. *Bamasundari Dasi* v. *Ramnarayan Mitter*, 7 B. L. R., Ap., 59.

A plaintiff who resided out of India paid a sum of money into Court as security for costs, under Section 34 of Act VIII of 1859. He subsequently obtained

a decree against the defendant, and the defendant appealed against that decree. *Held* that the defendant was not entitled to an order detaining in Court, pending the appeal, the money which had been paid in under Section 34. *Fleming* v. *Shearman*, 4 B. L. R., O. C., 92.

(*d*) *Right to Costs.*

The plaintiff in a properly instituted interpleader suit is entitled to his costs, and has a lien for them on the fund. *The Secretary of State* v. *Mir Mahommed Hossain and others*, 1 Mad. Rep., O. C. 361.

At the settlement of issues, defendant paid money into Court, which plaintiff took out in part satisfaction of his claim, and raised an issue as to damages. The plaintiff subsequently accepted the sum paid in full satisfaction, and withdrew the suit. *Held* that the plaintiff was entitled to his costs up to and including those of the settlement of issues. *Ardaseer Limjee* v. *Sorabjee Pestonjee and others*, 1 Bom. Rep., 70.

A defendant who, although he has a good defence, has by his conduct induced the plaintiff to sue him, may be made liable for the plaintiff's costs, though the suit be dismissed. *Lallah Bhugwan Doss* v. *Syed Akbar and others*, 1 Ind. Jur., N. S., 390.

When a suit is dismissed for want of jurisdiction, the Court will give costs. *Punchanun Ghose* v. *Brojendronarain Deb and another*, 1 Ind. Jur., N. S., 38, and *Maharajah Juggeshur Bunwaree Gobind* v. *Sut Chunder Sircar*, Marsh., 375.

When a plaintiff has asked for a sum which is in excess of what the Court holds him entitled to, and to which a lower rate of pleader's fee or of stamp duty applies than to the rest of the claim, the defendant, who succeeds in that part of the case, is entitled to recover the costs applicable to that particular part of the subject-matter (Bayley, J. dissenting). *Bamasoondery Debia* v. *G. Rogers*, 7 W. R., 127.

If a plaintiff claims in respect of two distinct matters, and succeeds as to one, and fails as to the other, the costs will be apportioned so as to give each party the costs applicable to that matter upon which he has succeeded. *Tarachund Mookerjee* v. *Juddonath Mookerjee*, Marsh., 79.

Ijmallee-holders, defendants, should be represented ijmallee by one pleader and one set of pleadings, and are not entitled to separate costs. *Brindabun Chunder Chowdhry* v. *Ram Coomar Chowdhry*, 1 W. R., 139.

Where an action on a contract was brought in the High Court, and judgment was given to the plaintiff for Rs. 454-13-4,—*Held* that, as the amount so found due was less than Rs. 500, the plaintiff could not have his costs, unless the Judge who tried the cause certified that the action was fit to be brought in the High Court.

The 37th Clause of the Letters Patent constituting the High Court does not give the Court an uncontrolled discretion as to costs in civil suits. Act IX of 1850, Section 101, is not repealed. *Subapati Mudaleyar Narayanswami Mudaleyar*, 1 Mad. Rep., A. C., 115.

Members of the same family, and living in the same place, when sued together on a common cause of action, are entitled to only one set of costs. *Kassee Nauth Roy Chowdhry* v. *Hullodhur Roy*, 2 W. R., 60.

Certain landed property, alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee who succeeded to the office of shebait, and was mortgaged subsequently on the death of the vendor by his widow to pay off the charge created by her husband. The last mortgage was foreclosed, and the mortgagee obtained a decree for possession. In a suit for the recovery of the property by a descendant of the vendee claiming as shebait of the idol, it was held that the zemindar and the putneedar, who were both compelled to appear for the protection of their interests, and whose defences were not necessarily identical, were entitled to separate costs. *Gobind Nath Roy Bahadoor* v. *Ranee Luchmee Koomaree and another*, 11 W. R., 36.

It is not correct in law or justice to say that costs must be invariably awarded in proportion to the amount decreed and dismissed. The Court can exercise the largest discretion in the matter; but this discretion is to be exercised with special reference to all the circumstances of the case, including the conduct of the parties. *Judoonath Tewaree* v. *Bissonath Tewaree*, 9 W. R., 61.

Although the question of costs is within the discretion of a Court, yet the Court is bound to give some reasons for the exercise of that discretion. A party disclaiming all interest in a suit, and unnecessarily made a party to it, is entitled to costs. *Shunt Buksh* v. *Lalla Nund Ram*, 11 W. R., 48.

Appeal by defendant against whom the suit was decreed in the Court of first instance, which decree was confirmed on appeal by the Sudder Adawlut. The Privy Council held that the plaintiff had not made out his case below, and reversed the judgment, but awarded to the defendant costs in the first Court only, and not in either of the Appellate Courts, on the ground that the plaintiff, as respondent, was defending the judgment. *Madho Row Chinto Punt Golay* v. *Bhookun Das Boolakie Das*, 5 W. R., P. C., 33.

A Court is bound to award, as costs to a defendant, his pleader's fees calculated according to the rules laid down in Section 25, Regulation XXVII of 1814. The plaintiff cannot take advantage of any private arrangement between the defendant and his vakeel. *Umirtonath Jha and another* v. *Roghoonath Pershad Roy*, 6 W. R., Mis., 35.

Under a charge against several defendants for having jointly misappropriated property, one defendant is not bound to entrust his defence to the counsel for the others, but each has a right to defend himself, and is entitled to separate costs if successful. *Nilkanth Surma and others* v. *Soosela Debia and others*, 6 W. R., 324.

A., under a decree against B., took possession of B.'s estate, and continued a litigation which had been commenced by B.'s manager, and in which he was unsuccessful, and charged with the costs of suit. B. meanwhile, having appealed to the Privy Council, obtained a decree restoring her to possession of the estate. *Held* that A. could not recover the costs he was charged with from the estate. *Huro Moyee*, alias *Huro Monee Debia, and others*, v. *Ram Kishore Achargee*, 6 W. R., Mis., 124.

When a decree in favour of an appellant describes

a set-off costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and the remainder only should be recovered under the decree. *Issur Chunder Doss* v. *Munmohun Chowdhry*, 12 W. R., 308.

Where a Collector had been unnecessarily made a party to a suit in which damages might have been awarded against him had he not appeared, he was held entitled to his costs.

In his appeal from the Judge's order passed in favour of the plaintiff, and disallowing his own claim for costs, a defendant unnecessarily made a co-defendant a respondent. As this respondent could not be injured in any way in this appeal, it was held by the Chief Justice (Mitter, J., dissenting) that, although the appeal was dismissed, the co-defendant was not entitled to costs, simply because he had been present watching the case. *The Collector of the* 24-*Pergunnahs* v. *C. J. Wilkinson*, 12 W. R., 444.

A suit for an account of partnership transactions was compromised on the terms of the plaintiff buying the share of his partner for a specified sum. The plaintiff by his plaint charged that the defendant had not observed the terms of this compromise, and had dealt fraudulently with the assets of the partnership. The Court went into the dealing of the partnership. Subsequent to the compromise at the hearing, the plaintiff abandoned the bulk of his allegations of fraud, was defeated on others, and recovered only a trifling verdict. The defendant having, however, resorted to a fraudulent and unscrupulous defence, the Court gave the plaintiff a verdict with costs. *Ram Gopaul Chatterjee* v. *Bhoobun Mohun Banerjee*, Cor. Rep., 126.

Where plaintiff had obtained a decree in the Small Cause Court, and execution had been issued, but defendant had not moveable property sufficient to satisfy the decree,—*Held* that a suit in the High Court, on the decree of the Small Cause Court, will lie for the balance, but costs will not be given to the successful plaintiff in such a suit, nor interest on the judgment be obtained in the High Court. *Mohendronath Ash* v. *Beedobodun Dutt*, 1 Ind. Jur., N. S., 220.

Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one kubuleut. *Held* that when both the shareholders were before the Court, though in different suits, the suits were maintainable, but that no more costs were to be awarded to the plaintiffs than if they had sued jointly. *Pyari Mohun Singh and others* v. *Mirza Ghaai and others*, 2 B. L. R., A. C., 337; S. C., 11 W. R., 270.

Where the defence is common and not separate, one set of costs should be awarded to all the defendants, even though they appear by separate vakeels. *Rev. Francisco de Assis, Vicar-General of the Portuguese Mission in Bengal* v. *L. D. Augos*, 17 S. W. R., C. R., 188.

Where a decree-holder came in, after the lapse of some three-and-a-half years, and when one of the Judges who made the order ceased to be a Judge of the Court, to ask for an amendment of the decree by allowing her the costs of all the remands that took place in the case,—*Held* that after such a delay the Court could not make such an order or even say whether the decree-holder was entitled to these costs. *Ooday Tara Chowdrain* v. *Syud Jonab Ali Chowdry*, 17 S. W. R., C. R., 358.

Costs are not consequential upon partial relief being granted in a suit involving a much larger subject-matter, a portion of which is still *sub-judice*, and cannot therefore be given by the High Court upon a decree of the Privy Council, if not provided for by the decree. *Rajah Leelanund Singh* v. *The Court of Wards on behalf of the Rajah of Derlangha*, 14 S. W. R., C. R., 387.

Where a party's admissions and conduct induced the supposition of his liability for a claim, the Court refused him his costs, although the suit against him founded on such claim was dismissed. *Sreenauth Roy* v. *Goluck Chunder Sein*, 15 S. W. R., C. R., 348.

Where parties who have no interest in a suit are unnecessarily made co-defendants, the lower Court ought, as a general rule, to award them costs; but that, as by Section 178, Act VIII of 1859, the awarding of costs is left to the discretion of the Court, no appeal lies from its decision. *The Collector of Dacca* v. *Kumalakant Mookerjee*, 2 W. R., 33.

A. L. D. and others, having got a decree in a suit in which S. B. D., a purdah-nushin, was plaintiff, a rule *nisi* was obtained by them against J. C. S. and another, on the ground that he was the real plaintiff, and S. B. D. only a nominal one. It appeared that S. B. D. had no means of her own, but lived in the house of J. C. S., who could explain nothing of her circumstances, or why she was residing in his house; but he stated that she had purchased the former plaintiff's right in the suit against a decree, she having been previously uninterested in the matter, and the only reason suggested for her doing so was that a small portion of the premises in question would serve for carrying out a religious purpose said to be entertained by her. The Court found that S. B. D. was only a sham plaintiff, and that J. C. S. was the real one, and the rule was made absolute. *Held* that the words "another party" in Section 187 of Act VIII of 1859, should be read as if identical with "another party to the suit."

Held also that the Court cannot, by its judgment in any given suit, deal directly with persons not before it in that suit.

That the Court has the same power of directing that the costs of any party to a suit for the recovery of land shall be paid by a person who is not on the record, as the late Supreme Court had, and as the Courts at Westminster still possess and exercise.

That the recovery of costs from the real plaintiff in a suit in which the plaintiff on record is only a sham one, is not a step in the proceedings in any particular suit, nor can it be made the subject of a separate plaint, but is of the nature of a substantive proceeding *in personam*, and is within the equitable jurisdiction of the Court.

That if the plaintiff on record in a suit be only a sham one, the defendant may proceed against the real plaintiff for costs.

That the real plaintiff in a suit, in which the one on record is a sham plaintiff, is liable for the costs. *Sreemutty Bama Sundary Dossee* v. *Anundolall Doss and others*, Bourke's Rep., O. C., 44.

The High Court has no power, under the Civil Procedure Code, to award costs to the defendant

when the plaintiff withdraws, not having asked leave to do so, with liberty to bring another suit for the same matter. *Queen* v. *Tirevemgada Pillai*, 1 Mad. Rep., O. C., 247.

After notice served upon, and appearance made by, the defendant, it appeared that the Civil Court had no jurisdiction, but that the suit ought to have been instituted in the Revenue Court. *Held* that the Civil Court had jurisdiction to order the defendant his costs, and that as he had been unnecessarily brought before the Court, it ought to order him his costs. *Gopal Chunder Ghose* v. *Dhurmdur Roy*, Marsh., 311.

(*e*) *Interest on Costs.*

Costs generally carry interest without any distinct order being required to that effect. *Digambaree Dabee* v. *Nundgopal Banerjee*, 1 W. R., Mis. 1.

The Court in executing a decree, has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *Ulfutunnissa* v. *Mohan Lal Sukul*, 6 B. L. R., Ap., 33.

Interest cannot be allowed upon costs when the decree of the Privy Council is silent on the subject. Where only one defendant appeals successfully to the Privy Council and obtains his costs, his co-defendants, who did not appeal, are not entitled to their costs. *Maharanee Brojo Soonduree Debia* v. *Aumud Mazu Debia*, 16 S. W. R., C. R., 302.

Interest cannot be allowed on costs awarded by a decree of the Privy Council when the decree is silent on the point. There is no provision of the Civil Procedure Code authorizing a Court to call upon a defendant to appear in Court and produce property decreed to plaintiff. *Bhoza Rughbur Singh and others* v. *Bhoza Roy Singh and others*, 3 N. W. R., 319.

Where the decrees of the Sudder Court and of the Privy Council made no provision for interest on the costs awarded in these Courts, the lower Court cannot in execution allow interest in such costs. *Rajah Leelanund Singh* v. *Maharajah Joy Mungle Singh*, 15 S. W. R., C. R., 335.

Held that the principle of the Full Bench ruling, reported at page 109 of Sutherland's *Weekly Reporter*, vol. vi. (Miscellaneous Rulings), is as much applicable to interest upon costs as it is to interest upon mesne profits not awarded by the decree, and must be applied to all decrees passed, either before or after the date of that judgment. *Rajah Leelanund Singh* v. *Rajah Ram Narain Singh*, 15 S. W. R., C. R., 415.

(*f*) *Pauper Suits.*

Leave to institute a suit in *formâ pauperis* refused, on the ground that the applicant (by petition) had no case on the merits. *Chunder Chunder Paul* v. *Ram Narain Sen.*, Cor. Rep., 8.

There is no necessity for an enquiry whether an alleged representative of an admitted pauper is a pauper or not. The Court, if satisfied that he is the legal representative, ought to admit him to carry on the suit. *Bhagbut Doss* v. *Buloram Doss*, 3 W. R., Mis., 20.

Where a respondent is allowed in the lower Court to sue in *formâ pauperis*, the High Court will not set aside that order on motion, on the ground that it has been improperly obtained. *In the matter of the petition of Khodjoonissa*, 7 W. R., 486.

Held that a pauper suit commences for the purpose of limitation on the day when the petition to sue in *formâ pauperis* is presented to the Court, under Section 299 of the Code, and not on the day when the application being granted, it is numbered and registered under Section 30. *Dhavle* v. *Sâmval*, 4 Bom. Rep., A. C. J., 39.

Held that Section 301 of Act VIII of 1859 requiring the petition for permission to sue in *formâ pauperis* to be presented by the petitioner in person is imperative, and must be held to control the provisions of Section 17 of the same Act. *Ex-parte Devgir Gurû Shumbhagir*, 4 Bom. Rep., A. C. J., 91.

When a day is fixed, under Act VIII of 1859, Section 305, for receiving evidence of the pauperism of the plaintiff, the Court will not, under Section 306, entertain any objection of the defendant other than on the single question of the pauperism of the plaintiff. *Shiponessa Bibee and others* v. *Kaminee Bibee and others*, 2 Ind. Jur., N. S., 121.

Enquiry, under Sections 305 and 306 of the Civil Procedure Code, should be made by the Judge himself, and not by the Sherista of the Court. *In the matter of Eknath Bin Madhoba*, 1 Bom. Rep., 102.

Under Sections 308 and 309 of Act VIII of 1859, a pauper cannot claim exemption from liability to pay any further stamp duty or penalty in respect of a document on which he relies, and which, owing to a defect in the stamp, is inadmissible as evidence in the suit.

It is not the duty of a Civil Court to receive and submit to the Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the Stamp Law; the pauper should himself make timely application under Clause 6, Section 15, Act X of 1862. *Golam Guffoor* v. *Ekram Hossein Chowdhry*, 10 W. R., 357.

There is no appeal open to a pauper when his application to sue as pauper is rejected for default. Where there has been no refusal under Section 310, Act VIII of 1859, the applicant may revive his application for leave to sue as a pauper. *Rajah Bhoj Singh* v. *Ranee Maha Koonwer and others*, 3 Agra Rep., M. R., 1.

An appeal lies from a decision in a suit heard in *formâ pauperis*. A separate formal application for enquiry into the pauperism of applicant need not precede an application for leave to appeal in *formâ pauperis*. *Kunrod Poory* v. *Sheo Poory*, 1 N.-W. R., par. 11, 167.

An Appellate Court has no power under Section 370, Act VIII of 1859, to annex to its order the condition that the party allowed to appeal should give security for costs. The provisions in Section 342, which make it discretionary in the Appellate Court to demand security for costs, is not applicable to appeals in *formâ pauperis*; and therefore the order of the Judge in this case requiring security for costs from the petitioner after his appeal had been admitted, and after the Judge on enquiry had found that the appellant was a pauper, was set aside. *Nusseerudun Biswas* v. *Ujjul Biswas*, 17 S. W. R., C. R., 68.

Per Jackson, J.—Where the grounds stated in Section 304, Civil Procedure Code, appear, the Court is bound to refuse an application to sue as a pauper; but should the Court not see reason to refuse, and should fix a day for hearing evidence on the question of pauperism, and, upon such further hearing, if the opposite party should bring to notice any ground upon which the Court would have been bound, under Section 304, to refuse the application, it would be at the discretion of the Court, upon being informed, to refuse leave. The words "within the jurisdiction of the Court" in Section 304 mean within the local jurisdiction. *Gunga Dass Adhikaree, In the matter of*, 14 S. W. R., C. R., 281.

When a pauper petition comes on for hearing, under Section 306 of the Code of Civil Procedure, the Judge has no power to enquire into any other circumstances than the pauperism of the petitioner. *Dipsangji Jitsangji* v. *Fatlesangji Jasoatsangji*, 5 Bom. Rep., A. C., 59.

Where Government, after attaching a pauper plaintiff's decree in order to recover the value of stamps, under Section 309 of the Code of Civil Procedure, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard to say as against the purchaser that the decree was sold subject to its claim for stamps.

The amount of stamps in a pauper case cannot be claimed as a lien or charge upon the decree in favour of Government, but is recoverable in the same manner as costs of suit; Government being, as regards its claim in such a case, in no higher position than an ordinary judgment-creditor. *Prankisto Roy* v. *The Collector of Moorshedabad*, 15 S. W. R., C. R., 205.

A pauper suit for possession was decreed with mesne profits to be ascertained in execution, costs being also awarded including the value of stamps due to Government which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of wasilat should be ascertained. As the parties did not choose to go into the enquiry as to mesne profits, the Court on a motion by Government called upon the parties to appear, and on their refusing to do so, altered its original order with respect to the payment of the stamp-duty, and declared that it should be realized from both the parties jointly.—*Held*, that the Court had no authority to make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation. *Shostu Churn Roy* v. *Collector of Chittagong*, 13 S. W. R., C. R., 155.

VIII.—DECREE.

(*a*) *Miscellaneous.*

Plaintiff sought to recover land sold by the first defendant, the widow of an undivided member of a Hindu family, and part of the consideration was the amount of a mortgage deed executed for the purpose of supplying the necessities of the husband of the first defendant. In special appeal a decree fastening the amount of the mortgage money upon the land was asked for. *Held*, that such a decree ought not to be made, the plaintiff not having sought for that relief, and the suit having been so conducted that the genuineness of the mortgage instrument, though disputed, was treated as a subordinate matter. *Madava Naikan* v. *Appavu Naikan*, 2 Mad. Rep., 394.

In a suit for the recovery of land upon an alleged lease found to be not genuine, the defendants set up a sale by plaintiff's father. The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff, the son of the vendor. *Held*, that the decree was erroneous, the validity of the sale not having been questioned by the plaintiff, who had rested his case on entirely different grounds, and no issues having been raised as to the validity of the sale. *Palancquadi Condon* v. *Mutteesamy Condon*, 2 Mad. Rep., 441.

Plaintiff sought to recover the amount of a bond executed by the father of the defendant, and prayed for a judgment against certain land which belonged to the defendant's father and the right to which passed by succession to the defendants,—*Held*, that the plaintiff was entitled to a decree for payment by the defendants of the amount of the bond out of any property which passed to them as the representatives of their father; the plaintiff, in execution of the decree, being at liberty to proceed in respect of the immoveable property, if there should be no moveable property left, or if it should prove insufficient when sold to satisfy the decree. *Royappa Chitti* v. *Ali Sahib*, 2 Mad. Rep., 333.

A creditor suing under a contract of hypothecation of land must prove that there was an actual pledge, and that the land was part of the debtor's estate at the time of the pledge. The decree will then be for sale of the property hypothecated, unless the debtor pay the amount due with interest within a period to be named by the Court. *Chitte Gondon* v. *Saudarum Pillai*, 2 Mad. Rep., 57.

Where defendants infringed plaintiff's legal right, and the lower Court dismissed the suit with costs, on the ground that plaintiff had given no evidence that he had sustained substantial damage,—*Held*, that the plaintiff was entitled at least to a decree without damages and costs. *Calliappa Kundan* v. *Vayapuri Condon*, 2 Mad. Rep., 442.

In a decree to put plaintiff in possession, leave cannot be reserved to defendant to remove buildings, &c., unless they were created by defendant in good faith. *Ramdhone Bhuttacharjee* v. *Ishance Dabee*, 2 W. R., 123.

A decree declaring plaintiff's title in a suit under Act X of 1859, not having been executed within the period allowed by law, was held to be no longer a decree, and to be no evidence against the fact of an intervenor in the suit having actually received the rents *bonâ fide*. *Ram Soonder Tewaree* v. *Sreenath Dewasie*, 10 W. R., 215.

Where a decree ordered a defendant to give in certain accounts within a specified period, and the defendant survived the period without any proceeding being ever taken against him, it was held that the decree was binding upon him, personally, and could not, after his death, be executed against his widow and representative. *Bidhoo Mookhee Dassee* v. *Rajah Beejoy Keshub Roy*, 12 W. R., 495.

In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge, in pro-

nouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share. *Ramlochan Das* v. *Mantur Ali*, 1 B. L. R., A. C., 65; S. C., 10 W. R., 96.

Act XI of 1861 does not apply to decrees which were not in force at the time of the passing of Act XIV of 1859. *Shamee Mahomed Sircar* v. *Brinda Mundul*, 11 W. R., 100.

In execution no new directions (*e.g.*, an order for mesne profits) can be imported into a decree. *Jugdeb Narain Singh* v. *The Court of Wards*, 3 W. R., Mis., 9.

The officer passing a decree is the most suitable person to construe it afterwards, should any doubt arise as to its meaning. Thus, where the suit was for Nizamut lands, and the claim was decreed according to the plaint, the officer passing the decree on petition by the other side after issue of proclamation, declared the decree to give rights over mokudumee lands, and this interpretation was upheld. *Sheikh Besharut Ali* v. *Shah Golam Nuzut*, 4 W. R., Mis., 13.

A Judge is bound to construe a decree as it stands, and not to go beyond it, or to incorporate anything into it. *Oolfutoonissa Beebee* v. *Akbur Ali*, 4 W. R., Mis., 20.

A decree for possession of land is of the nature of immoveable property, and a Judge has no jurisdiction to interfere with the order of a lower Court setting aside the sale of such a decree. *Mobkoonissa* v *Dewan Ali Mistree*, 4 W. R., Mis., 22.

Where a plaintiff sued, while his lease was still running, to recover possession of certain julkurs, and the lease expired after action brought, but before decree,—*Held* that the decree, instead of directing actual possession to be given, should have merely declared his right to possession up to the date on which his lease expired. *Umanund Roy and another* v. *Sreekissen Banerjee*, 7 W. R., 248.

A decree in a suit upon a bond, against the heir of the deceased obligor, awarded to the plaintiff the amount of the bond from the property of the obligor, and directed that "the defendant be released from the claim in this suit." An order for execution of the decree was set aside by the Principal Sudder Ameen, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person.

Held, first, that the decree was informal in not expressing that the debt was to be realized out of the assets of the deceased in the hands of the heir, or that should come to the hands of the heir, but that the Principal Sudder Ameen had jurisdiction to amend and ought to have amended the decree in this respect. Secondly, that a suit was maintainable by the plaintiff upon the decree recovered in the former suit, there being no other means of enforcing the former decree or recovering his debt. *Anund Roy* v. *Thakoor Munorut Singh*, Marsh., 611.

The Court will not interfere with a decree on the ground of misapprehension on the part of the Court below as to the applicability of an Act, or with respect to the relation of the parties, if it can see that the real questions in dispute have been properly disposed of. *Juggobundo Mozoomdar* v. *Gooroo Persad Roy*, Marsh., 52.

An order allowing a defendant to pay a decree for Rs. 1,200 by instalments of Rs. 100 per annum (in other words, deferring execution of the decree for twelve years) cannot legally be passed, except for some sufficient reason. *Ramgopaul Roy* v. *Ramtonoo Chatterjee*, 6 W. R., 89.

A decree should not give a plaintiff more than he claims. *Ghyrullah Mundul* v. *Kishorenath Koondoo*, 5 W. R., Act X R., 60.

A decree is held to be part of a judgment-debtor's effects, and not to fall under the head of immoveable property. *Bunsheemohun Doss* v. *Hurochunder Boss Chowdhry*, W. R., 1864, Mis., 28.

A decree awarding immediate mesne profits at the rate admitted by defendants, and larger mesne profits contingently on a higher rate being proved at the time of execution, is altogether irregular. *Syud Lotfoollah* v. *Mussamut Nusseebun*, 10 W. R. 24.

When the first of twelve suits against the same defendants was filed in the Recorder's Court at Rangoon, it was agreed between the parties, by their advocates in open Court, that all legal evidence to be taken in the first suit should be evidence in the rest. When the case came on for hearing, the advocate for the plaintiffs consented that the other cases should follow the finding of the Court in the first case, but the advocate for the defendant refused assent. Judgment was given in favour of the plaintiffs, and was also entered up in all the remaining cases. Defendant appealed from these decisions to the High Court, which reversed the Recorder's decision in the first case, and subsequently, without hearing argument, reversed the decisions in such (7) of the eleven as were appealable.

Held that the decrees passed by the Recorder's Court in the four unappealed suits are good decrees, on which execution may be issued in the usual form, provided they be not altered on review. *Nga Bike* v. *R. Snadden*, 9 W. R., 276.

When an action is brought for a certain sum, on the failure of the plaintiff to prove his entire claim, judgment may be given for a smaller amount in accordance with the acknowledgment of the defendant. *Eduljee Framjee* v. *Abdoolla Hajee Cherak*, 5 W. R., P. C., 58.

A decree for possession was construed to include mesne profits where the High Court was satisfied that such was the intention of the Court which passed the decree. *Raesonissa Begum* v. *Sharoda Soonduru*, 16 S. W. R., C. R., 25.

The ascertainment of the amount of damages is a necessary preliminary to a decree under Act VIII of 1859, Section 192, for specific performance of a contract and payment of damages as an alternative in case of non-performance. *Rammavami Nayakkan and others*, 1 Mad. Rep., A. C., 341.

Section 192, Act VIII of 1859, only applies to suits for damages for breach of contract, and does not authorize damages for refusal of a mother to comply with an order of Court to deliver up her daughter. *Mussamut Raj Begum* v. *Nawab Reza Hossein*, 2 W. R., 76.

(*b*) *Judgment.*

The rule which makes a judgment conclusive against parties, and those who claim under them,

is subject to certain exceptions which are the offspring of positive law, and the reason of the exception may be generally stated to be that the nature of the proceedings by which there is a fictitious, though not unjust, extension of parties, renders it proper to use the judgment against those not formally parties.

The rule as to judgments *in rem*, except in some peculiar cases, results from the nature of the proceedings; and before attempting to apply the rule in this country, consideration should be given to the question, whether there are Courts so proceeding as to warrant the application of the doctrine of decrees *in rem*.

Mr. Smith's definition of a judgment *in rem* discussed and dissented from, and the authorities in English and Roman law upon the subject examined and commented upon. *Yarakalamma and others* v. *Anakala Naramma*, 2 Mad. Rep., 276.

Where a decree of the Sudder Court was in general terms, *viz.*, "that the appeal be decreed, with costs," though the judgment indicated a different intention,—*Held*, that the decree ought not to have been used to obtain execution for the whole of the claim, but restricted to that which it was the manifest intention of the Court to grant. *Mirza Mehdee Bey* v. *Telala Thakoor*, 15 S. W. R., C. R., 530.

A copy of the judgment, with the schedule of costs appended, does not constitute a proper decree such as is required under Section 189, Code of Civil Procedure. *Purmessuree Dutt Jha* v. *Jugnauth Thakoor*, 15 S. W. R., C. R., 326.

The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. *Chunder Kant Chowdhry* v. *Hurish Chunder Chowdhry*, 1 W. R., 214.

A judgment in another case is of itself insufficient evidence against a party who had no part in it, even though his interests may be of a similar nature to those of the parties then suing. *Dost Mahomed Khan Chowdhry* v. *Soolochana Dabia*, 1 W. R., 270.

The judgment of the lower Appellate Court is defective, if it does not state the opinion of that Court, but merely what had been the opinion of the Court of first instance. *Ommutal Fatima Begum* v. *Mussamut Janee Khanum*, 1 W. R., 295.

Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. *Vurjeevan Runjee* v. *Ajee Dajee and others*, 1 Bom. Rep., 165.

The plaintiff alleged in his plaint that the defendant had erected a hut or *challa* upon a ground to which he, the plaintiff, was separately entitled. The lower Appellate Court found that the land in dispute was the joint property of both parties, and that the defendant was not at liberty to erect the hut, without the express permission of the plaintiff, and ordered the demolition of the *challa*. *Held* that the plaintiff was not entitled to a judgment upon a ground which was inconsistent with the case set out in his plaint. *Nabin Chandra Mitter* v. *Mohes Chandra Mitter*, 3 B. L. R., Ap., 111.

The Appellate Court, as well as the parties to the suit, have a right to know the reasons that have led a Judge to his conclusion. His judgment should contain his reasons for the decision. *Imrit Singh and others* v. *Koylashoo Koer and others*, 11 W. R., 558.

A judgment should state not merely the finding of the plaintiff's or defendant's claim proved, but also what the evidence consists of, and in what way or for what specific reasons it proves the plaintiff's or defendant's case. *Trilochun Dutt* v. *Ishen Chunder Chowdhry*, 3 W. R., 176.

An alleged mokurruree pottah having been set aside by a judgment *in rem*, in a case between the shareholders of the plaintiff and the defendant, was held to be for ever inoperative against the plaintiff also, although the plaintiff's suit was barred by limitation. *Khoka Koomar* v. *Jugoo*, 3 W. R., 192.

Where a judgment in one case governed other cases,—*Held* that the filing of that judgment was a substantial compliance with the requirements of the law, and that the filing of the short judgment referring to the other judgment was merely formal, and the delay excusable. *Mothoornath Chuckerbutty* v. *Kissen Mohun Ghose*, W. R., 1864, Mis., 9.

In a suit for a share of joint ancestral property, where defendants claim under a will and deny that the property was joint, and the Court of first instance tries the question of possession, and dismisses the claim as barred by limitation, but the lower Appellate Court remands the case for trial on a different issue, the order of remand is not an interlocutory order, but a judgment from which an appeal lies. *Gopal Chunder Chatterjee* v. *Raj Coomaree Debia*, 4 W. R., 101.

An order of a Deputy Collector refusing to entertain a suit, because the section of the law to which it relates was not cited in the plaint, is a judgment within the meaning of Section 160 of Act X of 1859, and an appeal lies from it to the Judge. Such an order ought to state whether the suit is dismissed, or the plaint rejected, and under what sections respectively. *Sheikh Golam Ehya* v. *Lalla Doorga Dyal*, 3 W. R., Act X R., 17.

A judgment is not a judgment *in rem* because, in a suit by A. for the recovery of an estate from B., it has determined generally concerning the *status* of a particular person or family; it is a judgment *inter partes*. *Kattama Nachear* v. *The Rajah of Shivagungah*, 2 W. R., P. C., 31.

In appealable cases the lower Courts should, as far as is practicable, pronounce their opinions on all the important points, for by forbearing from deciding on all the issues, joined, they not unfrequently oblige the Privy Council to remand a case which might otherwise be finally decided on appeal. *Tarakant Banerjea* v. *Puddomonee Dassee*, 5 W. R., P. C., 63.

It is regular to add to a judgment once delivered when the effect of the addition is to alter the grounds on which the judgment proceeded.

Semble,—A Judge may append to his judgment additional reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code. *R. Snaddon* v. *Todd, Findlay, and Co.*, 7 W. R., 286.

Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade, and refrained from giving judgment, but left it to his successor for decision.

Quære per Markby, J.—Whether such decision is legal. *Radha Nath Banerjee* v. *Jadu Nath Singh and others*, 7 W. R., 441.

Directions as to the manner in which a Judge should write his judgment. *Syud Lutf Ali Khan* v. *Syud Velaet Ali Khan and others*, 6 W. R., Mis., 115.

The determination in a cause should be founded upon a case, either to be found in the pleadings, or involved in, or consistent with, the case thereby made. *Eshan Chunder Singh* v. *Sama Churn Bhutto*, 6 W. R., P. C., 57.

R. C. brought a suit against M. D., the widow of R. S., in which it was found by the Court that R. S. had been adopted by J. L., and that R. C. was therefore entitled as reversionary heir to R. S. The judgment was affirmed on appeal. R., who was no party to that suit, afterwards brought a suit against R. C., to have it declared that he, R., was heir to R. S., alleging that R. C. obtained the property by deed of gift from J. L., and not by adoption. *Held* that the judgment in the former suit as to the adoption was not a judgment *in rem*, and was not admissible as evidence against R. *Kanhye Lall and Mussamut Soondur Koonwur* v. *Radha Churn and others*, 2 Ind. Jur., N. S., 222.

A decision by a Court that a Hindu family is joint and undivided, or upon a question of legitimacy, adoption, partibility of property, rule of descent in any particular family, or upon any other question of the same nature in a suit *inter partes*, is not a judgment *in rem* or binding upon strangers (*i.e.*, persons neither parties to the suit nor privies); and a decree in such a case is not admissible as evidence at all against strangers.

No judgment of a mofussil Court can be a judgment *in rem*.

Per Peacock, C. J. and L. Jackson, J.—By a decree brought by A. against a widow as heiress of her husband to set aside alienations by her, and establish A.'s right as reversioner, it was declared that A. was reversioner. Subsequently B. (who was not a party to the former suit) sued to have it declared that he, and not A., was the person legally entitled to succeed on the widow's death.—*Held* that the judgment in the former suit was not (upon the ground of its having been made in a suit brought against the widow when holding the estate as heiress) admissible as evidence against the plaintiff B. in the second suit.

The suits to which the Privy Council intended to refer in the *Shiva Gunga* case (2 W. R., P. C., 31) are suits in which the title of the settler or the validity of the estate-tail has been in issue, and not to suits against the tenant-in-tail in which a question has incidentally arisen and been determined as to who was the remainderman entitled to succeed upon the termination of the estate-tail. *Konye Lall and others* v. *Radha Churn and others*, 7 W. R., 338.

In a suit by A. against B., a mokurruree pottah, under which B. claimed, was declared to be a forgery. B's co-sharer, C., was not a party to the suit. C. brought his suit against A., to have his right declared under the mokurruree pottah. *Held* that the judgment in the suit declaring the pottah to be a forgery was not a judgment *in rem* and binding against C. *Gungadhur Roy* v. *Wooma Soondary Dossee*, 2 Ind. Jur., N. S., 120; 7 W. R., 347.

It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to show that the Court has dealt with each ground of appeal, and more especially to record distinct findings on questions of fact.

Where the Civil Judge, confirming a decree of the District Moonsiff, stated by way of judgment that he was of opinion that the decision of the Moonsiff was fair and equitable, the High Court on special appeal sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure. 4 Mad. Rep. Rulings LVI.

A Judge may at the close of the hearing of a suit state at once orally the judgment which he intends to record and deliver. 5 Mad. Rep., Rul. VIII.

The Civil Judge, in confirming a decision of the District Moonsiff, did not state the reasons upon which his judgment was founded, and the High Court remitted the case in order that the Civil Judge might record a judgment in accordance with the Civil Procedure Code. The Civil Judge had been appointed to another district; and when the case went down, the new Judge had the case re-argued before him, and reversed the decision of the Moonsiff.

The High Court under the circumstances held that effect should be given to the first judgment, notwithstanding the irregularity. *Kristna Reddi* v. *Srinivasa Reddi*, 5 Mad. Rep., 174.

A Subordinate Judge wrote out his judgment in a case which had been heard before him, after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—*Held* that the judgment was valid. *Mussamut Parbutti* v. *Mussamut Bhikun*, 8 B. L. R., Ap., 98, and 17 S. W. R., C. R., 475.

Plaintiff, a younger son, failed in a former suit to recover possession of a Raj and of the property belonging to it from his elder brother on the ground that he, plaintiff, was legitimate, and his brother illegitimate. He proved the former, but not the latter ground. He now sues for the same object on the ground not only of his brother's illegitimacy, but also of his priority of right by reason of the superior nature of the marriage of his own mother; and the question was whether the judgment in the former case was not a judgment *in rem*. It appeared to the Privy Council very doubtful whether there existed in India (exclusive of the particular jurisdictions which are exercised by the High Courts in the matter of probate and the like, and which in the case of war might be exercised in matters of prize) any ordinary Court capable of giving a judgment *in rem*; but without considering whether an ordinary Zillah Court could pass a judgment *in rem* determining the legitimacy of a party against all the world, they held that the judgment pleaded in bar in this case could not be treated as one of that nature upon any principles, whether derived from the English law or from the law and practice of India. *Jogender Deb Roy* v. *Funinder Deb Roy Kut*, 17 S. W. R., C. R., 105.

A Judge whose vernacular language is English, ought to write his decision in his own language.

Huro Soondurii Dabee v. *Sreedhur Buttacharjee*, 17 S. W. R., C. R., 352.

For the Court to say that a plea is absurd and ridiculous, without giving any reasons, is not complying with the requirements of Section 185, Code of Civil Procedure. *Juggessuree Debia* v. *Gudadhur Banerjee*, 6 W. R., Act X R., 21.

The meaning of Section 183, Act VIII of 1859, taken in connection with Section 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken under Section 173, and the subsequent Sections, which are expressly allowed to be read in evidence at the hearing; and care should be taken, in the transfer of suits, and in the disposal generally of the business of the lower Courts, to prevent the necessity of re-summoning witnesses. *Naranbhai Vrigbhukandas* v. *Narosh Sakar Chundar Shankar et al.*, 4 Bom. Rep., A. C. J., 98.

A Judge should not, without the consent of the parties, allow his judgment in one case to govern his decision in another, even if the subject of dispute is of a similar nature and the evidence similar in character, when the parties are not the same and the subject-matter of the suit is different. *Soorendronath Roy* v. *Purmanund Ghose*, 15 S. W. R., C. R., 342.

The Judge of the Lower Appellate Court not having recorded his judgment as required by Section 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively. *Satur Khawas* v. *Jagannath Prosad*, 7 B. L. R., Ap. 14, and 15 S. W. R., C. R., 131.

Where a case is altogether dismissed, no adverse opinion expressed in the judgment can affect the defendant's rights in any future litigation between the parties. *Chowdry Mahomed* v. *Lutafeet Hossein*, 13 S. W. R., C. R., 239.

An Appellate Court has no power to reverse the judgment of a Court of first instance merely on the ground that the document on which the suit was based did not bear a stamp at all. *Srinath Saha* v. *Saroda Gobindo Chowdry*, 5 B. L. R., Ap. 10.

A judgment *inter partes* between A. and B. cannot be considered to conclude A. in a suit between A. and C., and is not admissible in the second suit as evidence of the truth of the facts adjudicated in the former one. The High Court remanded the case to the District Court for the determination of a material issue regarding the alienation of Hindu family property in land. *Balajee Joshi* v. *Dhurma and others*, 2 Bom. Rep., 385.

(c) *Declaratory Decrees.* (See PLAINT.)

In a suit to establish plaintiff's right to the reasonable use, for the purpose of irrigation, of water, the flow of which had been impeded by a bund erected by defendants,—*Held* that even though plaintiffs had not yet been endamaged by the acts of the defendants, it was in the discretion of the Court, if they proved their right, to give them a declaratory decree recognizing that right, seeing that serious consequences might otherwise result. *Wuzeroodeen and others* v. *Sheo Bund Lall and others*, 11 W. R., 284.

A Civil Court has no authority to make a declaration as to the validity or otherwise of a marriage where no question of property depends thereon. *Ram Surn Mitter* v. *Rakhal Doss and others*, 11 W. R., 412.

Plaintiff prayed for a declaration of title to, and confirmation of, his possession of 17 beegahs, which he claimed through J. and five others. The lower Court found that of these persons, J. only ever had any interest in the 17 beegahs, and gave plaintiff a decree declaring that he had purchased the rights and interests of J., whatever they might be. *Held* that such a decree was bad, as not in any way declaring what interest the plaintiff had in the 17 beegahs, or whether he had any right, and that the Court ought to have decided what J.'s precise rights were which had passed to the plaintiff. *Ram Phul Ahir* v. *Bhugwan Dutt*, 12 W. R., 326.

A declaratory decree ought only to be passed where some injury appears so probable as to lead to the conclusion that, unless stayed by the declaratory decree, the inchoate or threatened injury is inevitable. *Pareejan Khatoon and others* v. *Bykunt Chunder Chuckerbutty and others*, 9 W. R., 96.

An unsuccessful claimant to property about to be sold in execution of a decree is entitled, in a suit brought for the purpose, to a declaratory decree to the extent of his rights and interest in the property, notwithstanding that the property may be joint family property, and that the suit was upheld. *Salgram Singh* v. *Lalla Luleet Ram Singh*, 5 W. R., 150.

It is discretionary with the Courts to give a declaratory decree or not. *Baboo Motee Lall and others* v. *Ranee*, 8 W. R., 64.

A decree declaratory of the plaintiff's general right to enhance on future service of notice may be passed in a suit under Regulation V of 1812, where the plaint was for enhancement at a certain specified rate, and in which service of notice was held to be not proved. *Ishur Chunder Mundul* v. *Sham Chunder Doss*, W. R., 1864, 312.

In a suit for declaration of title, the mere fact that the Revenue Courts decreed the registration of the plaintiff's vendor's name as a joint sharer of the estate, and that no steps were taken during twelve years to set aside that decree, cannot operate as an estoppel. *Nittanund Roy* v. *Bydonath Mohapathur*, W. R., 1864, 350.

In a suit to obtain a declaration that the proceeds of a certain village ought to be appropriated to the maintenance of a ghatwal, and also a declaration that Government was entitled to appoint a ghatwal, where the only actual disturbance of the rights of Government (if it had any rights) took place 35 years previously, when the person who claimed to be ghatwal was rejected by a putneedar holding a lease from the zemindar, and where no new ghatwal had been appointed, though the ejected claimant had died 15 years before,—*Held* that the suit could not be maintained in accordance with the rules as to the grant of declaratory decrees without relief. *Anund Koomaree and others* v. *The Government*, 11 W. R., 180.

Where a defendant resists the plaintiff's title, he cannot afterwards object that a suit for a declaratory decree will not lie. *Shib Jaton Roy* v. *Panchanan Bose*, 3 B. L. R., Ap., 55.

In a suit for a decree declaratory of the right of

a person to the membership of a somaj (society), upon the allegation that the other members have excluded him from the somaj,—*Held*, that as such exclusion neither deprived him of caste nor affected any right of property, it is not cognizable by the Civil Court. The members of a society are the sole judges whether a particular person is entitled to continue as a member or not. Section 8, Regulation III of 1793, commented on. *Sudharam Patar* v. *Sudharam*, 3 B. L. R., A. C., 91; S. C., 11 W. R., 457.

A decree of the High Court declaring plaintiff's right to assess rent upon land held by defendant as lakheraj, is a binding decision between the parties on the question of title, even though incapable of execution by reason of lapse of time, and should not be excluded from consideration by the Deputy Collector. *Ramsoondry Debee Chowdhrain* v. *Ram Pershad Sadhoo and others*, 8 W. R., 288.

Though a suit may be brought within one year from the date of a declaratory decree, yet that decree is not a cause of action for arrears which the plaintiff might have obtained in the former suit, and which are now barred by limitation. *Huronath Roy* v. *Gooroodass Biswass*, 3 W. R., Act X R., 19.

A declaratory decree that the defendant is holding at a certain rate of rent before any rent is in arrear, is not sufficient to compel payment at that rate when the rent becomes due, without a fresh suit. *Boydonath* v. *Ramjoy Dey*, 9 W. R., 292.

No suit lies for a declaration of a right of occupancy unless there has been some act to disturb that occupancy. The mere fact of the landlord having given a tálookee pottah to a third party, and of having obtained against such third party a decree for arrears of rent, is not a sufficient cause of action to the occupant. *Woodoy Chunder Mundle* v. *Ahmedoolah*, 12 W. R., 467.

In a suit for declaration of right which existed at the time the suit was commenced, but which had ceased to exist pending the suit before decree, plaintiff is not entitled to a decree, and a declaratory decree of title will not be given when the plaintiff's claim would have been bound by limitation had he sued for possession. *Nobokishore Dey and others* v. *Ramkishen, Mohurrir, and others*, 9 W. R., 131.

A *bonâ-fide* purchaser of a transferable tenure is entitled to sue for a declaration of title and possession, though he may not have registered his name in the zemindar's sherista. *Hurish Chunder Mookerjee* v. *Annund Chunder Chatterjee*, 9 W. R., 279.

In a suit by reversionary heirs to declare that the property standing in the name of defendant had been purchased by the ancestor in his name benamee, it was held that there was no ground for a declaratory decree. *Rajbunsee Lall* v. *Judobuns Sudhye and others*, 9 W. R., 285.

In a suit for a declaration of title to lands which had been erroneously surveyed as part of defendant's village,—*Held* that although plaintiff's proper course was, in the first instance, to apply to the survey authorities to correct their map, yet, as defendant had claimed the land as his own, and the contention had been carried to the extent of the case being remanded for local investigation and disposed of on its merits after such enquiry, it was too late for the objection that plaintiffs had no cause of action. *Sheobjeethun Roy* v. *Punchanun Bose and others*, 11 W. R., 466.

Where a plaintiff brings a suit for a declaration of his title as owner, he is bound to establish his title affirmatively. He is in the same position as any other plaintiff, and must make out his case; and the *onus probandi* that he is in possession as owner is upon him. *Rasonada Royar* v. *Seetaram Pillai*, 2 Mad. Rep., 171.

A suit ought not to be entertained where the plaintiff, who merely seeks for a declaration of title, is in possession of all his alleged rights, and is not in a position to bring an action. *Padagaligum Pillai* v. *Shanmugum Pillai*, 2 Mad. Rep., 333.

Where property in dispute was found by the lower Court to be debutter land belonging to plaintiff, and not mâl land included in defendant's putnee, and it was contended in special appeal by defendant that plaintiff was entitled to one-fourth share only, as one of four brothers, it was held that plaintiff was entitled to a declaration that the whole land was mâl land, and that he was entitled to a fourth share. *Gunga Gobind Singh* v. *Joy Gopaul Panda*, 10 W. R., 105.

Immediately before the British entered Bhootan, the Soobah of Mynagorie gave plaintiff a mourasee pottah of some jotes of land, and shortly after ran away. After the British entered, the defendants gave him kubuleuts and paid him rent. The British authorities also recognized his rights and received rents from him. Subsequently the defendants disputed plaintiff's rights, and applied to the Collector to have their own names registered as jotedars. Their applications having been successful, plaintiff sued for a declaration of his title under the pottah. *Held* that as plaintiff's title had been acknowledged by the defendants and recognized by the British authorities, he was entitled to the declaration sought. *Sree Kant Shaha* v. *Kaltoo Doss and others*, 10 W. R., 135.

The mere fact of a widow making alienations during her life which are not binding on the reversioner after her death, does not entitle him to a declaratory decree. *Brinda Dabee Chowdhrain* v. *Peary Lall Chowdhry*, 9 W. R., 460.

Declaratory orders ought not, as a general rule, to be made in cases which are wholly one-sided, and in which the decrees would not be binding upon the parties really interested, if the defendant should succeed in establishing his right. *Brojo Kishoree Dassee* v. *Sreenath Bose*, 9 W. R., 463.

In a suit to obtain a declaration that two pottahs and a chittah which had been put forward in a butwarra were forgeries, it was held that, as no action had been taken on the documents in question, and plaintiff's rights were in no way prejudiced, the Court could not make any binding declaration of right. *Sheo Lall Chowdhur* v. *Chunder Benode Oopadhya and others*, 9 W. R., 586.

Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession, but the plaintiff went on with his suit in order to get a decree that he was solely entitled and in sole possession, and failed to prove his case, he was held not entitled to a decree founded on joint possession. *Lukhun Singh and another* v. *Nuffur Sing and others*, 6 W. R., 311.

Where a decree is merely declaratory, and not capable of being enforced by delivery of possession, the remedy which the law gives by process of execution may, by lapse of time, be barred, and yet the right and the title decreed may exist, and be susceptible of enforcement by suit. *Jagur Nath* v. *Balljobind*, 1 N. W. R., 105.

After a Court of competent jurisdiction has exercised its discretion under Section 15, Act VIII of 1859, and passed a declaratory decree, it does not lie within the power of a Court of Appeal, under Section 350 of that Act, to set aside the decree upon an objection which does not affect the merits, and which was not taken at the time when the decree of the first Court was passed. *Ram Kanaye Chuckerbutty* v. *Prosseno Coomer Sein*, 13 S. W. R., C. R., 176.

(*d*) *Cross Decrees.* (See EXECUTION.)

A. and B., having obtained a decree for a sum of money against C. and D., sold part of their interest therein to E., who afterwards sold the same to F. G. obtained a decree against F., and in execution attached and sold F.'s interest in the decree obtained by A. and B., and H. became the purchaser of the same. He applied for execution against C. and D. C. claimed to have set-off the amount of a decree obtained by his son I. against G., and which C. alleged was held by I. benamee for him as a cross-decree within the meaning of Section 209 of Act VIII of 1859. *Held* that the decrees could not be set-off. *Held* also that a special appeal lies from a regular appeal heard *ex-parte*. *Tara Chand Ghose* v. *Anund Chundra Chowdhry*, 2 B. L. R., A. C., 110; 10 W. R., 450.

A judgment-debtor is entitled to set-off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. *Huro Pershad Roy Chowdhry* v. *Shama Pershad Roy Chowdhry*, 5 W. R., Mis., 52.

A tenant obtained a decree giving him possession of his tenure with mesne profits, but directing him to pay the rent due to the zemindar, with interest up to date of realization. The tenant, who had kept alive his decree by intermediate applications for execution, having applied for further execution,—*Held* that the zemindar, who had made no attempt to execute his decree within the period of limitation, could not, when the execution of his decree was barred by limitation, be allowed to execute in the shape of a set-off. *Prosunno Coomar Ghose* v. *Sham Lall Gungopadhya*, 5 W. R., Mis., 8.

In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. *Rezaoodeen Hossein* v. *Fuzloonissa*, 5 W. R., Mis., 12.

A set-off is not admissible, except upon a cross-decree which the decree-holder is seeking to execute, and not upon a cross-decree incapable of execution by lapse of time. A cross-decree must be kept alive by the action of the party entitled under it. *Anund Mohun Surma Mojoomdar* v. *Huro Chunder Bhuttacharjee*, 5 W. R., Mis., 16.

Quære,—Whether, had the assignment been a *bonâ-fide* one, *i.e.*, for a valuable consideration, the assignee would have taken the decree subject to the equities or liabilities of the decree-holder to the judgment-debtor. *Syad Tullub Hossein* v. *R. Walker*, 7 W. R., 470.

The purchaser of a decree against which a cross-decree may be set-off, takes his decree subject to the set-off. *Nundcoomar Bukshee and another* v. *Koonjo Kishore Roy*, 6 W. R., Mis., 73.

Where execution of A.'s decree against B. was stayed pending the passing of a decree in B.'s cross-suit,—*Held* that no subsequent purchase of B.'s rights and interests in his cross-suit could be set up as a bar to A.'s rights to attach the whole of the decree in the cross-suit, in execution of his decree against B. *Mussamut Peloo Chowdhrain and others* v. *The Court of Wards, on behalf of Maharajah Luchmessur Singh, minor*, 7 W. R., 219.

The purchaser of a decree held by A., against whom B. holds a cross-decree, takes it subject to a set-off on account of B.'s decree. *Kaim Ali Jawurdar* v. *Lakhikant Chuckerbutty*, 1 B. L. R., F. B., 23; 10 W. R., F. B., 32.

A judgment-debtor is entitled to set-off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. *Huro Pershad Roy Chowdhry* v. *Shama Pershad Roy Chowdhry*, 5 W. R., Mis., 52.

A widow is liable for a debt contracted by her husband. Such debt may be set-off against a debt due to her. *Grish Chunder Lahoory* v. *Koomaree Dabea*, 1 W. R., Mis., 23.

A tenant obtained a decree giving him possession of his tenure with mesne profits, but directing him to pay the rent due to the zemindar, with interest up to date of realization. The tenant who had kept alive his decree by intermediate applications for execution, having applied for further execution,—*Held* that the zemindar, who had made no attempt to execute his decree within the period of limitation, could not, when the execution of his decree was barred by limitation, be allowed to execute it in the shape of a set-off. *Prosunno Coomar Ghose* v. *Sham Lall Gungopadhya*, 5 W. R., Mis., 8.

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Before cross-decrees can be set-off the one against the other, it is necessary that they should be in the same Court for execution. *East Indian Railway Co.* v. *Hall*, 3 N. W. R., 104.

Section 209, Act VIII of 1859 (allowing a set-off) refers not only to cases of decrees of the same Court, but also to decrees which are in the same Court for execution. *Hadoo Sirdar* v. *Jadoo Menu Dassee*, 17 S. W. R., C. R., 46.

It is not equitable to allow a set-off against a claim relating to a particular account, of a matter of another nature altogether. *Kalu Coomar Chuckerbutty* v. *Huro Chunder Chuckerbutty*, 17 S. W. R., C. R., 177.

A decree of one Court cannot be set-off under Section 209 of the Code of Civil Procedure against a decree of another Court.

Quære,—Whether the provisions of that Section are applicable to decrees passed under Act X of 1859. *Ignatius Peter D. Silva* v. *Ameen Shaha*, 16 S. W. R., C. R., 203.

Where there are cross-decrees for possession and mesne profits in respect to the same land, the earlier

decree comprehending only a part of the land embraced in the latter, each party may take execution and be entitled to receive wasilat separately. *Annun Mohun Hajra* v. *Shibo Soondaree Dabee*, 16 S. W. R., C. R., 256.

Where two parties have to recover sums from each other under the same decree (not cross-decrees) the party entitled to the lesser sum cannot be allowed to take out execution against the party entitled to the larger sum, and the Court is bound to direct a set-off or to enter satisfaction of the smaller sum upon the decree. *Jugo Mohun Bukshee* v. *Soorendronath Roy Chowdry*, 13 S. W. R., C. R., 106.

The purchaser of a decree sought to execute the decree, but was opposed by the judgment-debtor, who sought to set-off two other decrees obtained by herself and her two sisters against the judgment-creditor. These decrees were obtained about the date of the purchase, but it did not appear whether previously or subsequently. *Held*, in neither case could they be the subject of a set-off. *Kusimenissa Bibi* v. *Hills*, 6 B. L. R., Ap., 125; and 15 S. W. R., C. R., 127.

By mutual agreement two decree-holders entered up satisfaction in respect of their cross-decrees. Nevertheless one of them appealed from the decree passed against him and obtained its reversal. He then applied to issue execution on his cross-decrees. *Held* that the application could not be entertained, as satisfaction had been entered. The grounds upon which the application could have been entertained discussed. *Gopinath Roy* v. *Dinabandhu Nandi*, 3 B. L. R., Ap., 62.

(e) *Joint Decrees.*

Where plaintiffs with separate interests sue for and obtain damages, the decree should not be a joint one for a lump sum, but should apportion the damages. *Trelokenhta Jha* v. *Hur Dutt Khurhuree*, 9 W. R., 299.

A suit against a co-sharer for a sum of money recovered by the plaintiff upon a decree which was joint property may be brought in a Small Cause Court. *Huro Mohun Roy* v. *Khettro Monee Dassee*, 12 W. R., 372.

A joint-decree can be executed against any of the debtors whom the decree-holder may select. *Krishto Kishore Chuckerbutty* v. *Ram Lochun Burdhun*, 2 W. R., Mis., 49.

Though a decree-holder has a right to put joint and common decrees in force against one or all of the defendants in the order he thinks fit, the claim to be enforced must be limited to the particular lands or properties with which particular defendants are clearly shown to have been connected. The application for dividing the amount of a joint-decree should be made, and the order for such division obtained, at the time of the decree, but not afterwards. *Bulwunt Singh* v. *Sheo Sahoye Singh*, 2 W. R., Mis., 52.

A. and B. obtained a decree against C. A. obtained an order for execution of his share in the amount of the decree. C. pledged immoveable property as security to A., who caused it to be sold. B. applied to the Court for her share of the sale proceeds. The Principal Sudder Ameen refused the application. On appeal, *Held* that the order for execution ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of the execution. The case was sent back that the Principal Sudder Ameen might apportion the amount realized amongst all the decree-holders. *Tarasundari Burmoni* v. *Beharee Lal Roy*, 1 B. L. R., A. C., 28.

One who holds a decree for possession of a two-annas share jointly with co-sharers to whom the remaining fourteen annas belong, is not entitled in execution to obtain exclusive possession of any specific portion of the lands covered by the decree. *Jardine, Skinner, and Co.* v. *Ranee Shama Soondery Debia*, 6 W. R., Mis., 59.

Where a decree is a joint one, the right of one decree-holder to execute is kept alive by proceedings duly taken to put the decree in execution by his co-decree-holder. *Johirbonissa Khatoon* v. *Ameeroonissa Khatoon*, 6 W. R., Mis., 59.

In the case of a joint-decree, any arrangement made by the decree-holders as to their relative shares in the amount of the decree would not alter its character, and *bonâ-fide* proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders.

In the absence of any order in the decree awarding particular sums to each of the decree-holders, one decree-holder cannot be allowed to take out execution of such portion of the decree as he may consider due to himself. *Maharanee Indurjeet Koonwar* v. *Mazum Ali Khan and another*, 6 W. R., Mis., 76.

When once a joint-decree has been given, that decree ever after remains a joint-decree, any act or conduct of the decree-holder notwithstanding. *Juggurnath Singh* v. *Sheikh Ahmedoollah*, 8 W. R., 132.

On an appeal from an order passed in execution of a decree for possession and mesne profits, the High Court laid down the principle that, though the decree was in words a joint and several decree for mesne profits, yet where it could be proved incontestably that out of a number of defendants any one had been in possession only of particular lands or a distinct mouzah or lease, his liability to satisfy the decree would in equity extend no further than to such particular land, mouzah, or lease, and for such land the decree-holder could take out execution as against lessor and lessee; the principle was then applied to the case under appeal. *Held*, in explanation of that opinion, that as the appellant was the lessee of one village, he could be held jointly and severally liable with the proprietors (co-defendants), and the decree-holder could proceed against him either severally or jointly with those defendants, and realize the wasilat due on that village. *Guneth Dutt* v. *Bulwunt Singh*, 14 S. W. R., C. R., 175.

A joint-decree remains a joint-decree, notwithstanding the acts of the decree-holder in realizing his money from one or more of the judgment-debtors separately, for he is entitled to realize his debt from any one of the debtors, and by proceeding against one he does not relieve the other debtors from their joint liability to him. *Nunkoo Lall* v. *Musst Dhunesh Kooer*, 17 S. W. R., C. R., 497.

Where some of the decree-holders in a joint decree apply for execution, the application may be

refused or granted at the discretion of the Court, which is bound to see that injury is not done to the rights of absent decree-holders; but whether the Court does so or not, all recoveries in execution so made must be for the benefit of all the decree-holders. *Shib Chunder Dass* v. *Ram Chunder Poddar*, 16 S. W. R., C. R., 29.

An application by one of two joint-decree-holders for execution of his part of the decree is irregular. *Rae Damodur Dass* v. *Bholanauth*, 2 N. W. R., 413.

In a suit against heirs inheriting equally, a joint-decree may be passed without determining the liability of each. *Brojo Mohun Mojoomdar* v. *Roodronanth Surmáh*, 15 S. W. R., C. R., 192.

When the judgment-debtors are jointly and severally liable to pay the decreed amount, the fact that one has paid his quota of an instalment will not modify his joint liability if default be made by the other judgment-debtor, and an order protecting the estate of the former from proceedings to realize the whole sum decreed is improper. *Salig Ram* v. *Báboo Ram Sewuk*, 1 Agra Rep., Mis., 14.

A judgment-debtor cannot make a private arrangement with a decree-holder, and urge that the latter exonerated him from payment of any portion of a joint-decree. *Doorga Monee Dosse* v. *Doorga Mohun Boss*, 2 W. R., 266.

One of several joint-decree-holders is not bound by the acts of another who has compromised with the judgment-debtor, and agreed to receive payment by instalments. *Balgobind* v. *Bhawanee Deen Sahoo*, 1 Agra Rep., Mis., 16.

A decree-holder can execute his decree against one, or any, or all of the joint-judgment-debtors. If he has received any sum in part payment of his decree from one of the joint-debtors, and chooses to absolve him from further liability, and to proceed against the others, this will not affect the position of the debtors *inter se*, or their mutual responsibilities, or absolve the debtor who has paid from contributing, if he has paid less than he is liable for as between him and his co-debtors. *Gopal Pershad* v. *Ramanoogra Singh*, 5 W. R., Mis., 9.

Joint-decree-holders are not entitled to apply separately for execution of the decree limited to what they consider their respective interests in it. *Prannath Mitter* v. *Mothoornauth Chuckerbutty*, 6 W. R., Mis., 65.

In a suit for contribution, a decree cannot pass jointly against all the defaulters. It should specify the particular sums to be paid by each. *Bamasoonduree Debia* v. *Anundmoyee Debia*, 3 W. R., 170.

Where several defendants submit to a joint decree, it is not competent to the Court in execution to treat the decree as a several decree against the different defendants in respect of their proportionate shares, however equitable such an order may be. *Mussamut Omutool Khair* v. *Mussamut Somayee Bibee*, 6 W. R., Mis., 40.

The splitting of the amount of a decree into shares for the private convenience of the decree-holders, unless the judgment-debtor was a party to the arrangement, cannot enable him to plead limitation against any of the decree-holders who may take no active steps in enforcing the decree. As far as the debtor is concerned, the decree continues a joint debt, for the whole amount of which he is liable to all the decree-holders. *Brijo Coomar Mullick* v. *Ram Buksh Chatterjee*, 1 W. R., Mis., 2.

A joint-debtor who satisfies the entire decree may sue his co-debtors for contribution; but he cannot purchase the decree and execute it against them, such a purchase operating as a satisfaction of the decree. *Digamburee Debia* v. *Sharoda Pershad Roy*, 5 W. R., Mis., 46.

If a plaintiff sues upon an ikrar, he is not entitled to a decree contrary to its terms. Thus, if the ikrar makes each of several sharers severally liable, all the co-sharers cannot be made jointly liable. *Mirza Nawab* v. *Sheikh Bahadoor Ally*, 7 W. R., 156.

(*f*) *Effect of Decree.*

A decree declaring a right to enhance does not constitute a "cause of action." A suit for arrears of rent at an enhanced rate after notice may be brought without first getting a decree in a merely declaratory suit establishing the plaintiff's right to enhance. *Doyamoyee Chowdhrainee and others* v. *Bholanath Ghose and others*, 6 W. R., Act X R., 77.

A decree of a competent Court fixing the rent for a previous year according to a solehnamah signed by both parties, cannot render nugatory a claim passed upon an ikrar for higher rent for the same land for the following year. *N. P. Pogose* v. *Azemooddeen Sikdar*, 1 W. R., 275.

A Collector gave a decree in a summary suit brought in 1857 for rent, which had not been enforced or acted on (the rent paid in subsequent years being less than the rent so decreed). *Held* insufficient to entitle the landlord to sue for the enhanced rate of rent given by the decree. *Inder Singh* v. *Miterjeet Singh*, 1 W. R., 276.

The decree of a competent Court must be presumed to be valid and binding on the parties, until the party attaching the decree clearly shows that it was improperly obtained by reason of fraud or misrepresentation practised upon the Judge by the party obtaining the decree.

Quære,—Whether a title to land can be gained by prescription without adverse possession. *Raj Narain Dutt* v. *Gourmonee Dossee*, 6 W. R., 215.

Decrees for arrears of rent against ryots cannot affect the title to the property claimed, their operation being restricted to the particular rents which they purport to cover. *Booa Rusullee* v. *The Nawab Nazim of Bengal*, 11 W. R., 382.

A decree of a Civil Court in a suit concerning the title is not of itself in all cases a bar to a suit against a tenant for rent by the person against whom such decree has been obtained. When the decree clearly adjudicates against the plaintiff's right, and the Collector sees that it relates to the property in question and is in force, the Collector should give effect to the decree as a bar to the plaintiff's suit for rent, notwithstanding that the plaintiff may have an actual receipt of rent prior to the institution of the suit. *Mussamut Tarinee* v. *Bamundoss Moakhet*, 1 W. R., 331.

A defendant, against whom a Principal Sudder Ameen had decreed damages on account of certain malicious and wrongful conduct towards plaintiff, appealed to the High Court; but before the appeal came on for hearing he died. Upon this a party (M.) sought to be substituted for the deceased appellant, not as his legal representative, otherwise than as having purchased a share in his property,

and in consequence liable to be injuriously affected if the plaintiff proceeded to execute the decree which he had obtained in the lower Court. *Held* that the dena-pauna clause in M.'s deed of purchase from deceased did not make M. liable to pay so purely personal a debt of deceased as that which the decree created, and consequently M.'s only title to be the appellant's legal representative failed. *Macleod for Mr. Wilson* v. *Kunhjoe Sahoo*, 9 W. R., 271.

Where a Civil Court refuses an application to execute a decree given on the terms of a petition embodying certain conditions of compromise, applicant's proper course is to appeal from the order of refusal, and not to proceed by a regular suit, though he has a right of action on his decree. *Ruthnessur Chatterjee* v. *Gooroo Churn Chatterjee*, 9 W. R., 296.

In the absence of proof of collusion between the purchaser and the decree-holder, the decree is binding against the heir in expectancy of the judgment-debtor. *Gopaul Chunder Manna* v. *Gour Monee Dassee and others*, 6 W. R., 52.

A person to whom the ordering part of a decree gives nothing cannot be treated as having acquired any right in the decree, merely because he has by mistake been described in the heading as the purchaser of the decree-holder's rights and interests. *Nawab Syud Zoynul Abdeen* v. *Phoolash Chunder Bethra*, 15 S. W. R., C. R., 126.

Where a decree directed that plaintiff should obtain possession of land according to the boundaries given in the plaint, and also specified the quantities of land of which he was to obtain possession, and it turned out that those quantities were not strictly accurate, it was held that the decree should be interpreted as if it were a conveyance of land, stating the boundaries and then saying that it contains so many acres; and that the plaintiff was entitled to all the land contained within the boundaries stated in the plaint, the mistake in the quantities stated in the decree being merely a false description. *Phulwan Singh* v. *Mohissur Buksh Singh; Maharajah Mohissur Buksh Singh* v. *Megburn Singh*, 16 S. W. R., P. C., 5.

The misconduct of a decree-holder can be no ground for setting aside a sale in execution of decree. *Rethbunjun Singh* v. *Mittürjeet Singh*, 4 W. R., Mis., 9.

The sale by a decree-holder of the right to recover possession under one decree, does not affect his right to recover, under another decree, mesne profits collected during the time of the judgment-debtor's illegal occupancy. *Seetal Chunder Shaha* v. *Brojo Soonduree Dosse*, 4 W. R., 12.

Held that a decree-holder is entitled to execute his decree against any property devolving on the judgment-debtor before the decree has been fully executed, and this without reference to whether the property was hypothecated to him; and that the denial of the judgment-debtor that he is interested in the property which it is sought to make subject to execution can have no effect.

Held further that the property in the hands of a Hindu judgment-debtor was liable to sale in the same way and to the same extent as would the other immoveable property of a Hindu having sons be liable; and that the question of the extent of the right to be sold should have been left an open question for adjudication in a suit between purchasers and other persons claiming right therein. *Buldeo Singh* v. *Dwarha Dass*, 1 Agra Rep., A. C., 169.

A decree-holder applied in execution to make H., as the son and heir of the judgment-debtor, the representative of the latter. The Judge in appeal held that H. was not the representative, and gave him costs.

Held that the proceedings in execution were of the character of those ordinarily taken in the progress of a suit towards final decision, and that the order of the Judge was not in the nature of a summary decision or award, such as an order under Act XIX of 1841, but in the nature of an order of a Civil Court having final jurisdiction. *Mohun Lall Sookul* v. *Sreemutty Oofunissa*, 11 W. R., 98.

A mortgagee decree-holder can proceed against any property belonging to the debtor; but by doing so he throws up his lien on the property pledged to him. *Radha Coomar Singh* v. *Luchmee Chund Marwaree*, 3 W. R., Mis., 16.

A private settlement, with or without release, given to any of several debtors, will not justify a decree-holder in requiring from the remaining debtors an account of the share or shares so exempted or settled. *William Foley* v. *Annie Kolonas*, 2 W. R., Mis., 15.

In a suit for recovery of a sum of money expended towards improvement of a joint property, the Court passed a decree that, if the defendant would contribute towards payment of the expenses for the improvement, he would be entitled to a proportionate share of the profits. No steps were taken by the plaintiff from 1863 to revive the decree; but on the application of the defendant tendering the amount due from him, and praying to be put in possession, the lower Courts restored the decree and passed an order in his favour.

Held that the lower Courts had no jurisdiction to revive a decree at the instance of the judgment-debtor. *Nilambar Sen* v. *Kali Kishor Sen*, 3 B. L. R., Ap., 94.

A decree-holder failed on summary application in execution to have a deed of gift in respect of the lands in dispute set aside. In a subsequent suit a third party succeeded in setting aside the deed as not *bonâ-fide*. *Held* that no second suit to determine the nature of that deed was necessary, but that the decree-holder may at once sell the property for the debts due to him. *Saragi Akim* v. *Chanda Bibee*, 2 W. R., 305.

Where S. obtained a decree for possession against D. P., the person in possession, and subsequently in a suit brought by J. P. claiming the property against S., a decree was passed in the terms of a compromise, whereby S. consented that J. P. should execute his decree,—*Held* that J. P. was entitled, under Section 208, Civil Procedure Code, to recover possession in execution of S.'s decree from D. P., although D. P. had not been made a party to the second suit. *Doorga Pershad Singh* v. *Lalla Juggunnath Pershad*, 1 N. W. R., par. 1, p. 34.

In a suit to have it declared that a certain howla was the property of W., plaintiff's judgment-debtor, defendants contended that it had been the property

of another person, and that they had purchased it in execution of a decree against that person. The lower Appellate Court found for the defendants on the basis of a decree dismissing a suit by W.'s representatives to have the property declared to be W.'s. *Held* that the decree could not bind the plaintiffs who were not parties to it. *Goluckmonee Debia* v. *Rammonee Bose*, 12 W. R., 21.

In a suit for resumption of land, plaintiff obtained a decree for a portion of her claim, with costs in proportion. Subsequently, on application for a review, she obtained a further decree for the rest of her claim. The latter decree was reversed in appeal by the High Court, who gave defendants all costs of the proceeding in proportion. Plaintiff allowed more than three years to elapse from the date of the former decree, without applying for execution; but when defendant applied to execute his decree for costs, she petitioned for a set-off of so much of the costs as had been decreed to her. *Held* that these two judgments and decrees must be treated as if reduced to one, wherein judgment was given in part for the plaintiff, and in part for the defendant; and, before issuing a warrant of execution, the Court was bound to ascertain how much, on the whole case, was due to the party executing, and to issue a warrant for that sum and no more. *Nubo Lall Khan* v. *The Maharanee of Burdwan*, 9 W. R., 590.

Held that a decree of the Court of Special Commission under Act IX of 1859, though adjudging a right to the plaintiff other than that sued for, cannot by this reason be treated as a nullity, and as one conferring no right; that the appropriation in satisfaction of the decree once made, a proprietary right in the assigned villages would arise in the plaintiff under the decree, of which she could not afterwards be lawfully deprived on any such allegation as that of incorrect valuation, the Government under the circumstances having no power of revision. *Held* further, that the suit having resulted from a new cause of action,—*viz.*, the dispossession,—the plaintiff's remedy was by a regular suit, and not by execution of that decree, which under the circumstances has been fully satisfied. *Mussamut Khanzadee* v. *The Collector of Boolundshuhur*, 1 Agra Rep., A. C., 57.

A decree (embodying the terms of a compromise) made in open Court, upon the consent of counsel duly instructed, is binding as between the parties to the suit, although the attorney of the defendant has no authority from his client to consent to such decree, or even though he is expressly directed not to compromise, provided such want of authority is not known to the other side.

Semble,—That such decree is binding, as between the attorney and his client, provided it embodies a reasonable and proper compromise, and is not made against the express directions of the client. *Ingannáth Dús Gurúbakhdás* v. *Rámdás Gurúbakshdás and others*, 7 Bom. Rep., O. C. J., 79.

Where a decree for a bond debt contained a clause to the effect that if the money due was not paid the property pledged in the bond might be sold, the clause was construed to mean that the property was liable for the debt decreed.

Held also, that the decree-holder could get at the property only in execution of the decree, in which case he would be in the position of any other judgment-creditor, and be bound by the provisions of the Civil Procedure Code, and the judgment-creditor would be entitled to the benefit of Section 243. *Mehunt Rum Ruchu Dass* v. *Doorga Dutt Mizer*, 13 S. W. R., C. R., 453.

A suit having been decreed, defendants appealed, but on both parties petitioning to the Court, to the effect that they had come to a settlement of their differences, the appeal was struck off the file. The plaintiffs now apply to execute the original decree.

Held, that as the Appellate Court did not reverse the decision of the first Court, the decree stands good, except so far as the plaintiffs, judgment-creditors, are debarred from executing it by their own agreement. *Mewa Singh* v. *Azeezooddeen Khan*, 13 S. W. R., C. R., 311.

(g) *Alteration of Decree.*

When a decree passed before Act VI of 1862 (B.C.) awarded costs, including Mooktear's fees (contrary to Section 71, Act X of 1859), the amendment of the decree in the execution stage by the Court executing the decree, instead of by application to the Court of first instance, was not interfered with, no injustice having been done thereby. *Bangseeram Shaha* v. *Juggurnath Shaha*, W. R., 1864, Act X R., 11.

A lower Court, in executing a decree of the High Court, has no authority to alter it: any amendment desired (*e.g.*, the grant of interest) should be obtained by application to the High Court on the part of decree-holder. *Messrs. Jardine, Skinner, and Co.*, v. *Ranee Shama Soondery Debia*, 10 W. R., 60.

Held that, after a decree of a District Judge is confirmed by the High Court in appeal, no subordinate Court has the power of making any alteration whatever in it. The proper course is to apply to the High Court itself to review its decree. *Bhanashanker Gopalram* v. *Raghunathram Sanalgram*, 2 Bom. Rep., 106.

Where a Judge finds that a decree passed by his predecessor contains something or bears a construction evidently not contemplated by the judgment of that Judge, he is quite competent to alter the decree so as to bring it into conformity with the judgment. *Modoosudun Ghose* v. *Romanath Ghose*, 12 W. R., 65.

After a decree has been confirmed by the High Court on appeal, the subordinate Court has no power to make any alteration in it. *Onraet* v. *Sankar Dutt Singh*, 5 B. L. R., Ap., 60; 14 S. W. R., C. R., 26.

Where a decree is silent as to mesne profits subsequent to the institution of the suit, they cannot be awarded by the Court executing the decree. *Chowdree Nain Singh* v. *Jowaheer Singh*, 1, 11 N. W. R., 167.

It is a power which all Courts possess to amend their record when there is anything to amend by. Consequently, when a Judge finds that the decree varies from his judgment, he can set the decree right. *Toona and others* v. *Kureemun and others*, 6 W. R., Mis., 31.

A decree should not be amended except in the presence of the parties concerned, or after service of notice on them to attend. *Kishen Dyal Singh* v. *Sunkar Dutt*, 2 W. R., Mis., 15.

When a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution, without leaving it to the Court of execution to decide what the Judge intended to decree.

The necessity of certainty in decrees discussed. *Dwarkanath Haldar* v. *Kamalakanth Haldar*, 3 B. L. R., Ap., 128; 12 W. R., 99.

Held that, when the not ordering the amount of the decree to be paid by instalments has arisen from any error or omission, or it is otherwise requisite for the ends of justice, the Court which passed the decree has power to review it, and to make an order for payment by instalments. Otherwise the Court has no power to make such an order subsequent to the decree, without the consent of the judgment-creditor. *Ravichand Dalichand* v. *Motilal Narbheram*, 4 Bom. Rep., A. C. J., 77.

A kistbundee is part of, or incidental to, the decree of the Court, and cannot be altered after the decree is finally given, unless for the purpose of the correction of errors. *Lall Mahomed* v. *Shona Jolla Ghazee*, 2 W. R., S. C. C. Ref., 3.

Held, that a Court executing the decree of a superior Court has no power to alter the terms of the decree. Any error that may have crept into a decree can be corrected by that Court only which passed the decree. *Semble*,—Such a correction should be obtained by a review of judgment. *Rao Oomrao Singh* v. *Lutun Lall*, 1.6 N. W. R., 77.

(*h*) *Reversal of Decree.*

A decree against several defendants, one of whom alone appeals, cannot be reversed as against the rest when it did not proceed on ground common to all. *Sreemutty Doyamoyee Dossee* v. *Eshur Chunder Muttyloll*, 1 W. R., 203.

When a lower Court, on insufficient evidence of a decree having been kept in force, orders execution, the Appellate Court should not summarily reverse the order, but should remit the case, that the decree-holder may give further proof of the fact. *Nilkunt Chuckerbutty* v. *Sheo Narain Koonwar and others*, 8 W. R., 276.

Where an application under Section 58 Act X of 1859 to reverse a decree was made by a defendant long after the expiration of the 15 days prescribed by the section,—*Held* that the Collector, in entertaining such application, was acting without jurisdiction, and that his order was appealable, notwithstanding Act VI of 1862 (B. C.), Section 13. *Kanhy Dass* v. *Nobin Chunder Chowdhry and others*, 1 Ind. Jur., N. S., 419.

In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to.

A. purchased a Government revenue-paying estate from B., but on going to take possession he found C., who claimed under a putnee grant also from B., in possession. A case was therefore instituted by B. under Act IV of 1840, but it was ordered that C. should be retained in possession. A. then brought a suit against B. and C. to recover his purchase-money. No relief was asked against C., nor had C. anything to do with the sale from B. to A. The suit was dismissed. On appeal, it was ordered merely "that the decree be reversed, and the appeal decreed with costs." Nothing was asked against C. in the grounds of appeal. In execution of this decree, C.'s property was seized and sold. C. petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it. *Held*, on special appeal, that C. was not liable to refund the purchase-money. *R. E. Bell* v. *Gurudas Roy*, 1 B. L. R., A. C., 50.

A plaintiff obtained an *ex-parte* decree in an Act X (rent) suit, and took out execution. This decree was modified on appeal, the Appellate Court holding that the plaintiff was entitled to part only of the sum he had recovered in execution. *Held*, that the Collector before whom the case was originally tried should have ordered the plaintiff to make restitution of the surplus; and that on his refusal, the High Court, under its general power of supervision conferred by 24 & 25 Vict., c. 104, s. 15, could order him to do so. *Gobindo Coomar Chowdhry* v. *Kristo Coomar Chowdhry*, 2 Ind. Jur., N. S., 199, 7 W. R., 520.

A regularly executed decree cannot be overridden or annulled by a miscellaneous petition. If the judgment-debtor wishes to proceed against the decree-holder, he must do so in a regular suit. *Rajah Leelanund Singh* v. *Baneemadhub Singh*, W. R., 1864, Mis., 31.

Distinction pointed out between a decree of an Appellate Court simply reversing the decree of the lower Court, and a decree which, reversing that decree, goes on to record judgment for the other party. *Hureekishore Roy and others* v. *Kaleekishore Sein and others*, 8 W. R., 114.

Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action, whilst the decree or judgment under which it was recovered remains in force. But this rule of law rests upon the ground that the original decree or judgment must be taken to be subsisting and valid, until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded, the money recovered under it ought to be refunded, and is recoverable either by summary process or by a new suit. *Doorga Pershad Roy Chowdry* v. *Tara Pershad Roy Chowdhry*, 3 W. R., P. C., 11.

(*i*) *Setting Aside Decree.*

The case of a judgment-debtor who alleges that a decree was obtained against him by fraud and personation, does not fall under Section 90, Act VIII of 1859 (which refers to attachments before judgment), nor under Section 11, Act XXIII of 1861 (which relates to disputes as to the mode of executing uncontested decrees). The debtor's remedy is by a suit to set aside the decree as fraudulent and collusive, or he may apply to the lower Court to review its order and to direct an enquiry, not into the mere outward regularity of proceedings, but into the substantial regularity of the

suit. *Mussamut Rajbansee Koomaree* v. *Bhugwattee Koomaree*, 1 W. R., Mis., 29.

No appeal lies to set aside a sale of a decree under Act X of 1859, the only remedy being by regular suit, as prescribed by Section 104. *Bunsheemohun Doss* v. *Hurochunder Doss Chowdhry*, W. R., 1864, Mis., 28.

The striking off of the execution case does not do away with an attachment once made, unless the attachment is expressly abandoned by the party at whose suit it was issued. *Maharajah Dhuraj Mahtab Chund Bahadoor* v. *Surumoyee Dassee*, 15 S. W. R., C. R., 222.

Where a plaintiff was declared by a judgment to be entitled to a share of the property sued for, and the decree on that judgment awarded the whole of the property to the plaintiff, but there was nothing to enable the Appellate Court to limit the decree to the share to which his right was established, the decree was entirely set aside, and the case was remanded to ascertain that share. *Chundey Puddum Singh* v. *Koerodee Singh*, 12 W. R., P. C., 1.

(*k*) *Lost Decree.*

A suit was held to lie for the amount of an unsatisfied claim adjudged by a decree which was destroyed during the mutiny, and the cause of action to date from the lost decree. *Ranee Emamun* v. *Hurdyal Singh*, W. R., 1864, 301.

A decree passed for money was lost or destroyed: the decree-holder on suing out execution was referred to a regular suit. *Held* that the existence of the decree and of its terms might have been enquired into in the execution department, and that the order of the Court, to which application for execution was made, could not confer jurisdiction on a Court to entertain such a suit. *Ranjeet* v. *Choonee Lall*, 1 Agra Rep., A. C., 78.

(*l*) *Assignment of Decree.*

A decree for possession of certain land with wasilat obtained by a zemindar of an estate, as such, cannot be pledged by him as security for a personal debt, nor for such a debt can the estate be made liable, nor his successor be held responsible. *Nimaye Churn Sen v. Rammonee Bibee and others*, 10 W. R., 152.

When a decree is sold, and the sale is admitted by the decree-holder in Court, the judgment-debtor cannot contest the right of the purchaser to execute it, except on the plea of payment to the original decree-holder. *Sunnooburnissa Khanum* v. *Meher Chund*, 7 W. R., 313.

A Court is not bound to admit the assignee of a decree to execution thereof. If there is no dispute it may admit him, or if the dispute is one which it can decide it may try the point in dispute, and upon the result of that trial admit the assignee to carry on the decree. *Bishtoo Churn Bhoosun* v. *Kishen Gopner Misser*, 13 S. W. R., C. R., 207.

A party to a suit can enforce any decree he may get as a matter of right; but an assignee of such decree can only do so after obtaining the Court's permission, which depends entirely on the Court's discretion. An assignee, therefore, is not in the same position as the original decree-holder, and is not entitled to have the same privileges. *Shuma Puddo Dutt* v. *Nobin Chunder Bose* 1 15 S. W. R. C. R. 283.

The purchaser of an *ex-parte* decree strongly tainted with fraud cannot be allowed to profit by it. *Deolar Ihu* v. *Rungut Roy*, 15 S. W. R., C. R., 340.

When an *ex-parte* decree for rent has been sold by the decree-holder, there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord. *Binode Beharee Mookerjee* v. *Beer Narain Roy*, 5 W. R., Act X R., 52.

(*m*) *Satisfaction of Decree.*

A decree for possession once satisfied by the plaintiff's being put in actual possession, cannot afterwards be revived or re-executed on the plaintiff being dispossessed. *Khatoo Bibee and others* v. *Furukh Ali*, 6 W. R., Mis., 108.

Each of the decrees held by several attaching creditors must be liquidated from the proceeds of the attached property according to priority of attachment. The holder of several decrees is not entitled to satisfaction of them first, because he first, in execution of one of the decrees, attached the estate. *Kanai Loll* v. *Rajah Puddona Bhonjo Bahadoor*, 1 W. R., Mis., 16.

A settlement between a decree-holder and his judgment-debtors who agreed to sell a share of a certain property, and to have the name of the decree-holder registered, was held good, the sale having been duly executed, but the judgment-debtors having failed to register the decree-holder's name as agreed. *Bhoomun Mundar* v. *Budree Singh*, 1 W. R., Mis., 25.

A settlement with one of several decree-holders, without the knowledge or consent of the others, is not binding on them. *Bykunt Ghose* v. *Kishen Chunder Ghose*, 2 W. R., Mis., 43.

Section 206 of Act VIII of 1859 (prohibiting settlements out of Court) is not applicable to decrees under Act X of 1859. *Rajah Protap Chunder Singh* v. *Kanaye Lall Doss*, 3 W. R., Act X R., 7.

A. had obtained a decree against B., C., and D., in execution of which the sheriff attached certain property belonging to B., C., and D., who were carrying on business in partnership. The property was sold, and the proceeds paid into Court, and by order of Court, A. received a sum in part satisfaction of his decree. Subsequently A., at the request of B., and without receiving any consideration, gave him a letter in Bengali, purporting to be a release to him of the remainder of his decree, but such adjustment was not made through the Court. A. afterwards applied for execution of his decree against B., C., and D., but his application was refused, the Court treating the letter as a release. A. appealed. *Held*, on appeal, that the letter was not a release; there was no consideration for it. The adjustment of the decree should have been made through the Court or certified to it, in accordance with Section 206, Act VIII of 1859. *Bhuban Mohan Bonnerjee* v. *Sadoo Churn Sircar*, 6 B. L. R., 339, and 15 S. W. R., A. O., 5.

It is not in the power of either of the parties to fall back upon a decree, the effect of which has been nullified by mutual consent of these parties *Mussamut Indro Kooer* v. *Sheikh Abdool Burkut* 14 S. W. R., C. R., 146.

A share of a decree was mortgaged by the decree-holder's vendor who sold his rights and interests to petitioner, who now seeks to execute the decree as against the judgment-debtor with reference to that share. The judgment-debtor having paid in the money by order of the Court, and the mortgagee having entered up satisfaction of this decree against the judgment-debtor,—*Held* that there was an end to that decree as against any person liable under it for the mortgagee's share. *Kristo Dass Koondoo* v. *C. J. Wilkinson*, 17 S. W. R., C. R., 159.

(*n*) *Interest on Decrees.*

Where a plaintiff obtains a decree with costs and interest upon the costs, the defendant being declared entitled to the set-off on account of costs, the interest should be calculated on the amount due to plaintiff after deduction of the set-off. *Amaunt Ali* v. *Mussamut Bendhoo*, 13 S. W. R., C. R., 138.

Although the decree in this case did not specify the rate of interest before or after the decree, yet as it appeared that in calculating the amount then due, the Court gave 12 per cent., and that that was the usual rate,—*Held* that the intention of the Court, when it passed the decree, was to give the same rate. *Syud Shah Abdoollah* v. *Meer Reasut Hossein*, 17 S. W. R., C. R., 414.

Where a decree ordering payment by instalments does not provide for the payment of interest, the Court executing it is bound to refuse giving interest upon objection being taken thereto, even though on particular occasions interest has been claimed and allowed. Where interest is objected to in such a case, and the decree-holder is subjected to serious loss by delay in satisfying his claim, he is entitled to proceed at once against any property which may be liable under the decree to attachment and sale on default of payment of any of the instalments. *Surno Moyee Dossee* v. *Kishen Koomaree*, 14 S. W. R., C. R., 324.

Where a Subordinate Judge, after the lapse of two years from the hearing of a case, altered his decree in respect of interest, he was held to have made a substantial alteration, and to have substantially, if not in form, granted a review; and some good ground for the delay ought to have been shown.

The grant of interest is in every case a matter for the judicial determination of the Court which grants the decree. *Sheikh Abdool Ali* v. *Bibee Ashrufforn*, 14 S. W. R., C. R., 62.

Where a decree does not provide for the payment of interest, it is not competent to the Court executing the decree to add to it by giving interest. *Kuppa Ayyar, petitioner*, v. *Venkataramana Ayyar, counter-petitioner*, 3 Mad. Rep., A. C., 421.

A plaintiff cannot recover more than is clearly given to him by the decree, either in express terms or by necessary inference. Where the plaint prayed for interest up to the date of the suit, together with subsequent interest, and the decree purported to be an award in accordance with the prayer of the plaint,—*Held* that the plaintiff was not entitled to interest subsequent to the date of the decree. *Prabhulanadhu Pillay* v. *Pinnuswamy Chetty*, 6 Mad. Rep., Rulings, 1.

(*o*) *Duties of Judges.*

It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district, was obtained in a proper Court. *Bukshoollah Chowdry* v. *Hur Chunder Chum*, 16 S. W. R., C. R., 248.

When the plaintiff in a suit seeking solely the payment into Court of a fund for the relief of poor Armenian orphans, had no interest, except as a member of the Armenian community,—*Held* that the consent of the defendants, the trustees of the fund, to the decree sought by the plaintiff, would not justify the Court in making it. *Satoor* v. *Satoor*, Mad. Rep., 8.

The Court will not be deterred from making a decree by the difficulties to be expected in carrying it out. *Purappanvanalingam Chetti* v. *Nallasivan Chetti and others*, 1 Mad. Rep., A. C., 415.

The duty of Judges in seeing that decrees are properly drawn up pointed out. *Rustom Aly* v. *Anner Aly Soudagor*, 10 W. R., 487.

An insolvent defendant appeared and confessed judgment, at the suit of one of his creditors at the filing of the plaint. There were other suits filed by other creditors. The Judge (Recorder of Moulmein) gave a decision for the plaintiff, but declined to sign judgment, pending a reference to the High Court, under Act XXI of 1863, Section 22, on the following questions:—

(1) Is the plaintiff entitled to a decree as of the date on which the defendant appeared and confessed judgment?

(2) If he is not so entitled, on what principle are the priorities of the successive plaintiffs to be determined?

Held that the Judge has a discretion when parties have come to a mutual agreement, or when the defendant has confessed judgment, to decide the suit at once, in accordance with such agreement or confession. He is not bound to do so till the time fixed for the regular hearing of the suit; and he cannot exercise that discretion where there is any doubt as to the good faith or identity of the parties.

The Court refused to entertain the question relating to the execution of the decree in the case referred, and to priorities of other decree-holders who were not before the Court. *The Bank of Bengal* v. *R. Currie and others*, 3 B. L. R., A. C., 396; S. C., 12 W. R., 432.

Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled, and the lower Court decreed to her joint and undivided possession of her half share, and she also succeeded in the whole of her claim as before the High Court in special appeal,—*Held*, that as the separate possession by partition is a form of decree at the option of the plaintiff, the Court was in justice bound to grant her request, that the decree should be re-framed in such a manner as to award possession to her in severalty, without regard to any stamp fee. *Bissonauth Chutterjee* v. *Madhubmonnee Dabee*, 15 S. W. R., C. R., 511.

Procedure laid down for working out an incomplete decree for damages. *Bibee Munnurun* v. *Bibee Mussuhan*, 13 S. W. R., C. R., 139.

A decree of a Court should, under Sections 196 and 197, Act VIII of 1859, state whether mesne profits are awarded or not, and it should distinctly state when it reserves any points for subsequent

enquiries in execution of the decree, what those points are. *Raesoonissa Begum* v. *Shuroda Soonduree*, 16 S. W. R., C. R., 25.

Of two rival decree-holders against the same judgment-debtor, one (S.) attached a house in execution, and the other (L.) attached the house as well as the land appertaining to it. In apportioning the sale proceeds in the execution department, the Sudder Ameen did not give any portion to S., who accordingly brought a suit for the satisfaction of his claim from the proceeds of the house, on the ground that his had been the prior attachment. The first Court dismissed plaintiff's suit, on the ground that it was not satisfied as to the exact value of the house attached; but the Lower Appellate Court decreed it, ordering, however, that the value was to be ascertained by appraisement in execution.

Held that the Judge should have himself determined and adjudged the value of the house, and not referred that duty to the executive department. *Lalla Mitterjut Singh* v. *Sonatun Dass*, 15 S. W. R., C. R., 124.

There must be a distinct finding one way or other on all the material issues in a case. *Shurno Moyee Dossia* v. *Joy Narain Bose*, 8 W. R., 481.

(*p*) *Proceedings to keep Decree Alive.*

(See EXECUTION, LIMITATION).

Held that, in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor should be deducted. *Chandi Prasad Nandi* v. *Raghunath Dhar*, 3 B. L. R., Ap., 52.

The dilatoriness of the Court cannot prejudice a petition for revival of a decree, if filed in time. The appellant is not bound to remind the Court to do its duty by motion or petition. *Rajah Sutto Surun Ghossal Bahadoor* v. *Nobeen Chunder Doss*, 5 W. R., Mis., 60.

Held that the decision of the Full Bench (6 W. R., 98) that anything of whatever kind which can be fairly denominated a proceeding taken *bonâ fide* by the judgment-creditor is sufficient to satisfy the words of Section 20, Act XIV of 1859, applies to any *bonâ-fide* proceeding, whether it is successful or not.

Resistance to legal proceedings taken by another person will count as a proceeding for the purposes of Section 20. *Kalee Kishore Bose* v. *Prosono Chunder Roy and others*, 10 W. R., 248.

Steps taken towards placing the assignee of a decree in the position of the original decree-holder do not constitute proceedings to enforce, or to keep in force, the decree within the meaning of Section 20, Act XIV of 1859. *Brojo Lall Poramanic* v. *Ram Tarun Gossain*, 10 W. R., 127.

The receipt of the proceeds of a sale in execution of a decree is a proceeding within the meaning of Section 20, Act XIV of 1859. The party who impugns the *bona fides* of a proceeding in execution is bound to furnish proof. *Gunga Bishen Chand* v. *Maharajah Dhiraj Mahatab Chand Bahadoor*, 10 W. R., 224.

The principle that persons who are not parties to a suit are not bound thereby, is not applicable to proceedings taken out to keep a decree in force; the law simply requiring that some such proceeding shall have been taken by one of the decree-holders within three years next preceding his application for execution. *Khaja Abdool Gunnee* v. *N. P. Pogose*, 12 W. R., 436.

Service of notice under Section 216, Act VIII of 1859, effected by sticking up the notice on the judgment-debtor's house, instead of returning the notice to the Court under Sections 220 and 156, when it was found that the judgment-debtor was absent, may, even if the service was defective, be notwithstanding a *bonâ-fide* proceeding to enforce the decree. *Bhugobutty* v. *Mohun Chand Puteedondo and others*, 6 W. R., Mis., 97.

A plaintiff who seeks damages on the ground of an illegal omission to give him notice of the sale of his property in execution of a decree, in accordance with Section 216, Act VIII of 1859, is bound to show that there was such an illegal omission. *Kassee Nath Roy Chowdhry* v. *Hullodhur Roy*, 2 W. R., 60.

A notice under Section 216, Act VIII of 1859, calling upon a debtor to show cause why a decree should not be executed against him, is a proceeding within the meaning of Section 20, Act XIV of 1859, and the debtor's period of limitation for a new trial runs from the date of service of such notice. *Obhoy Churn Dutt* v. *Modhoosoodun Chowdhry*, 9 W. R., 330.

When land is attached for sale in execution of a decree, the point of possession is the one which determines its liability to sale or not under Section 216. But in a suit brought to set aside a sale made under that Section, it is not the mere possession, but the actual right and title, which determines whether the sale ought or ought not to stand. *Wooma Churn Chowdhry* v. *Kurralee Churn Chowdhry*, W. R., 1864, 163.

In cases falling within Section 216, Act VIII of 1859, a judgment-creditor should apply for the execution of the decree, and not for the issue of a notice. It is the duty of the Court to issue a notice. *Gooroo Doss Auckhoolee* v. *Modoo Koondoo*, 6 W. R., Mis., 98.

A petition, under Section 217, Act VIII of 1859, is not required to be verified. *Sunt Gopal Chunder* v. *Maharajah Jugut Indur Bunwaree Gobind*, 8 W. R., 200.

Held (by Macpherson, J.) that, in the exercise of the discretion given by Section 221, Act VIII of 1859, a Court may properly refuse fresh warrants when it is not satisfied that the parties have made reasonable endeavour to execute those which have expired. *Kalee Chunder Paul* v. *Thakoor Dass Biswas*, 12 W. R., O. C., 7.

Process of execution cannot always be issued for three years' arrears under a decree directing annual payment of money for a series of years.

The petitioner, who had obtained a decree for an annual sum for maintenance during her life alleged satisfaction of the decree up to a period less than three years from the date of the application for execution of the decree. The Judge was not satisfied of the alleged satisfaction, and dismissed the application for execution.

Held, that the petitioner was entitled to execution of the decree at any time from the date at which the first instalment became due, but that she was not entitled to have process of execution issued within

three years from the date at which the second instalment or subsequent instalments became due. *Lakshmi Ammal* v. *Sashudry Nizanga*, 4 Mad. Rep., 275.

An application to execute an aliquot part of a decree, though irregular and ineffectual for the purpose, must, if made *bonâ fide* under a misapprehension of the law, be regarded as a proceeding which keeps the decree alive. *Koylas Nath Ghose* v. *Nitya Shama Dassee*, 15 S. W. R., C. R., 449.

Paying tullubana and taking out of process evince a sufficient *bonâ-fide* intention of obtaining the fruits of a decree. *In the matter of Kuladass Ghose*, 15 S. W. R., C. R., 356.

Where a decree-holder is referred to a civil suit by the Court to which he applies for execution, and he accordingly carries on proceedings in order to get full relief under his decree, such proceedings must be held to be in furtherance of execution, and as keeping the decree alive. *Rudha Gobind Shaba* v. *Brojendro Coomar Chowdry*, 15 S. W. R., C. R., 207.

Where an applicant for execution did nothing beyond depositing tullubana without indicating the mode in which execution was to be obtained, his proceeding was held not to be a *bonâ-fide* proceeding keeping his decree alive. *Moonshee Syud Amcer Ali* v. *Sahib Singh*, 15 S. W. R., C. R., 530.

Where parties to a suit which had been decreed entered after remand into a compromise, and filed a solehnamah, in accordance with which the case was decided,—*Held* that an application to execute the solehnamah was not a proceeding taken on the basis of the decree, and being, therefore, illegal, could not keep the decree alive. *Preo Madhub Sircar* v. *Bissumber Sircar*, 15 S. W. R., C. R., 514.

The Civil Judge rejected an application for execution of a decree, on the ground that it was barred by the Law of Limitation (Section 20, Act XIV of 1859). A prior application was made in 1864, and less than three years before the present application, but the Civil Judge treated the former application as nugatory, because it was not accompanied by a certificate which the applicant had been directed to produce by an order of Court made upon the petitioner's application for execution in 1862.

Held by the High Court that the applicant's right to have process of execution issued was not barred. *Kendiga Madi Chetti* v. *Soobbamma*, 5 Mad. Rep., 453.

A decree was passed in June, 1851. Application was made for execution on the 21st July, 1861, and from that date, at various intervals, each less than three years, up to 1868. Upon different grounds all the applications were rejected, but the last order was reversed in appeal by the Civil Judge.

Held that the last application was not barred by the Limitation Act. *Karuppanan* v. *Muthunnan Serbey*, 5 Mad. Rep., 105.

When a judgment-debtor is an inhabitant of a foreign territory, and has no property capable of attachment, *bona fides* on the part of the decree-holder, in taking all the steps in his power towards execution, will readily be presumed. *Seith Kishen Chand* v. *Kour Askunder Gir*, N. W. R., 95.

Where an application to execute a decree as well as the service of notice took place within three years before the subsequent application, and it appeared that not merely was a notice issued and served, but the judgment-debtor had cajoled or amused the decree-holder with repeated promises to pay, and had thereby induced him to abstain from proceeding further, the proceedings of the decree-holder were held to have been *bonâ fide*. The Court ought to see that the notice is served on the right person, and should not be satisfied with the return of service upon a mere Mooktear, and not the recognized agent of the judgment-debtor within the meaning of the Procedure Code. *Kristo Chunder Goopto* v. *Fuzul Ali Khan*, 15 S. W. R., C. R., 389.

An application to arrest, which is not carried out, is a *bonâ-fide* proceeding, taken with the intention of keeping the decree alive, only when the judgment-creditor can show that certain circumstances happened that rendered it necessary for him to proceed further against the judgment-debtor in execution of that process. *Jeykissen Shaha* v. *Bishoka Maya Chowdrein*, 17 S. W. R., C. R., 355.

In this case certain proceedings of the Beerbhoom Courts in 1866, appealed to and finally decided by the High Court in 1868, were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree. *Sreenarain Mitter* v. *Moharaj Dhereaj Mahtab Chund Bahadoor*, 17 S. W. R., C. R., 72.

The Full Bench decision in 6 W. R. Misc. Rul., p. 98, cannot be cited in support of proceedings taken not against the judgment-debtor, but against parties who have nothing whatever to do with the decree (*e. g.*, debtors of the judgment-debtors), and such proceedings cannot be considered as *bonâ-fide* for keeping the decree in force. *Javo Lall* v. *Radha Kissen Misser*, 17 S. W. R., C. R., 99.

An application by a decree-holder for issue of notice and for enforcement of the decree by possession is a proceeding to keep a decree alive within the meaning of Section 20, Act XIV of 1859. *Mookta Kashee Dabee* v. *Gunga Dass Roy*, 14 S. W. R., C. R., 483.

The mere payment of tullubnamah by a decree-holder is not sufficient evidence of a *bonâ-fide* intention on his part to execute his decree. *Roy Coomar Baboo* v. *Juddoo Bunghee*, 14 S. W. R., C. R., 112.

When a Court under a mistaken view of the law allows any of the holders of a decree to execute a portion of the decree, such execution cannot be excluded from the calculation when the question of limitation is raised. *Shib Chunder Dass* v. *Ram Chunder Poddar*, 16 S. W. R., C. R., 29.

Proceedings in execution, taken out *bonâ-fide* and with the permission of the Court, even though irregular, *e.g.*, execution of a part only of a joint-decree, are sufficient to keep the decree in force. *Pran Kishore Deb* v. *Kishen Chunder Chowdry*, 16 S. W. R., C. R., 267.

Where the original suit is pending in appeal, the decree-holder is not obliged to execute his decree for costs until the proceedings are set at rest by the Appellate Court; and if application is made for a review of the order made in appeal, an attempt made to support the original order must be regarded as proceedings to keep it alive. *Shaikh Mahomed*

Busseeroollah v. *Ram Kant Chowdry*, 16 S. W. R., C. R., 266.

By Spankie and Turnbull, JJ.—When the nature of a decree is such that it admits of execution, the decree-holder cannot, after allowing the limitation period to elapse without issuing process of execution, seek by a fresh suit to obtain the relief he should have sought by execution.

By Turner, officiating C. J.—Although by reason of the Limitation Law process of execution may be barred, the decree is not altogether void.

Its effect in ascertaining the rights of the parties is unaffected by any of the provisions of the Limitation Law.

In respect of landed property which has been the subject of a decree, a plaintiff need not necessarily found his suit on the decree. He may assert, as his cause of action, the continued trespass of the defendants subsequently to the decree, which gives him a new cause of action. *Ram Jus Rae* v. *Ram Narain et al.*, 2 N. W. R., 382.

An act done in furtherance of a decree in which the decree-holder cannot in reason expect success, and which is not followed up by any other proceeding for more than three years, cannot be said to be done in good faith. An application for execution cannot be brought down to a later date than that on which it is made, by any agreement between decree-holder and judgment-debtor to postpone execution. *Madhoomutty Debia* v. *Dhunput Sing*, 13 S. W. R., C. R., 164.

Though it is the duty of the Court to issue process after application has been made for execution, yet the law fully intends that when the decree-holder sees that the Court has taken no steps to issue any process, he shall be diligent and move the Court from time to time, as required, to keep him within the period of limitation. *Gooroo Dass Dutt* v. *Womra Churn Roy*, 13 S. W. R., C. R., 83.

The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ-fide* to keep alive such decree, is a question of fact, and no special appeal lies from an order finding that the proceedings taken were *bonâ fide*. *Bhuban Mohan Chattopaddhya* v. *Sandamrini Debi*, 5 B. L. R., Ap., 59.

In a case in which a certain sum was adjudged to five persons as an entire sum to which all of them were jointly entitled, but one moiety to three of them and the other moiety to the remaining two,—*Held* that the effect of the adjudication was the same as if two separate and distinct decrees had been pronounced, and that no action taken by the decree-holders to whom one moiety had been assigned could keep the decree alive to the benefit of the others. *Chova Sahoo* v. *Tripoora Dutt*, 13 S. W. R., C. R., 244.

A suit for a declaration of plaintiff's right to assess certain lands as mâl having been decreed, some of the defendants applied under Section 119 Act VIII of 1859, and prayed the Court to set aside the decree. The remaining defendants were made parties, and the decree was materially modified. *Held* that as the decree-holder was taking steps for the purpose of preserving the original judgment intact, he was taking a proceeding to keep the decree alive. *Poornanund Surkhel* v. *Huro Sooonderu Debia*, 13 S. W. R., C. R., 208.

A precept to the Collector under Clause 2, Section 24, Regulation XLVIII of 1793, for mutation of names in the terms of a decree, is a process to enforce the decree, and cannot, under Section 20, Act XIV of 1859, be issued after a lapse of three years from the passing of the decree. *Mussamut Nanerbi Kunwur* v. *Mussamut Kasturi Kunwur*, 4 B. L. R., A. C., 158.

The service of a notice under Section 216 of Act VIII of 1859, if made *bonâ-fide* with a view to take further proceedings, is sufficient to keep a decree alive. The question in this case was whether service of a notice under Section 216 of Act VIII of 1859 was a proceeding within the meaning of Act XIV of 1859, Section 20. *Maharajah Dhiruj Mahtah Chund Bahadur* v. *Lakhi Bibi*, 6 B. L. R., Ap., 146.

A. obtained a decree against B. on the 17th September, 1853. The decree was kept in force by sundry proceedings, the last of which was taken on the 30th December, 1864. On the 6th February, 1865, the parties filed a kistbundee, whereby they agreed that the amount due under the decree should be payable by instalments, the first instalment to fall due on 14th July, 1865; at the same time an existing attachment was given up. On 14th July, 1868, A. applied for execution of the decree in respect of six instalments due under the kistbundee.

Held (Mitter, J., dissenting), the Court cannot recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree. The filing of the kistbundee and relinquishment of the attachment were not a proceeding to enforce the decree or keep it in force. Execution of the decree was barred by limitation. *Krishna Kumal Sing* v. *Hiru Sirdar*, 4 B. L. R., F. B. R., 101, 13 S. W. R., F. B. R., 44.

Where a creditor has obtained a decree for money payable by instalments, the whole amount to become due on failure by the debtor to pay one of the instalments, he is, upon failure, entitled, notwithstanding Section 206 of Act VIII of 1859, to come into Court and certify to the Court, and prove payment of the earlier instalments, to show that execution of his decree is not barred. *Fakir Chand Bose* v. *Madan Mohun Ghose*, 4 B. L. R., F. B. R., 130, 13 S. W. R., F. B. R., 40.

Confirmation of a sale in execution of a decree by the Court, of its own motion, and drawing out the proceeds of sale by the execution-creditor, are not proceedings to enforce such decree, or to keep the same in force, within the meaning of Section 20, Act XIV of 1859. *Maharaja Dhiraj Mahtab Chund Bahadur* v. *Ram Brahma Mullick* 4. B. L. R., A. C., 115, 13 S. W. R., C. R., 38.

A decree is not kept alive by the mere service of notice when the notice is returned because the judgment-debtor does not live in the place where it has been served, and the decree-holder makes no subsequent attempt to amend his mistake. *Mazedoonissa Beebee* v. *Fuezen Beebee*, 4 W. R., Mis., 6.

Payments made otherwise than through the Court, in adjustment of a decree, cannot be recognized as keeping alive the decree. *Kedarnath Mahata* v. *Heralol Mundul*, 4 W. R., Mis., 21.

The presentation of a petition without any further active steps on the part of a decree-holder, is insufficient to keep alive his right to execute a decree.

Sheikh Idoo v. *Sheikh Besharoolla*, 2 W. R., Mis., 10.

A dispute between the purchaser of a decree and a third party, and the proceedings connected therewith, cannot be taken to be proceedings within the purview of Section 20, Act XIV of 1859. *Narain Acharjee Chowdhry* v. *Mohamoya Dabee Chowdhrain*, 10 W. R., 240.

A party (M.) having borrowed money on the security of land, obtained a decree against the borrower for principal and interest, execution being stayed for six months, and plaintiff's lien on the land maintained. A year after the decree-holder applied for execution, and the estate was attached with a view to sale. Thereupon one K. claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued under the decree, and that money was taken out with the leave of the Court by the decree-holder (M.), and satisfaction entered upon the decree. Subsequently K. obtained a decree in virtue of which M. was ordered to refund the money. *Held* that the defence to K.'s suit by the decree-holder M. would not be a proceeding taken by him within the meaning of Section 20, Act XIV of 1859, to keep his decree alive. *Prosono Chundra Roy* v. *Mookund Pershad Roy*, 11 W. R., 210.

A decree for possession of land and wasilat was made in 1845, but the decree-holder, though annually praying for execution, never applied to the Court to be put into possession, and in 1864 issued a notice to the judgment-debtors. *Held* that these proceedings were merely colourable proceedings; the notice of execution must be a *bonâ-fide* notice; and that they were not sufficient in law to keep the decree alive. *Tatur Singh* v. *Motee Singh*, 8 W. R., 306.

IX.—Execution of Decrees.

(a) *Miscellaneous.*

Execution cannot be obtained on a merely declaratory decree. *Munian* v. *Peria Kutunda Ammal*, 1 Mad. Rep., A. C., 184.

There may be a valid sale upon an execution in an action of damages for a tort, of the share of undivided family property to which, if a partition took place, the judgment-debtor would be individually entitled. Such damages in the costs recovered constitute a judgment debt, in respect of which the judgment-creditor's rights are the same as those upon any other judgment for payment of money. *Virasvami Gramini* v. *Ayyasvam Gramini*, 1 Mad. Rep., O. C., 471.

Cross-decrees in the same Court may be set-off one against the other, whether they are originally decrees of the same Court, or are decrees sent to the same Court to be executed. But decrees of different Courts cannot be set-off one against the other, unless when they are both in the same Court for the purpose of being executed. *Greesh Chunder Lahoory* v. *Fakeer Chund Khan*, 6 W. R., Mis., 72.

After a debtor has been arrested in execution of a decree, and discharged at the request of the creditor, his personal property may be taken in execution under the same decree. *Janokee Singh Roy* v. *Kaloo Mundle*, 9 W. R., 178.

When the records of a case are destroyed, the plaintiff may prove his first decree, and get the execution of it; but on his inability to do so, he cannot bring a second suit for the same subject-matter. *Mussamut Nuzur Banoo* v. *Hossein Ali Khan*, W. R., 1864, 378.

The holder of three decrees for rent against a jote took out execution and attached the jote for two of them. The purchaser of the tenure disputed the amount due on two of the decrees, for which the tenure had been attached, but paid nothing on account of the third decree. *Held* that the tenure bought by the purchaser was liable for all the three decrees. *T. J. Kenny* v. *Gopee Soonduree Dassee*, W. R., 1864, 387.

Execution of a decree for enhanced rent should not be refused merely because the decree has been appealed against on a point of law. *L. Theodorus* v. *Moulvie Abdool Burkut Ameenoollah*, W. R., 1864, Act X R., 106.

The plaintiff purchased certain property at a sale under an execution upon a decree and paid the purchase-money. The purchase-money was applied partly in satisfying the decree-holder, and partly in satisfying other persons admitted by the decree to participate. The decree was afterwards reversed upon appeal, and the execution-debtor reinstated in his rights. *Held* that the plaintiff was not entitled to recover the purchase-money from the execution-debtor. *Choolun Singh* v. *Roy Mohunlall Mitter*, Marsh., 183.

Execution was issued upon a decree, and the proceeds of the execution paid over by the officer of the Court to the mookhtear of the execution creditor, and misapplied by him. A second execution was afterwards issued under the same decree in ignorance of the first. *Held* that, although his mookhtear may not have had authority to receive the proceeds of the first execution, the receipt of such proceeds by the Court officer absolved the execution-debtor from all further liability; and that the second execution was illegal, and the execution-creditor was responsible in respect of it. *Purtaub Chunder Burooah* v. *Bhuggobutty Dabee and others*, Marsh., 59.

After a decree had been satisfied and the case struck out at the request of the decree-holder, he discovered that, by resorting to a different mode of calculation, he might have recovered more under the decree. The Court refused to re-open the matter, or to allow execution for the difference. *Cloonus and others* v. *Bulazau*, Marsh., 21[illegible].

When a decree-holder who has acquiesced in an execution order for the sale of certain property, credits only a portion of the proceeds in satisfaction of the decree, he is not entitled to have his lien declared upon other property. *Lallah Beharee Lall* v. *Moonshee Kally Pershad*, 4 W. R., 67.

Execution cannot be issued upon a razinamah, unless the terms of it are embodied in a decree of the Court. *Darbba Venkatta Sastry* v. *Verdla Gangaia*, 2 Mad. Rep., 305.

Execution against the person of a judgment-debtor is not a preliminary step necessary to entitle the judgment-creditor to proceed against the debtor's immoveable property under Section 11, Act XLII of 1860. *Venkatasamy Naik* v. *Vettamalai Gaundaun*, 2 Mad. Rep., 339.

Quære,—Whether the holder of a simple money-

decree can follow the property stated in the bond to have been previously pledged to him by the debtor in security for the bond-debt, after the conveyance of such property to another party. *Ramnath Ram* v. *Deen Dyal Ram*, W. R., 1864, 311.

Property substantially conveyed for the benefit and support of a judgment-debtor and his family is liable for his debt, even though it was purchased in the name of his son. *Fukeerooddeen Mahomed Ahsan Chowdhry* v. *Kureem Buksh Chowdhry*, 5 W. R., 43.

An application for the revival of execution of a decree was made to the Principal Sudder Ameen in January, 1862. The Judge's permission for the Principal Sudder Ameen to try the case was asked for and given in June, 1864. *Held* that the sanction of the Judge legalized all the previous acts of the Principal Sudder Ameen; and that, in this view, execution was revived before the expiry of the three years allowed by Act XIV of 1859. *Jugutendro Narain Chowdhry* v. *Gour Monee Dossee*, 2 W. R., Mis., 2.

A Civil Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate. *Anderson* v. *McQueen*, 7 W. R., 12.

Where, according to a will, until the testator's wife came of age, his mother had the beneficial interest in his property, and the rent which the mother recovered from the tenants was on her own account, and not as guardian of the wife,—*Held* that a decree obtained against the mother was consequently not as guardian of the minor, but personal, and that the property of the wife could not be sold in execution of a decree personal to the mother. *Gooroo Doss Babee* v. *Soondur Koomaree Debia*, 8 W. R., 217.

A decree was obtained against A., and on his death execution was taken out against his widows, B. came in, and alleging that A. was merely a benamee holder for B., applied to be substituted for the widows as defendant. *Held* that the Court was not right in exempting from liability A.'s heirs to the extent of any assets which might have come into their hands. *Doorga Soonduree Debia* v. *Soorjomonee Debia and others*, 8 W. R., 101.

Where a person filed a petition in a suit stating that all the interests of the judgment-debtor had been transferred to him, and for several years thereafter opposed all attempts, on the part of the decree-holder, to issue execution,—*Held* that the person who had so come forward, and had so interfered in the suit, was liable as a defendant, and that execution could be issued against him.

A stranger to a suit cannot (even with the decree-holder's consent) so deal with a judgment-debtor as to acquire an interest in the suit which will enable him to oppose and prevent the execution of the decree, without rendering himself liable to be put upon the record as a judgment-debtor. *Lala Porihit Lall* v. *Mussamut Saberun*, 7 W. R., 368.

A right to future maintenance cannot be sold in execution of a decree. *Mussamut Duloon Koonwar* v. *Sungum Singh and others*, 7 W. R., 311.

A plaintiff who has obtained a decree having died, and the defendant in the suit being one of the representatives of the deceased plaintiff, and as such entitled to succeed to a share in his estate,—*Held* that the mere fact of the defendant being one of the representatives of the deceased did not debar the other representatives from executing the decree according to their rights. *J. P. Wise and others* v. *Abdool Aly and others*, 7 W. R., 136.

A judgment-debtor executed a kistbundee agreeing to pay the decree-holder by certain instalments, and giving sureties for due performance; one condition being that if the debtor failed to make payment as agreed upon the decree-holder was to take out execution of the kistbundee. On this document and the surety bond being filed in the Court by the parties, the execution proceedings were struck off the file.

Held that the kistbundee was in substitution of the decree, and having been executed in the presence and with the sanction of the Court, the judgment-creditor could only proceed on its terms; and the judgment-debtor failing to carry out its terms, could not require the judgment-creditor to bring a fresh suit to recover what had already been decreed to him. *Tareef Biswas and another* v. *Kallee Doss Banerjee and others*, 11 W. R., 86.

The manager of a factory, who had executed a bond in respect of sums owed by him on account of factory expenses, having left the service of the proprietor of the factory, an *ex-parte* decree was obtained on the bond against another manager. But as there was nothing in the decree to connect the judgment-debtor (the manager) with his principal (the proprietor), it was held that the decree could not be executed against the property of the principal. *The Agra Bank, Limited*, v. *Dabee Pershad*, 12 W. R., 208.

Where a judgment-debtor executed a kistbundee or instalment bond, providing for the satisfaction of the decree which had been obtained against him, and subsequently failed to pay according to the terms of the kistbundee,—*Held* that the decree-holder could enforce his claim under the terms of the kistbundee by proceeding in execution, and need not file a fresh suit. *Tarif Biswas* v. *Kalidass Banerjee*, 2 B. L. R., A. C., 223.

A judgment-creditor is entitled to prove payments made according to the terms of a kistbundee, for the purpose of showing that his right to sue out execution under the kistbundee was not barred by limitation.

Quære,—Whether part payments under a decree may not be proved, although they have not been made through the Court, or certified to the Court, under Section 206 of Act VIII of 1859. *Bhubaneswari Debi* v. *Dinanath Sandyal and others*, 2 B. L. R., A. C., 320; S. C., 11 W. R., 232.

A Court executing a decree is bound to have regard only to the decree, and to any adjustment of such decree which the parties may agree to bring to its notice.

Where a compromise is set up, and disavowed by one of the alleged parties thereto, the other party cannot, by an application in the execution department, relying on the compromise, arrest the execution of the decree.

Whatever rights may exist under the compromise must be established by a new suit. *Jhundoo* v. *Himmut*, 3 N. W. R., 81.

A decree directing payment by instalments ought to be executed to the extent of the instalments falling due within three years before the application

for execution. *Ram Serdaj Ghose* v. *Roy Buthale Saha*, 15 S. W. R., C. R., 547.

Execution of decree—interest decreed, but rate not specified. *Ram Lulun Mani* v. *Behari Lal Mookerjee*, 7 B. L. R., Ap., 30.

The rule in the case of foreign judgments sought to be executed in our Courts is, that such judgments must finally determine the points in dispute, and must be adjudications upon the actual merits, and that they are not open to impeachment on the ground of want of jurisdiction, whether over the cause, the subject-matter, or the parties, or that the defendant was not summoned, or had no opportunity of defence, or that the judgment was fraudulently obtained. *Sreekuree Bukshu* v. *Gopaulchunder Samunt*, 15 S. W. R., C. R., 500.

Where a party applies, under Section 199, Code of Civil Procedure, to have an *ex-parte* decree set aside, on the allegation that the decree was obtained upon a petition of confession of judgment put in by a person fraudulently employed to personate him, the Court is bound to enquire into the truth of the allegation, and if it be established the decree may be set aside. *Koroonamoyee Dassee* v. *Nobo Kishore Sein*, 6 W. R., 36.

A defendant who appeared at the first hearing, but against whom in his absence at the adjourned hearing the case was decreed *ex-parte*, is not debarred from appeal under Section 199, Code of Civil Procedure. *Kalee Churn Dutt* v. *Modhoossodun Ghose*, 6 W. R., 86.

A decree for possession and mesne profits must, with reference to Section 196, Civil Procedure Code, be held to mean mesne profits down to the date of delivery of possession. *Dhurm Narain Singh* v. *Bundhoo Ram*, 12 W. R., 75.

Under Section 201 and other Sections cited of Act VIII of 1859, a judgment-creditor has uncontrolled option whether he will proceed in the first instance against the person or the property of his judgment-debtor; and by Section 15, Act XXIV of 1861, the Small Cause Court is bound to issue execution according to the nature of the application, if made in writing after the passing of the decree under Section 207, Act VIII of 1859.

The Court may, at its discretion, refuse execution against the person and property at the same time or against the same person when, under Section 13, Act XXIII of 1861, or under Section 19, Act XI of 1865, application for immediate execution is made verbally at the time of passing the decree. *J. Davis and Co.* v. *M. A. Middleton*, 8 W. R., 282.

An award of private arbitration *per se* does not come under the provisions of Section 202 of Act VIII of 1859, so as to be set off against a decree of Court. *Dheeraj Singh* v. *Deen Dyal Singh*, 11 W. R., 144.

Where persons by their own neglect have lost the remedy by process of execution to which they became entitled by an adjudication in a former suit, they cannot be permitted to revert to the position which they held prior to the institution of that suit, and to bring a fresh suit. *Sheikh Golam Hossein* v. *Mussamut Alla Rukha Bibee*, 3 N. W. R., 62.

In execution of a decree a judgment-debtor cannot be ordered to pay a sum beyond what is stated in the decree, although he may, after the decree, have agreed with the decree-holder to do so. *Kanhya Lall Pundit* v. *The Court of Wards*, 16 S. W. R., C. R., 275.

A compromise embodied in a decree was to the effect that defendant should pay to plaintiff the principal sum within a specified period, and that if he (defendant) were successful in another suit against a different party, he would also pay the interest. He succeeded in his suit in the first Court, but his suit was dismissed in appeal. The judgment-debtor subsequently paid the principal, but was afterwards arrested, and M. H. became surety for his production and for the payment of the interest, if the order of the Moonsiff releasing the judgment-debtor were set aside in appeal.

Held (by Markby, J.),—That the decree on the compromise was not one upon which execution could be carried out, at any rate for the sum which was only conditionally due, as the enquiry relative to the fulfilment of the condition could only be made in a regular suit; and that execution could not be taken out against M. H., the surety, the arrangement between him and the judgment-creditor not falling within Section 204, Act VIII of 1859, which applies to persons who have become security for the performance of a decree or any part thereof. *Bolakee Lall* v. *Mahomed Hossein Khan*, 14 S. W. R., C. R., 63.

S. brought a suit under Section 15, Act XIV of 1859, obtained a decree, and took possession. After this B. applied under Section 230, Act VIII of 1859, alleging that he had been in possession, and was dispossessed by S. in execution of a decree against another party. The Moonsiff decreed the case in favour of B. *Held* that the latter was not a proceeding under the former suit, and the decision upon it was appealable under Section 231, Act VIII of 1859. *Brohmo Moyee Dabee* v. *Burkut Sirdar*, 13 S. W. R., C. R., 264.

A Civil Court alone can execute a Civil Court's decree for possession of land. *Raja Sutto Churn Ghosal* v. *Gourupersaud Roy*, 13 S. W. R., C. R., 117.

In a suit for possession of certain plots of land, where plaintiff appeared to be in exclusive possession of other lands devolving by the same title, the Moonsiff compelled the plaintiff to alter her claim into one for a third of the whole of the lands on which she was entitled to a share, and gave her a decree accordingly. When she sought to execute the decree, the defendant objected that she sought first to execute it in respect of the lands in her possession which were alleged to exceed the one-third decree. *Held* that the decree-holder was entitled to execute her decree in respect of the lands in the hands of the defendant. *Radha Kristo Panjee* v. *Bamasoonduree Dossee*, 13 S. W. R., C R., 9.

In a suit for possession and wasilat, N. was originally the answering defendant; but when the suit had to be determined, U. intervened of her own accord, and her name was, at her own request, substituted in the decree for that of N. *Held* that U. was the person responsible for mesne profits and costs under the decree. *Umbika Dassia* v. *Chirunjun Pershad Bose*, 13 S. W. R., C. R., 81.

Practice in execution, by High Court, of decree of another Court. *Jadu Roy* v. *Farrell*, 6 B. L. R., Ap., 66.

A decree which is incapable of being enforced cannot be set-off against a decree which is alive.

Huro Pershad Roy Chowdry v. *Hool Rishodra Dassee*, 16 S. W. R., C. R., 308.

(*b*) *Rulings under the Code.*

The property of sons is liable for a deceased father's debt, unless the sons prove, according to Section 203, Code of Civil Procedure, that they have duly applied such property of the deceased as came into their possession. *Mooktokeshee Dabea* v. *Woomachurn Bhuttacharjee*, 12 W. R., 233.

Where a decree is passed against certain parties as representatives of a deceased party, it can only be executed against the property of the latter, unless the defendants fail to satisfy the Court that they duly applied all such his property as came into their possession, in which case the decree may be executed against property belonging to the defendants to the extent of the deceased property not properly applied by them (Section 203, Act VIII of 1859).

The provisions of Act VIII of 1859 relative to execution against a living judgment-debtor are not applicable after he is dead. By his death his property passes from him; and if it is still liable for the debt, the transferee should be put on the record in place of the deceased, or irregularly sued. There is no ground for applying Section 246 to him as if he were holding benamee for the dead man. *Surfun Bibee* v. *The Collector of Sarun*, 10 W. R., 199.

Section 203, Act VIII of 1859, although it primarily refers to a party who has been substituted before decree for the original debtor, is equally applicable to a person who has become representative of the original debtor in execution proceedings, his liability being limited to the extent of the property of the original debtor which may have come into his hands. *Syud Jafur Hossein and others* v. *Hingun Jan and others*, 8 W. R., 161.

A surety against whom the judgment-creditor is proceeding under Section 204, Act VIII of 1859, is not debarred by Section 11, Act XXIII of 1861, from an appeal. *Ghoree Lall Jha* v. *Sheo Narain Singh and others*, 8 W. R., 24.

Section 204, Act VIII of 1859, applies to cases such as that of parties who become sureties under Section 76 or Section 83, but not to parties who become securities after a decree is passed. *Baboo Ram Kissen Doss and others* v. *Hurkhoo Singh*, 7 W. R., 329.

Where a deed is executed stipulating the grant of a regular maintenance payable from the grantor's estate, and recoverable, in the event of non-payment, from that estate, the allowance so granted is property which can be attached under the provisions of Section 205, Act VIII of 1859. *Enaet Hossein* v. *Nujeeboonissa Begum*, 11 W. R., 138.

The right of a son to succeed by survivorship to his father's specific share of property cannot be sold in execution of decree, such right being too remote. Section 205 of the Code of Civil Procedure, which specifies the kinds of property which are liable to attachment and sale in execution of decree, makes no mention of contingent interests. The property must belong at the time to the defendants. *Gour Surun Doss and others* v. *Ram Surun Bhukut and others*, 8 W. R., 253.

Section 206, Act VIII of 1859, applies where execution is sought after that law of a decree passed before its enactment. *Bykunt Ghose* v. *Kishen Chunder Ghose*, 2 W. R., Mis., 43.

A decree-holder who was not barred by lapse of time in seeking to execute his decree, was opposed by the judgment-debtor, on the ground that the decree had been seized and sold by the Deputy Collector, in execution of a decree of that functionary's Court, and that he himself (the judgment-debtor) had become the purchaser thereof. *Held* that these proceedings amounted to an adjustment out of Court, which, under Section 206, Act VIII of 1859, could not be recognized by the Court, unless certified to by the judgment-creditor himself.

Held also that a Court charged with the execution of a decree has no other discretion with regard to noticing a transfer thereof than that which is given to it by Section 208, which only applies to cases where the transferee can and does come forward to claim execution for himself, instead of the original decree-holder. *Bhurrut Chunder Roy*, v. *Nabob Nazir Aly Khan Bahadoor*, 10 W. R., 354.

Held that Section 206 of Act VIII of 1859 does not apply to adjustments of decrees made before the Act came into operation. *Chimnájee Bálkrishna, ex-parte*, 4 Bom. Rep., A. C., 85.

Section 206 (prohibiting settlements out of Court) is not applicable to decrees under Act X of 1859. *Rajah Protab Chunder Singh* v. *Kunayelall Doss*, 3 W. R., Act X R., 7.

Section 206 does not apply to Revenue Courts, and no rule of the Board of Revenue can justify a Deputy Collector's refusing to enquire whether or not a private adjustment of a decree has, as alleged, been effected out of Court. *Ramchunder Roy* v. *Ramchurn Bukshee*, 9 W. R., 372.

Under Section 206, Act VIII of 1859, a Court cannot recognize any adjustment of a decree unless made through the Court, or notified to the Court by the person in whose favour the decree has been made, or to whom it has been transferred. *Bhya Bhoopinath Sahee* v. *Kuwan and others*, 7 W. R., 134.

The suing on a kistbundee in Court does not necessarily make it the instrument of a public adjustment through the Court, within the meaning of Section 206, Act VIII of 1859. *Muddon Mohun Mittra* v. *Bibee Peer Bukshun*, 7 W. R. 85.

A letter from a decree-holder to his vakeel to put in an acknowledgment into Court, is not a settlement out of Court certified to the Court in the manner required by Section 206, Act VIII of 1859, to warrant further investigation in the matter. *Thakoor Lall Missree* v. *Kanye Lall Tewaree*, 7 W. R., 510.

A petition signed and filed in Court by a judgment-creditor certifying payment of the amount due to him by his judgment-debtor, is a sufficient certificate of payment under the decree in the terms of Section 206, Code of Civil Procedure. *Suadoollah Shaik* v. *Kaleechurn*, 12 W. R., 358.

A. sold a decree obtained by him under Regulation VII of 1799 to B., but after the sale realized the decree from the judgment-debtor. On application by B. for execution, on 2nd January, 1862, the fraud was discovered, and B. was referred by the Collector to the Civil Court. On 2nd October, 1866, B. brought his suit for recovery of purchase-money from A. *Held* that the period of limitation

ran from the discovery of the fraud. The suit was not barred. Section 206 of Act VIII of 1859 does not apply to decrees under Regulation VII of 1799. *Gopal Chundra Dey* v. *Pemu Bibi*, 1 B. L. R., A. C., 77.; 10 W. R., 104.

Where several of the acts requiring to be done in execution of a decree are such as can be done through a Court, and where all of them are acts the doing of which may be certified to the Court by the person in whose favour the decree was made, the policy of Section 206 of the Code of Civil Procedure is to exclude the reception of evidence upon the point, or any question arising out of evidence before the Court. No adjustment can be recognized unless made through the Court, or certified by the person in whose favour the decree was made. When arrest in execution has not been specially objected to in the Court below, this Court will not interfere. *Dwarkanath Dass Biswas* v. *Unnodachurn Dass*, 8 W. R., 319.

According to Section 206, Act VIII of 1859, no adjustments made out of Court are admissible by the Court in execution. *Motee Lall* v. *Ram Dass*, W. R., 1864, Mis. R., 38.

Held that the rejection, under Section 206 of Act VIII of 1859, of a defendant's objection, in a Mofussil Small Cause Court, to the execution of a decree, on the ground that it had been adjusted out of Court, did not bar his right to bring a suit against the execution-creditor to recover the thing alleged to have been given in satisfaction of the decree. *Gulawad Chandábhái* v. *Rahimtulla Jamálbhái*, 4 Bom. Rep., A. C., 76.

K., an execution-creditor of C., applied to the Court by which the decree was passed, and caused C. to be imprisoned under it. C. then entered into a compromise upon certain terms with K. for the adjustment of the decree, and K. thereupon, but without certifying the terms of such adjustment to the Court, petitioned for the release of C., who was accordingly released.

Subsequently K. again applied to the Court to compel satisfaction of the whole amount of the decree against C.

This application was opposed by C., on the ground that an adjustment of the decree had taken place between him and K. The Judge, however, refused to enter into the question of the adjustment, as the terms of it had not been certified to the Court under Section 206 of the Civil Procedure Code.

Held that the Judge was in error; that it was the duty of K., on applying for the release of C., to certify the adjustment to the Court; that it would be unjust to allow him to take advantage of his own omission to do so; and that, not having done so, the presumption against him was that the decree had been satisfied in full; but that, under the circumstances, it would be the most equitable course to direct the Judge to enquire into the terms of the adjustment. Case remanded for that purpose. *Chángo Valad Dudhá Mahájan* v. *Kaleeram Náráyandás*, 4 Bom. Rep., A. C., 120.

Section 206 of Act VIII of 1859 forbids the recognition of adjustments not made through the Court between debtor and decree-holder. If the date of an alleged adjustment be prior to that Act, the *bona fides* of the adjustment must be considered. *Brindabun Chunder Sircar Chowdhry* v. *Khooshal Chunder Dutt*, 2 W. R., Mis. A., 2; *Bykunt Ghose* v. *Kishen Chunder Ghose*, 2 W. R., Mis. A., 43; and *Kalee Pershad Surmah Roy* v. *Khetturnath Shaw*, 4 W. R., Mis., 11.

Section 206, Act VIII of 1859, does not bar a suit brought to recover money paid into the Collectorate as Government revenue, although the person on whose behalf the money was paid had an Act X decree against the person paying the money, as the entire amount of the decree was eventually recovered by taking out execution of the whole decree. *Mohima Chunder Ghose* v. *Nobinchunder Audhicaree*, 8 W. R., 449.

Where a judgment-debtor, instead of paying into Court, as prescribed in Section 206, Code of Civil Procedure, pays direct to the creditor, he does so at his own risk. *Gunga Gobind Goopto and others* v. *Makhan Lall Hatee and others*, 9 W. R., 362.

Where a judgment-debtor pays the amount decreed to the officer of the Court under the authority and pressure of the Court's process, he is entitled to protection, the latter clause of Section 206, Act VIII of 1859, relating not to such payments, but to voluntary adjustment. *Bindhoo Beebee* v. *Keshub Chunder Baboo*, 9 W. R., 462.

In execution of a decree against his judgment-debtor, the defendant caused the cattle of the plaintiff, a stranger, to be seized and taken. The plaintiff filed his claim under Section 246, Act VIII of 1859, which was allowed. Subsequent to the admission of the claim, but before the order for release of the cattle, three of the bullocks died.

The plaintiff sued for damages, consequent on the seizure of the cattle, and for the value of the three bullocks which had died during the time they were in the custody of the officer of the Court.

Held that the defendant was liable to the plaintiff for damages sustained by him in consequence of the seizure and detention of the cattle,—*i.e.*, for a sum sufficient to cover what would have been plaintiff's expenses for hiring bullocks to cultivate his lands.

That neither Section 214, Act VIII of 1859, nor Section 15, Act XXIII of 1861, contemplates any enquiry before the Court, whether the property belongs to the judgment-debtor or not; and that seizure of personal property, in execution of a decree, is not an act of the Court, but one of the party himself seeking execution, for which he is liable if any trespass be committed on the property of a stranger. *Mussamut Subjan Bibi* v. *Sheikh Sariatulla*, 3 B. L. R., A. C., 413.

A Court executing decrees, whilst giving effect to Section 206 of Act VIII of 1859, should also take reasonable care that its process is not about to be abused for fraudulent purposes. It may, by examining the judgment-debtor and others having knowledge, inform itself of the position of the decree, and whether it has or has not been satisfied. This, however, is merely an enquiry to inform the Court, and it need not frame and decide an issue. *Pareechut* v. *Rugho Goordeo*, 2 N. W. R., 48.

H. sued B. to recover possession of a certain house. B. answered that the house was his own; that H. having fraudulently got possession of it, he (B.) had filed a suit to recover possession: that a decree was passed in his favour in the lower Court,

which, however, was reversed on appeal; that, pending a special appeal, a compromise had been entered into between him and H., in pursuance of which he (B.) was put in possession of the house. The terms of this compromise were not certified to the Court under Section 206 of the Civil Procedure Code.

Held that this compromise, having been effected after the decree in favour of B. had been reversed, did not come within the meaning of Section 206, and was, therefore, a good defence to the suit of H. *Hari Sadú Shia Dikshit* v. *Bassu Bulvan*, 5 Bom. Rep., A. C., 78.

Payments out of Court may be certified to the Courts and proved by the decree-holder in order to avoid the action of the Law of Limitation, notwithstanding the provisions of Sections 206, Act VIII of 1859. *Juggut Mohina Dassee* v. *Madhub Chunder Kur*, 15 S. W. R., C. R., 66.

(*c*) *Modes of Execution.*

If money is brought into Court under process of execution, and the party entitled to it or his vakeel is present to receive it, the Court shall cause it to be paid over immediately. *Muttuvelu Pillay* v. *Samu Pillay*, 5 Mad. Rep., Ruling II.

The provisions of Section 229 of the Code of Civil Procedure are not applicable to the case of a person put in possession of land under a decree in the manner prescribed by Section 224 of the same Code. *Gunesh Pershad* v. *Jykishun*, 17 N. W. R., 134.

In the execution of a decree for land passed prior to the enactment of the Code of Civil Procedure, in which the value of the produce of the land was given to the plaintiff up to the date of the decree, it is not competent to the Court executing the decree to grant further produce up to the date of execution. *Chinnaiya Chetty* v. *K. Naranapayra*, 6 Mad. Rep., 15.

Delivery of possession under Section 264, Code of Civil Procedure, is complete as soon as the steps prescribed by that Section have been taken; and any subsequent act of resistance on the part of the claimant to the land is not the resistance or obstruction referred to in Section 236, and can in no way give the Court a right to interfere in the summary way provided by that Section. *Syud Wajed Hossein Moulvie Abdool Kadir*, 13 S. W. R., C. R., 418.

Plaintiff having only partially succeeded in a suit against R., G., and others, for possession of certain land with mesne profits, appealed to the High Court, who gave him a decree with costs. Upon this, all the defendants except R. and G. applied for a review, and obtained a modification of the High Court's judgment, such as left the lower Court's decree standing against R. and G. alone. Plaintiff then applied for execution. *Held* that the only thing that the plaintiff could do in these circumstances was to ask for delivery, in the mode prescribed in Section 224, Code of Civil Procedure, of the shares and interest of R. and G., but that the Court in execution was not authorized to make any enquiry into the extent or amount of these shares in relation to the other defendants. *Annoda Pershad Mookerjee* v. *Troyluckhenath Paul Chowdry*, 13 S. W. R., C. R., 123.

A person executing a process directing a general attachment of moveable property, having gained access to a house, has a right to remove the lock from the door of a room in which he has reasonable ground for believing moveable property to be lodged. *Kendavawmy Pillay* v. *Kristna Swamy Pillay*, 5 Mad. Rep., 189.

Where, by an arrangement sanctioned by the proper Court the terms of a decree were varied, and provision was made for its payment by instalments, for the payment of a portion of which instalments a surety executed a bond hypothecating his property,—*Held* that the terms of Section 204 of the Civil Procedure Code are not applicable to such an arrangement. *Chunder Dun* v. *Hossein Ali*, 3 N. W. R., 88.

A party who obtains a decree enabling him to recover a mortgage debt by sale of two mortgaged premises, is entitled in law to proceed against both or either of the properties, as he thinks proper. *Khorshed Ali* v. *Chowdry Wahid Ali*, 15 S. W. R., C. R., 170.

Where a decree requires the judgment-debtor to render accounts, he can only discharge himself by accounting for all the moneys that have come into his hands, and it is always open to the decree-holder to show that this has not been done. *Woomanauth Roy* v. *Sreenauth Singh*, 15 S. W R., C. R., 260.

Where a plaintiff had obtained a decree, declaring his right to erect a building,—*Held* that it was not the business of the Ameen in execution to take any part in the erection, and that what was done by the Ameen at the instance of the decree-holder could not be regarded as the act of the Court. *Kanhya Lall* v. *Shaikh Munowur Hossein*, 15 S. W. R., C. R., 271.

Where a decree is for the delivery of moveable property and states the amount to be paid as an alternative if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery then assessed damages should be paid. *Kashu Nath Kooer* v. *Deb Krist Rumanuff Dass*, 16 S. W. R., C. R., 240.

Semble,—A decree which is not a decree for possession cannot, under Section 223, be executed by an order for delivery of possession of property in the possession of a third party who has acquired a title subsequently to the institution of the suit. *Ameeroonissu Khatoon* v. *Abedoonissa Khatoon*, 16 S. W. R., C. R., 307.

In the execution of a decree for the possession of land, if it is found that the boundaries described in the plaint are no longer in existence, it is allowable to take the evidence of witnesses to ascertain their former position. *Kalee Dabee* v. *Mudoo Soodun Chowdhry*, 16 S. W. R., C. R., 171.

If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under Section 183 or Section 186 of the Indian Penal Code. *Reg.* v. *Gazi Kan A'bú Dore*, 7 Bom. Rep., Cr. Ca., 83.

A Mamlatdur's Court, authorized under Act V of 1864 (Bombay) to give immediate possession of lands and premises, has the power to direct the breaking open of a door when necessary to give

effect to its decree. *Baji Deb* v. *Sadashib Bhâishankar*, 9 B. L. R., A. C., 158.

Under Section 233, Act VIII of 1859, a Nazir, authorized to execute a warrant by attachment of moveable property, has power to remove locks put by the judgment-debtor on the doors of godowns or other places where his property is stored, and put his own locks thereon, for the purpose of attachment and safe custody of the property. *Sodamini Dasi* v. *Jageswar Sur*, 5 B. L. R., Ap. 7; 13 S. W. R., C. R., 339.

(*d*) *Application for Execution.*

Separate applications to execute the same decree do not constitute separate causes or suits. Thus, when a Judge, *ex necessitate rei*, executes the decree of a Principal Sudder Ameen, he is at liberty to carry out that execution to whatever extent may be necessary. *Sharoda Moyee Burmonee* v. *Wooma Moyee Burmonee*, 8 W. R., 9.

Every application made by one or more out of several decree-holders is an application made in the interests of all, and every proceeding taken by one is a proceeding taken for the benefit of all to enforce the judgment, or to keep it in force. *Roy Preconath Chowdhry and others* v. *Prannath Roy Chowdhry*, 8 W. R., 100.

Held that, where one of several representatives of a deceased judgment-creditor applies for the execution of a decree, the general powers of attorney contemplated by Section 17, Clause 1 of Act VIII of 1859, are not necessary, but it is sufficient if the applicant is authorized under Section 115 to act for the other representatives.

Held also that, in executing a decree of a Court of competent jurisdiction, the Court executing it cannot question the validity of any portion of it. Its duties are only of a ministerial character. *Amborane Harivollabhdo* v. *Himat Sing Halianji*, 2 Bom. Rep., 109.

Held, by Phear, J., that, under the Code of Civil Procedure, a Court is not bound to grant, as a matter of course, a second application from a judgment-creditor for execution, but ought always to require him to show why the steps previously taken did not lead to a full discharge of the debt, and ought not to grant its process a second time unless satisfied that the failure was not attributable to the applicant's own fault. *Byjnath Pundit* v. *Kunhya Lall Pundit*, 9 W. R., 527.

The holder of a decree for possession and wasilat is not obliged to apply for execution of both within three years from the passing of the decree. He may first apply for execution as to possession and costs, and then, within three years from the date of such applications, seek to enforce the decree as to wasilat. *Barodakant Roy* v. *Ram Kishore Dutt and others*, 8 W. R., 99.

An application for execution of a decree need not be accompanied with either the original decree or a copy. *Gunga Gobind Goopto and others* v. *Makhun Lall Hatee and others*, 9 W. R., 362.

When application is made for the execution of a decree of a Civil Court of the North-Western Provinces against property situated within a district under the Government of Bengal, the procedure of the Bengal High Court in the matter of execution should govern the case. *Ali Mirza* v. *Ram Narain Sein*, 11 W. R., 430.

Under Act VIII of 1859, a decree-holder who applies for execution is not bound to file a copy of his decree, and when a professed purchaser of the decree applying for execution files a copy and the alleged deed of sale, no presumption arises, from his doing so, of the genuineness of the sale. *Khetter Mohun Chuttayodhya* v. *Issur Chunder Surma and others*, 11 W. R., 271.

When a Judge (in reversal of an order of the lower Court) admitted the claim of a person representing himself to be the purchaser of a decree from the decree-holder to execute the decree,—*Held* that the Judge had no jurisdiction under Section 11, Act XXIII of 1861, as the applicant was not a party to the suit in which the decree was given, nor (as the lower Court had ruled) the representative of such party. *Umrit Lall Bajpye* v. *Sheeb Pershad Bajpye*, W. R., 1864, Mis., 35.

The rule of law which forbids application for execution of part of a decree does not bar application for all that remains due upon a decree where the rest has been previously satisfied. *Tej Narain Chatterjee* v. *Ram Tunnoo Mojoomdar*, 12 W. R., 370.

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No appeal will lie from an order of a lower Court refusing an application by one decree-holder under Section 207, Act VIII of 1859, to execute the whole of a joint-decree. Nor is an appeal necessary, for the Court is bound under that Section to protect the interests of any co-decree-holder not before the Court; so that if any application for execution has been preferred by the other decree-holders, the appellant is entitled to apply for leave to join in that application; or if there is no application now before the Court, the appellant is entitled to ask the Court, after calling upon the other decree-holders to join in executing the decree, and on their refusal or neglect to do so, to allow execution to proceed on his sole application. *Odhoya Pershad* v. *Mohadeo Dutt Bhandaree*, 17 S. W. R., C R., 415.

Where the decree to be executed is that of the Zillah Court, and that decree has been affirmed in appeal by the High Court, the party applying for execution should state whether or no a further appeal to the Privy Council has been preferred *Soondun Singh* v. *Pokh Narain Singh*, 14 S. W. R., C. R., 205.

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Held, that on the decision of the other suit, it ought to have been ascertained which party had a decree for the larger sum, and that execution should have been taken out by that party only, and

which, however, was reversed on appeal; that, pending a special appeal, a compromise had been entered into between him and H., in pursuance of which he (B.) was put in possession of the house. The terms of this compromise were not certified to the Court under Section 206 of the Civil Procedure Code.

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Where the decree to be executed is that of the Zillah Court, and that decree has been affirmed in appeal by the High Court, the party applying for execution should state whether or no a further appeal to the Privy Council has been preferred *Soondun Singh* v. *Pokh Narain Singh*, 14 S. W. R., C. R., 205.

S. had against M. in the Rungpore Court a decree for costs which he removed for execution to the Court of Beerbhoom. On this M. applied to the latter Court, under Section 209, Act VIII of 1859, for stay of execution pending the decision of another suit which he had brought against S.

Held, that on the decision of the other suit, it ought to have been ascertained which party had a decree for the larger sum, and that execution should have been taken out by that party only, and

for so much as should remain after deducting the smaller sum, which should have been entered on the decree for the larger sum. *Shibchunder Sirkir* v. *Juggut Indur Bunwaree*, 12 W. R., 212.

A. obtains a decree in a Court of the N. W. Provinces against B. C., taking the decree *bonâ-fide* by assignment, applies to execute it in the 24-Pergunnahs. B., who has got a decree against A. in the 24-Pergunnahs, applies to have the decree set off against the other decree in the hands of C. *Held* that, in such circumstances, Section 209, Act VIII of 1859, does not apply. *Sheikh Rojeeooddeen* v. *Sheikh Jehangeer*, 5 W. R., Mis., 22.

The provisions of Section 209, Act VIII of 1859, apply only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which have found their way for execution to the same Court. *Ram Coomar Ghose* v. *Gobind Nath Sundyal*, 7 W. R., 480.

In a suit for resumption of land, the plaintiff got a decree for a portion of her claim, with costs in proportion. Subsequently, on application for a review, she obtained a further decree for the rest of her claim. The latter decree was reversed in appeal by the High Court, which gave defendants all costs of the proceedings in proportion. The plaintiff allowed more than three years to elapse from the date of the former decree without applying for execution.

Held that no question of limitation could arise in respect to the execution of the first decree, which became incapable of execution as soon as the High Court's decree in appeal (which was for a larger sum) was passed; but that the latter, under Section 209, Code of Civil Procedure, could only be executed to the extent of the difference between the two decrees. *Nobo Lal Khan* v. *The Maharanee of Burdwan*, 9 W. R., 590.

When an application to stay execution of a decree is made to a Court in which a suit is pending against a decree-holder, the Court's competency, under Section 209, Act VIII of 1859, to grant the application depends on the decree being its own decree. An application of this nature ought not to be entertained, without an affidavit or satisfactory proof of the complaints alleged in it, without the Court calling for such proof. *Mittun Bebee* v. *Buzloor Khan and others*, 8 W. R., 392.

Section 209 gives no authority to a Judge to receive an appeal from an order passed by a Collector in execution of a decree under Act X. *Chunder Coomar Roy* v. *H. Mackenzie*, 3 W. R., Act X R., 10.

When a decree in favour of an appellant describes a set-off costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and the remainder only recovered under the decree.

Section 209, Code of Civil Procedure, has no application in such a case. *Issur Chunder Decree* v. *Munmohun Chowdhry*, 12 W. R., 308.

When a suit is instituted, and a decree is passed against a person who was dead at the time the suit was instituted, the decree cannot be executed against his legal representatives. Section 210, Act VIII of 1859, contemplates only the case of a person who, being alive when the decree is passed, dies before execution has been fully had. *The representatives of Griendro Nath Tagore* v. *Hurro Nath Roy*, 10 W. R., 455.

No appeal lies from an order passed under Section 210, Act VIII of 1859, refusing application of decree-holder to execute decree against the legal representatives of the person against whom the decree was passed. *Syed Lootfur Ali Khan* v. *Sadda Brut Pershad*, W. R., 1864, Mis., 35.

Under Sections 210 and 296 of Act VIII of 1859, the representative of a deceased plaintiff in an abated suit is liable for costs of interlocutory orders in the suit. *Syed Mahuddee Allee Khan* v. *Peince Roheemoodeen and others*, Bourke's Rep., O. C., 154.

A Judge is bound to refuse to proceed upon an application to give notice to judgment-debtors when there is before him no application to execute drawn up in conformity with Section 212, Act VIII of 1859. Execution cannot proceed upon an application made with a view to execute an aliquot part of a decree.

And where, notwithstanding objection made, applicants persist in seeking execution of decree for their shares only, they cannot be allowed to amend an application which, after coming up to the High Court, they find it impossible to maintain. *Poornoo Chunder Mookerjee and others* v. *Sharoda Churn Roy*, 11 W. R., 241.

Two out of several co-decree-holders applied to the Judge's Court to execute their share of a decree. *Held* that this was not an application upon which the Court would proceed in execution, and that it could not in appeal be changed into an application for an execution of their whole decree.

Although a Judge should, when necessary, direct notices to be served on judgment-debtors, he cannot proceed in execution on a mere application to issue such notices over the parties who are bound to apply under Section 212 of Act VIII of 1859. *Purna Chandra Mookerjee* v. *Sarada Churun Roy*, 3 B. L. R., Ap., 21; S. C., 11 W. R., 241.

Where an application for execution of a decree was defective in regard to many particulars required by the terms of Section 212, Act VIII of 1859, and asked also for execution of a share only of the decree, it was held not to be a proceeding within the meaning of Section 20, Act XIV of 1859.

Where an application for execution by a party representing himself to be the purchaser of a decree was rejected on account of the applicant's failure to produce evidence, as he was directed to do, in support of his claim, it was held not to be a proceeding properly taken to enforce a decree. *Oodoychund Luskur and another* v. *Nobocoomar Poramanic and others*, 10 W. R., 428.

The words "otherwise as the case may be," in Section 212, mean that the mode of execution is to be adapted in each case to the nature of the particular relief sought to be enforced under the decree. *Denonath Ruchit* v. *Mutty Lall Paul*, 1 Ind. Jur., O. S., 126; 1 Hyde's Rep., 158.

In attaching an estate paying revenue to Government, the attaching creditor must, in addition to the information required by the 1st Clause of Section 213, Act VIII of 1859, in respect of ordinary immoveable property, give also the special information indicated in the latter clause of that Section,

that Section being cumulative in respect of estates paying revenue to Government. *Ajoodheya Doss and others* v. *Sheo Prosono Singh and others*, 11 W. R., 175.

The intention of Section 213, Act VIII of 1859, is that the description in a notice of attachment should be sufficient to identify the property; and in the case of an estate paying revenue to Government, that there should be a specification of the revenue. *Lack Ram* v. *Mohes Dass*, 12 W. R., 488.

Semble,—Whether, if a judgment-creditor applies for a general warrant of attachment of all the defendant's property under Section 214, and under it causes property of a third person to be seized as property of the defendant, he is not liable to such third person. *Joykalee Dassee* v. *The Representative of Chadamala*, 9 W. R., 133.

Section 215, Act VIII of 1859, like Section 15, Act XXIII of 1861, does not make it essential that the decree itself should be filed, but only requires certain particulars specified in Section 212, Act VIII of 1859, on which the Judge is empowered to pass orders for execution. *Sufur Ali* v. *Mohesh Chunder Kang*, 4 W. R., Mis., 16.

In execution, a decree must be construed by its own terms, and not by the plaint.

Where a decree is a joint-decree, execution cannot proceed upon an application made with a view to execute an aliquot part of the decree.

Where no interest is given in a decree, none can be recovered in execution of that decree.

When an application for execution is contrary to the terms of the decree, the High Court cannot in appeal allow the application to be amended, but the decree-holder must apply to the lower Court to be allowed to execute it according to its terms. *Nobo Kishore Mojoomdar* v. *Ahmud Mohun Mojoomdar*, 17 S. W. R., C. R., 19.

The application to execute the decree of an Appellate Court should be made to the Court which passed the first decree, upon or after the receipt by that Court of the copy of the decree certified by the Appellate Court; but *quære*, whether execution should be allowed to issue upon a certified copy procured by the parties and presented to the Judge by petition. *Soondun Singh* v. *Pokh Narain Singh*, 14 S. W. R., C. R., 205.

When a party applies to execute a decree on behalf of a minor, his representative capacity comes to an end by the death of that minor; and further steps in execution, or otherwise, must be taken by the legal representative of the deceased, whoever that may be. *Hulodhur Roy Chowdry* v. *Juddonauth Mookerjee*, 14 S. W. R., C. R., 162.

A decree-holder having applied for execution, the judgment-debtor applied for a re-hearing; but the latter application having been opposed was rejected. Pending the proceedings on the application for re-hearing, the application for execution was struck off, but very shortly after re-hearing was refused the decree-holder applied again for execution.

Held that the omission of the decree-holder to carry on execution proceedings pending the application for re-hearing, was no evidence of want of *bona fides*. *Titooram Bose* v. *Tarinee churn Ghose*, 15 S. W. R., C. R., 127.

If a person is to be concluded by the contention that his application to execute is not *bonâ fide*, he should be given an opportunity of explaining fully and clearly all his acts. *Seetanuth Mundle* v. *Annund Chunder Roy*, 15 S. W. R., C. R., 5.

A decree-holder is at liberty, under Section 210, Act VIII of 1859, to follow his deceased judgment-debtor's property in the hands of the parties in possession, notwithstanding a certificate under Act XXVII of 1860 has been obtained by a third party. *Dunput Sing Bahadoor* v. *Ranee Rajepura*, 15 S. W. R., C. R., 476.

Where a Judge finds that an application for execution is within time, and there is no appeal from his finding, his successor is not justified in going behind his order.

An application for execution cannot be thrown out summarily as barred by limitation, because the decree-holder has failed to find any of his judgment-debtor's property, or been baffled in his endeavours to satisfy his decree. *Maharajah Dheeraj Mahtab Chund* v. *Moorlee dhur Ghose*, 15 W. R., C. R., 67.

It is not required by Section 212 of Act VIII of 1859, and Section 15, Act XXIII of 1861, that a copy of the decree should be filed when an application is made for execution. *Madhoo Dossia Nobin Chunder Roy*, 16 S. W. R., C. R., 25.

Where a decree-holder applied for execution just one day before the limitation of three years had expired, and did nothing further in the matter, after notice had been issued and returned as served, it was held to be a just inference that his proceedings were not *bonâ fide*. Proof of actual service of notice is not requisite. *Ram Dhungoor* v. *Gooroo Dassee*, 13 S. W. R., C. R., 40.

Where successive applications for execution had been made for years against a party merely as the representative of a deceased defendant, it was held that execution could not be taken out against him personally as one of the original defendants, even if he were liable in both capacities. *Prem Lall Gossamee* v. *Hosseeinooddeen*, 13 S. W. R., C. R., 36.

An application for execution of the decree of an Appellate Court should be made to the Court which passes the first decree in the suit, irrespective of any previous order referring the case for execution. *Ram Jadub Sircar* v. *Ameeroonissa Bibee*, 13 S. W. R., C. R., 27.

On an application under Section 230, Act VIII of 1859, in the investigation of the matter in dispute, the Court may go into the question of title. It is open to the applicant to give evidence of title beyond mere possession, and the decree holder may prove his title to the property. *Rudha Pyari Debi* v. *Nobin Chundra Chowdry*, 5 B. L. R., 708; 13 S. W. R., F. B., 80.

The word "issued" in the sentence, "no process of execution of any description whatever shall be issued," at the commencement of the 92nd Section of Act X of 1859, is to be interpreted to mean "sued out" or "applied for with success"; that is, no application for a process of execution shall be successful unless the application for it is made or it is sued out within the fixed time. (Bayley and Kemp, JJ., dissenting.) *Rhidey Krishna Ghose* v. *Koilas Chundra Bose*, 4 B. L. R., F. B. R., 82; 13 S. W. R., F. B. R., 3.

After A., a judgment-creditor, had attached property of his debtor under the decree, the Court, at the instance of the Collector of the district, ordered that, instead of selling the estate, a manager should

be appointed, and the rents and profits applied in liquidation of the claim of A. and other decree-holders. *Held* that A. was entitled to some priority over the other creditors. The Court, finding that A.'s debt might be paid out of the proceeds of the estate in two years, and at the same time funds be left for the reduction of the other debts, ordered that it should be so. *Pearee Dabea* v. *Rajah Boydonath Baugh*, Marsh., 413.

An application, under Section 230 of Act VIII of 1859, should be registered and numbered in the register of suits as a plaint in a regular suit, and the Court is bound to determine, upon regular issues as in an ordinary suit, both the right and title, as well as the possession of the applicant. *Mussamut Yusan Khatun* v. *Ramnath Sen*, 7 B. L. R., Ap., 26.

Where certain execution proceedings had been struck off the file, and the decree-holder applied that they might be restored, his petition containing not one of the particulars set forth in Section 207 of the Code of Civil Procedure, it was held that his application was not an application to execute the decree within the meaning of the Procedure Code. *Ramdhun Roy and others* v. *Khajah Abdool Gunnee and others*, 9 W. R., 390.

Three persons obtained a joint-decree. Two of them took out execution, and realized each his own share. The third applied for execution within three years from the time of the last proceedings taken by the other two, but after a lapse of three years from the last proceedings taken jointly by all three. *Held*, that under Section 207, Act VIII of 1859, there was no severance of the decree, and therefore the proceedings taken by the two kept alive the decree. *Azizunnissa Khatoon and others* v. *Shoshibhushon Bose and others*, 2 B. L. R., A., 47; and 11 W. R., 343.

Section 207, Act VIII of 1859 (relating to cross-decrees between parties before the Court), relates only to decrees which are in course of execution at the same time. *Jadunath Roy and others* v. *Ram Buksh Chittagingee and others*, 7 W. R., 535.

Under Section 208, Act VIII of 1859, it is not essential that a certificate should in every instance be obtained by a representative before he can be allowed to apply for execution. *Raja Gopal Singh Deb* v. *Gopalchundra Chuckerbutty and others*, 7 W. R., 393.

An application for execution of a decree for possession, asking for the eviction of the defendant, is quite different from an application for possession under Section 224, Act VIII of 1859. Although the lower Court rightly refused to grant the former application,—*Held* that there were no grounds for refusing the latter application, except as to that part in which the decree-holder asked for an order to issue to the ryots to pay rent to him, which order would be beyond the purview of that Section. *T. M. Gibbon* v. *Sheo Purshun Misser*, 17 S. W. R., C. R., 236.

Where the security offered by a judgment-debtor, with a view to execution against her being stayed, until the decision of a suit for an account which she had brought against the decree-holder was rejected by the lower Court, it was held that the order of rejection could not be interfered with by the High Court under Section 15 of the Charter Act. *Held* that the most obvious course in such a case is that suggested by the latter part of Section 209 of the Code of Civil Procedure, which directs that whenever a suit shall be pending in any Court against the holder of a decree of such Court by the party against whom the decree was passed, the Court may, if it appear just and reasonable, stay execution either absolutely or on such terms as it may think just, until a decree should be passed in the pending suit. *Jodoomony Dossee*, 11 W. R., 494.

Section 208, Act VIII of 1859, puts a party to whom a decree is transferred, into the position of the original decree-holder, and entitles him to have the decree executed; as if application were made by the original decree-holder. *Shamanund Surma* v. *Sumbhochundra Dass and others*, 7 W. R., 205.

(*e*) *Procedure in Execution.*

Procedure to be observed where, while execution of decree is going on against immoveable property, the decree-holder alleged that he is obstructed in getting possession of certain lands included in the decree. *Brojo Mohun Sutputty* v. *Shooda Monee Dabee and others*, 8 W. R., 79.

In a suit for possession and wasilat, the first Court awarded wasilat, but the lower Appellate Court, considering that no evidence had been given by the plaintiff of the wasilat which he was entitled to recover, allowed him up to date of suit only the amount which he had paid as Government revenue upon his mehal. *Held* that the Court executing the decree was not prevented from ascertaining the amount of wasilat which had accrued between the date of decree and the date of possession. *Sheikh Mahomed Bushroollah Chowdhry* v. *Hedaet Ali Chowdhry and others*, 8 W. R., 42.

Held that the words used in Section 20, Act XIV of 1859, do not necessarily require that the proper warrants for execution of decree should issue against the person or property of the judgment-debtor. It is enough if the judgment-creditor has taken such steps to set the Court in motion as would indicate sufficiently on his part a desire to execute the decree, and if the Court has proceeded in accordance with his request, it is not necessary to prosecute them to a termination, but can be withdrawn when it appears useless. *Kullyan Singh and another* v. *Bahadur Singh and others*, 1 Agra Rep., F. B., 163.

After execution has once gone out under a decree of the High Court, subsequently appealed to Her Majesty in Council, it is beyond the power of the High Court, and not within the scope of Section 4, Regulation XXI of 1797, to set aside the execution. *Joynaran Puttur* v. *Russeek Mohun Banerjee*, 8 W. R., 144.

Held that a question raised for the first time between the parties to a decree at the time of its execution, although not expressly reserved in that decree for determination at the time of its execution, may be enquired into and determined by the Court executing the decree under Section 11 of Act XXIII of 1861. *Janoji Bonaji* v. *Vyankatesh Shrinivas*, 2 Bom. Rep., 393.

Held that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to submit to the jurisdiction; and that any decree which may be pronounced against him cannot, when it is sought to be executed, be objected to by him, on the ground that the Court

which made it had no jurisdiction to try the suit. *Ex-parte Manahar Bhirroo Patonis*, 2 Bom. Rep., 396.

Where one of two defendants appeals against a decree, if the decree be joint and several, and the appeal imperils the whole decree, the time for execution will count from the date of the decision in appeal. *Chedoo Lall* v. *Nund Coomar Lall and others*, 6 W. R., Mis., 60.

Every Court is bound to execute its own decree, if it can, by process (when necessary) issued against the property or person of the judgment-debtor: it is only when the decree cannot be executed within the jurisdiction of the Court whose decree it is that it may be sent to another Court for execution. There is no intermediate procedure between these two executions. *The Maharajah of Burdwan* v. *Sree Narain Mitter*, 9 W. R., 346.

A judgment-creditor obtained a decree on the 31st August, 1859, and took out proceedings in the following order of time: First, on the 20th August, 1861, when an effectual notice was served on the judgment-debtor; secondly, on the 13th September, 1865, when a similar notice was served; and thirdly, on the 13th August, 1866, when application was made to arrest the person of the judgment-debtor. *Held* that, as the execution of the decree was barred by limitation when the application of the 13th September, 1865, was made, the last application, on the 13th August, 1866, was within the terms of Section 20, Act XIV of 1859, barred. *Bisseshur Mullick* v. *Maharajah Mahtab Chunder Bahadoor*, 10 W. R., F. B., 8.

An arrangement to pay by instalments come to since the passing of a decree, between the decree-holder and judgment-debtor and recognized by the Court, and incorporated with the decree, may be enforced without the necessity for a new suit. *Jankee* v. *Sreenath Roy Chowdhry*, 5 W. R., Mis., 19.

Where the holder of a decree for maintenance is opposed in execution by the heirs of her judgment-debtors, the questions arising between them cannot be determined in execution, but must be tried in a regular suit.

Quære,—If the original judgment-debtor were alive, could the decree-holder enforce her claim for maintenance by execution, without a fresh suit for each instalment unpaid? *Premoo Bibee* v. *Dassoo Debia*, 10 W. R., 93.

In taking out execution, a decree-holder is not bound to produce his original decree or even a copy thereof. *Ram Dhun Rukhit* v. *Punchanun Chuckerbutty*, 10 W. R., 144.

Decree-holders seeking to obtain khas possession of property which is already in possession of a surburakar under order of Court, should apply for his removal to the Court which appointed him in the matter of the suit in which he was appointed. *Hurrish Kisto Doss and others* v. *Mutty Chand*, 10 W. R., 444.

Where a party applies for execution and neglects to deposit tullubana, his neglect is evidence to be taken into consideration in deciding whether the application was merely colourable or for the *bonâ-fide* purpose of enforcing the decree. *Bharath Debia* v. *Koroonamoye Dossee*, 10 W. R., 229.

In authorizing (Section 19, Act XI of 1865) immediate execution of a Small Cause Court decree, by the issue of a warrant, either against the person or against the moveable property of a judgment-debtor, the Legislature never intended that the debtor should be protected from arrest until he had had a reasonable time for returning home. *G. A. DePenning* v. *Debendronath Moiter*, 9 W. R., 549.

Held, by Loch J., (Mitter, J., dissenting) dismissing the appeal, that an order of Court restoring an execution case to the file is no guarantee of the *bona fides* of the decree-holder, and, if it be proceeded with no further, will be no better protection against limitation than the petition on which it was passed. *Raja Shutto Churn Ghosal* v. *Bhyrub Chunder Brohmo*, 9 W. R., 565.

Where a decree had been obtained in a Zillah Court, and sent to Calcutta for execution, the Court made an order directing a notice to issue, calling on the defendant to show cause why the decree should not be executed by the High Court. On appeal the order was upheld. *Ramdoss* v. *Lallah Nundocoomar*, 1 Ind. Jur., N. S., 189.

In executing a decree for mesne profits, a Court does right in excluding from the account lands of such a nature as would, under ordinary circumstances, yield no profit, regarding which it has not been shown that the judgment-debtors had opportunities of disposing of them for a profit. *Becharam Dass* v. *Brojonath Pal Chowdhry and others*, 9 W. R., 369.

Proceedings held by the Revenue Courts in execution of their own decrees are final, and cannot be interfered with by the Civil Courts, unless on some special ground, like that of fraud. *Bhoojungo Thakoor* v. *Luchmee Narain Sahee and others*, 9 W. R., 80.

Execution cases in which a sale or other proceedings are stayed for a fixed period at the request of the debtor, and with the consent of the decree-holder, should not be struck off till that period has expired; and if struck off for the convenience of the Court, by an order which provides for the continuance of the attachment, sale may follow within the said period without a fresh attachment. *Chumun Lall Chowdhry* v. *Domun Lall and others*, 9 W. R., 205.

Execution under process of a Civil Court is not *ipso facto* legal, *e.g.*, when taken against those who were not parties to the decree, or are distinctly exempted from the operation of the decree. *Umrit Lall Bose* v. *Soorubee Dassee*, 2 W. R., Act X R., 86.

Where there has been a decree in favour of applicant for special possession of his wife, and application made for execution, the process under the ordinary sections will not be enforced. A mere misconstruction of a section of the Act which does not materially affect the case is no ground for appeal. *Akbarally* v. *Hossain Ally*, 1 Ind. Jur., N. S., 101; S. C., 5 W. R., Mis., 29.

The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none.

Nor should the Court, in the exercise of those powers, interfere when such interference would have the effect of working an injustice.

A District Judge has power to review an order passed by him on appeal in an application in the execution of a decree. *Narayanbhai Lalbhai* v. *Gangakrishna Balkrishna and another*, 4 Bom. Rep., A. C. J., 87.

A District Judge having held that an application to execute a decree did not prevent the operation of Section 20 of Act XIV of 1859, it having been struck off, because the application did not pay batta; the High Court reversed the order, and directed the Judge to determine whether the former application to execute the decree was *bonâ fide*, notwithstanding batta was not paid. *Dalni* v. *Lakshuman Hari Patil*, 4 Bom. Rep., A. C. J., 86.

Plaintiff owed defendant a judgment debt. He paid the debt, but not through the Court. Defendant then fraudulently applied to the Court to execute the decree, and the Court being debarred by Section 206 of the Code of Civil Procedure from recognizing payments made otherwise than through it, executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid. *Held* by the majority of the Court (Scotland, C. J., and Innes, J., dissenting) that such a suit is not maintainable. *Anunachella Pillai* v. *Appava Pillai*, 3 Mad. Rep., A. J., 188.

When a decree does not provide for the payment of interest, it is not competent to the Court executing the decree to add to it by giving interest. *Kappa Ayyar* v. *Venkataramana Ayyar*, 3 Mad. Rep., A. J., 421.

One of several judgment-debtors who purchases a decree against himself and his co-debtors cannot issue execution against his co-debtors, and recover from them the whole amount of the common debt. His only remedy is to sue them in a regular suit for contribution, and to compel them to pay him their shares of the amount for which the decree was purchased.

An appeal under Section 11, Act XXIII of 1861, against the order for execution would not affect a purchaser at a sale under the execution. *Soroop Chunder Hajrah* v. *Troylokhonath Roy*, 9 W. R., 230.

The decision of the Full Bench (10 W. R., 8, Full Bench Rulings), that a decree once barred is always barred for the reason that no proceedings in execution can be valid if instituted after three years from the date of the last proceeding, was held to apply in a case where the admissions of a judgment-debtor were pleaded in con donation of the decree-holder's laches in executing his decree. *Bhooputty Lall Tewaree* v. *Soochee Seekhur*, 12 W. R., 255.

The Code of Civil Procedure gives no power, in an ordinary suit for damages, to direct the amount to be assessed in execution, as it does with regard to wasilat. *Bhenuck Singh and another* v. *Sugger Singh and another*, 10 W. R., 299.

A summary order of an inferior Court for the execution of a decree may be conclusive as between the decree-holder who obtained it and those against whom it was made, but is not necessarily so against the latter as between themselves only. Such an order has not necessarily the same effect so far as contribution is concerned as if it were the original decree in the suit. *Nund Coomar Singh* v. *Gunga Pershad*, 3 W. R., 207.

In a case of execution of decree of 12 years' standing, the defendant is not bound to prove service of notice, but the Court may presume that notice has been regularly served, unless the party alleging irregularity can produce evidence to the contrary. *Kasee Kant Talookdar* v. *Gopal Kisto Moitro*, W. R., 1864, 314.

After the striking off of an execution case, the omission to re-issue the processes required by law on the admission of a third party as decree-holder is not a material irregularity in the case. *Bishen Dyal Singh* v. *Sreemutty Khudeemun*, W. R., 1864, 359.

A suit may be brought by a decree-holder to obtain the assistance of the Court in the removal of an obstruction (*e.g.*, setting aside fraudulent conveyances by the debtor) to the execution of his decree against his debtor's property. *Takhuroodeen Mahomed Eshan Chowdhry* v. *Kurimbux Chowdhry*, 3 W. R., 20.

Procedure to be followed in the execution of a decree for immoveable property in the occupancy of a ryot. *Soobhudra Dossee* v. *Gooroo Dyal Singh*, 3 W. R., 48.

Where a Deputy Collector executes a decree against a party holding another decree from his own Court he ought, instead of selling that other decree, to appoint a manager under the provisions of Act VIII of 1859 to realize the judgment-debt due thereon. *Ramchunder Roy* v. *Ram Churn Bukshee*, 9 W. R., 372.

The ruling of the High Court (6 W. R., 51) which lays it down that a Judge must execute his own decrees, refers entirely to execution under Act VIII of 1859, but not to proceedings before that year, when Judges were competent to refer cases of execution to the Principal Sudder Ameen. *Nil Komul Ghose* v. *Nobin Chander Bose*, 9 W. R., 463.

The splitting of the amount of a decree among the decree-holders, unless the judgment-debtor was a party to the arrangement, does not enable him to plead limitation against any one of the decree-holders who may have slept over his rights. As far as the debtor is concerned the decree continues a joint debt, for the whole amount of which he is liable to all the decree-holders. *Brijo Coomar Mullick* v. *Ram Buksh Chatterjee*, 1 W. R., Mis., 1.

The Court executing a decree has no discretion to order the decree-holder to proceed first against one debtor, and afterwards (if his debt should remain unsatisfied) against the other debtors. *Ram Coomar Chowdhry* v. *Ram Mohun Chowdhry*, 5 W. R., Mis., 44.

When a case is transferred by the Court which passed the original decree to another Court in order that the decree may be executed, and the proceedings on the application for execution have been struck off the file for default, the proper Court to apply to for a fresh issue of execution is the Court which passed the original decree, and not the Court to which the case was transferred to be executed. *Rajah Bhoop Singh Bahadoor* v. *Sunkar Dutt Jha*, 6 W. R., Mis., 47.

Zillah Courts ought to refer to the High Court parties applying for execution of decrees which have been appealed to England. *Hubeeboollah Khan* v. *Khaja Gowher Aly Khan and others*, 7 W. R., 225.

The recovery back of money taken in execution of a decree which is afterwards reversed on appeal is not the subject of a new suit. The matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree.

Nursing Chunder Sein v. *Bidhadhuree Dossee*, 2 W. R., 275.

The Zillah Court decreed a suit in plaintiff's favour. On appeal the High Court reversed the judgment, and remanded the case, making no order as to the costs of the appeal. Against such remand an appeal was preferred to Her Majesty in Council. The Zillah Court, however, proceeded with the case, and eventually dismissed the whole suit, and the defendant applied to execute the decree for his costs.

Held that, in such circumstances, the High Court was not competent, under Section 4, Regulation XVI of 1797 (the last-mentioned decree not having been appealed to it), to suspend execution of decree, or to direct the taking of security. *Onooroop Chunder Mookerjee, petitioner*, 6 W. R., Mis., 45.

A. obtained a money-decree against B. declaring certain properties belonging to B. liable to be sold in satisfaction of it. Other decrees were subsequently obtained against B., in execution of one of which certain of these properties were sold (subject to the lien), and purchased by A. himself; and in execution of another, certain others were sold also (subject to the lien), and purchased by C. On A. proceeding to execute his own decree against B., C. sought to have it declared that satisfaction should be entered upon it to the extent of the value of the property purchased by A. *Held* that C. was not entitled to appear in the execution proceeding following upon a case to which he was no party. *Greeja Bhoosun Mittra* v. *Kishen Kishore Ghose*, 7 W. R., 221.

If execution has once been duly issued against a person as representative of one who is deceased, this person cannot dispute his representative character on the occasion of any subsequent issue of execution against him as representative. *Maharajah Dheraj Mahatab Chund Bahadoor* v. *Mussamut Pearee Dossee and others*, 6 W. R., Mis., 611.

It is contrary to general principles and a senseless addition to all the vexations of delay in the course of procedure to hold that when, for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose are to be considered as taken in a new suit. *Rajah Mohesh Narain Singh* v. *Kishramund Misser*, 5 W. R., P. C., 7.

In a suit in which an appeal to the Privy Council from a decree of the High Court has been admitted and is still pending, the Court of original jurisdiction which made the decree first appealed from has power to issue execution. But such Court, if it has notice of the appeal to the Privy Council, should stay its hand until the parties have had an opportunity of applying to the High Court, under Section 4, Regulation XVI of 1797. *J. P. Wise* v. *Raj Kishen Roy and others*, 6 W. R., Mis., 84.

An intimation to the Court of a contemplated satisfaction of the decree by arbitration, on which intimation the execution case was removed from the file, would not preclude the decree-holder from suing out execution again, unless it be proved on enquiry that the result of the private arbitration was a satisfaction of the decree in the mode contemplated by the parties. *Choonnee Lall* v. *Doorga Pershad*, 3 Agra Rep., 252.

The striking off of a case from the file, while pending in execution, does not release a property from attachment. *Sheikh Golam Aabeya* v. *Mussamut Sama Sundari Kuari*, 3 B. L. R., Ap., 134; S. C., 12 W. R., 142.

A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property then obtained from the former Court an order on the second Court to send the record back again to Moorshedabad, for the purpose of executing the decree there, on the ground that the judgment-debtor had property in that district, and also on the allegation, unsupported by oath, that the property sought to be attached in Rajshahye was his.

Held that the Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution.

Held also that the claimant had no *locus standi* in the Moorshedabad Court to make such application. *In the matter of Indra Chand Dugar* v. *Gopal Chundra Chetia*, 3 B. L. R., A. C., 181; S. C., 11 W. R., 557.

Where there were cross-decrees, and one of the decree-holders was, by an order of the Court, made with the consent of both parties, bound in executing his decree to set-off the amount of the decree against him,—*Held* that it would be inequitable to allow the other decree-holder to obtain execution in full, without setting-off the amount decreed against him. A decree cannot be executed, nor can it be seized and sold, in portions. *Haro Sanker Sandyal* v. *Tarak Chundra Bhuttacharjee*, 3 B. L. R., A. C., 114; S. C., 11 W. R., 488.

Held by Peacock, C. J., that even although a Judge may have a discretion, under the Code of Civil Procedure, as to issuing warrants for the execution of decrees, the fact that the decree-holder has not used the utmost possible diligence in executing a previous warrant is not a sufficient ground why a fresh warrant should be refused. *Kalee Chunder Paul* v. *Thakoor Doss Biswas*, 12 W. R., A. O., 7.

Where, under colour of a decree in course of execution, the decree-holder gets possession of land not included in the decree, otherwise than through the officer of the Court, this possession and the question relating to it are separate from the questions relating to the execution of the decree, and may be made the subject of a separate suit. *Surut Soonduree Dabee* v. *Puresh Narain Roy*, 12 W. R., 85.

In 1827 S. commenced a suit against B., and, before judgment applied for and obtained, under Regulation II of 1806, an attachment of certain immoveable property belonging to the defendant. In 1828 S. obtained a decree, upon which he did nothing immediately; but in 1844 he sold the attached property in execution, and purchased it himself. Thirteen years after B. commenced proceedings to set aside that sale, and in 1860 obtained a final decree reversing the sale, restoring to him the possession, and awarding him mesne profits. The mesne profits were ascertained, and a third party (R.) attached the decree in respect of a judg-

ment debt due to himself from B. Upon this S., after trying ineffectually to stay R.'s proceeding, brought a suit claiming to set-off the amount of the decree of 1828 against the decree of 1860. *Held* that whatever equitable right S. might have in consequence of the situation of the parties, it should have been urged in the suit before decree, and not in execution when rights of third parties had accrued, and that what R. sought was not the mesne profits attached by S. under the decree of 1828, but the amount decreed to be paid by S. to B. *Ram Coomar Ghose* v. *Gobind Nath Sandyal and others*, 12 W. R., 391.

The object of Section 3, Act III of 1870, B. C., is that a person against whom a decree is passed shall not be harassed by two sets of proceedings in execution simultaneously carried on in two different Courts. *Mudden Mohun Biswas* v. *Puddo Monee Dassee*, 17 S. W. R., C. R., 139.

A claim for damages for injury to certain goods belonging to plaintiff, but attached by the defendant in execution of a decree held by him against the plaintiff, pending such attachment, through the alleged negligence of the defendant, is a matter which should be determined by a separate suit, and not by the Court executing the decree under which the goods are attached. *Luchman Dass* v. *Hura Lal*, 3 N. W. R., 187.

The Judge's order directing a precept to be sent to the Subordinate Judge, upon which precept the latter stayed execution of the decree, was set aside as made without authority; and the Subordinate Judge was reminded that a decree-holder coming and asking for execution of his decree is entitled to have that decree properly executed. *T. C. Barlow* v. *Moolva Abdool Hayc*, 17 S. W. R., C. R., 341.

A Judge is not bound, under Section 243, Act VIII of 1859, to allow a judgment-debtor a year's time to pay his decree, without the debtor assigning some good or sufficient reason for the delay, *e.g.*, that the money due to the judgment-creditor could be raised equally well in some other way than by immediate sale, and that the creditor would not by that arrangement be put to loss. *Ram Rutten Neogy* v. *Land Mortgage Bank of India*, 17 S. W. R., C. R., 193.

A party who had obtained a farming lease for a period of years on the understanding that he was to repay himself the amount of a loan made to the lessor out of the surplus usufruct of the estate, not being satisfied with his security sued on the bond executed by the lessor, and obtained a decree, by executing which he realized from time to time nearly the whole sum due. *Held* that the decree substituted another means of recovery for the one previously given, and if he chose to recover the greater part of his due under a decree, which in the place of his farming lease gave him power to sell the property leased to him, he could not retain his former status as well. *Issur Chunder Sein* v. *Kinaram Ghose*, 14 S. W. R., C. R., 463.

Sums paid in execution in excess of what was due under the decree, can only be recovered by application to the Court which executed the decree, not by a separate suit. *Kushu Kishore Roy* v. *Kishen Chunder Sandyal*, 15 S. W. R., C. R., 160.

Where a decree-holder pays into Court sums of money for the purpose of issuing notices of attachment and sale, his intention must be supposed to be *bonâ fide*. *Moharajah Dhiraj Mahtab Chund* v. *Mudoo Soodun Banerjea*, 15 S. W. R., C. R., 162.

A judgment-debtor executed two kistbundees in favour of parties interested in the decree, making provision for the payment of certain instalments on these terms, that if one of the kists fell due the party to whom it was to be given might claim the whole amount with interest, and realize it in execution of the decree.

Held that the decree was not satisfied by the taking of the kistbundee, and that the payments made in pursuance of the kistbundee were made towards satisfaction of the decree, and the remedy of the decree-holder under the decree continued although he agreed, so long as he received the instalments under the kistbundee, not to execute the decree. *Bishto Chunder Chuckerbutty* v. *Woomeenauth Roy Chowdry*, 15 S. W. R., C. R., 459.

While a special appeal was pending the decree-holder took out execution, and realized a sum in satisfaction of his whole decree. The decree having been modified, and the amount decreed reduced, the judgment-debtor applied for a refund of the excess payment, and this was awarded to him with interest. *Held* that interest was rightly awarded. *Wooma Sonduree Burmonia* v. *Gooroo Pershad Roy*, 15 S. W. R., C. R., 74.

There is no procedure under Act VIII of 1859 amounting to a warrant of attorney under the English law, according to which execution may be taken out of a kistbundee incorporated into a decree or made part and parcel thereof, without a previous resort to a regular suit. *Madhub Chunder Dunput* v. *Madhub Lall Khan*, 15 S. W. R., C. R., 542.

Where property has been attached in execution of a decree, it is competent to a rival decree-holder to show that the attachment should not issue, as the decree under which it issued was barred by lapse of time, and the Court, if satisfied that the decree is so barred, is competent to see that the decree-holder who took out execution does not share in the distribution of the sale proceeds. *Radha Gobind Shah* v. *Shaikh Oozeer*, 15 S. W. R., C. R., 219.

A judgment-debtor claiming a deduction on account of mesne profits decreed against him, should make good his claim when called upon by the Court executing the decree. Failing to do so he loses his remedy. *Nobo Coomar Chatterjea* v. *Ramdhun Chatterjea*, 15 S. W. R., C. R., 266.

In a case of execution of decree pending in a Moonsiff's Court, the Judge is not the person to sanction a proposition for a temporary alienation of the judgment-debtor's property to provide for payment of the decree, but the Court which passed the decree. Such an arrangement should provide for the whole amount payable under the decree, including interest. *Gooman Singh* v. *Makhun Singh*, 2 N. W. R., 145.

Payment of money into Court by a judgment-debtor, to prevent arrest under a writ of attachment, is not a voluntary payment; and on application by the decree-holder to take the money out, the judgment-debtor is not limited to those objections only which he raised to the right of the decree-holder at the time of paying the money in. *Pareshnath Mookerjee* v. *Binadiram Sen*, 4 B. L. R., Ap., 25.

When money has been taken in execution of a decree which is subsequently reversed or modified, no fresh suit will lie for its recovery; the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. *Saligram Sing* v. *Gobind Sahai*, 4 B. L. R., Ap., 64.

In execution of a decree, seven out of nine judgment-debtors, with the consent of the decree-holder, filed an instalment-bond, agreeing to pay the amount of the decree with interest thereon in two instalments. The decree-holder neglected to take proceedings to keep alive the decree, and his application to execute the decree was disallowed. In a suit brought by the decree-holder against the persons who had executed the instalment-bond for the amount of principal and interest due thereon,—*Held* that the suit was maintainable. *Ashiahari Chowdry* v. *Jageshur Kumeer*, 6 B. L. R., Ap., 32, and 14 S. W. R., C. R., 430.

B. sued his brother C. for possession of certain lands. B. and C. came to an amicable settlement, one of the terms of which was that C. during his life should retain possession of certain of the lands, and that after his death they should pass to B. A decree was given in accordance with the terms of the compromise. On C.'s death, his widow refused to put B. in possession of the lands. B. sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against C.'s widow. *Held* that he ought to proceed by regular suit. *Tara Mani Dasi* v. *Rudha Jiban Mustafi*, 6 B. L. R., Ap. 142; and 14 S. W. R., C. R., 485.

Where a judgment-debtor, under pressure of a process of arrest, deposited in Court the money claimed by the judgment-creditor, making at the time but one objection, he was held not to have been thereby debarred from making any other objection previous to the money being paid away to the decree-holder; payment into Court, under such pressure, in no way affecting the right of the parties. *Prosononath Mookerjea* v. *Binode Ram Sein*, 13 S. W. R., C. R., 29.

In suits framed under the provisions of Sections 229 and 230 of Act VIII of 1859, the question of title is to be tried, and not the mere question of *bonâ-fide* possession.

The matter in dispute is to be investigated in the same manner, and with the like powers, as if a suit for the property had been instituted by the appellant against the decree-holder. *Ruchu Rae* v. *Permeshur Dyal*, 2 N. W. R., 252.

The word "month" in Section 230 of the Code of Civil Procedure means a month according to the English calendar. An applicant under that Section has a clear calendar month, exclusive of the day of dispossession, within which to prefer his application. *Dádu Salad Amar Sáheb* v. *Bálgondá bin Shankurápp*á, 5 Bom. Rep., A. C., 39.

Procedure under the Small Cause Court Act (Act XI of 1865) against immoveable property, if the sale of moveable property has not satisfied the decree. *Anonymous*, 2 W. R., S. C. C. Ref., 5.

Exposition of the procedure to be observed for the execution of a decree against the legal representative of a deceased person. *Rajah Roodro Narain Roy* v. *Nittyanund Doss*, 8 W. R., 195.

(*f*) *Rulings under the Code.*

Where a decree is partly for a share of land in the occupancy or khas possession of the defendants, and partly for a share of land in the occupancy of ryots, the decree as to the former can only be executed according to Section 223, Act VIII of 1859; and as to the latter, according to Section 224. *Ranee Sama Soondery Debea* v. *Jardine, Skinner and Co.*, 7 W R., 376.

Where plaintiff sued defendant as a trespasser, the prayer in the plaint being for khas possession, and the defendant set up an adverse title, the decree given against the latter for possession was held to give the judgment-creditor the possession sued for, —*i.e.*, legal possession as provided by Section 223, Act VIII of 1859. *Raj Mungul Roy* v. *Sreemutty Anundmoyee*, 11 W. R., 63.

A person who has obtained symbolical possession under Section 224 of Act VIII of 1859, may subsequently ask for actual possession under Section 223, if the terms of his decree warrant such possession being given. *J. Robson and Co.* v. *Maseyk*, 3 W. R., Mis., 2.

Where a decree-holder who had received possession under Section 224, Code of Civil Procedure, and gave the usual acknowledgment, was refused khas possession of part of the land which defendants claimed to hold as ryots, it was held that his proper course was an application under Section 223, although the case had been struck off the execution file, and that defendants' allegation of purchase (their sole plea at the trial) having failed, they could not afterwards set up a ryotee title. *Ranee Muhtoon* v. *Gopee Rhugutt*, 12 W. R., 285.

Where a suit was preferred for the purpose of recovering possession of defendants' lands, for possession of which plaintiff had already obtained a decree against the same defendants and others, the suit was held to be barred, as the cause of action was not different from that which had been previously determined. Instead of asking for delivery of possession under Section 224, plaintiff's proper course would have been a resort to the provisions of Section 223 of the Procedure Code. *Ram Surn Muhtoon and others* v. *Jinnonath Bhuggut and others*, 10 W. R., 396.

Where compliance with the formalities prescribed by Section 224, Act VIII of 1859, and a legal receipt for possession, are found as facts, they give such a right under a Civil Court's decree as will prevail over one founded on mere actual receipt of rent. *Khetternath Roy* v. *Durbesh Momshee*, 9 W. R., 358.

A proclamation of 30 days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor. Section 225 relates to a re-sale, and not to a postponed sale. *Budree Nath Shutt* v. *Rajah Chunder Shekur Man Singh, Sree Chunder Moradraj Bhomarbar Roy Bahadoor*, 1 W. R., Mis., 3.

On a complaint by a decree-holder, under Section 226 of the Civil Procedure Code, against a mortgagee in possession of the land, and two other persons who resisted the execution of the decree, the Moonsiff passed an order for delivery of possession, but without having numbered and registered the claim as a suit, as directed by Section 229 of the Code, which, in his opinion, did not apply to the

claim of a mortgagee in possession ; and the senior Assistant Judge, though of opinion that the Moonsiff was in error in not proceeding under Section 229, ruled that there was no appeal from his order, as the claim had not been numbered and registered, and investigated.

Held that the irregular procedure of the Moonsiff should not prevent the Court from correcting his error ; and that his order, which could only have been made under Section 229, was subject to appeal under Section 231, and should therefore be reversed, and the case remanded, that the claim might be numbered and registered as a suit, and an order passed thereon after the investigation, as directed by Section 229 of the Code. *Musabhi* v. *Shramudin Hismuddin*, 4 Bom. Rep., A. C. J., 35.

In the event of execution of decree being obstructed, it is optional for the decree-holder to take action under Section 226, Act VIII of 1859, but it is not imperative on him to do so, and the omission to take it would not preclude the decree-holder from bringing a fresh suit for recovery of possession against the same person against whom the decree was passed, if he were ousted after his formal institution in possession in execution of decree, or resisted or obstructed in the exercise of the right then adjudged to him.

A suit should not be dismissed at the last stage of the proceedings in regular appeal for want of sufficient distinctness in the plaint, but such defect may be cured by examining the plaintiff or his pleader on that point. *Jugmohun Tewaree* v. *Buldeo Naick and others*, 3 Agra Rep., 162.

Where the order of remand directed the lower Court to ascertain from the settlement chittahs the situation of the lands in dispute, and the chittahs were found not to give the expected information,—*Held* that the Judge should, when the Ameen's investigation was objected to, have proceeded under Sections 226 and 227 of Act VIII of 1859, and allowed both parties to adduce proofs of their claims. *Shadhoo Surun* v. *Bhugoo Lall*, 12 W. R., 98.

In order to bring a case under Sections 226 and 227 of the Civil Code, it must be shown that obstruction has been offered, arising from the circumstance that lands have been taken which were not included in the plaint. *Prannath Roy Chowdhry* v. *Preonath Roy Chowdhry*, 8 W. R., 398.

The procedure prescribed by Section 229 is applicable to a case in which, though the decree was passed before the enactment of that law, execution was taken out after its coming into operation. Under that Section a *bonâ-fide* claimant other than the defendant, obstructing the execution of the decree, instead of being looked upon as an intervenor, must be regarded as one of the substantial parties to the suit. *Maharajah Dhiraj Mahtabchand Bahadoor* v. *Nadooroonissa Bebee*, 4 W. R., 82.

The provisions of Section 231 are not applicable where the proceedings are not conducted according to the provisions of Section 229 of the Procedure Code. *Chujgoo* v. *Doorga Doss and others*, 2 Agra Rep., A. C., 223.

Section 230, Act VIII of 1859, does not authorize the registry as a suit of objections by defendants or purchasers from defendants dispossessed of immoveable property in execution of a decree, and disputing the right of the decree-holder to be put into possession of such property. *Huro Persand Roy Canoongoe* v. *Ram Lochun Mundul and others*, 6 W. R., 148.

The first Court gave a decree to the plaintiff for possession of land against A., the original defendant in the suit, but exempted land in the possession of B., an intervenor whom the Court had made a co-defendant. The Appellate Court reversed so much of that decree as adjudicated upon the claim as between the plaintiff and B., and confined its decree for possession against A., but awarded costs against B. *Held* that B. continued to be a defendant in the suit, and had a right of appeal under Section 11, Act XXIII of 1861, and that he was not bound to come in under Section 230, Act VIII of 1859. *Huree Kishore Roy and others* v. *Kalee Kishore Sein and others*, 8 W. R., 114.

Section 230, Act VIII of 1859, is applicable to the case of a person who, though personally the defendant in the original suit, was legally other than the defendant as regards the particular portion of land in dispute in execution.

Where an Ameen was appointed to measure and give possession of land in execution of a decree, the one month allowed for preferring a claim under that Section must be calculated from the date when the Ameen gave over possession, and not from the date of his final report. *Kasheenath Doss* v. *Bhowanee Dossee*, W. R., 1864, Mis., 18.

To entitle a party to come in under Section 230, Act VIII of 1859, by petition, and have his case tried in like manner as if he had paid full stamp duty on a regular plaint, he must prove that he was in possession of the land in suit, and was dispossessed by another party, alleging the land to form part of land decreed to him. *Neel Madhub Dutt* v. *Radha Mohun*, 3 W. R., 205.

In a case under Section 230, the plaintiff (*i.e.*, the person dispossessed of immoveable property who disputes the right of the decree-holder to be put into possession of such property) must not only show possession, but the question of title should also be enquired into. *Nugendur Chunder Ghose* v. *Ram Comul Mundul*, 3 W. R., 213.

An objector who does not claim to be in possession "on his own account, or on account of some person other than the defendant," but whose sole ground of intervention is that he holds a *bonâ-fide* title derived from the defendant, is not entitled to be heard under Section 230. *Eusuf Ali Khan* v. *Shib Shunkur Shuhaye; Kurim Buskh* v. *Shib Shunker Shuhaye*, W. R., 1864, 384.

Where an objection takes the form of a suit, under Section 230 of the Code of Civil Procedure, the real question to be tried is, whether the objector has a better right to the property in dispute than the decree-holder. *Mussamut Sheero Coomaree Dabee* v. *Keshur Chunder Bose*, 1 Ind. Jur., N. S., 188.

Section 230, Act VIII of 1859, does not refer to decrees obtained in possessory actions, but to executions in regular suits where judgments have been pronounced on the merits, and cannot be introduced into a case determined under Section 15, Act XIV of 1859. *Gobind Chundra Bagdee* v. *Gobind Ghosh Mundul*, 7 W. R., 171.

Four persons made separate applications to the Court, under Section 230, Act VIII of 1859, alleging that the defendant having obtained a decree against Government for possession of fisheries in a suit to

which they were no parties, had in execution dispossessed them of fisheries, of which they were severally in possession. On enquiry it appeared that each and several of the four applicants claimed possession of the same portions of the fisheries. The lower Court holding that it was impossible for each of several parties setting up adverse claims to the same property to show that it had been *bonâ-fide* in his possession, and that he had been dispossessed from it, referred all parties to a regular suit, —*Held* that the Judge should have tried each case by itself as between the applicant and the decree-holder. *Saradamayi Chowdhrain* v. *Nobin Chundra Roy Chowdhry*, 2 B. L. R., A. C., 333; 11 W. R., 255.

D. having sued to recover possession of certain lands, P. intervened, and D.'s claim was decreed without prejudice to P.'s rights. In execution of that decree D. took possession, and thereupon P. applied to be heard under the provisions of Section 230, Act VIII of 1859. *Held* that having been a party to the decree, P. had no remedy under that law. *Ramgopal Chuckerbutty* v. *Poornochunder Banerjee*, 12 W. R., 475.

Where, in an application professedly under the provisions of Section 230, Act VIII of 1859, plaintiff affirmed that he was in possession and sued to have his rights affirmed,—*Held* that as plaintiff was not dispossessed he had no cause of action, and that he was not entitled to be heard; nor had the Court jurisdiction to hear and determine his cause under the extraordinary provisions of that Section. *Kalee Narain Singh* v. *Protapchunder Burooah*, 12 W. R., 231.

A party dispossessed of land under colour of a decree to which he was not a party, applying to a Judge under the provisions of Section 230, Act VIII of 1859, is entitled to an investigation, and, if his title is established, to a decree. *Hassan Aly* v. *Naib Ahmed and another*, 11 W. R., 146.

A decree-holder in execution having got possession of certain property, application was made for an investigation under Section 230, Act VIII of 1859. The Moonsiff, without going into evidence, rejected the application, and the Judge, in the same manner, reversed the Moonsiff's judgment and gave the applicant possession. *Held* that the question still remained for decision, whether the property was *bonâ-fide* in the possession of the applicant on his own account or on account of some person other than the defendant. *Woomesh Chunder Roy* v. *Bidhoo Mookhee Dassee and others*, 11 W. R., 197.

Where a decree-holder sought to execute his decree against an under-tenure which had been sold for arrears of rent, and the purchaser objected on the plea of limitation,—*Held* that the purchaser being no party to the suit, was not entitled to contend that execution was barred. He could only be heard under Section 229 or Section 230, Act VIII of 1859; and if under the former, a very wide discretion could be exercised by the Court. *Moheschunder Banerjee* v. *Chundra Money Debia*, 9 W. R., 486.

Whether or not an appeal lies from the decision of a lower Court rejecting an application by a party other than a defendant, under Section 230, Act VIII of 1856, disputing the right of the decree-holder to dispossess him, the High Court may, under the 15th Section of the Charter, compel the lower Court to exercise its jurisdiction. *Golucknarain Dutt* v. *Bistooprea Dossee*, referred to and questioned.

Planting a bamboo, and making proclamation to the occupants of an estate that it has been adjudged to some other, is sufficient dispossession of a landlord to warrant him in applying to the Court under Section 230. *The Collector of Bogra* v. *Krishna Indra Roy*, 2 B. L. R., A. C., 301; S. C., 11 S. W. R., 191.

Where a lower Appellate Court found that a suit falling substantially under Section 230, Act VIII of 1859, which had been received and numbered as such, had been subsequently dismissed by the Court of first instance upon a point which did not properly arise under that section,—*Held* that it should have remanded the case to the first Court for trial and decision under that section. *Sahir Khan* v. *Ram Luckhee Chowdhrain*, 10 W. R., 438.

In a dispute between a mokurrureedar and dur-putneedar, it was held that the khas possession of the dur-putneedar, having been established by a decree under Section 230, Act VIII of 1859, could not be disturbed, except by a regular suit by the mokurrureedar for confirmation of his title as mokurrureedar and for direct possession. *Shero Coomaree Bibee* v. *Keshub Chunder Bose and others*, 8 W. R., 131.

There is no appeal from an order passed under Section 230, Act VIII of 1859, rejecting an application by a person, not a party to the suit, alleging that he is being dispossessed by the Court Ameen in execution of decree. *Khellut Chunder Ghose* v. *Prosunnomoye Dossee*, W. R., 1864, Mis., 24.

In default of application by a person other than a defendant dispossessed of any land or other immoveable property in execution of a decree, a suit would not be barred under Section 230, Act VIII of 1859, if brought within twelve years from date of cause of action. *Kishen Soondur Talookdar* v. *Fukeeroodeen Mahomed*, W. R., 1864, 61.

No discretion is allowed to a Civil Court to extend the month allowed for applications under Section 230, Act VIII of 1859, even though the Court is closed, or the Judge absent, the whole of that period. *Dewan Ali* v. *Munsoor Aly and another*, 11 W. R., 259.

Section 230, Act VIII of 1859, only gives an applicant the right, without instituting a separate suit, of contesting the decree-holder's right to dispossess him, but does not exempt the applicant from the *onus* of proving his case. *Mahomed Ausur and others* v. *Prohash Chunder Sha and others*, 8 W. R., 8.

In a suit brought by an intervenor under Section 230, Code of Civil Procedure, if during the pendency of the execution case the land in dispute is passed by transfer from one district to another, and thereby the Court is deprived of jurisdiction, it is the duty of the Court to transfer the record to the Court of the district to which the land has been transferred. *Kalee Doss Neogy* v. *Huronath Roy Chowdhry*, 3 W. R., 4.

An application under Section 230, Act VIII of 1859, when once registered, is to be dealt with as an ordinary civil suit, and the question of title may be gone into although there has been no ejectment by the decree-holder. *Ajookhan* v. *Kisto Pershad Lahoory*, 8 W. R., 477.

Where an application was made to the Civil Court,

under Section 230 of the Civil Procedure Code, by the petitioner disputing the right of a decree-holder to dispossess him of certain immoveable property and the Civil Judge rejected the application,—*Held* that Section 231 of the Civil Procedure Code did not give the petitioner a right of appeal to the High Court. *Strinarasimmu Chariyur* v. *Narusimmu Chariyar*, 5 Mad. Rep., 183.

Where an application, under Section 230 Code of Civil Procedure, has been registered as a suit, the Court is bound to investigate it as an ordinary regular suit, and to try not only the question of possession, but also that of title, and its decision will be final and complete for both purposes. *Mussumut Ehsan Khatoon* v. *Ramnath Sun Lushkur*, 15 S. W. R., C. R., 327.

When an application is made by a party on the ground that he was in possession and that he has been dispossessed in execution of a decree in a suit in which he was not a party, the proper order to be made under Section 230, Act VIII of 1859, is in the first instance to examine the applicant. *Obhoy Churn Dey* v. *Rajendrocoomar Ghose*, 16 S. W. R., C. R., 288.

Held that the principle of the Full Bench ruling, that a suit under Section 230 of the Code of Civil Procedure must be treated as an ordinary suit for the recovery of property, and that the whole question of title between the parties ought to be gone into, is equally applicable to a case under Section 229. *Meer Abdoos Sobhan* v. *Brahma Deo Narain*, 14 S. W. R., C. R., 140.

A. and B. obtained a decree against their father, C., for possession of their share of ancestral property. In execution they dispossessed D., who held under a mortgage from C. On an application, under Section 230, Act VIII of 1859,—*Held*, upon proof of such holding, the Court ought to have gone into the question of the validity of the mortgage against A. and B. *Jadunath Sing* v. *Kaliprasad*, 6 B. L. R., Ap., 55; and 14 S. W. R., C. R., 358.

Held that the Judge need not have gone into the question as to whether the petitioner was entitled to relief under Section 230, Act VIII of 1859, when the parties were agreed that the defendant had dispossessed the plaintiff under colour and in execution of a decree which he had obtained; it being immaterial whether that dispossession was affected by a Court officer or not, and whether the land in question was comprised in the decree or not. *Judoo Kapulu* v. *Issurchunder Roy*, 17 S. W. R., C. R., 375.

Where a party complains, under Section 230, Civil Procedure Code, of having been dispossessed in execution of a decree to which he was not a party, and there are reasonable grounds for thinking that his claim is *bonâ fide*, it is the duty of the Court to treat the case as a regular suit between the claimant as plaintiff, and the decree-holder and judgment-debtor as defendants. *Luleet Narain Gossamee* v. *Keshub Deb Gossamee*, 15 S. W. R., C. R. 209.

Possession by receipt and enjoyment of rent is as good in law as actual occupation, and Section 230, Act VIII of 1859, is not restricted to cases of personal occupation. *Bhyrub Sircar* v. *Sham Manjee*, 15 S. W. R., C. R., 70.

In order to a legal possession being given under Section 224, Act VIII of 1859, is is essential that all the requirements of that Section be carried out. *Court of Wards* v. *Burra Lall Opendronath Deo*, 15 S. W. R., C. R., 99.

(*g*) *Execution by Court other than that by which Decree was Passed.*

On April 5th, 1857, some property of a judgment-debtor was sold in satisfaction of a decree. On December 31st, 1861, an application was made to execute, and notice was thereupon served on the judgment-debtor, but, nothing further having been done, the execution was struck off. On March 23rd, application was made for the transmission of the decree under Section 284, Act VIII of 1859, to a different District (Dinagepore), and the decree was transmitted without any notice to the judgment-debtor. The Court of Dinagepore then ordered the notice to be sent, but the decree-holder failing to deposit tullubana, it was not served, and the proceedings were struck off the file. On March 25th, 1867, another application was made to the Dinagepore Court, upon which the judgment-debtor appearing in both Courts pleaded limitation. The Judge of Dinagepore allowed the objection. The Judge of the other Court (Beerbhoom) would not allow it.

Held that the Court of Dinagepore had no jurisdiction in the matter, having once struck the case off the file, and no fresh reference having been made to it by the other Court.

Held that the Court of Beerbhoom had no authority to determine the question of limitation, as the proceedings were not before it at the time. *Brojendro Naran Roy* v. *Benode Ram Sein and others*, 11 W. R., 269.

Where a decree of the High Court is transmitted to a Judge for execution under Section 284, Act VII of 1859, and the judgment-debtor contends that the balance due on the decree is less than that for which execution is sought, the Judge has no jurisdiction to enquire into the question, but may, on cause shown under Section 290, stay execution, pending a reference to the High Court. *Kishub Chunder Paul Chowdhry* v. *Khelat Chunder Ghose*, 9 W. R., 361.

Where a case is decreed in one district, and property is attached and sold in execution in another district, without application made by the decree-holder to the Court of the latter district, and without the certificate and other papers being obtained from the former district, as laid down in Sections 284 and 285, Act VIII of 1859, the proceedings must be held to be without jurisdiction. But (held by Jackson, J.) where the certificate alluded to in Section 284 was sent, whether asked for or not, the execution proceedings are legal, even though the process of attachment was issued by the Court, instead of (as it should have been) on the direct application of the decree-holder.

Held (by Jackson, J.) that a particular form being prescribed in law for a certificate, under Section 284, if it contains all the information which it should contain, it is a good certificate, even though wanting in precision. *Mooktakeshi Dabea* v. *Lachmeput Singh Doogur and others*, 10 W. R., 137.

When a decree is, under Section 284 and the following sections of Act VIII of 1859, transmitted from one Court to another Court for execution, the

Court to which the decree is transmitted has jurisdiction to determine whether or not execution of the decree is barred under Act XIV of 1859. *T. Leake* v. *W. Daniel*, 10 W. R., F. B., 10.

Where a decree of one Court has been transmitted to another for execution under Section 284 of Act VIII of 1859, the latter Court has jurisdiction to entertain an application to cancel its own order for striking off the case, whatever "striking off" amounts to. *J. G. Bagram* v. *J. P. Wise*, 1 B. L. R., F. B., 91; 18 W. R., F. B., 46.

The attachment of immoveable property by a Court other than that which passed the decree before the decree had been sent to it for execution, vitiates the sale subsequently made of that property, as not being made in strict observance of the procedure prescribed by Section 285 of Act VIII of 1859. *Shurutoolah Merdha* v. *Gooroo Churn Doss*, 8 W. R., 310.

A decree-holder applied to the Court of the Principal Sudder Ameen at Kishnagore, under Section 285 of the Code of Civil Procedure, that a copy of a decree with a certificate should be sent to the Court at Burdwan, to enable him to apply to the latter Court for execution. The Court at Kishnagore did nothing until it was removed to Santipore, where, after proclamation, the case was struck off.

Held that the law did not require the decree-holder, after the application had been made, to take any further steps in the Court at Kishnagore, nor could his application be considered as not *bonâ fide* because that Court neglected to do its duty. *Kripa Moyee Dossee and others* v. *Poorun Chunder Roy and others*, 11 W. R., 403.

The transmission by the Court of one district to the Court of another of a copy of its decree, and a certificate under the provisions of Sections 285 and 286 of Act VIII of 1859, with a view to execution in that other district, is a "proceeding" within the meaning of Section 20, Act XIV of 1859. *William Francis Leake* v. *William Daniell*, 10 W. R., 337.

When attachment is sought of property situated out of the jurisdiction of the Court to which the application is made, the Principal Sudder Ameen should proceed in the manner prescribed by Section 285 of Act VIII of 1859, and base the petition to apply to the Court within whose jurisdiction the property is situated for execution in due form. *Bawun Doss Mookerjee* v. *C. S. Hogg*, 2 W. R., Mis., 56.

A Principal Sudder Ameen is competent, under Section 290, Act VIII of 1859, to allow the stay of execution of a decree of the High Court on its original side, for a sufficient time to enable the judgment-debtor to make his application to the High Court for a new trial, on the ground that the decree had been obtained *ex-parte* without his knowledge. *Mirtoonjoy Chuckerbutty* v. *John Cochrane*, 8 W. R., 202.

Where a Subordinate Judge's Court in one district executes the decree of a Subordinate Judge's Court in another district, it is bound by Section 292, Act VIII of 1859, to comply with a requisition from the latter Court to transmit to it the record of the case. *Indur Chunder Dogur* v. *Gopal Chand Satia*, 11 W. R., 230.

A decree wrongly drawn up must be corrected by the Court passing it. The Court to which a decree is transmitted for execution is not justified in executing it for any other costs than those included in the decree. *Nilcomal Roy* v. *Rehinee Dossia*, 13 S. W. R., C. R., 330.

A decree transmitted to a Court for execution is to be regarded as a decree of that Court for the purpose of execution, and an appeal therefore lies against the order of a District Judge passed in execution of a decree transmitted to his Court from a Small Cause Court. *Moburuck Ali* v. *Soomee Runga Churn*, 3 N. W. R., 168.

Process of execution against the person or personal property of a judgment-debtor may be issued on the decree of a Court of Small Causes by a Court in another district. Before issuing such process of execution, the Court receiving the decree is bound to see that the provisions in Sections 286 and 287 of the Civil Procedure Code have been strictly complied with.

The documents required to be transmitted for the purpose of obtaining execution are a copy of the decree and a certificate of any sum remaining due under it, together with a copy of any order for execution that may have been passed.

Act XXVI of 1867 requires that copies of the decree and of the order for execution should be stamped; the certificate requires no stamp. *Ven Kata Subia* v. *Sivaramappa*, 4 Mad. Rep., 331.

When an Assistant Judge is invested with all the powers of a District Judge within any part of the district of such Judge, the Court of the Assistant Judge must be considered, equally with the Court of the District Judge, the principal civil court of original jurisdiction, and a decree sent for execution in such part of the district is properly executed by or under the directions of such Assistant Judge. The functions of the Court executing a decree are judicial, and not merely ministerial. *Gobind Huri Wa'lekar* v. *Shi'drâm bin Shidmurti*, 7 Bom. Rep., A. C., 37.

The assignee of a decree should apply to the Court which passed the decree, and not to the Court to which the decree had been forwarded under Section 285, Act VIII of 1859, for execution, for the purpose of being substituted in the place of the original decree-holder. The word "Court" in Section 208, Act VIII of 1859, does not include the Court to which a decree has been transferred for execution. *Sheo Narayan Sing* v. *Parlans Lal*, 5 B. L. R., 497, 14 S. W. R., C. R., 65.

(*h*) *Execution of Joint Decrees.*

A joint-decree can be executed against any of the debtors whom the decree-holder may select. *Krishto Kishore Chuckerbutty* v. *Ram Lochun Burdhun*, 2 W. R., Mis., 49.

One out of several decree-holders cannot execute a decree in respect of his own separate interest, or otherwise than the decree as a whole. In this case, however, the decree-holder was allowed to amend his application to execute the decree for his own share, and to convert it into an application to execute the whole decree. *Jadunath Roy and others* v. *Ram Buksh Chittagongee and others*, 7 W. R., 535.

A judgment-debtor cannot object to the share which one or more decree-holders may claim. *Maharajah Sutesh Chunder Roy* v. *Saroda Pershad Mookerjee*, 5 W. R., Mis., 58.

A joint-decree was passed against two debtors

On the application of one of them, execution was ordered to be taken out against the other only. The decree not being satisfied, the creditor applied for and obtained an order for attaching the property of both. *Held* that, as the property of the one was not shown to be sufficient to cover the amount of the decree, the creditor was entitled, notwithstanding the previous order, to attach the property of the other debtor, the property of the former being sold first. *Mussi. Purseh Monee* v. *Kissoree Misser*, 1 W. R., Mis., 14.

Though one of two or more decree-holders may, with the permission of the Court, take out execution of a joint-decree under Section 207, the execution must be for the whole decree, and not for any fractional share to which the decree-holder may consider himself entitled, the Court making such orders as may be necessary for protecting the interests of other decree-holders. *Thakoor Doss Singh* v. *Luchmeput Doogur*, 7 W. R., 10.

Where two joint-decree-holders, each interested in an eight-anna share in a money decree, issued joint execution, and one of them, after the death of the other, received the whole amount due under the decree,—*Held* that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half. *Mohima Chundra Roy* v. *Pyari Mohun Chowdhry and another*, 7 B. L. R., Ap., 43.

The action of a co-decree-holder is sufficient to keep the decree alive in its entirety, and a partial execution by one or more decree-holders operates for the benefit of all parties interested in the decree. *Neet Lall and another* v. *A. B. Miller*, 11 W. R., 421.

In a joint-decree the execution creditor is at liberty to proceed against all or any of his judgment-debtors as he may choose. If a landlord and his gomastah are declared jointly liable, the decree-holder is not wrong in law in proceeding against the gomastah in the first instance. *Sreenath Ghose* v. *Saheb Ram*, 12 W. R., 305.

Where one of several holders of the same decree wishes to take out execution, his proper course is to apply under Section 207, Act VIII of 1859, to execute the whole decree, and the Court, if it sees sufficient cause, may admit the application, passing such order as may be necessary for protecting the interests of the other decree-holders. *Indro Coomar Doss* v. *Mohina Mohun Roy*, 15 S. W. R., C. R., 159.

Where an appeal was inadvertently decreed against four shareholders instead of against five, the Court which executed the decree was held to have erred in recovering the entire amount decreed out of the shares of the four. *Hills, J.* v. *Wooma Moyee Burmena*, 15 S. W. R., C. R., 545.

The fact of a decree-holder giving a release to one or more of the judgment-debtors who were jointly and severally liable, cannot prevent his proceeding against the others for the balance due. *Sheo Churn Lall* v. *Rum Surun Saha*, 16 S. W., R., C. R., 49.

(*j*) *Execution of Decrees under Appeal.*

Application for decree-holder pending decision of appeal to the Privy Council to give security refused; Ainslie, J., following the Full Bench Ruling reported in 6 S. W. R., Misc. Rul., p. 3, and Paul, J. (whilst declining to follow that Ruling), considering the application premature because merely put on the file of the High Court without the appeal being submitted. *Burra Lall* v. *The Court of Wards*, 16 S. W. R., C. R., 289.

A Civil Court has no power to stay execution in cases where an appeal has been made to the Privy Council against a decree of the High Court. *Muttealaummal* v. *Chellayammal*, 5 Mad. Rep., 98.

Before staying execution of a decree and preventing the decree-holder from receiving the fruits of his decree, or before requiring him under Section 36, Act XXIII of 1861, to give security for its restitution, probable cause must be shown of the judgment-debtor's inability to recover the money if the decree be reversed. *Sukha Monee Debia* v. *Brojoraj Mookerjea*, 17 S. W. R., C. R., 69.

A District Judge has no jurisdiction to release a surety from security taken from him by the High Court, to enable a decree-holder to take out execution of his decree pending an appeal to the Privy Council.

No appeal will lie from such an order of release by the Judge, although it is an improper one. *Abedoonissa Khatoon* v. *Ameeroonissa Khatoon*, 17 S. W. R., C. R., 464.

A party, who seeks to obtain security after the decree has been executed, must show special circumstances (*e.g.* waste or improper dealing with the property) before the Court can grant such an order. *Juggo Lall Oopadhya* v. *Junka Bibee*, 17 S. W. R., C. R., 521.

Where a lower Court on remand admits as sufficient security tendered to enable the decree-holders to take out execution in a case appealed to the Privy Council, which security before remand the Court had rejected as insufficient, the Court is bound to give specific reasons for this act, and to satisfy itself of the sufficiency of the security, using the Nazir's report as an assistance, but not relying upon it on the ground of the Nazir's responsibility. *Chowdhry Brojo Mohun Suttputty* v. *Sooda Moyee Debee*, 5 W. R., Mis., 42.

A decree-holder is entitled to execute his decree without security, notwithstanding that his debtor has a suit which has been dismissed, but which he has appealed to the Privy Council. *Luchmeeput* v. *Mir Mahomed Tukee Chowdhry*, 3 W. R., Mis., 20.

The High Court cannot, under Section 36, Act XXIII of 1861, direct the lower Courts to take security in the execution of a decree against which no appeal has been preferred to it. *Bhugwan Chunder Ghose, petitioner*, 6 W. R., Mis., 15.

The High Court can, on cause shown, require security from a decree-holder who has been put in possession in execution of decree against which an appeal has been preferred to the Privy Council, and is still pending.

It is not imperative on the High Court, under such circumstances, to take security from the decree-holder in possession, unless it be shown that the party in possession is making waste, or is so embarrassed by debt that the estates are likely to be seized by creditors in satisfaction of their claims, or unless some other good cause be given. *Sooraj Monee Dayee* v. *Suddanund Mohapattur*, 12 W. R., 296.

A judgment-debtor, who had been permitted to retain possession of disputed property pending an appeal to England, on furnishing security for mesne profits and costs, deceased, and the widow offered her life-interest in his estate as security. *Held* that as her interest was only temporary, it could not be accepted as competent security; and that as she was under no legal necessity to carry on the appeal to the Privy Council, and did not do so for the benefit of the estate, she could not bind the estate as against the reversioner for the purpose of raising the necessary funds. *Mussamut Phool Koer*, alias *Kanaya Koer*, v. *Dabee Persaud*, 12 W. R., 107.

In the case of an appeal to the Privy Council, security to the extent of the whole sum decreed need not always be taken from the decree-holder. When security is taken for less than the full amount decreed, the decree-holder should be restrained from issuing process of execution with a view to realizing any sum in excess of the amount for which security is given. *Mussamut Molka* v. *Mussamut Sumput Koonwar*, 6 W. R., Mis., 62.

(*k*) *Stay of Execution.*

According to Section 338, Act VIII of 1859, the non-expiry of the period of appeal is not sufficient reason for staying execution of a decree. *The Deputy Collector of the Sonthal Pergunnahs* v. *Binode Ram Sein*, 5 W. R., Mis., 53.

A party wishing to stay execution, under Section 338, Act VIII of 1859, of a money-decree, is bound to show sufficient grounds to the Court for staying it, and the rule is equally applicable to decrees for immoveable properties and to other decrees.

When an order is made for the execution of a decree against which an appeal has been preferred, the Court, under Section 36, Act XXIII of 1861, may, if it thinks fit, require security to be given. *In the matter of Ranee Ismaid Kooer*, 9 W. R., 448.

The granting of a judgment-debtor the indulgence of a temporary stay of the warrant of execution issued to enforce his decree, does not prejudice his right to execution at a subsequent time. *Butchenner, M.* v. *Rayudu*, 5 Mad. Rep., 285.

Procedure where there is an order of Court to stay the execution of a decree obtained by a party who has appealed to the Privy Council from another decree against himself, if the holder of the decree which is appealed against attempts to execute it. *Dwarkanath Roy* v. *Woomasoonduree Dassee*, 14 S. W. R., C. R., 329.

The Court declined to stay the execution of a decree (1) because the applicant has not shown, as he was bound to show, something beyond the mere fact of an appeal having been preferred against it, and (2) because there seemed to have been great delay on his part. *Leslie* v. *Land Mortgage Bank of India*, 17 S. W. R., C. R., 160.

Execution will be stayed only on security being given. *Sagore Chunder Chuckerbutty* v. *Sheebonene*, Bourke's Rep., O. C., 103.

The Court will not interfere to stay execution upon the application of a person not a party to the suit, who claims immoveable property liable to be taken under the decree. The remedy of such a erson is under Section 230 of Act VIII of 1859. *Khilut Chunder Ghose* v. *Prossunomonee Dassee*, Marsh., 478.

When an appellant to the Privy Council applies to the High Court to stay execution of the decree on giving security, and action is taken by the Court on such application, a Principal Sudder Ameen has no authority, without the direction of the High Court, to make an order on an application to execute the decree, though the judgment-debtor should have failed to give security. *Debee Pershad* v. *Umurth Nath Chowdhry and others*, 8 W. R., 275.

(*l*) *What bars Execution.*

The mere issue of notice in execution does not necessarily suffice. If the notice is not served, or if endeavours had not been made to serve it, that would indicate *mala fides* on the part of the decree-holder, and enable the judgment-debtor to plead that no *bonâ-fide* proceedings had been taken within three years so as to bar the execution. *Kisto Kant Bural* v. *Nistarinee Debia and others*, 8 W. R., 268.

The attachment of property in execution of a decree, although attachment is afterwards set aside, is a sufficient issuing of process or execution within the meaning of Section 21, Act XIV of 1859. *Kalee Pershad Singh* v. *Jankee Deo Narain*, 7 W. R., 9.

A decree-holder took out against the moveable property of his judgment-debtor execution of a decree passed in December, 1859, in a suit for damages on account of illegal distraint and sale, instituted before Act X of 1859 came into operation. His decree remaining still unsatisfied, he sued in the Civil Court for a declaratory decree against the immoveable property of his judgment-debtor. *Held* that the plaintiff's remedy, if his claim was not barred by limitation, was, under Section 109 of Act X of 1859, to apply to the Collector for execution against the immoveable property of his judgment-debtor. *Jadub Paul Poledar* v. *Radha Lal Chatterjee*, 6 W. R., Act X R., 67.

A decree-holder having sold a portion of his debtor's property, his case in execution was struck off the file on the 27th July, 1865. On 9th September he again applied for execution, and was told to file a list of his debtor's property. This he did not do; but on 21st September he filed a petition, alleging that he had received two small sums from persons owing money to his judgment-debtor. On the 31st October the case was struck off the file. On the 21st August, 1868, he again applied for execution. The lower Court holding that the realizations made in September, 1865, were not made through the Court, and therefore not in execution, declared further execution barred by limitation,—*Held*, on appeal, by the High Court, that it was material to enquire whether the petition of 9th September, 1865, was *bonâ-fide* presented with intention to proceed under it, and whether the moneys were really paid as alleged. *Gunga Narayan Chowdhry* v. *Phul Mahomed Sirka and others*, 2 B. L. R., Ap., 45.

An application for execution of a decree need not be accompanied by a copy of the decision of the first Court. An application for execution was made by a Mooktear, and admitted by the Judge, who ordered a notice to issue to the judgment-debtor. *Held* that such application cannot after-

wards be set aside for irregularity, and that it is sufficient to keep the decree alive. *Dhunput Singh* v. *Lilanund Singh*, 2 B. L. R., Ap., 18.

Upon an application for execution being made the judgment-debtor executed in Court an instalment-bond, by which he bound himself to pay his debt by half-yearly instalments in the months of Magh (January and February) and Bhadra (August and September) of each year, and it was stipulated that, on failure to pay a single instalment, the whole of the bond might be realized by execution. A decision was given accordingly, and the instalment-bond was filed.

The judgment-debtor did not pay the instalment due in August and September, 1864, till a few days after the expiry of that month. He did not pay the instalment of January and February, 1865, at all, but subsequent payments were made and accepted.

In December, 1867, and January, 1868, the decree-holder applied to execute the decree, and realize the whole amount of the bond. The lower Appellate Court, holding that time ran from the first default in August and September, 1864, dismissed the application. *Held*, by the High Court on appeal, that the application was not barred, and that the time ran from January and February, 1865. *Upendra Mohun Tagore and others* v. *Takala Bepari and another*, 2 B. L. R., A. C., 345; S. C., 11 W. R., 570.

An application was made on the 13th February, 1862, for execution of a decree, and was struck off on the 31st January, 1863. A fresh application was made on the 9th August, 1865, and certain property was then attached by the decree-holder. *Held* that the Judge should have enquired whether the former applications were *bonâ fide* and sufficient to keep the decree alive, if not proceedings under the latest application would be barred by limitation. Case remanded accordingly. *Golam Ashgur* v. *Lachimuni Dabi*, 2 B. L. R., Ap., 24.

Plaintiff as decree-holder applied for execution, and the property attached was sold. Intermediately another decree-holder attached and sold other properties belonging to the same judgment-debtor. Subsequently plaintiff applied and obtained an order to share rateably in the proceeds of this sale, and did receive them. Eventually, on the application of the other decree-holder, plaintiff was ordered to refund the money which he had obtained as his rateable share. Plaintiff then applied for the execution of his decree.

Held that there was no failure on the part of the plaintiff to take effectual proceedings in furtherance of the execution of his decree. *Ram Soondar and another* v. *Ram Canto and another*, 11 W. R., 8.

Where a mortgagor, having obtained a decree for possession of the mortgaged property, on condition of his depositing a certain sum in Court, applied for execution, and then brought a suit to recover wasilat from his judgment-debtor, on the ground that the money had been paid by the usufruct, and that a surplus was due to him and obtained a decree, his latter proceedings were held to be *bonâ fide*, keeping the original decree alive. *Tuffuzzul Hossein Khan* v. *Bahadoor Khan and others*, 11 W. R., 205.

Where the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and then their execution case was struck off the file,—*Held* that the steps taken by them were *bonâ-fide* steps taken to keep the decree alive. *Adina Bibi* v. *Sububunissa Bibi*, 3 B. L. R., Ap., 142.

As between judgment-debtors and the decree-holder, the purchase of a decree by one of the debtors operates as a satisfaction of the decree, which cannot, after such satisfaction, legally be executed. *Digumburru Debia* v. *Eshan Chunder Sein*, 15 S. W. R., C. R., 372.

Case in which it was held that, before summarily deciding that the claim of the decree-holder was barred, and the proceedings taken by him from time to time, apparently with the view to enforce the decree, were not *bonâ fide*, the Judge ought to have given the decree-holder an opportunity of proving that his proceedings were *bonâ fide*. *Udoyto Churn Sahoo* v. *Rum Dhun Roy*, 16 S. W. R., C. R., 297.

(*m*) *Resistance to Execution.*

A Civil Court cannot make over a case of simple resistance of its process to a Magistrate for trial; Section 25, Regulation IV of 1793, being still in force. *Re Chunder Kant Chuckerbutty*, 9 W. R., Cr., 63.

The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. *Queen* v. *Rhagai Duffadar*, 2 B. L. R., F. B., 21.

A. and B. obtained a decree for possession of land against C. On their proceeding to execute their decree, D., who was in possession, presented a petition to the Moonsiff, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of Section 229 of Act VIII of 1859. *Held*, *per* Jackson, J., that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within Section 229 of Act VIII of 1859, and therefore the Court had not jurisdiction to take summary cognizance of the case. *Per* Mitter, J.—This objection, taken for the first time on special appeal, did not affect the merits of the case or the jurisdiction of the Court. *Bullub Singh Chowdry* v. *Behary Lall*, 1 B. L. R., A. C., 206; 10 W. R., 318.

X.—Attachment in Execution.

(*a*) *Miscellaneous.*

A plaintiff, before judgment, attached defendant's property, but the suit was dismissed by the High Court on appeal. He filed an appeal to the Privy Council; and on his application the High Court held that it could not continue the attachment over the defendant's property pending the appeal of the plaintiff to the Privy Council; nor could it call on the defendant, respondent, to give security for the value of the property attached before being allowed to remove it. *In re Ditta Harakman Singh*, 3 B. L. R., F. B., 45; S. C., 12 W. R., F. B., 16.

The Government having seized certain chur lands and dispossessed the proprietor in possession, and having entirely failed to establish any claim for as-

sessment or resumption during the period of attachment following the dispossession of the proprietor, —*Held* that the Government must be regarded as a wrong-doer for the whole period, and must account to the proprietor for all the collections made by its officers up to the time of the restitution. *Ranee Surnomoyee* v. *The Collector of Rungpore*, W. R., F. B., 4.

As to moveable property, process of attachment and sale may be issued successively or simultaneously. In regard to immoveable property, process of attachment and sale should be issued successively; but if issued simultaneously, and the attachment has been made *bonâ-fide*, and the sale proclamation issued as required by law, with an interval of thirty days between it and the sale, such an irregularity is not a sufficient ground for setting aside the sale, as no material injury can accrue to the debtor thereby. *Huro Soondury Debia* v. *Brojo Govind Shaha*, 4 W. R., Mis., 12.

A Court which cannot attach primarily in execution of its decree, cannot attach in anticipation of it. *Marthamnua* v. *Kittu Sheregara*, 6 Mad. Rep., 91.

Where property is under attachment, the mere fact of the execution case being struck off the file does not put an end to the attachment. *Ingobundhoo Sein* v. *Bhugwan Chunder Dass*, 17 S. W. R., C. R., 15.

Held that the lower Court was right in giving plaintiff a decree for the damages sustained by him in consequence of defendant's wrongful attachment, and in awarding half costs to plaintiff under the circumstances. *Kangalu Chunder Shahd* v. *Kooniessurree Nurtaku*, 17 S. W. R., C. R., 150.

An execution-creditor attaching an estate paying revenue to Government is not obliged to insert in the notice of sale the names of all appurtenances, such as aslee and dakhilee mouzuhs. *Zerkalu Kooer* v. *Lalla Doorga Persand*, 16 S. W. R., C. R., 149.

A suit will lie by a prior attaching creditor to compel a decree-holder, whose attachment is subsequent in date, to refund money obtained by him under an order of the Judge of a Subordinate Court, in contravention of the provisions of Section 270, Code of Civil Procedure, but it must be a suit to set aside the Judge's order.

The Court having jurisdiction to adjudicate the conflicting claims of attaching creditors is the Court in which the attached money is deposited. *Wooma Moyee Burmonya* v. *Ram Buksh Chitlangu*, 16 S. W. R., C. R., 11.

The law requires the issue of attachment after judgment, although a plaintiff may have already obtained attachment before judgment. *Mussamut Satbhawan* v. *Sahoo Banarasee Doss*, 2 N. W. R., 365.

Section 244 of Act VIII of 1859 admits only of a temporary alienation of land, and not of an arrangement by which possession is left with the judgment-debtor, subject to a payment by yearly instalments. *Kashee Lal* v. *Musumut Ameer Jan*, 2 N. W. R., 347.

Section 243 of the Civil Procedure Code does not authorize an order in the execution department having the effect of staying the sale of certain property for one year. *Fyaz-ood-deen* v. *Girand Singh*, 2 N. W. R., 1.

Before an attachment can be relied on under Section 240, Code of Civil Procedure, for the purpose of invalidating any subsequent alienation, it must be shown to have been duly made by a written order issued and published, *viz.*, the prohibitory notice prescribed by law. *Dwarkannath Biswas* v. *Ram Chunder Roy*, 13 S W. R., C. R., 136.

Under the Code of Civil Procedure, property may be attached without view to immediate sale. The process for attachment and the order for sale may be distinct and separate, and there may be a complete execution of a decree under attachment without any order for sale.

Where lands are situate in other zillahs, the Code contemplates the issuing of separate orders, subsequent to the attachment, for the sale or other disposition of them. The Code, instead of preventing the transmission of a decree with certificate to several Courts concurrently for execution, allows of it, and of its being done most beneficially for the creditor, and without injustice to the debtor. At the same time, the Privy Council considered that in any case it would be a right exercise of the discretion of the Court not to act on the power, and to refuse to send a decree for concurrent execution into several places, or at least to impose terms on decree-holders that they should not proceed to sale under all the attachments at once.

Assuming that if no copy of the decree was sent the attachment made in this case would be invalid, and without determining that point, the Privy Council held that the *onus* lay on the respondent to prove non-transmission; and as the Judge had acted on the certificate by the attachment and sale of the lands, the maxim *omnia præ sumuntur rite esse acta* must prevail until the contrary were shown. *Saroda Prosad Mullick, Manager of the person and estate of Sreenath Sannyal, a lunatic*, v. *Luchmeeput Singh Doogar*, 17 S. W. R., C. R., 289.

A decree-holder who has executed a decree of a Civil Court confirming him in his title, must be considered by a Collector to be in possession. *Sreenath Ghosal* v. *Joynarain Kavar*, 3 W. R., Act X R., 11.

When a person to whom property is pledged for a debt obtains a simple money-decree against his debtor, he cannot execute that decree against the property pledged to the prejudice of a subsequent *bonâ-fide* purchaser. *Gopeenath Singh* v. *Sheo Sahoye Singh*, 1 W. R., 315.

A decree-holder cannot first sell a decree and then sue out execution upon it *Seetaram Sahoo* v. *Mohun Nundee*, 3 W. R., 90.

(*b*) *Effect of Attachment in Execution.*

An attachment once legally made is revived upon the reversal of the sale in execution. *Gunno Singh Baboo Muddun Mohun Singh*, W. R., 1864, 26.

The attachment of a property is adverse possession, causing limitation to run as against the party in possession of the property. *Brojo Rajkishoree* v. *Bishonauth Dutt*, W. R., 1864, 305.

Where an attachment previous to decree had been obtained against the property of the defendants, it was held that attachment did not give to the plaintiff any licence in respect of the property attached as against the assignee of the defendants, notwithstanding their insolvency having occurred

after the plaintiff had obtained his decree. *Petumber Mundle* v. *John Cochrane*, 1 Ind. Jur., N. S., 11; S. C. Bourke's Rep., O. C., 339.

When a party attaches property, he also attaches the profits thereof; but if, when attaching the property, he allows the original owner to remain in possession and enjoy the profits, those profits cease, from the moment they find their way into the pockets of the owner, to be specifically liable for the judgment-debt under the attachment. *Ram Coomar Ghose Gobind Chunder Sandyal and others*, 12 W. R., 391.

Where a judgment-debtor raised a sum of money by a sale of part of the attached property, and devoted some part of that money to a payment on account to the judgment-creditor, and the judgment-creditor thereupon withdrew from the execution and from the attachment of the property,—*Held* that the attachment would not invalidate the sale. *Prannath Mittra* v. *Sumbhoo Chundra Nath*, 7 W. R., 430.

P. having attached R. M.'s property, and obtained a decree against him, subsequently had him adjudicated an insolvent. The Court ruled that the attachment was unaffected by the adjudication. *In re Ramcomoye Miller, an insolvent*, Bourke's Rep., O. C., 149.

An attachment cannot subsist when the suit has been struck off for neglect to pay in the tulubana for the service of the necessary sale processes. *Purbhoo Doss* v. *Goma Bhujun Singh*, 5 W. R., Mis., 4.

The attachment of property by a judgment-creditor ceases on his execution case being struck off the file, and he is remitted to his former position of a simple judgment-creditor, and must begin *de novo* and re-attach the property before a sale at his instance can take place. *Baboo Luchmeepnt and others* v. *Baboo Lekraj Roy*, 8 W. R., 415.

Held that attachment issued after suit supersedes the attachment order obtained during the pendency of the suit, and that the former was taken off the property when the sale proceedings were struck off the file.

The second attachment ought to have continued till it had been ascertained whether the judgment-debtor fulfilled his promise of payment within the month. The sale could have been postponed, and the interest of the judgment-creditor protected. *Ram Jeawan* v. *Ram Lall*, 2 Agra Rep., A. C., 190.

Certain property having been attached and advertised for sale in execution of a money-decree, the decree-holder asked the Court to stay further proceedings for six weeks, as the debtor had made part payment, praying that the attachment might be considered to be still in force. The execution case was accordingly removed from the file.

Held that the order striking the case off the file for the convenience of the Court did not put an end to the attachment. *Held* (Jackson, J., dissenting) that the attachment continued in force, notwithstanding a year's delay on the part of the judgment-creditor in applying again for execution. *J. Da Costa* v. *Kalee Pershad Singh*, 12 W. R., 260.

If property is once attached, the attachment will subsist, if not expressly abandoned by the party at whose suit it was issued, until an order is issued for its withdrawal, even although no further steps are taken on the attachment within a reasonable period.

If an execution case is struck off with the consent of the judgment-creditor, or in such manner as the law provides, or if the judgment-creditor subsequently applies of his own accord for a second attachment, treating the first as non-existent, then the first must be deemed to have been abandoned.

If, on the contrary, the judgment-debtor did not intend to abandon his first attachment, and takes out the second attachment merely because the Court insists on his beginning *de novo*, then the first attachment remains in force, notwithstanding the issue of the second. *Jobhoo Sahoo and others* v. *Ramchurn Roy and others*, 11 W. R., 517.

Where land is attached under Section 319, Act XXV of 1861, the attachment must remain in force until the right of possession has been decided by a Civil Court in a regular suit. A certificate to collect the debts of the estate under Act XXVII of 1860 gives no right to obtain possession. *Kristochundra Mahata* v. *Mussamut Obinessuree Dabee*, 11 W. R., 532.

Where a suit was for Rs. 3,000, and the plaintiff, who was declared entitled to Rs. 677, without sufficient grounds attached the defendant's property to the amount of Rs. 3,000, the defendant was held entitled to compensation. *Sheikh Mahomed Rezoodden* v. *Hossein Buksh Khan*, 6 W. R., Mis., 24.

Property of A. was attached under a decree obtained by B. After the attachment, but prior to the sale, A. was adjudicated an insolvent, and the usual vesting order was made. On the following day the agents of the Sheriff, by the order of the Official Assignee, sold the property attached for the recovery of the amount of B.'s decree, &c., and the proceeds of the sale were handed over by them to the Official Assignee. Subsequently the petition of the insolvent was dismissed. Immediately thereupon, on the same day, C., another execution creditor, attached the proceeds of sale in the hands of the Official Assignee. B. applied to the Court to order the Official Assignee to hand over the proceeds to the credit of his cause. On the same day A. filed a fresh petition in the Court for the Relief of Insolvent Debtors, and a second vesting order was made. C. claimed that the proceeds of sale should be handed over to him. *Held* that B. was entitled to have the proceeds paid to him. *Winter* v. *Gartner*, 1 B. L. R., O. C., 79.

Where an estate is attached under Regulation II of 1806, the attachment includes its mesne profits. *Ramcoomar Ghose* v. *Gobind Nath Sandyal and others*, 9 W. R., 450.

If property is once attached, the attachment will subsist, if not expressly abandoned by the party at whose suit it was issued, until an order is issued for its withdrawal, even although no further steps are taken on the attachment within a reasonable period.

A mere striking of the execution case off the file by the Court, of its own motion, without notice to or consent of parties, will not invalidate an attachment. *Jhatu Sahu* v. *Boboo Rama Charan Lal*, 3 B. L. R., Ap., 68.

Held that no appeal lies to the District Court from an order made by a Moonsiff compensating a defendant for loss of property attached before judgment under Section 4 of Act VIII of 1859. *Trikam Govardhon* v. *Dullahl Kusher*, 2 Bom. Rep., 389.

A. and B. borrowed money from D., with C. as their surety, mortgaging their house to C. to secure him from loss. The same house having been previously given to D., C. had to pay the debt to D., but the house was attached by E. in execution of a decree against A. and B. C. sued D. and E. to raise the attachment. *Held* that the action did not lie. *Shivlall bin Kohubchand* v. *Balvantra Vinayak*, 2 Bom. Rep., 75.

A Collector in taking charge of property which came under attachment by an order of the Civil Court, under Section 6, Regulation V of 1812, as modified by Section 3, Regulation V of 1827, was held to have taken and retained charge on behalf of the parties entitled, and unless and until anything could be shown to have changed the state of things during such attachment. Purchasers subsequently put into possession by the Civil Court, who took from the Collectorate rents relating to an antecedent period, did not thereby exercise rights of ownership for such period. *Soolochona Dayee* v. *Durp Narain Bose*, 12 W. R., 95.

If the debt to secure which an attachment has been made is satisfied, a subsequent alienation of the property is not void, merely because the attachment has not been formally withdrawn.

The right of attachment after judgment exists for the purpose of realizing sums actually due under a decree, and not for that of securing property, so that it may at some future period become available for the realization of moneys not yet due, but to become payable under the decree. *Ramdhun Mitter* v. *Koylasanduth Dutt*, 12 W. R., 457.

An attachment of property before judgment places it in the custody of the law, but does not alter the property in it. An order, therefore, vesting the property of an insolvent in the Official Assignee, vests in that officer property of the insolvent which has been so attached. *In the matter of Gocool Dass Soonderjee, an insolvent; and Petumber Mundle* v. *Gocool Dass Soonderjee*, 1 Ind. Jur., N. S., 327; Bourke's Rep., O. C., 240.

An attachment of property in execution of a decree operates *de die in diem* as process of execution upon a decree. *Brookes* v. *Pattam Mari Nangappa Naip*, 4 Mad. Rep., 316.

Where property has been attached in execution of decree, and the parties applied that the sale might be postponed, the Court executing the decree ordered the sale to be postponed, and the "case to be struck off the file." *Held* by the majority of the Court—the Chief Justice, and Roberts, Turner, and Spankie, JJ. (Ross and Pearson, JJ., dissenting)—that inasmuch as there was no order passed directing the removal of the attachment, but on the contrary it appeared that it was the intention of the Court and of the parties that the attachment should continue, the direction that the case should be struck off the file of pending cases did not operate to remove the attachment. *Ahmud Hossein Khan* v. *Mahomed Asim Khan*, 1 N. W. R., par. 1, p. 51.

An alienation of property attached in execution of a decree, made for the *bonâ-fide* purpose of satisfying the decree in respect of which the attachment has been made, and where the consideration for the alienation is applied to, and is found to be sufficient for, the satisfaction of the decree, is not invalid under Section 240 of the Code of Civil Procedure. *Purmeshur Rai* v. *Hidayutoollah*, 13 N W. R., 60.

A judgment-debtor satisfied a decree under which attachment of his property had been made. He reported the satisfaction to the Court, and on the following day he executed a mortgage of his property. The day after the execution of the mortgage the attachment was removed by the Court. *Held* that the mortgage if *bonâ fide* was not null and void under Section 240 of the Code of Civil Procedure. *Buldee Singh* v. *Kanaha and others*, 14 N. W. R., 71.

The implied withdrawal of an order of attachment, even though such order was not formally withdrawn, and was understood to be withdrawn by the decree-holder, bars objection against validity of alienation of the attached property by mortgage or otherwise. *Jugun Nath* v. *Ghasseram*, 1 N. W. R., par. 1. p. 32.

An alienation of property while under attachment is not absolutely void for all purposes and as to all persons, but voidable only, and capable of confirmation. *Syud Mahomed Ali* v. *Gokul Chand*, 1 N. W. R., par. 1. p. 19.

The plaintiff sued to recover certain land which had been hypothecated to him in 1843, and subsequently sold to him in 1868, while under attachment in execution of a decree in a suit brought by the plaintiff to establish his hypothecatory claim. The 3rd defendant claimed under a mortgage prior in date to the hypothecation to the plaintiff, and under a sale prior in date to the sale to the plaintiff, made to the 3rd defendant whilst the land was under attachment in execution of the decree to the plaintiff.

Held that the sale to the 3rd defendant, which was made not under any agreement with the plaintiff for the satisfaction of the decree through the Court, was invalid by reason of Section 240 of the Civil Procedure Code; but that the alienation to the plaintiff, the decree-holder, during the attachment to satisfy the decree, which was duly sanctioned by the approval of the Court, which issued the process of attachment, was valid. *Annabundaban* v. *Jyasawmy Pillali*, 6 Mad. Rep., 65.

Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. *Referred Case*, No. 11 of 1871, 6 Mad. Rep., 135.

The Privy Council affirmed the judgment of the majority of the Full Bench, by which it was held that a private alienation of property during the continuance of an attachment was null and void only as respects the attaching creditor and those who claimed under or through the attachment. *Annund Lall Dass* v. *Julladhur Snan*, 17 S. W. R., C. R., 313.

A deed of sale conveying property, if executed while the property is under attachment, cannot afterwards be made valid by the release of the property. *Maharajah Dheeraj Mahtabchund Bahadoor* v. *Surnomoyee Dassee*, 15 S. W. R., C. R., 222.

Where one judgment-creditor has been diligent and has secured attachment of certain property, his judgment must be satisfied before the proceeds can be available in satisfaction of a later attachment by another creditor. The mere fact of a property

being attached does not destroy a judgment-debtor's right in that property. *Shun Kur Sahoo* v. *Mungle Singh*, 15 S. W. R., C. R., 158.

Where landed property is attached in execution of a decree, the party attaching is bound by a lease obtained for it prior to his attachment. *Fegredo, J.* v. *Mahomed Mudessur*, 15 S. W. R., C. R., 75.

A debtor may, prior to attachment, give priority to one creditor over another, notwithstanding judgment may have been obtained against him. *Doorga Tewaree* v. *Naipal Aheer*, 2 N. W. R., 224.

Where an attachment of money in the hands of a Deputy Collector was made by a Civil Court, without any such direction as is enjoined by Section 237, Civil Procedure Code, that the money should be held subject to the further order of the Court, it was held that the attachment ceased to be binding when once the suit was dismissed. *Luchmeeput Singh Doogur* v. *Humphrey*, 14 S. W. R., C. R., 101.

An alienation which is null and void because made whilst an attachment was subsisting, cannot be validated by the removal of his attachment. *Ram Churn Lall* v. *Jhubboo Sahoo*, 14 S. W. R., C. R., 25.

This case follows and explains the Full Bench decision, cited, that a private *bonâ-fide* alienation of property during the continuance of an attachment is not null and void against the whole world, but only against the attaching creditor and those claiming under him. *Bal Mokund Mohunt* v. *Ramhit Dass*, 13 S. W. R., C. R., 134.

In execution of a decree, A., the judgment-creditor, obtained an order for the attachment of certain property of B., the judgment-debtor, but it was not executed as required by Act VIII of 1859. The property was however advertised for sale, and B. obtained an order staying the sale, on a petition alleging that A. had agreed to give him time on condition that the attachment should remain good, and declaring that he (B.) would not alienate the property until the whole of the decree was satisfied. Subsequently B. mortgaged a portion of this property to C. A. assigned his decree to D., upon whose application the property was attached and sold, and E. became the purchaser. C. having taken steps to foreclose the mortgage, E., to prevent such foreclosure, paid the amount into Court. *Held* that E. could not maintain a suit against C. to recover the amount so paid by him. The mortgage by B. was not an alienation null and void under Section 240, Act VIII of 1859. B.'s petition did not create a charge upon the property in favour of A. *Rameswar Sing* v. *Ramtanu Ghose*, 4 B. L. R., A. C., 24.

(c) *Liability to Attachment.*

A. was liable to pay B., a widow, a monthly allowance for maintenance. A. obtained a decree against B. as heir of her husband for a debt of her husband. *Held* that he was not entitled to attach the maintenance under the decree. *Komaree Dabee* v. *Greesh Chunder Lahoory*, Marsh., 200.

A Court ought not to order property belonging to a judgment-debtor to be attached and placed under management in respect of a decree-holder who never applied to the Court to have his claim included among those for the repayment of which the judgment-debtor's property was attached. *Kishen Coomar Chowdhry* v. *Meer Muzuf Ali*, 5 W. R., Mis., 21.

The stipends allowed by Government to the members of the Mysore family cannot be attached. *Hazee Mahomed Ruzulbash* v. *Shazada Mahomed Buseeroodeen*, 7 W. R., 169.

Since the passing of Act X of 1859 there is no law authorizing the attachment of an under-tenure for arrears of rent, except express power to do so be reserved in the lease. When a zemindar has collected all that is due to him up to hand, if he still continue to hold possession after that he cannot claim anything on account of the rents of such subsequent period. *Mussamut Beebee Coolsom and others* v. *Dhunput Singh*, 7 W. R., 293.

The pay of an officer of the Small Cause Court will be set aside by an order of the High Court, in satisfaction of judgment obtained in that Court. *Koomkurrun* v. *Michael*, Bourke's Rep., O. C., 259.

Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII of 1859, Section 236. The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the agent of the Railway Company, at the head office of the Company. It need not be sent through the High Court, although the head office is within the jurisdiction of the High Court. *In the matter of J. Hollick and others*, 2 B. L. R., A. C., 109; 10 W. R., 447.

Books of Account cannot be taken in execution. *In re Pestonji Cursetji, Shroff*, 3 Bom. Rep., O. C., 88.

Arrears of maintenance are capable of being attached as a debt due to a widow in execution of a decree against her. *Hoymobutty Debia Chowdhrain* v. *Koroona Moyee Debia Chowdhrain*, 8 W. R., 41.

Arrears of maintenance are liable to attachment in execution of a decree, although the right to future maintenance is not so liable. *Kashecshuree Debia* v. *Greesh Chunder Lahooree*, 6 W. R., Mis., 64.

The stipend of a Carnatic stipendiary is not liable to attachment in execution of a decree obtained against the stipendiary, it being one of the description of personal grants expressly protected from attachment in satisfaction of any decree or order of a Court by Section 3, Regulation IV of 1831, extended by Act XXIII of 1838.

These enactments are not impliedly repealed by Sections 205 and 237 of the Code of Civil Procedure. *Mahomed Abdul Vakub Sahib* v. *Comandur Ruma Samy Aiyangur*, 4 Mad. Rep., 277.

Arrears of yeomiah pension due to the estate of a deceased yeomiahdar, which have accidentally accumulated, are not subject to attachment in satisfaction of a decree of a Civil Court obtained against the representatives of the yeomiahdar. Referred case, No. 33 of 1870, 5 Mad. Rep., 371.

Although a Court will not allow account books to be attached and brought to sale as mere waste paper, yet, to prevent a judgment-debtor from making away with his books, and defeating a decree-holder, it will be competent to a Court executing a decree, if execution is applied for by attachment of debts, to require the judgment-debtor to produce his books in Court, and leave them in the custody of the

Court. *Adjoodhja Pershad* v. *Middleton, Cohen and Co.*, 3 N. W. R., 384.

There is nothing in Act VIII of 1859 which exempts from attachment property to be found in the Zenana of a judgment-debtor. *Doorga Churn Mitter* v. *Huru Mohun Gooho*, 17 S. W. R., C. R., 86.

Execution of a decree against the civil pay of a non-commissioned officer is entirely in conformity with law. *Cohen* v. *McCarthy*, 14 S. W. R., C. R., 231.

It is not illegal for a judgment-debtor to dispose of all his property before attachment, provided the transaction is an actual conveyance and not merely nominal. *Digumburee Dassee* v. *Baney Madhub Ghose*, 15 S. W. R., C. R., 155.

The fact of A. obtaining a declaration of his lien under certain property for an amount of debt, is no bar to B.'s attaching and selling that property, but the purchaser will be bound by that lien. *Monohur Pal* v. *I. P. Wise*, 15 S. W. R., C. R., 246.

Where a decree declares a decree-holder's lien on certain property without distinctly declaring his right to sell the same, it may be executed as against that property specially; but the usual course of attachment and of the sale on one hand, or of attachment and management under Section 243, Code of Civil Procedure, on the other hand, must still take place. *Nuddyabasher Dass* v. *Rezu Chowdry*, 15 S. W. R., C. R., 337.

A money-decree cannot be executed against a judgment-debtor's property after such property has passed by purchase into the possession of a third person, without such third person being made a party to a suit to enforce the supposed lien.

All that can be sold under a money-decree is the judgment-debtor's right, title, and interest. *Maharajah Dheraj Mahtab Chund Bahadoor* v. *Hurdeo Narain Saddo*, 16 S. W. R., C. R., 119.

The whole salary of a peon in the service of a Mámlatdár under Government is liable to attachment as it becomes due. *Tejrám Jagrupúji* v. *Kusaji bin Gaúgi et al.*, 7 Bom. Rep., A. C. J., 110.

Articles of such a perishable nature that they cannot be kept for fifteen days and sold, according to the Civil Procedure Code, ought not to be taken in execution. *Sadáshia Moreshvar* v. *Hanso bin Shravan*, 5 Bom. Rep., A. C., 156.

Where a person deposited upon the works of another certain materials to be used in carrying out a contract with such second person, and the latter had recognized and accepted such deposit by the advance of the value thereof,—*Held* that such materials had vested in the person with whom they were deposited as a purchaser, and were not liable to attachment under a decree against the depositor. *Small Cause Court Reference*, 2 N. W. R., 337.

The interest of an heir, according to the Hindu law, expectant on the death of a widow in possession, is not property, and therefore not liable to attachment and sale in execution of a decree under Section 205 of Act VIII of 1859. *Ram Chandra Tantra Das* v. *Dhurmo Narayan Chuckerbutty*, 7 B. L. R., 341, and 15 S. W. R., F. B., 17.

Under Section 205 of the Civil Procedure Code, sums to be attached must be not inchoate, but existing and definite, and although liquidated demands in their nature definite and certain, though *sub lite* and unproved may be seized, a mere expectancy or a mere right of suit cannot be attached: the attachment must operate at the time of attachment, and not be anticipatory, so as to fasten on some future state of property in which the suit may result. A claim which may accrue under a pending award cannot be sold in execution. *Syud Tuffa Zul Hossein Khan* v. *Raghunath Prasad*, 7 B. L. R., 186.

A decree of Court falls within the description of "other property" in Section 205 of the Civil Procedure Code, and is therefore liable to attachment, which should be made under Section 237. *Prince Gholam Mahomed* v. *Indra Chand Jahuri*, 7 B. L. R., 318, and 15 S. W. R., C. R., 34.

The plaintiff permitted B. to erect a thatched dwelling-house with mud walls on a piece of land belonging to the plaintiff, and B. dwelt in it for more than forty years. *Held* that B. had an assignable interest in the house and land, which could therefore be seized and sold in execution of a decree against B., and that the purchaser who had obtained possession could not be dispossessed at the suit of the plaintiff. *Durgaprasad Misser* v. *Brindubun Sookul*, 7 B. L. R, 159, and 15 S. W. R., C. R., 274.

Where a judgment-debtor was possessed of a decree entitling him to maintenance from a third party, held that his judgment-creditor could attach the amount before it accrued due, by prohibitory order forbidding such third party to pay the judgment-debtor, and directing him to pay to such person only as the Court might direct; or an arrangement might be made for the collection, or administration if necessary, of the amount of maintenance. *Maniswur Das* v. *Baboo Bir Pertab Sahu*, 6 B. L. R., 646, and 15 S. W. R., C. R., 188.

A decree-holder in execution attached and seized certain property which belonged to the judgment-debtor in partnership with another person, who alone at the time of attachment was in actual possession. *Held* that such property was the subject of attachment in execution of the decree against the one partner, but such attachment must be limited to his share, and the attachment should be by prohibitory order, not by actual manual seizure. *Thama Sing* v. *Kalidas Roy*, 5 B. L. R., 386.

K. D., a Hindu widow, by deed appointed R. S. to be her general mooktear, for the conduct of certain suits in her name, which were pending in respect of the estate of her deceased husband. By this deed, dated September 25th, 1858, she covenanted to re-pay him within two months of the successful termination of the suit, "all moneys properly disbursed by him on her account," and also to pay him an additional sum as remuneration to himself. R. S. entered on the conduct of her business, and advanced certain moneys on her account, and in October, 1859, K. D. executed in his favour a second deed, by which she mortgaged to him her share in the estate of R. H., deceased, which was in the hands of his executors, "and my decrees 24 and 25 in the Zillah Court, and the decree in the Supreme Court, and the right and interest of all the said decrees and all other real and personal properties belonging to the said estate." By a decree of the High Court of 28th July, 1862, in one of the suits brought by K. D., the estate of R. H. was declared to consist of a share of a certain talook, of a share of a house in Calcutta,

and of a certain sum of money; and K. D. was declared to be entitled to one moiety thereof. K. D. afterwards obtained an order for possession, and held possession of the said talook until August, 1866. R. S. continued the conduct of K. D.'s business, and advanced more money on her account, in respect of which, on May 31st, 1865, he brought a suit against her, and on September 21st, 1865, obtained a decree in his favour. Under this decree he attached the right, title, and interest of K. D. in the estate of R. H., and on the 25th June, 1866, it was put up for sale, and purchased by R. S. himself. In a suit brought by K. D. against R. S., among other things, for an account, held that R. S. was a trustee for K. D., in respect of her share in the estate of R. H., which he had purchased in execution of his decree.

A mortgagee cannot, properly, in execution of a simple decree for money, the repayment of which is secured by mortgage, attach and sell the mortgagor's equity of redemption in the property mortgaged, but if he do so, and purchase it himself, he becomes a trustee for the mortgagor, against whom he cannot acquire an irredeemable title. *S. M. Kamini Debi* v. *Ramlochun Sircar*, 5 B. L. R., 450.

A decree-holder, who was also a partner of the judgment-debtor, sought to attach, in execution of his decree, the share of the judgment-debtor in the assets of the partnership business, the business then being in the hands of the Receiver of the Court under a decree for dissolution and winding up. *Held* that such share of the judgment-debtor was not property within the meaning of Section 205 of Act VIII of 1859, and therefore not liable to attachment in execution. *Abbott* v. *Abbott and Crump*, 5 B. L. R., 382.

Under Act VIII of 1859 an equity of redemption can be sold in execution of a decree. *Srimuti Sarutwati Debi* v. *Nabadwip Chundra Gossain*, 5 B. L. R., 380.

A. obtained a decree against B. for a sum payable by instalments. B. made defaults in payment of an instalment, so A. attached certain immoveable property belonging to B. While under attachment B. sold the property to C., and out of the proceeds paid into Court the full amount of the debt then due, and for which the property had been attached. A. took out the money, but applied for and obtained an order from the Moonsiff that the property should remain under attachment, in order to satisfy any future sum which should fall due under the decree and in payment of which B. should make default. B. failed to pay a further instalment when due, and A. obtained an order for sale of the property. A. himself became the purchaser, and was put in possession by the Court, notwithstanding the claim of C., who had been in possession ever since his purchase. In a suit by C. to recover possession,—*Held*, the Court had no power to make the order continuing the attachment, the right of attachment being only for sums actually due, and the whole amount for which execution issued being satisfied out of the proceeds, the alienation of the property of C. was not void as against A. *Ramdhan Mitter* v. *Kailas Nath Dutt*, 4 B. L. R., A. C., 20; and 12 S. W. R., C. R., 457.

An annuity, the payment of which is a charge upon an estate, is property which can be attached under the provisions of Section 205, Act VIII of 1859, at the instance of the person who has inherited the estate from the grantor of the annuity, and by whom the annuity is payable. *Maharajah Dheraj Mahtab Chund* v. *Sreemuttee Dhun Coomaru Bibee*, 17 S. W. R., C. R., 254.

Attachment of certain property by plaintiff in satisfaction of her decree was found by the Court executing the decree to be wrongful, the attached property not belonging to judgment-debtor, and plaintiff was adjudged to be liable to the owner for the loss sustained. *Held* on plaintiff's suit that the order adjudging the liability passed in the Miscellaneous Department was illegal, and should be set aside. The question of the legal liability of several parties to the owner for the loss sustained can only be determined in suit brought by the owners for recovery of property or value thereof, and not in the present suit, in which they are not plaintiffs. *Elizabeth Wright* v. *Seeta Ram*, 2 Agra Rep., A. C., 105.

Where the Principal Sudder Ameen ordered sequestration of only a portion of the property attached by the decree-holder,—*Held* that such interference could only be warranted in cases where the decree-holder wantonly attached more property than was necessary for the discharge of his claim. *Pursotum Doss* v. *Rajah Oodey Narain Mull*, 1 Agra Rep., Mis., 3.

Where a defendant, against whose person an attachment in execution has been issued, absconded, a second attachment against his moveable property was granted, and the writ of attachment against the person was not recalled. *Gregory* v. *Hadjee Essuff Coonjee*, 1 Ind. Jur., N. S., 244.

A decree-holder cannot attach his judgment-debtor's right to appeal, or his right to future maintenance; nor can the Court prescribe to the decree-holder what course he is to take for the realization of his claim, or what property he is to attach. *Bipro Protap Sahu* v. *Deo Narain Roy*, 3 W. R., Mis., 16.

A right of action is not liable to attachment. *E. I. Drury* v. *Haradhun Bhuttacharjee*, 3 W. R., Mis., 8; *Carapiet* v. *Ponnalall Seal*, 14 S. W. R., C. R., 152.

(*d*) *Priority of Attachment.*

A creditor holding several decrees against the same judgment-debtor cannot take out simultaneous attachments against that debtor's property, so as to entitle him to have all his decrees paid in full, to the exclusion of other attaching creditors. He can only be regarded as first attaching creditor in respect of one of the decrees which he held. *Radha Gobind Shaha* v. *Sheikh Tawkujemadar*, 2 B. L. R., A. C., 100.

When property is attached by two different decree-holders, and sold at the instance of the one who made the second attachment, the claim of him who made the prior attachment must be satisfied first; but he cannot again sell the rights and interests of his debtor in the property. *Unnoopoorna Dassea* v. *Gunga Narain Paul*, 2 W. R., 296.

A. obtained a decree against the defendant on June 21st, and attached his property in execution on July 6th. B. attached the same property prior to decree on June 13th, and obtained his decree on

July 9th. A.'s decree must be satisfied in priority to that of B. So long as a judgment subsists the Court will treat it as a valid judgment; and if a subsequent execution creditor desires to obtain priority, he must take steps to set the first judgment aside by showing fraud against himself. *Lutchmeeput* v. *Dogaree Kenaram Sen*, 1 Ind. Jur., N. S., 393.

Where money due to the judgment-debtor was attached in the hands of the Administrator-General in execution of a decree, and afterwards, before any further steps were taken by the attaching creditor, the judgment-debtor filed his schedule in the Court for the Relief of Insolvent Debtors, and the usual vesting order was made,—*Held* that the Official Assignee had priority over the attaching creditor under Act VIII of 1859. *Roy Chunder Roy* v. *Bampton*, 2 Ind. Jur., N. S., 188.

An execution creditor, who has delivered a writ of *fi. fa.* to the Sheriff in a suit under the old procedure, is in no better position than an attachment creditor under the new procedure.

Where, therefore, a plaintiff who had obtained a decree under the new Procedure Code (Act VIII of 1859, &c.), and had attached the property of the defendant on the 17th of May,—*Held* that he had priority over another creditor who had proceeded against the same property under a writ of *fieri facias* in an old Supreme Court suit delivered to the Sheriff on June 27th. *Punchanun Banerjee* v. *Hurry Mohun Sen*, 1 Ind. Jur., N. S., 408.

There is nothing in Regulation II of 1806 which expressly or impliedly gives to the judgment-creditor who holds an attachment made prior to judgment under that Regulation, any priority whatever over any other judgment-creditor who has come in and got a decree and has attached the same property. *Ram Coomar Ghose* v. *Gobind Nath Sandyal and others*, 12 W. R., 391.

Where one of several writs first reaches the Sheriff it has priority, and he has no power to deprive it of such priority and transfer it to another by first executing it. *Dwarkanath Shaw* v. *Prankristo Paul Chowdhry*, Bourke's Rep., O. C., 260.

Where a person had by deed assigned his share to his wife in lieu of dower, and the assignee had been put in possession of the share so assigned to her under the decree of the Court,—*Held* that the reduction of shares by any subsequent decree would not affect the assignment, and if at all affected, she (assignee) would be entitled to have the same extent of land made up to her out of whatever other interest her husband or his heirs may have had in the estate; that her right would be prior in time and preferable to any that could be set up by a creditor under a decree subsequent to assignment, and that the plaintiffs who purchased from the assignee were consequently entitled to decree. *Dhun Singh* v. *Ram Suhai*, 1 Agra Rep., 39.

A sale by the second attaching creditor cannot be set aside at the suit of the first, who after attachment delayed to proceed to a sale. *Mohunt Nanut Buksh* v. *Koonwar Roy*, 2 W. R., 62.

Section 270 of the Civil Procedure Code gives priority to the decree-holder who first causes the property of the judgment-debtor to be attached, and not to the decree-holder who first applies for attachment. *Kattasanadu Mudely* v. *Narayana Mudely*, 5 Mad. Rep., 113.

A., a judgment-creditor of the defendant, attached his property but took no further step. B., another judgment-creditor, subsequently attached and sold the property. *Held* that the decree-holder who first attached the property of the judgment-debtor did not forfeit his prior right to payment, under Section 270 of the Civil Procedure Code, by delaying to obtain an order for the sale of the property upon his attachment. *Peter Pillai* v. *Kristna Ayyan*, 6 Mad. Rep., 348.

Plaintiff claimed priority under Section 270, Act VIII of 1859, asserting that the property attached and sold by defendant was an identical property which he had attached prior to defendant's attachment. *Held* that he was bound to prove the due attachment of the property, *viz.*, by proof of having obtained a written order, under Section 235, prohibiting defendant from alienating the property by sale, gift, &c., and by the publication of the said order in the manner prescribed by Section 239. *Kunhya Lall Pundit* v. *Dinonath Sircar*, 17 S. W. R., C. R., 23.

The decree-holder by whom the property in question is first attached, and not the decree-holder at whose instance the sale takes place, is entitled to be first paid out of the proceeds. *Hurru Mohun Sáha* v. *Panchoo Beparu*, 17 S. W. R., C. R., 89.

An attachment made by a decree-holder prior to a vesting order in favour of the Official Assignee, must have preference to the claim of the Official Assignee. *S. Narain Singh* v. *A. B. Miller*, 17 S. W. R., 234.

Where one decree-holder attached the house, and another decree-holder attached the land upon which the house stood as well as the house, and both house and land were sold together, although the former had priority with reference to the sale proceeds, the latter was declared entitled to share *pro rata* on account of the sale proceeds of the land which was not attached by the former. *Lalla Mitterjut Singh Chowdry* v. *Sonatun Dass*, 17 S. W. R., C. R., 474.

In considering which of two writs of attachment in execution of a decree is to have priority over the other, the time when the writs are lodged in the office of the Sheriff is the criterion by which priority is to be determined, and not the time when such writs reach the hands of that officer. *Narsingdás Muttánchand* v. *Nabundbái, widow of Buldib Takla; Sumármal Ichárimál* v. *Nahánubai, widow of Buldib Takla*, 7 Bom. Rep., O. C. J., 183.

Where two separate attachments after judgment in execution of decrees are placed on property at the same time, the proceeds of the sale of such attached property should be distributed between the parties in proportion to the amount of their respective decrees; and the attachment obtained by one of the parties before judgment does not operate to confer on him a right to priority over the other in the distribution of the sale-proceeds, under Section 270 of Act VIII of 1859. *Bukht Ram* v. *Masumut Buddamo*, 2 N. W. R., 368.

A. obtained a decree against B. on 15th August, 1870, and an order for execution thereof on 8th September. In pursuance of such order the Sheriff attached certain property belonging to B.; and by order of Court of 14th September the Sheriff was

directed to sell the property so attached, and the sale was fixed for 1st December. On 30th November B. filed his petition in the Insolvent Court, and the usual vesting order was made. On 1st December the property was sold by the Sheriff under the order of 14th September, and the proceeds were paid into Court. *Held*, that the execution-creditor was entitled as against the Official Assignee to be paid out of the proceeds. *Aga Mahomed Ali Sheruji* v. *S. E. Indu*, 7 B. L. R., 50.

A. obtained a decree under Section 23, Act XX of 1866, upon a registered bond, against B., one of the original obligors, and C., the representative of another obligor, who had died before the institution of the suit. A. sued out execution, and caused certain property of B. to be attached. D., a judgment-creditor of B., sued out execution of his decree, which was of a subsequent date to the decree of A., and caused the same property to be attached. Subsequently D. applied to the Moonsiff, under Section 272, Act VIII of 1859, that he might be first paid from the proceeds of sale, as the decree of A. had been obtained by fraud and improper means. The Moonsiff held, as the decree was obtained upon a plaint whereupon was a stamp of one-fourth of the value it ought to bear, it was obtained by "improper means." On the application of A. to the High Court for an order that the order of the Moonsiff be set aside as passed without jurisdiction, —*Held*, that a mere error in the procedure did not come within the scope of the words "improper means" in Section 272, Act VIII of 1859, and that there must be some misconduct of the decree-holder to invalidate his decree under that Section. *Bruja Nath Shaha* v. *Kanayi Lal Sen*, 6 B. L. R., 174, and 14 S. W. R., C. R., 363.

Where the decree-holders in two different suits, against the same defendant, attached the property of the judgment-debtor in execution at one and the same time,—*Held*, (Norman, J., dissenting) that they were entitled to be paid rateably out of the proceeds of sale, notwithstanding that the property had been attached by the decree-holder in one suit before judgment. *Sri Rammanik* v. *Tincowri Rai*, 4 B. L. R., F. B. R., 63; 13 S. W. R., F. B. R., 9.

(*e*) *Setting Aside Attachment.*

A Mufti Sudder Ameen may set aside an attachment in a suit issued from his Court, and no longer properly in force in the suit, although no express statutory power to do so exists. But on a petition to set aside such an attachment, he cannot also make a declaration as to the right to the property attached and claimed to have been acquired subsequently, and direct that possession should be transferred to the petitioner. *Ex-parte Chella Pperumwal Pillai*, 1 Mad. Rep., 135.

An order striking off an attachment pending an appeal does not release the property from attachment. *Sheor Narain Singh* v. *A. B. Miller, Official Assignee* 17 S. W. R., C. R., 234.

Certain hoondees, which V. A. and Co. had discounted for P., having been dishonoured by the drawers, V. A. and Co. sued P. for the value of the bills, and applied, under Section 81, Code of Criminal Procedure, to have certain property attached before judgment as belonging to P. An attachment having been ordered, M. and J. objected by petition that the property belonged to them, and not to P., upon which V. A. and Co. applied to have them made co-defendants in the regular suit which had been brought against P. on the ground that they (M. and J.) and P. were partners in trade. The decision in the suit released the property on the ground that there was no such partnership, and that the property belonged exclusively to M. and J. M. and J. then sued V. A. and Co. to recover damages sustained by their goods under the above attachment and profits foregone during the stoppage of their trade by the tortuous acts of the defendants.

Held, that as V. A. and Co. had made the attachment most carelessly and recklessly, and without sufficient or reasonable ground for assuming M. and J. to be partners of P., they were rightly amerced in damages.

Held, also, that their act having been one done without a probable cause, was such as to evince a malicious motive on their part, and that damages in such a case should be in the nature of a penalty as well as of a compensation.

Held, further, that plaintiffs were not bound to release their property, and it was no defence to their claim for damages to say that they might have done so by giving security, nor could their declining to do so shift the responsibility of the illegal acts of the defendants. *Valeat Ali Khan* v. *Matadeen Ram*, 13 S. W. R., C. R., 3.

(*f*) *Rulings under the Code.*

Where. in a suit against certain sutputtees and putneedars to recover possession of a share of an ijmalee family talook, plaintiff obtained a decree, it was held that the Court executing was bound, under Section 233, Act VIII of 1859, to put her in possession of the immoveable property adjudged, and, if necessary, to remove any person who might refuse to vacate; and that her having already been put in possession, under the provisions of Section 224, was no bar to her being put into the more direct and actual possession contemplated by Section 223. *Adoremonee Dasse* v. *Premchund Mussamut and others*, 9 W. R., 454.

S. G. obtained a decree against M. D., attached her property, and obtained an order for the sale of it, but the time of sale was subsequently postponed by order of Court. Meantime, while the sale was pending, and before the extended time had expired, R. and Co. obtained a decree against the same defendant, a prohibitory order touching the same property, and an order for the sale thereof, upon which the property was sold. S. G. now applied for an order that the Sheriff should pay the proceeds of the sale into Court to his account. The application was granted.

Held that the effect of a seizure is the same under any or either of the 233rd, 234th, or 235th Sections of Act VIII of 1859, namely, for the benefit of the decree-holder in the cause.

That the proceeds of the sale of property under a decree is to be held for the benefit of the decree-holder; that when property has been seized under a decree the Court cannot order its sale, so as to defeat the lien of the party first seizing it. *In re-Sumbonath Ghose* v. *Nobinmoney Dossee; Robert and Charriol* v. *Nobinmoney Dossee*, Bourke's Rep., O. C., 92.

To render an attachment of land or any interest in land effectual, so as to render a subsequent alienation void (with reference to Sections 235, 239, and 240 of Act VIII of 1859), the several processes prescribed in Section 239 must be gone through,—*i.e.*, (1) the written order of attachment issued under Section 235 must be read aloud at some place on or adjacent to the land or property attached; (2) the written order must be fixed up in some conspicuous part of the Court-house; and (3) the written order must be fixed up in the office of the Collector of the zillah in which the land was situated. *Indrochundra Baboo and another* v. *Hamilton Grant Dunlop*, 10 W. R., 264.

Where an attachment is made under Section 235, Act VIII of 1859, the only further process required to bring the property to sale is the due issue of the proclamation of sale. If the property be not within the jurisdiction of the Court whose duty it is to execute the decree, the course to be followed by the decree-holder is that prescribed in Sections 285 and following. *Mookta Keshee Debee* v. *Kanuck Money Dabee and others*, 7 W. R., 267.

On an application made to a Principal Sudder Ameen for execution of a decree against a judgment-debtor's estate situate in a different district, that functionary caused a prohibitory order, under Section 235, Act VIII of 1859, to be issued through the Judge of the other district, after which, without further procedure, under Section 285 and the sections following, or further attachment, the property was put up for sale and purchased, no certificate under Section 259 being given to purchaser. *Held* that the sale was illegal, and that there had been no valid transfer of right, title, and interest in the property. *Luchmeeput Singh* v. *Mooktakashee Debia*, 9 W. R., 388.

When the property to be attached consists of debts, a written notice of attachment is necessary under Section 236, Act VIII of 1859. Until the debtor receives such notice he is bound to pay the amount of his debt to the creditor whose right to receive it has been declared by a decree of Court, and it is no part of the duty of the debtor to make enquiries whether his creditor is or is not entitled to receive the money. *Thakoor Dass Singh* v. *Luchmeeput Doogor*, 7 W. R., 10.

Money payable to sirdars, as the wages of coolies over whom they are sirdars, does not constitute a debt to the sirdars, but debts to the coolies themselves, even where a sirdar is entitled by custom or contract to have the wages of coolies paid to him, in order that he may deduct the amounts due to him by the coolies for food supplied. Money payable as above is therefore not attached under Section 236, Act VIII of 1859, in execution of a decree against the sirdar. *Suffewan* v. *Gopal and another*, 10 W. R., 149.

An attachment of immoveable property is not voidable merely because all the forms prescribed in Section 239, Code of Civil Procedure, have not been followed, when the irregularities complained of are immaterial and not productive of any substantial injury to the person who objects to the proceedings. *Mussamut Kooranee Dassee* v. *Bhubun Mohinee Dossee*, 6 W. R., Mis., 52.

A decree-holder (W.) obtained an order for the attachment of an estate belonging to his judgment-debtor (A.), but the attachment was not made known in the manner required by Section 239, Act VIII of 1859. Three days before the day advertised for sale the judgment-debtor put in a petition, reciting that the decree-holder had agreed to give him time on condition that the attachment should remain good, and agreeing not to alienate the property until the decree was satisfied. Shortly after this A. mortgaged a village in the estate to R.

Held that there was nothing in the order of attachment to prevent R. from acquiring a valid title under his mortgage, and that A.'s petition did not constitute a charge on the property. *Rutennussur Singh* v. *Ram Tonoo Ghose*, 12 W. R., 491.

Held that the alienation of property cannot be declared void under the provisions of Section 240, Act VIII of 1859, where no attachment order was issued or notified in the manner prescribed by Sections 235 and 239 of the said enactment.

Where there was no attachment after the manner prescribed in Act VIII of 1859, but the property was advertised for sale, and the judgment-debtor encumbered the property with liens,—*Held* that the decree-holder can sell the property, but subject to liens which were not otherwise proved to be collusive. *Saboo Chund* v. *Jeetum Singh and others*, 2 Agra Rep., A. C., 206.

A. obtained a decree *ex-parte* against B. Property belonging to B. was attached in execution. While under attachment B. sold the property to C. Afterwards B. applied for and obtained an order, under Section 119, Act VIII of 1859, to set aside A.'s decree and for a new trial. *Held* that C.'s purchase was not null and void under Section 240 of Act VIII of 1859. *Lala Jugat Narayan Tulsiram*, 1 B. L. R., A. C., 71; S. C., 10 W. R., 99.

Held by Loch and E. Jackson, JJ., that a mortgage of any kind made after attachment is such an alienation as is contemplated by Section 240, Act VIII of 1858, and is null and void.

Held also by Loch, J. (E. Jackson, J., dissenting), that such alienation is null and void, not only as against the creditor making the attachment, but also in regard to the whole world. *Munno Lall* v. *Reet Bhungun Singh and others*, 9 W. R., 544.

Held (Markby, J., dissenting) that a private *bonâ-fide* alienation for value of property, attached under Act VIII of 1859, made during the continuance of the attachment, is, by Section 240 of that Act, null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment, and not as against the whole world. *Anando Lall Dass* v. *Radhamohun Shaw and others*, 2 B. L. R., F. B., 49.

Any alienation of property after attachment is illegal under Section 240, Act VIII of 1859. *Jadubanund Roy* v. *Bejoy Govind Chowdry*, 7 W. R., 511.

Held by Loch and E. Jackson, JJ., that a mortgage of any kind made after attachment is such an alienation as is contemplated by Section 240, Act VIII of 1859, and is null and void. *Munnoo Lall* v. *Reet Bhunjun Singh*, 9 W. R., 544.

Where it is found that a judgment-debtor is entitled to a particular share of money deposited in a Collectorate, such share is not liable, under Section 242 of Act VIII of 1859, to be sold in satisfaction of the decree, but may at once be made over to the decree-holder. *Mohabeer Pershad and others* v. *Ram Naran Singh*, 11 W. R., 30.

An appeal lies from an order refusing the request of a judgment-debtor for the appointment of a manager under Section 243, Act VIII of 1859. *Bisram Singh* v. *Maharanee Inderjeet Koonwar*, 2 W. R., Mis., 49.

There is no appeal against the order of a manager appointed under Section 243, Act VIII of 1859. *Bhoobun Myee Debea* v. *A. Mooty*, 1 W. R., Mis., 11.

The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application, under Section 243, Act VIII of 1859, for the appointment of a manager. *Debkumari Bibee* v. *Ram Lall Mookerjee*, 3 B. L. R., Ap., 107; 12 W. R., 66.

An appeal lies from an order, passed under Section 243 of Act VIII of 1859, postponing the sale of the property attached, in order to enable the judgment-debtor to raise the amount of the decree against him (Jackson, J., dissenting). *Hanuman Prasad* v. *Ajodhya Prasad*, 1 B. L. R., F. B., 7; 10 W. R., F. B., 5.

Section 243, Act VIII of 1859, gives no authority to a Court to give a lease or mortgage of attached property, but only to give time to the judgment-debtor to mortgage or let his land, or sell part of it, when he can satisfy the Court that there is reasonable ground to believe that the amount of the decree will be raised thereby. *Luchmeeput Doogar* v. *Maharajah Jugut Indur Tewaree*, W. R., 1864, Mis., 5.

In appointing a manager under Section 243, Act VIII of 1859, a Court must exercise a reasonable discretion; and the sole reason for such appointment ought to be that, whilst the debts would be equally satisfied in that manner, and as surely as in any other, the arrangement would at the same time save the debtor from great prospective loss. *Musst. Zuhoorun and others* v. *Syed Nujeeboodeen*, 11 W. R., 505.

In execution of a decree, the defendant caused a decree of the plaintiff awarding him Rs. 925 to be attached; and under Section 236, Act VIII of 1859, caused the prohibitory order to be fixed in a conspicuous part of the Court-house, and copies thereof to be delivered to the judgment-debtors. The decree was subsequently sold by auction, and the defendant purchased it for Rs. 20. On special appeal by the plaintiff, upon the ground that the sale was irregular, as the prohibitory order had not been served upon him,—*Held* that the prohibitory order, having been in accordance with the provisions of Section 236, Act VIII of 1859, was legal and irregular.

Held that the Court executing the defendant's decree ought not to have sold the plaintiff's decree, but should have, under Section 243, appointed a manager to enforce the plaintiff's decree.

That a decree-holder ought not to be allowed to bid and purchase at a sale in execution of his decree, without an order of Court previously obtained upon notice to the judgment-debtor.

Practice of English Courts regarding sales in execution of decrees discussed. *Bandhu Roy* v. *Hanuman Singh*, 3 B. L. R., A. C., 320.

When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ-fide* made for it, the Court is not competent to postpone the sale, or to decline to conclude it, and order another auction, merely on the representation of the judgment-debtor that he can obtain a higher price by private transfer, there being shown no ground to believe that the amount of judgment debt would have been thus realized. *Baboo Luchmee Narain* v. *Baboo Bhyroo Pershad*, 1 Agra Rep., Mis., 11.

Certain property had been attached in execution of a decree under the 235th Section of Act VIII of 1859, which was specified in the schedule annexed to the order of attachment as "the right, title, and interest of R. H., deceased, in the hands of B. D. and W. D., his widows." M. D. claimed the property under the 246th Section of Act VIII of 1859, and proved that the property was in his possession, and not in the possession of B. D. or W. D. *Held* that the property must be released from the attachment. *Sreemutty Bindobaseeny Dabee* v. *Sreemutty Bissomoye Dassee and others*, 2 Ind. Jur., N. S., 339.

(*g*) *Claims to Attached Property.*

Claim by a mortgagee to remove an attachment, placed by a judgment-creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of attachment. The mortgagee had never had possession of the mortgaged property; and by the stipulations of the deed the mortgagor had a power of sale after the expiration of the time fixed for the payment of the debt, and it was only on the failure to exercise this power that the proprietary title would pass to the mortgagee.

Held that, under a condition of this character, a reasonable time must be allowed for the exercise of the power of sale, and that the fact that no sale had taken place within an interval of 23 days from the date fixed for payment could not equitably be held to divest the mortgagor of the equity of redemption; that consequently at the time of attachment the defendant was only a mortgagee, and the suit to remove the attachment could not be maintained. *Koner Mandher Mahajana Ambekur* v. *Naro Hari Dasputre*, 1 Bom. Rep., 167.

Section 11, Act XXIII of 1861, does not alter or modify the effect of Section 246, Act VIII of 1859, so as to give an appeal from orders passed under the latter section.

Where property is seized as belonging to A., as representative of B., deceased, and A. claims the property as his own and denies that it ever belonged to B. or B.'s estate, A.'s claim is properly dealt with under Section 246 of Act VIII of 1859. *Maharajah Dheraj Mahatab Chund Bahadoor* v. *Mussamut Pearee Dossee and others*, 6 W. R., Mis., 61.

Before a claim can be investigated under Section 246, Act VIII of 1859, it is necessary to ascertain whether the proprietary title claimed by the intervenor arose through a right originating before or after the attachment made by the decree-holder. *Beebee Sahel Jehan* v. *Syud Shah Asudoollah*, 5 W. R., Mis., 28.

Certain property was sold in 1858, in execution of a decree, as the property of the present second defendant's brothers. Plaintiffs presented petitions claiming a right in the property, and protesting against the sale. Their petitions were rejected, and they were referred to a regular suit, which they

brought in 1861. Under the old law the time within which a suit might be brought on such a cause of action was 12 years. Section 246 of Act VIII of 1859 shortened the period to one year.

Held, reversing the decision of the Civil Judge, that the plaintiffs' action was not barred.

The period of limitation contained in Section 246, Act VIII of 1859, is applicable only to a case in which the procedure prescribed by that section has been adopted. *Venkatanara* v. *Akkamma*, 3 Mad. Rep., A. C., 139.

The effect of the last sentence of Section 246, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section,—*viz.*, a regular suit to be brought within one year from the date of the order made against him, and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date. *Settiappan* v. *Sardt Singh*, 3 Mad. Rep., A. J., 220.

The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under Section 246. *Petambur Shaha* v. *Kuroona Moyee Debea*, W. R., 1864, 321.

In a suit by a landlord against his ryot for rent, in which he attached certain growing crops, under Section 16, Act VI (B. C.) of 1862 (the attachment being before judgment, and therefore according to Section 86, Act VIII of 1859), the claim of an intervenor ought to be investigated in the same manner as a claim to property attached in execution of a decree.

The course to be adopted in such a case is that pointed out in Section 246, Act VIII of 1859, and an order passed under that section is not open to appeal, though the party against whom it is made is at liberty to bring a suit to establish his right. *Kartick Chundra Mookerjee* v. *Mookta Ram Sircar*, 10 W. R., 21.

Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under Section 246 of Act VIII of 1859. One of them sued the successful claimant, and obtained a decree declaring the property in dispute to belong to the judgment-debtor, and thereupon caused the property to be sold, and became the purchaser thereof. Thereupon an assignee of the other judgment-creditor sued him, alleging an earlier lien, and praying a sale in satisfaction thereof. The defence set up was that, as the plaintiff did not come into Court to set aside the order under Section 246 within a year from the date thereof, he was barred from bringing the present suit.

Held that the omission to bring a separate suit for that purpose did not bar him from obtaining a declaration of his prior lien. *Chintamani Sein* v. *Iswar Chandra*, 3 B. L. R., Ap., 122.

Where, in execution of a decree, property is seized as belonging to A. as representative of B., deceased, and A. claims the property as his own, and denies that it ever belonged to B. or to B.'s estate, A.'s claim must be dealt with under Section 246, Act VIII of 1859, and an order under that section is not appealable, but can only be disturbed by recourse to a regular suit. *Re J. B. Rainey* v. *Ishur Chunder Bhuttacharjee*, 12 W. R., 333.

An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint.

Held that a party against whom an order has been obtained under Section 246, Act VIII of 1859, must, if he sue for its reversal, assert substantially the same right as that which has been contended for in the execution. *Held*, by Jackson, J., that in a suit for declaration of title, defendant must have given a cause of action, by impugning it antecedently to plaint filed, even though their written statement be hostile. *Colvin, Cowie, and others* v. *Elias*, 2 B. L. R., A. C., 212; S. C., 10 W. R., 43.

The provisions of Section 246, Act VIII of 1859, are prospective, and do not apply to proceedings in execution under the old procedure. *Gocool Ram Deb* v. *Ram Soondur Surmah*, 9 W. R., 292.

A party failing to establish his claim to attached property under Section 246, Act VIII of 1859, on the point of possession, is not debarred from afterwards bringing a suit to establish title within the period allowed by law for bringing such suit. *Rajah Bishenperkash Narain Singh* v. *Baboo Misser and others*, 8 W. R., 73.

In disposing of a claim under Section 246, Act VIII of 1859, if the Court be of opinion that the property attached ought not to be sold, the proper order for the Court to make is a simple order to release the property from attachment. *Bhyrub Lall Bhukut* v. *Meer Abdool Hossein and others*, 8 W. R., 93.

Money paid to release an attachment in execution of a decree cannot be made the subject of a claim under Act VIII of 1859, Section 246. *Mohamed Beg* v. *Juggernauth Dass and Rogonauth Doss; Claim of Omerchund and Ramnarain*, 1 Ind. Jur., N. S., 248.

When, under Section 246, Act VIII of 1859, property which has been attached is ordered to be released, the order for release is made with reference merely to the particular claimant who has obtained the order. This order is not to be regarded as a general decision (of which all the world can have the benefit) that the property does not belong to the judgment-debtor. *Mussamut Imam Bandee Begum* v. *Mirza Mahomed Tukee Khan and others*, 8 W. R., 27.

The purchaser from a judgment-debtor cannot take advantage of an order obtained by the judgment-creditor under Section 246, Act VIII of 1859, to which he is an entire stranger. *Ganga Narain Ghose and others* v. *Haradhun Ghose*, 6 W. R., 157.

Where a claim under Section 246 of Act VIII of 1859 is dismissed, there is no appeal from the order of dismissal. *Sheikh Bukshee and another* v. *Bungsheedhur and others*, 6 W. R., Mis., 46.

Section 246 of Act VIII of 1859 (relating to investigations of claims and objections to sales of attached property) is prospective, and does not apply to past proceedings in execution. *Lokun Singh* v. *Deo Narain Singh*, 3 W. R., 62.

Where a judgment-creditor seeks to attach and sell a decree on the allegation that the assignment of it was not a *bonâ-fide* conveyance, and the conveyance purports to be one of property specified in Section 265, Act VIII of 1859, it is the duty of the Judge, under Section 246, to enquire whether the assignee of the decree was or was not in *bonâ-fide*

possession of the property. If the Judge enquires into the facts, no appeal lies from his order; but if he refuses an enquiry, the High Court, under its general powers of superintendence, can and ought to require the Judge to make the enquiry. *Grish Chunder Lahoree* v. *Kasheepuree Debia*, 8 W. R., 26.

In a suit to establish a right to property attached in execution under Section 246, Act VIII of 1859, if the plaintiff fails to make out his claim of right, he is not entitled to a decree, on the ground that the order of attachment was made without jurisdiction. *Hurrish Chunder Chuckerbutty* v. *Bhoobun Moye Debia Chowdhrain*, 4 W. R., 99.

Where a Civil Court attaches immoveable property for sale in execution of a decree, and a third party comes forward and claims a portion, the Court need not, under Section 246, Code of Civil Procedure, hold any enquiry in the matter. The claimant should be treated as a defendant, and his proofs used, as they bear upon the question whether the judgment-debtor is in possession. *Nito Kalee Dabee* v. *Kripanath Roy*, 8 W. R., 358.

A decree-holder caused the right, title, and interest of his debtor in certain land to be attached in execution. A claim was preferred, under Section 246, Act VIII of 1859, against the attachment by a previous purchaser, but was rejected. The claimant then instituted the present suit for confirmation of his possession upon reversal of the said order. The defence set up was that the purchase was merely benamee. *Held* that the *onus* was upon the plaintiff to make out his title. *Mahima Chandra Kundu* v. *Nuruddin*, 3 B. L. R., A. C., 70; S. C., 11 W. R., 422.

In a suit brought under Section 246, Act VIII of 1859, for establishment of right,—*Held* that the plaintiff's failure to prove his possession at the time of the institution of the suit is not sufficient for its dismissal. The question of title should be tried according to the meaning of that section. Section 246, Act VIII of 1859, distinguished from Section 15. It is often the case that fraud cannot be established by positive proofs, and on the other hand it is not to be presumed from circumstances of mere suspicion. It is generally shown by such circumstantial evidence as overcomes the natural presumption of honesty and fair dealing, and satisfies a reasonable mind that such presumption has been displaced. The investigation of a case upon a portion of the evidence, excluding the other portion under a mistaken impression that it was not legal evidence but conjecture, is an investigation erroneous in law, and is likely to produce an error in the decision of the case on its merits. The mode in which evidence is to be dealt with discussed. *Mathura Pandey* v. *Ram Rucha Tewari*, 3 B. L. R., A. C., 108; S. C., 11 W. R., 482.

In execution of a decree against A., C. seized certain moveable property which was claimed, under Section 246, Code of Civil Procedure, by B., who was part owner of the property. B.'s claim was rejected, and the sale proceeded as that of the right, title, and interest of the debtor; no mention was made of B.'s claim, and the property was made over manually to the auction-purchaser, the proceeds being handed to the judgment-creditor, in liquidation. B. then sued C. for damages.

Held that C. was not liable. The purchaser became entitled to an undivided share of the chattel to be used by him as an undivided share. He would have the same right as the judgment-debtor, and would not be liable to the owner of the other undivided share merely for using it, nor unless he converted it to his own use. *Tamizoodeen Mollah and others* v. *Nayatollah Sircar and another*, 11 W. R., 528.

The plaintiff brought a suit to establish his right to certain property as against the claim which the defendant had successfully made under Section 246 of the Civil Procedure Code in execution of a decree obtained against the plaintiff. The order of the Court directed the release of the property from attachment. The present suit was brought more than one year from the date of the order.

Held, per Scotland, C. J., Bittleston and Collett, JJ., (Innes J., doubting) that the plaintiff was a party against whom the order was "given" within the meaning of the section, and that the suit was barred by the section. *Nettietom Perengaryprom* v. *Tavanbarry Parameshwaren Nambudry*, 4 Mad. Rep., 472.

Suit for redemption of an itti by an alleged purchaser of the same, and for recovery of land on which he had purchased a Kànam. The defence was that the purchase was made by the father of the first defendant, and that the plaintiff was constructively a mere trustee. The Moonsiff decreed for the plaintiff, and the Principal Sadr Amin reversed his decree because the suit was not brought within a year of a release of the property from attachment under a claim of the defendants, which attachment was made in execution of two decrees for money against the present plaintiff. It appeared that in the proceedings had for releasing the property from attachment, no notice was issued to the judgment-debtor (present plaintiff). *Held* that the decision of the Principal Sadr Amin was wrong. In the present case, the claimants in possession were not so according to any of the modes of derivation which Section 246 enumerates as authorizing the continuance of the possession and the dismissal of the claim. The possession was in the claimants, and there was nothing in the rights of the judgment-debtor which could make such possession his possession. This being so, even assuming that he was a party to the order made, such order could not be said to be against him, because his claim was one which could not have been determined by any order made under Section 246. The order so made was perfectly consistent with his present condition.

Special Appeal, No. 541 of 1868 (4 Madras High Court Reports, p. 472 distinguished), *Cheriyarakel alias Arakel Kunhi Kullizal* v. *Vayaku Parambath Imbichi Ammah*, 6 Mad. Rep., 416.

In order to maintain a suit under Section 246, Act VIII of 1859, the plaintiff must be prepared to prove that the right which he put forward and is seeking to have declared has been investigated and disallowed, that it is still in existence, that it has been infringed, and that he is seeking compensation, or to recover possession. But it never was intended by the Legislature in that section that the time of the Court should be taken up with a perfectly useless enquiry into a dispute apart from any claim for compensation or possession, *e.g.*, as in this case, where the plaintiff's object was to establish the truth of his assertion that the interest of a

judgment-debtor, which was put up for sale, was that of a tenant only, and not that of an usufructuary mortgage. *Amjud Ali* v. *Kunkoo Sham*, 17 S. W. R., C. R., 304.

Quære,—Whether a person holding by purchase from the judgment-debtor is in a position to succeed under Act VIII of 1859, S. 246. *Syud Wajid Hossein and others* v. *Hafez Ahmed Reza*, 17 S. W. R., C. R., 480.

A refusal to make enquiry as to whether an intervenor is in possession of the shares of attached property which he claims, or whether the judgment-debtor is in possession of the share only which the intervenor says the judgment-debtor is in possession of, is opposed to the principles of Section 246 of Act VIII of 1859. *Issur Chunder Gangooley* v. *Mohina Mohun Dass*, 17 S. W. R., C. R., 74.

If a plaintiff coming into Court, under Section 246 of the Code of Civil Procedure, to set aside an attachment and sale shows, in proof of his title, that a deed of sale has been executed in his favour by the judgment-debtors, and that consideration-money has passed and possession has been given him, he starts his case sufficiently. If the defendant alleges notwithstanding that the sale was collusive and fictitious, it is for him to show that it was so. *Digumburee Dassee* v. *Baneymadhub Ghose*, 15 S. W. R., C. R., 155.

The only question proper to be decided under Section 246, Act VIII of 1859, is whether the property attached is in the possession of the judgment-debtor or some person in trust for him, or whether it is in the possession of a third party not in trust for the judgment-debtor. *Maharajah Dheraj Mahtab Chand Bahadoor* v. *Hurdeo Narain Sahoo*, 16 S. W. R., C. R., 119.

Where a claim under Section 246, Civil Procedure Code, is dismissed or struck off without adjudication, a fresh claim by the same claimant within a reasonable time may be entertained, subject to the provisions of Section 247. *Mahadeb Mundle* v. *Madhoo Mundle*, 16 S. W. R., C. R., 59.

The Official Assignee having attached certain immoveable property as the exclusive property of A., the judgment-debtor of an estate represented by him, the plaintiff (one of the brothers of A.) unsuccessfully claimed the property under Section 246, Act VIII of 1859, and subsequently brought the present suit against the Official Assignee for a declaration of his right to the property, on the ground that it was his own and self-acquired property, of which he had been in separate possession. The plaintiff and his witnesses were examined in support of his case, but the Official Assignee adduced no evidence whatever.

Held by Phear, J., in the original Court, that the plaintiff was bound to prove the specific title which he set up, and that as the evidence on his side was untrustworthy his suit should be dismissed *in toto*, even though it appeared that the plaintiff had some interest in the property as a member of a joint Hindoo family, as such interest could not be ascertained in the present suit in which the plaintiff claimed the property as his sole and exclusive property.

The judgment of Phear, J., confirmed on appeal by Norman, C. J., (Paul, J., dissenting) without prejudice to the right of the plaintiff and his brothers to bring another suit to establish their right to their shares in this property as being joint family property. *Sreenarain Chuckerbutty* v. *A. B. Miller*, 15 S. W. R., A. O., 7.

The title of the objector, as compared with that of the debtor in possession, is not a point for adjudication under Section 246. *Khelat Chunder Ghose* v. *Bhuggobutty Churn Mookerjee*, 14 S. W. R., C. R., 144.

A Court is bound to investigate a claim made by an intervenor under Section 246, Act VIII of 1859, to a share of moveable property attached in execution of a decree. *Deanuth Biswas* v. *Issur Gine*, 14 S. W. R., C. R., 52.

An application under Section 246, Act VIII of 1859, having been disallowed on the ground of unnecessary and improper delay, the attached property was sold; but on the attempt to take possession the purchaser was obstructed by the applicant, who alleged himself to be in possession. The Court made an investigation under Section 269, and determined that as applicant's claim had been disallowed, under Section 246, he had no right to remain in possession. *Held* that this order was judicious and proper. *Baneemadhub Roy*, Petitioner, 13 S. W. R., C. R., 431.

In execution of a decree against A., "the moiety or half-share of A." in certain lands is attached. M. files a petition, under Section 246 of Act VIII of 1859, in which he admits that A. has a one-eighth share in the lands, but alleges that A. has only a one-eighth share, and that a two-eighths share belongs to himself, M. *Held* that this was a claim to property attached in execution under Section 246 of Act VIII of 1859, which the Court under that section is bound to investigate and adjudicate upon.

In execution of a decree against A., "the right, title, and interest of A." in certain lands are attached. M. files a petition under Section 246 of Act VIII of 1859, in which he admits that A. has a one-twentieth share, but alleges that A. is entitled to no more than a one-twentieth share; and that he, M., has a two-twentieth share. *Held* that, assuming the attachment of A.'s eighth title and interest to be an irregular attachment under Section 213, M., whose lands were included within such attachment, was entitled to come in and claim his own two-twentieths share, and the Court was bound to investigate his claim under Section 246 of Act VIII of 1859.

Held, also, in both cases, that M. was entitled to have the attachment removed so far as his share was concerned.

Held, also (*per* Phear, J.), that in the first case M. was entitled to have the attachment removed so far as regards the margin in excess of A.'s actual share; and that in the second case he was entitled to have the whole attachment discharged. *Cowar Rajkumar Roy* v. *S. M. Kadambini Debi*, 4 B. L. R., F. B. R., 175; 13 S. W. R., F. B. R., 63.

A Judge has no jurisdiction to try the same objector's claim, under Section 246, Act VIII of 1859, a second time as against the same attachment, or to re-open a question finally decided on the former occasion. *Khelat Chunder Ghose* v. *Bhuggobutty Churn Mookerjee*, 14 S. W. R., C. R., 144.

An elephant having been attached in execution, it was released on the claim of one P., upon S. standing surety. It was finally declared to be the property of the judgment-debtors; but the decree

having been satisfied from other sources, it was ordered that the elephant be returned to the judgment-debtors. It was then demanded from the surety; but he objecting, the claimant (P.) was served with notice to produce it. This not having been done within the period fixed, the Moonsiff ordered that it should be demanded from the surety, and (on his failure to produce its stipulated price) should be realized by attachment and sale of his property.

Held that the decree having been executed, the Moonsiff's subsequent proceedings as to the elephant were illegal, and that the right to it was open to a suit. *Juggut Chunder Bhadooru* v. *Shib Chundre Bhadooru*, 16 S. W. R., C. R., 269.

Where a plaintiff applied for attachment of certain property before judgment under Section 81, and a third party intervened, claiming to hold the property by purchase on his own account,—*Held* that such intervenor ought not to have been made a party under Section 73 of the Code, but that his objection should have been entertained under Sections 86 and 246 of the Procedure Code. *Ram Ruttun Dass* v. *Gobind Dass*, 2 Agra Rep., A. C., 141.

(*h*) *Limitation with respect to Claims.*

The limitation prescribed by Section 246 of Act VIII of 1859 cannot be applied retrospectively to suits to question orders made before that Act came into operation. *Dwarkanath Roy* v. *Sreenath Roy*, W. R., 1864, 237.

A claim to property about to be sold in execution of a decree was made under Section 246 of Act VIII of 1859, but the Court declined to entertain it, and passed an order under Section 247 disallowing the investigation.

Held that the claimant in bringing a regular suit to prosecute his claim was not bound to institute his suit within one year from the date of the order disallowing the investigation. *Syed Mahomed Afzul* v. *Kanhya Lall*, 2 W. R., 263.

A person may sue within a year of his majority to set aside an order passed under Section 246, Act VIII of 1859, rejecting an application made by a "well-wisher," with his consent to stop the sale of certain lands attached in execution of a decree during his minority. *Huro Soondery Chowdhrain* v. *Anundnath Roy Chowdhry*, 3 W. R., 8.

When intervenors claim a share of attached property, the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no decision under Section 246, Act VIII of 1859, of which the purchaser, by lying in wait without possession for one year, can take advantage. *Monohur Khan* v. *Troyluckho Nath Ghose*, 4 W. R., 35.

Section 246, Act VIII of 1859, makes no distinction in favour of cases not decided on the merits, but makes it imperative on the party whose claim to attached property has been rejected, under any circumstances, to sue within one year. *Shaikh Khoda Buksh* v. *Purmanund Dutt*, 5 W. R., 214.

The limitation contemplated by Section 246, Act VIII of 1859, is applicable only to an order passed under that section, or to a suit brought to set aside an order passed under that section. *Kally Mohun Paul* v. *Bholanath Chakladar and others*, 7 W. R., 138.

The plaintiff applied for the attachment of a property, and on the objection of the defendant the property was released from attachment, *Held* that the plaintiff was bound, under Section 246, Act VIII of 1859, to sue in the Civil Court to establish his right within a year from the order of release. *Jugoo Lal Upadhya and others* v. *Mussamut Ekballoonissa and others*, 7 W. R., 456.

The possession of an auction-purchaser at a sale in execution of a decree runs from the date of delivery, as provided by Section 246, Act VIII of 1859,—*i.e.*, by publication of sale certificate and proclamation by beat of drum,—and not from the date of his possession. *Ausadoolah* v. *Sheikh Ahar Aly*, 7 W. R., 60.

Limitation, under Section 246, Act VIII of 1859, is not applicable to an adjudication upon a petition disallowed on the ground that the section did not apply at all to the petitioner's case, and that the case was not a fit one for adjudication under that section. *Radha Nath Banerjee* v. *Jadu Nath Singh and others*, 7 W. R., 441.

The limitation of one year, in Section 246, Act VIII of 1859, does not apply to a suit for declaration of right and confirmation of possession. *Wuzeer Jumadar* v. *Noor Ali*, 12 W. R., 33.

Certain lands were attached under a decree against the ancestor of the plaintiffs; but on the intervention of the defendant, under Section 246, Act VIII of 1859, they were released to him.

Held that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. *Nitta Kolita and others* v. *Bishunram Kolita*, 2 B. L. R., Ap., 49.

An objection not taken in cross-appeal before the lower Appellate Court cannot be taken in special appeal; but if the case be remanded for new trial, such objection may then be taken before the Court of first instance. On attachment of certain property, plaintiff and defendant preferred their respective claims thereto. The plaintiff's claim was disallowed; but the defendant's claim was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was that the suit was barred by lapse of time under Clause 5, Section 1, Act XIV of 1859, and Section 246, Act VIII of 1859.

Held that Clause 5, Section 1, Act XIV of 1859, and Section 246, Act VIII of 1859, do not apply to such a suit. *Durgaram Roy* v. *Raja Narising Deb*. 2 B. L. R., A. C., 254.

Where the holder (G.) of a simple money-decree, who is at the same time a mortgagee, applies to a Civil Court to sell mortgagor's property in execution of said decree, such property having previously been sold in execution of K.'s decree and purchased by N. (G.'s claim upon it being at the same time notified), and in his (G.'s) application inserts the name of N., and calls him a judgment-debtor in the room of the heir and representative of the deceased debtor; and a purchaser comes in and denies that he is a judgment-debtor or liable, and asks for the release of the property, and the Judge disallows his objection,—*Held* that if the Judge's

order was made after investigation, then, under Section 246 of Act VIII of 1859, an appeal is barred; if it was an order refusing to investigate the objection, then the appeal is barred either by Section 247 or by Section 364, unless allowed by Section 11, Act XXIII of 1861.

Held also that the objector was not a party to the suit, and that he was not entitled to appeal under Section 11.

Section 223, Code of Civil Procedure, can have no bearing on this case. *Narain Acharjee* v. *E. Gregory*, 8 W. R., 304.

Property attached was, on the claim of a third party, released by the Court without proceeding under the provision of Section 246, Act VIII of 1859. The attaching creditor sued more than a year afterwards for a declaration that the property belonged to the judgment-debtor. *Held* that the suit was not barred. *Jagguhendha Bose* v. *Srimati Sachyi Bibi*, 16 S. W. R., C. R., 22; 8 B. L. R., Ap., 39.

Where, notwithstanding that a claim under Section 246, Act VIII of 1859, was rejected, the claimant, who was in possession, continued in possession until the execution proceedings were struck off for default and subsequently revived, and her property was sold under a second attachment,—*Held* that the claimant was not bound to sue within one year of the order rejecting her claim, which was in reality no decision under Section 246. *Luckhee Prea Debia* v. *Khyroollah Kazee*, 14 S. W. R., C. R., 367.

The law of limitation, under Section 246, Act VIII of 1859, cannot apply to a person who comes in too late to be made a party to the proceedings under that section. *Rughoonanth Dass Mohaputter* v. *Boydonath Dass Maharatha*, 14 S. W. R., C. R., 365.

(*j*) *Manager of Attached Property.*

A Court executing a decree was held to have been justified in refusing to appoint a manager for attached property belonging to the judgment-debtor where it would have taken 20 years to pay off the debt from the profits of the property. But the High Court saw no objection to the appointment of a manager to dispose of portions of the property by sale, mortgage, and otherwise, under Section 243, Code of Civil Procedure, if the debt could thereby be cleared off in six months. *Mohinee Mohun Dass* v. *Ram Kant Chowdry*, 15 S. W. R., C. R., 322.

The fact of a manager having been appointed to realize the profits of a property with a view to satisfy certain decrees (even though the appointment should have been confirmed by the High Court) is no bar to a Judge, on the application of another decree-holder, enquiring into the state of the property, and passing proper orders, and should he find that the proceeds are insufficient to satisfy all the decrees within a reasonable time, causing the decree to be executed in the usual way. *Din Dyal Lall* v. *Ram Rutten Neoghy*, 16 S. W. R., C. R., 46.

Property cannot be put under a manager unless it has been attached, and the Court has no right to assume that the assets are sufficient to meet the claims of the creditors. *Ajoodhya Doss* v. *Doorja Dutt Singh*, 17 S. W. R., C. R., 101.

Attachment, Act VIII of 1859, Section 243.—Appointment of Manager.—*Banwari Lal Saha* v. *Baboo Girdhari Sing*, 8 B. L. R., Ap., 23; and 16 S. W. R., C. R., 273.

Numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was attached in 1859. The village was under the management of the Collector, whom the Courts below treated as a manager put in under Section 243 of the Code of Civil Procedure. The decree-holders received rateable shares in the nett income of the village in liquidation of their respective decrees. It appeared that it would take 15 years to pay off the various decree-holders. The petitioner applied to the Civil Court for an attachment of the village in execution of his decree. The application was refused on the ground that the village was already under attachment in satisfaction of other decrees.

Upon appeal the High Court ordered a sale of the village, the sale proceeds to be dealt with in accordance with the proper provisions of the Code, on the ground that it could never have been intended to give the Civil Courts for an indefinite length of time the management of the encumbered estates of the country, or to compel decree-holders to submit to such an unreasonable delay as 15 or 20 years before obtaining satisfaction of their decree.

Quære,—Whether Section 243 was intended to be applied to the case of more than a single decree-holder. *Rednum Atchutaramayyu* v. *Khaja Mahomed Amin Khan*, 5 Mad. Rep., 272.

XI.—Execution against the Person.

(*a*) *Arrest.*

The Code of Civil Procedure expressly preserves a distinction between arrest and imprisonment, and the immunity from further process is only generated by actual confinement. *E. Chingalarazzia Chetty* v. *W. Subbich*, 6 Mad. Rep., 84.

Where a judgment-creditor had obtained a writ of attachment against the property of his judgment-debtor, but the debtor had no property to the knowledge of the creditor against which the attachment could be enforced,—*Held* (reversing the decision of the Court below) that he was entitled to an order for execution of the decree by attachment of the person of the debtor.

In an application for such an order the onus is on the judgment-debtor to show that he has no means of satisfying the debt, and that he has not been guilty of any misconduct, and not on the creditor to show that, by sending the debtor to prison, some satisfaction of the debt would be obtained. *C. Seton* v. *A. S. Bijohn*, 8 B. L. R., 255; and 17 S. W. R., C. R., 165.

No order for enforcing a decree by imprisonment under Section 200 of the Code of Civil Procedure should be made until the defendant has had an opportunity of obeying the decree, or has contumaciously refused to obey it. *Umed Kiku* v. *Nagindas Norotamdas*, 7 Bom. Rep., O. C. J., 122.

Bad faith in Section 281, Act VIII of 1859, means bad faith not only in respect of the applica-

tion, but includes bad faith on previous occasions. *Smith* v. *Boggs*, 5 B. L. R., Ap., 22.

When arrest in execution has not been specifically objected to in the Court below this Court will not interfere. *Dwarkanath Dass Biswas* v. *Unnoda Churn Dass*, 8 W. R., 318.

A prisoner arrested by the Sheriff under a writ of *ca. sa.* must be brought before the Court without delay, under Section 14 of Act XII of 1867. *In re Ramcoomar Dutt*, 2 Ind. Jur., N. S., 340.

If a decree-holder can show that assets of a deceased judgment-debtor have come into the hands of such debtor's legal representative, and if the representative fails to satisfy the Court that he has duly applied such assets, the latter may be arrested in execution of the decree. *Maharajah Dheraj Mahtab Chund Bahadoor* v. *Manmohinee Dassee*, 12 W. R., 517.

Women of rank are exempted from arrest in execution of decrees. *Rookinee Soondery Debee* v. *Heramotee Debee*, 2 W. R., Mis., 33.

It is not within the competence of a Judge to direct the re-arrest of a judgment-debtor without any petition or motion of the decree-holder to that effect. *Shib Ram Mundle* v. *Roheemtoollah*, 15 S. W. R., C. R., 69.

Arrest under civil process of a Mofussil Court on Sunday is legal in this country. 4 Mad. Rep., Rul. LXII.

A defendant, arrested in execution of a decree of a Small Cause Court, applied to that Court, under Section 273 of the Civil Procedure Code, averring that the only property which he had was immoveable property, and he was willing to place it at the disposal of the Court.

Held that the judgment creditor is liable to be called upon to show cause for not proceeding against the property described in the application in execution of his decree. *Shaw, I. C.* v. *Subramier*, 5 Mad. Rep., 108.

(*b*) *Commitment.*

A writ of the Calcutta Small Cause Court commanding its "Bailiff to take the body of A., and "have him before the Court on the——day of —— "to satisfy B. in the sum of —— debt and costs, "ordered and decreed by the said Court on the "- day of —— to be paid to the said B. with "costs of execution, and by virtue thereof to take "and convey the said A. to the Common Jail of the "said Court, there to be detained in safe custody "for —— weeks, or until he shall sooner perform "the said order of the Court," is in point of form a sufficient warrant to the jailer to receive and detain A., notwithstanding Act XII of 1865.

It is not necessary, in the case of commitment of a debtor to prison by the Calcutta Court of Small Causes, to bring him in the first instance before the Court, as under the provision of Act VIII of 1859, in order to have his subsistence-money fixed. *In the matter of Meer Nawaub*, 1 Ind. Jur., N. S., 315.

(*c*) *Subsistence-Money.*

On the 30th of September the plaintiff, a detaining creditor, paid to the jailer of the Calcutta jail subsistence-money for 30 days, for a prisoner confined at the suit of the plaintiff, the jailer then having a balance of 4 annas over from the subsistence-money for September.

Held a sufficient compliance with Section 276 of Act VIII of 1859. *Haladhar Dey* v. *Ambika Churan Bey*, 5 B. L. R., Ap., 80.

A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal the execution-creditor paid into the hands of the jailer a sum sufficient for his subsistence-money for 27 days, at the established rate of 4 annas per day. On the 5th August a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the jailer to cover any deficiency in the former payment. *Held* that the requirements of Section 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was entitled to his discharge under Section 278. *Dutt* v. *Cornelius*, 5 B. L. R., Ap., 79.

The discharge of a defendant from confinement in jail, in consequence of the plaintiff's failure to pay subsistence-money at the rate fixed by the Court, bars a second arrest and imprisonment in execution of the decree. *Appiah Chetty* v. *Chengadoo*, 4 Mad. Rep., 76.

Where the defendants were arrested through the Moonsiff's Court in execution of a decree, but were released at the request of the execution-creditor before they had been sent to the civil jail, it was held that the execution-creditor was entitled to a refund of the balance of subsistence-money advanced by him, that remained in the Moonsiff's hand at the time of his debtor's release. Section 10 of Act IV of 1865 (Bombay) is not applicable to such a case. *Ex-parte Kâshinâth Balâl Ok*, 5 Bom. Rep., A. C., 84.

Act VII of 1852 amends the law of arrest on the mesne process in civil actions in her Majesty's Courts of Judicature, and provides for the subsistence of prisoners confined under civil process of any of the said Courts. *Ram Persaud Roy* v. *Kala Chand Doss*, Bourke's Rep., O. C., 23.

Unless subsistence-money is paid before the commitment the commitment is illegal. The jailer is bound by the words of the Act. It is for him, and not for the prisoner, to see that the money is paid. *In the matter of Julius Thomson, a prisoner in the Great Jail of Calcutta*, Bourke's Rep., O. C., 421.

D. M., a prisoner for debt, having been discharged for non-payment of subsistence-money, the execution-creditor applied for a *rule nisi* for his re-arrest, or for a new writ. Rule refused.

Held that a prisoner once discharged, on non-payment of his subsistence-money, cannot be re-arrested, nor can a new writ be issued against him for the former debt, and that the principle that no man shall be twice vexed on the same charge applies here.

Per Morgan, J.—That there may be a distinction between the words "release" and "discharge" in Act VIII of 1859, and that the arrest of the person is not the full satisfaction here that it is under English law. *In the matter of Dwarkalall Mitter*, Bourke's Rep., O. C., 109.

Where a judgment-debtor, arrested in execution of a decree, applied for his discharge under Section 273, Act VIII of 1859, but while pretending to furnish a complete statement of his property was shown to have concealed a portion, the lower Court

was held to have acted properly, under Section 8, Act XXIII of 1861, in ordering him to prison. *Gunga Gobind Mundle* v. *Benomalee Paul*, 14 S. W. R., C. R., 54.

"Bad faith," in Section 281 of Act VIII of 1859, refers only to bad faith in respect of an application under that section. *In re Gurudas Bose*, 7 B. L. R., Ap., 23.

A judgment-debtor, in receipt of a monthly stipend, is not entitled to obtain a discharge under Section 273 of Act VIII of 1859, unless he submits to place that stipend at the disposal of the Court, that provision may be made for satisfaction of the debt. *Nawab Asdutdowlu Rezu Hossein Khan* v. *Hamin Saddowlee Abed Khan*, 6 B. L. R., 575, and 15 S. W. R., C. R., 204.

J. P. having been imprisoned on a writ of *ca. sa.*, was brought up on a *habeas corpus*, and applied for his discharge, on the ground that his arrest and imprisonment were illegal, as no order for his allowance, under Section 276 of Act VIII 1859, had been made. Sufficient subsistence-money, however, was paid to the Sheriff previous to the arrest, and he was kept amply supplied with it. Application refused.

Held that Sections 276 and 278 of Act VIII of 1859 apply as much to the execution of a mofussil decree as to an arrest by writ of the High Court; that no one is to be imprisoned in execution of a decree unless subsistence-money for a month in advance be paid to the person to whose custody he is committed; that a similar payment must be received in advance every successive month pending the imprisonment; that if any such payment be not made the prisoner is entitled to be released; that the "allowance" referred to in Section 276 of Act VIII of 1859 means subsistence-money of four annas per diem; that Section 276 of Act VIII of 1859 enacts only that the prisoner shall have an allowance of four annas per diem paid monthly, unless the Court shall especially fix a less amount; that an order for an allowance to the prisoner is not necessary, and is intended only as a relief to the execution-creditor; that the omission to have such order made does not render the arrest and imprisonment illegal; that in the absence of such order, Section 278 of Act VIII of 1859 ensures four annas a day as subsistence-money for the prisoner. *Aga Ali Khan* v. *Joydoyal Persaud*, Bourke's Rep., O. C., 52.

S. H., D. M., and R. D., in the custody of the Sheriff on a *ca. sa.*, appeared on a *habeas corpus* for the execution-creditor to show cause why they should not be discharged. S. H. had been arrested in execution of a decree in a suit which was begun under the old procedure in the Supreme Court, and the question was whether the procedure in his case should be regulated by Act VII of 1855 or Act VIII of 1859. The grounds relied on by all three prisoners (besides the above in S. H.'s case) were, that no order for their allowance had been made by the Court, nor had they been brought before it for that purpose. S. H. was remanded, as his case was held to be affected by the old procedure only, under which there need be no order for allowance passed. The other two prisoners were discharged.

Held that proceedings in execution of a decree in a suit begun under the old procedure are regulated by Act VII of 1855.

Held also (Peacock, C. J., *dissentiente*) that a prisoner arrested on a *ca. sa.* must, within a convenient time, be brought before the Court to have his allowance fixed; that an "allowance" within the meaning of Sections 276 and 278 of Act VIII of 1859 means subsistence-money fixed by order of the Court; that the Court must have the prisoner before them to exercise their discretion upon a matter which must be determined before he can be formally committed to prison, and which may be so determined as to entitle him to be discharged; that a decree must be carried into execution by and under the direction of the Court which pronounces it by means of a special application to the Court, and an order passed thereupon; that a jailer or other officer cannot lawfully receive a prisoner for debt under commitment unless the preliminary payment of subsistence has been made in compliance with the order of the Court; that the jailer cannot lawfully detain a judgment-debtor when the time limited for payment of any subsistence-money under the order of the Court passes without due payment accordingly; that the warrant empowers the Sheriff only to arrest the defendant in execution, and detain him for such reasonable time as is sufficient to allow of his being brought before the Court, and having an opportunity of applying for his discharge; that detention of such prisoner by the Sheriff after such reasonable time, without further authority of law, is illegal. *In re Sumboo Chunder Haldar, a prisoner for debt in the Jail of Calcutta; In re Durgapersaud Mitter, a prisoner for debt in the Jail of Calcutta; In re Rakhal Doss, a prisoner for debt in the Jail of Calcutta*, Bourke's Rep., O. C., 59.

J. J. was arrested on the 30th of December on a *ca. sa.* dated the 24th of December, on which day the execution-creditor paid subsistence-money for thirty days. This failing on the 29th of January, the prisoner made a fruitless application to the Sheriff for more, and then applied to the Court for his discharge, upon which notice was directed to be given to the execution-creditor. J. J. was brought up on a *habeas corpus*, and all parties were represented by counsel. It appeared that the prisoner had been left without subsistence-money by the execution-creditor, and he was accordingly discharged.

Held that the Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his custody; that no particular form of petition of discharge is required from a prisoner applying for his discharge for non-payment of subsistence-money; that subsistence-money must be paid in advance by the execution-creditor before putting a writ of *ca. sa.* in force; that the discharge by the Sheriff of a prisoner detained on a writ of *ca. sa.* is equally imperative on the happening of any of the contingencies specified in Section 278 of Act VIII of 1859; that a prisoner who has not been transferred by the Sheriff to the custody of the jailer by a separate warrant, and is brought up on the writs by the Sheriff, is to be considered as in the custody of the Sheriff; that on failure of subsistence-money the prisoner should be released, and further detention of him by the person in whose custody he is, is illegal. *J. L. Khon Speyer and another* v. *Johan Janssen*, Bourke's Rep., O. C., 28.

(*d*) *Discharge.*

The Court will discharge a prisoner from custody when the jailer holds no warrant for his detention, although he has been properly in the custody of the Sheriff. *In the matter of Shah Sahib*, 1 Ind. Jur., N. S., 19.

R. D. applied for his discharge under Section 273 of Act VIII of 1859, and the Court not being satisfied of his inability to pay, and that he was honest and *bonâ-fide* in dealing with his property, refused the application. *Held* that a prisoner for debt, if he be perfectly honest, without present means of payment, and has given every facility in his power to his creditors taking possession of his property, is entitled to release. That nothing short of this will entitle him to it. *Chyet Ram* v. *Ramchunder Dutt and others*, Bourke's Rep., O. C., 101.

The Sections of Act VIII of 1859 (273- 280, &c.,) which enabled a defendant, arrested or in prison in execution of a decree, to obtain his discharge on application to the Civil Court, and giving up all his property, have no application in cases in which the prisoner has become insolvent, and the Court for the Relief of Insolvent Debtors has his case pending before it; but they do apply where the petition in insolvency has been dismissed or otherwise fully disposed of. The acts of bad faith referred to in Sections 275 and 281 are not limited to acts of bad faith committed by the prisoner in his application for discharge, or for the purpose of procuring his discharge, but include acts of bad faith in the manner of incurring his original liability. *In re Soopersaud, a prisoner, and others*, 2 Ind. Jur., N. S., 91.

B. M. and several other prisoners in the custody of the Sheriff of Calcutta for debt, without having been brought up to have an order for their allowance made, on being produced for that purpose by the Sheriff, applied for their discharge under Section 273 of Act VIII of 1859. Preliminary objections were taken to the validity of the warrants on which the Sheriff arrested them, on the grounds that the time for execution was not specified in them; and that even had they been originally valid their authority had expired, owing to the delay in bringing up the prisoners. Both objections were overruled.

Held that a mere informality in a warrant, such as the omission of the time for execution, only renders it irregular, and does not invalidate it.

That advantage having been taken of such irregularity to prejudice the prisoner, affords grounds for an application to the Court to set the warrant aside.

That a mere delay in bringing the prisoner before the Court after his arrest, if not for a considerable period, does not render his detention illegal. *In re Bholanath Mullick and others, prisoners in the Jail of Calcutta*, Bourke's Rep., O. C., 96.

Held that the procedure, on an application for his discharge under Section 273 of Act VIII of 1859, by a person arrested in execution of a decree for money, is such a question as comes within the words introduced by Section 11 of Act XXIII of 1861, in addition to the original provision in Act VIII of 1859, Section 283; and the order passed thereon by the Court executing the decree, is subject to appeal, notwithstanding that orders as to imprisonment in execution of a decree are excepted from the operation of Section 365 of Act VIII of 1859, as this exception, there being no affirmative prohibition, is removed by the provision of Sections 8 and 11 of Act XXIII of 1861, which Act, as directed by Section 44 thereof, is to be read as part of Act VIII of 1859. *Yeshanao Amritrao Janim* v. *Ismail Ali Khan*, 2 Bom. Rep., 99.

Sections 273 and 280 of Act VIII of 1859 do not apply to cases of insolvency where the whole of the debtor's property is vested in the Official Assignee, and cannot be handed over to this Court in the manner contemplated by those sections. *Kissoreemohun Chatterjee* v. *Kanny Lall Dutt*, 1 Ind. Jur., N. S., 247.

Where a lower Appellate Court, from the replies of a judgment-debtor whom it examined, and from the circumstances of the case as set forth in the evidence, came to the conclusion that the judgment-debtor had not proved that he was not possessed of property, so as to be entitled to the benefit of Section 273, Act VIII of 1859, and Section 8, Act XXIII of 1861, *Held* that there was no error of law in this finding. *Abdool Ruhman* v. *Abdool Sobhan*, 12 W. R., 125.

A person in custody who has been guilty of bad faith in the transactions relative to which he is detained, but not with regard to his application under Section 280 of Act VIII of 1859, is entitled to his discharge. *In the matter of a prisoner in the Great Jail*, 1 Ind. Jur., N. S., 8.

Where a judgment-debtor applied for release from imprisonment under the provisions of Section 280, Act VIII of 1859, and the judgment-creditor adduced *primâ-facie* evidence that the applicant had wilfully concealed property, or rights and interests in property, which evidence was rebutted, the Judge was held to have done right in rejecting the application. When a party seeks the assistance of a Court in any case in which the best knowledge of the disputed facts is with himself, he is bound to place that knowledge before the Court with the sanction of an oath. *Gunga Churn Dhur* v. *Kalingapa Setee*, 12 W. R., 422.

A plaintiff imprisoned at the suit of the defendant for the costs of an unsuccessful action is not a proper object for the application of Section 281, Act VIII of 1859. *In the matter of Beenarussee Doss*, Cor. Rep., 123.

According to Section 283, Act VIII of 1859, no appeal lies from an order passed in execution of a decree. By Section 11, Act XXIII of 1861, the power of appeal is restricted to cases in which the appellant was one of the parties to the original suit. *Goburdhun Sahoo Mistree* v. *Issuree Nund Dutt Jha*, 3 W. R., Mis., 22.

C. D. repaired P.'s ship on his express representation that the repairs would be paid for by a letter of credit which the owners had sent for that purpose.

P. applied the funds to the payment of other creditors. C. D. sued him for the amount of the repairs, and obtained a decree, in execution of which P. was imprisoned. The Court having refused to give him his discharge under Section 273 of Act VIII of 1859, he appealed, but the appeal was dismissed.

Held that a person who gets work done on the representation that it is to be paid for out of certain

specific funds, which funds he afterwards applies in paying sums due to other creditors, is guilty of *mala fides* and of giving undue preference, and is therefore not entitled to his discharge under Section 273 of Act VIII of 1859. *Possmore* v. *The Calcutta Docking Company, Limited*, Bourke's Rep., A. O. C., 74.

XII.—Sales in Execution.

(a) *Sales.*

A Deputy Collector cannot set aside a sale in execution of a decree which he has once completed when there is no default on the part of the auction-purchaser. *Adurmonee Dassee* v. *Kaminee Soondure Debia*, 3 W. R., Act X R., 145.

Where an execution sale was set aside, on the ground of irregularity on the part of the Ameen and other officials,—*Held* that the judgment-debtor was not chargeable with the expenses of such sale. *W. Hulse* v. *Luchmun Dass*, 1 Agra Rep., Mis., 1.

If in a sale under execution against A., B.'s property is sold, B. is not bound to reverse the sale before he can recover possession; nor will his asking to reverse the sale preclude him from recovering possession. *Gungaunarain Bhutta* v. *The Collector of Midnapoor and others*, 6 W. R., 47.

A sale in execution of a decree is illegal if made on a holiday, whether it is a fixed holiday or only a day on which the Courts are closed by order of the High Court. *Haro Jemadar* v. *Jadub Chunder Haldar*, 3 W. R., Mis., 24.

A seizure and sale by the Sheriff of the amount of a legacy under a writ against the executor, declared invalid in the absence of proof of payment extinguishing the legatee's interest. *Stephen Lazar* v. *Colla Ragava Chitty*, 5 W. R., P. C., 126.

It is no valid ground for impeaching a sale, otherwise good, to say that other sales which apparently might have been set aside had been conducted elsewhere. *Kalee Koomar Mookerjee* v. *The Maharajah of Burdwan*, 5 W. R., 39.

Under a sale in execution of a decree no property can be sold except that which belongs to the defendants in the suit. Accordingly, if under a decree in a suit against A. alone, for a debt for which B. is jointly liable, an estate be sold in which B. is entitled to an equal share with A., the interest of A. alone is acquired by the purchaser.

Where there was reason to suppose that the plaintiff's claim, which had been dismissed by the Court below, and which the Court of Appeal decreed, would be found to be barred by the Statute of Limitation, the Court remitted the case to the lower Court, with a direction to raise and try the issue. *Kissen Chunder Ghose* v. *Mussamut Ashoorun and others*, Marsh., 647.

A., a Hindu, was possessed of an undivided moiety in certain property, and was also entitled to a reversionary interest in the other undivided moiety contingent on his surviving his mother. In a suit against A., the Sheriff, under a writ of *fi.-fa.*, seized and sold to B. the right, title, and interest of A. in the premises. In an *ex-parte* suit by B., asking for a declaration that he was entitled to the contingent reversionary interest of A., as well as to his present possessory right, Macpherson, J., gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of A. *Kisto Dhon Gangooly* v. *Rabutty Dassee and others*, 1 Ind. Jur., N. S., 324.

In a suit to annul the sale of an under-tenure in execution of a decree under Act X of 1859, which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree-holder nor the purchaser was guilty of any fraud.

Held that the mere circumstance of the decree under which the sale had taken place having itself been set aside did not invalidate the sale, the plaintiff having failed to show that the purchaser was a party to the fraud which led to the decree and sale. *Juggul Kishore Banerjee* v. *Abhaya Churn Surma*, 1 B. L. R., A. C., 84.

To save a particular property from sale, a judgment-debtor must show the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made, so as to avoid the sale of the property already attached. *Deb Kumari Bibee* v. *Ram Lall Mookerjee*, 3 B. L. R., Ap., 107; 12 W. R., 66.

A party who bids for an estate at a sale in execution, knowing that he is not able to deposit the earnest-money, obstructs the business of the Court, and is guilty of contempt of Court, punishable under Section 228 of the Penal Code. *Mohesh Chunder Mookerjee, appellant*, W. R., 1864, Mis., 3.

A sale in execution of a decree made while that decree is under review, cannot stand if the decree is subsequently reversed. The party dispossessed under the decree is entitled to recover the land with mesne profits. *Sheikh Bhoolloo* v. *Ramnarain Mookerjee*, W. R., 1864, 129.

Property not attached and not advertised for sale cannot be sold in execution of a decree. The quantity and nature of rights and interests existing in the debtor at the time of attachment and advertisement alone pass by the sale in execution. *Ram Onoogroho Singh and others* v. *Mussamut Montorun Singh and others*, 6 W. R., 223.

Where a decree directs the sale of A.'s property first, and then of B.'s, if the decree-holder is unable, from opposition, to sell A.'s property, and proceeds against B.'s, and cannot realize his decree therefrom, he has not lost his right to attach and sell A.'s property. *Mary Eliza Stephenson and another* v. *Unnoda Dossee*, 6 W. R., Mis., 18.

Where a sale in execution of a decree is postponed, a fresh proclamation and fresh notice ought to be issued. *Shoshee Mookhee Burmokya* v. *Dwarkanath Biswas*, 6 W. R., Mis., 84.

A sale in execution of a decree was set aside by a subsequent decree of 9th March, 1861, but was afterwards allowed to stand by an order of 7th May, 1862. As no suit was brought to set aside the latter order, it was held to be a final judicial proceeding, and the sale declared to be good and valid. *Munoo Lall* v. *Choonee Shahoo*, 7 W. R., 116.

A sale in execution of a decree for costs is not cancelled when that part of the decree which made the plaintiff answerable for the costs is set aside. *Pearee Monee Dossee and others* v. *The Collector of Beerbhoom and others*, 8 W. R., 300.

Where there is a sale in execution, the latest act of the decree-holder to keep his decree in force is

the sale which took place at his instance, not the confirmation of the sale. *The Maharajah of Burdwan* v. *Luckhee Monee Debee and others*, 8 W. R., 359.

A suit was brought against A.'s widow upon a bond given by A. In execution of the decree obtained against the widow, A.'s property was put up and sold. The advertisement of sale in one place said that the property to be sold was the property of the widow; and in another, the rights and interests of the debtor. *Held* that the property intended to be sold, and sold, was the rights and interests, not of the widow personally, but of the widow as A.'s representative. (*Dissentiente*, Campbell, J., who held that a public sale carried only the rights which were expressed, and not those which ought to have been expressed, in the proclamation of sale.) *Buksh Ali Sowdagur* v. *Essan Chunder Mitter*, W. R., F. B., 119.

A decree-holder caused certain property to be sold by auction in execution of his decree, alleging it to belong to his judgment-debtor. He purchased it himself, and set off the price against the amount of his decree, which was thus satisfied. It was afterwards found that the judgment-debtor had no interest in the property, and it was recovered by the real owner. *Held* that no fresh execution of the decree could issue against the judgment-debtor. The decree-holder could not recover his purchase-money. He was in no better position than a stranger. *Sheikh Mahomed Basirulla* v. *Sheikh Aboulla*, 4 B. L. R., Ap., 35.

A., in satisfaction of a decree against B., caused the sale of a tenure, styling it a jote-jumma. C., the superior zemindar, purchased the tenure as such for Rs. 900; but failing to pay the balance of the purchase-money, the tenure with the same description was re-sold, and purchased by C. for one rupee. A., on discovering his mistake in having advertised the property as a jote-jumma, when in fact it was a shamilat talook (a more permanent and valuable holding), caused a sale of B.'s rights and interests in the shamilat talook, and, having purchased them himself, was put into possession. A. then sued for rent under Act X of 1859, when C. intervened as in enjoyment of the rent, and A.'s suit was dismissed. A. now sues to establish his right to the shamilat talook.

Held that A. was entitled to succeed, as he had acted *bonâ-fide*, and that C. could not be considered an innocent purchaser for a valuable consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence. *Horo Nath Roy and others* v. *Mothoora Nath Acharjee*, 7 W. R., 4.

No sale in execution of a decree can take place, either of moveable or immoveable property, under the provisions of Act VIII of 1859, without previous attachment, and a sale without prior attachment is illegal. The words "attachment and sale" in Section 201 must be taken together, and not distributively.

The omission in a sale proclamation to mention particulars as to the numbers, value, &c., of Government promissory notes under attachment for sale, is not such an irregularity as will vitiate the sale, though the lower Court would have exercised a sound discretion, under Section 249 of the Code, if it had called for such particulars.

The sale of such notes through a broker is permissive under Section 248, and not obligatory.

The production of the notes in Court was not essential, as they were in the custody of the Collector; Section 238 applying to cases in which property is in the possession or power of the judgment-debtor. *Luchmeeput and others* v. *Lekraj Roy*, 8 W. R., 415.

A life-interest in the residue of the real and personal property of a testator, after all the charges upon it have been satisfied and provided for, and after a full administration has taken place of the assets for the purpose of discharging these several dispositions, cannot be sold under an execution issued in the Supreme Court against the property of the testator. *Bibee Tokai Sherob* v. *Daood Mullick Fureedoon Beglar*, 4 W. R., P. C., 87.

The law of the mofussil is the *lex rei sitæ* at Sheriff's sales, and controls or modifies the English law as to execution and delivery. *E. Brown* v. *Ram Comul Ghose*, W. R., 1864, 179.

A decree-holder may attach property, and have it sold in execution of his decree, notwithstanding the existence of a previous attachment. A question might arise at the time of the distribution of the sale proceeds, whether a party having made an attachment under Regulation II of 1806 would be entitled to have his claim satisfied before the other decree-holders. *Mahomed Kuzulbash* v. *Mahomed Jha*, 12 W. R., 48.

Where the holder of two decrees attaches property in execution of one of the decrees, he has a right to state in the notification of sale that he likewise claims the same property in satisfaction of his second decree. *Bolakee Lall* v. *Khuruckdharee Singh*, 12 W. R., 79.

In the case of a re-sale the judgment-debtor is entitled to credit for the full amount bid for his property at the time of the first sale. *Joobraj Singh* v. *Gour Buksh Lall and others*, 7 W. R., 110.

A sale made of immoveable property pending a suit against the vendors to recover a debt is valid, although the motive of the vendors may have been to prevent the land being attached and sold in execution. *Pullen Chetty* v. *Ramalinga Chetty*, 5 Mad. Rep., 368.

Where the decree-holder is himself the purchaser at a sale in execution, there is no reason why he should not, instead of paying the price in cash, give receipts for the amount due to him under his decrees, supposing their value is sufficient to cover the amount for which the property is sold. *Khellat Chunder Ghose* v. *Keshub Chunder Paul Chowdry*, 16 S. W. R., C. R., 46.

Where an execution-debtor is jointly interested with another person in immoveable property which the execution-creditor seeks to sell in execution of his decree, the ordinary procedure for a Court executing the decree to adopt is, to put up for sale the right, title, and interest of the judgment-debtor in his undivided share of the property to be sold.

Where the Court below adopted a different procedure, and, after partitioning the property, put up for sale the divided share of the execution-debtor, the High Court, in the exercise of its extraordinary jurisdiction, refused to interfere, in consequence of the *laches* of the applicant in neglecting to avail himself of an opportunity which the lower Appellate Court had given him, of showing that the partition

which had been made was injurious to him. *Mathurá Dáj Govardhundás* v. *Fátmá Ulka Begum*, 5 Bom. Rep., A. C., 63.

In a suit for possession of a tank, on the allegation that plaintiff purchased it in execution of a decree against one S. D., and that, after being put in possession, she was subsequently ousted, defendant's plea being possession after prior purchase at an execution sale under a decree against the same S. D.; the lower Court found that the defendant's purchase was a fictitious transaction, being in reality for the benefit of S. D., who was in actual possession and enjoyment of the property at the time of the plaintiff's purchase.

Held that the case did not come under the purview of Section 260, Act VIII of 1859. *Tara Soonduree Dabee* v. *Ocjul Monce Dassee*, 14 S. W. R., C. R., 111.

The proviso in Section 271, Act VIII of 1859, applies to a case where the property is actually sold subject to a mortgage, and where the purchaser is in fact only buying the equity of redemption which remains in the judgment-debtor; and it does not apply where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. *Fukur Buksh* v. *Chutterdharee Chowdry*, 14 S. W. R., C. R., 209.

A judgment-debtor having preferred various objections to the Court of the Subordinate Judge which was executing the decree against him, his objections were rejected, and the Court proceeded to sell the property attached in execution. The judgment-debtor then preferred an appeal to the Judge against the order which threw out his objections, but without expressly objecting to the confirmation of the sale. *Held* that the Judge was entitled to deal with the case as an appeal against the sale which had taken place before the appeal was preferred, and no further appeal therefore lay to the High Court. *Sonamonee Dossia* v. *Motee Singh*, 14 S. W. R., C. R., 385.

In a case wherein lands were sold in execution, notwithstanding intervention, under Section 246, Code of Civil Procedure, by a plaintiff who claimed under a hibba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction-purchaser had not appeared to give evidence. *Syud Abdool Huq and others* v. *Syud Ambur Ali and others*, 8 W. R., 422.

On the application of a decree-holder of a money decree for the sale of immoveable property belonging to the judgment-debtor, certain parties objected that they had purchased the rights of the judgment-debtor therein. Subsequently some of the objectors who claimed a 14-annas share in the property compromised with the decree-holder, who then applied that the remaining 2-annas in possession of certain specified parties should be sold. The lower Court ordered that the sale of these 2 annas should not proceed if the objectors who claimed them paid to the decree-holder a sum equal, rateably, to that levied from the 14-annas. *Held*, on appeal by the decree-holder against the original judgment-debtor, that the provisions of Section 246, and not those of Sections 229 and 230, of Act VIII of 1859, apply to this case, which really seeks to enforce a particular remedy against third party named, and not against the original defendant. *Gobind Persad* v. *Rajah Ram Purkash Singh*, 8 W. R., 378.

In execution of a decree which merely declared that the right of a judgment-debtor in certain property extended to two-thirds of it, the lower Court divided the property before selling the debtor's share,—*Held* that as the decree did not specify that any particular portion of the property belonged to the debtor as his share, his right, title, and interest in the property could only be sold, and that the determination of this right must be left for future adjudication between the purchaser and the co-sharer of the debtor, unless an arrangement could be arrived at. *Atmárám Kuliándás* v. *Fátmá Begam*, 5 Bom. Rep., A. C., 67.

The immoveable property of A. at a Court's sale was purchased by B. with the money and on behalf of A. B. subsequently conveyed the property to C. for the benefit of A.,—*Held* that the property could be taken in execution by the creditors of A.

Quære,—Whether but for the subsequent conveyance B., under the operation of Sections 259 and 260 of the Civil Procedure Code, would not have had a good title against the creditors of A. *Satápu Valad Dan Dargree* v. *Karbasúpú and Rudrápu* 7 Bom. Rep., A. C., 21.

(*b*) *Irregularities in Sales.*

A judgment-debtor whose right in the property in dispute was put up for sale under a previous execution, and purchased by the decree-holder himself, is in a position to contest the legality of the sale.

Smallness of price is not a sufficient ground for setting aside a sale, unless it be the effect of an irregularity in the sale proceedings. *Reet Bhunjun Singh and another* v. *Mitterjeet Singh*, 6 W. R., Mis., 31.

Held that it was unnecessary to determine whether the omission to attach immoveable property sold in execution could vitiate the sale where no substantial injury was shown to have resulted from the irregularity.

Quære,—Whether a sale in execution of a decree can be set aside by reason of an omission (entire or partial) to attach the property. *Jowheroos Jumma Khan* v. *Banee Madhub Nundun and others*, 11 W. R., 226.

Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings, on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non-service or of insufficient service. The misconduct of a decree-holder may be a good cause of action, but cannot be a ground for setting aside a sale. This can only be done summarily if irregularity in the sale proceedings resulting in material injury to the debtor be proved. *Rethbunjun Singh* v. *Mitturjeet Singh*, 4 W. R., Mis., 9.

G. A. obtained a decree against M. Afterwards L. N., who had obtained a decree against G. A., attached the decree which he (G. A.) had obtained against M., and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by L. N. against G. A. was barred by limitation. *Held* that the execution of L. N.'s decree against G. A. being barred by lapse of time at the time of sale, the sale was invalid. *Golam Asgar* v. *Lakhimani Debi*, 5 B. L. R., 68; 13 S. C. S. W. R., C. R., 273

A sale conducted by a peshkár, by direction of his Moonsiff, who was indisposed, was upheld, no substantial injury being shown to have resulted. *Omur Chunder Doss* v. *Soormunissa Khatoon*, W. R., 1864, 44.

When a sale was advertised to take place on the 5th Jeyt, 1269, which date was erroneously stated in the sale notice to correspond with Saturday, May 17th, 1862, whereas the 5th Jeyt was in fact Sunday, May 18th, and the sale took place on Saturday, the 4th Jeyt, the sale was held to be illegal, in consequence of its not having taken place on the 5th Jeyt, or any subsequent date to which it might have been adjourned after due notice. *Beeharam Mookerjee* v. *Issur Chunder Mookerjee*, W. R., 1864, 4.

A sale by a judgment-debtor to the special appellant of a portion of the attached property was declared void, because made after attachment taken out by the special respondent. *Lalla Rung Lall* v. *Lalla Ombika Pershad*, 1 W. R., 212.

When a decree-holder sells, under a summary decree obtained *ex-parte*, which was ten years old at the date when he sought to enforce it, and of which the plaintiff who now sues to set aside the decree had no notice until the proceedings for the sale of his property at that date, it is incumbent on the defendant to prove the service of the necessary process by the clearest evidence. *Chundee Churn Haldar* v. *Womesh Chunder Deb*, 1 W. R., 233.

In the case of moveable property, process of attachment and sale may be issued successively or simultaneously; but in regard to immoveable property, process of attachment and sale should be issued successively; but if issued simultaneously, and the attachment has been made *bonâ fide*, and the sale proclamation issued as required by law, with an interval of 30 days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. *Huro Soondery Debia* v. *Brojo Gobind Shaha*, 4 W. R., Mis., 12.

On application by the judgment-debtor to the Principal Sudder Ameen to set aside the sale by auction of a house in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury, the objections were disallowed as untenable, and the sale confirmed. But the District Judge on appeal set aside the sale for a ground on which he had no authority to interfere.

On petition to the High Court by the purchaser of the house,—*Held* that the order of the Judge must be set aside as illegal; and the original order, confirming the sale, allowed to stand. *Kosti* v. *Narayán Dharupa*, 3 Bom. Rep., A. C. J., 110.

When a portion of property pledged as security in a bond is sold in satisfaction there is nothing to prevent the obligee from purchasing such portion. *Mussamut Hoolas Koweree and others* v. *Mussamut Beebee Sufeehun*, 8 W. R., 379.

When no fraud has been alleged, a sale in execution cannot be set aside as regards the auction-purchaser, whether the order of Court under which it took place was legal or not. Even if the decree in execution of which the sale took place were a collusive one, the rights of the auction-purchaser would not be affected if he was no party to the fraud; and there would be no ground for setting aside the sale. *Mahomed Kuzulbash* v. *Mahomed Shah*, 12 W. R., 48.

The inam village of Chundunpuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Maligam or Chundunpuri, and be completed at Maligam. *Held* that the notice of sale was sufficiently certain.

An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion. The practice of kárkuns reading aloud notices of liens on property about to be sold by auction is objectionable, but, in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. *Gobind Hari Valikar* v. *Bank of India*, 4 Bom. Rep., A. C., 164.

Where a decree merely ordered that an embankment should be lowered to its proper height, and the nazir in addition caused breaches or holes to be cut in the embankment so lowered, because he thought them necessary for the protection of the bund from the flow of water over its surface,—*Held* that this was not done in execution of the decree. *Rash Behary Lall* v. *Bebee Wajuna and others*, 11 W. R., 516.

Where the fact of an execution sale having taken place about two hours earlier than the hour announced was alleged to be a material irregularity seriously prejudicial to the interests of the judgment-debtor, it was held to be the bounden duty of the Court to take evidence and determine whether bidders had been prevented from attending, and whether an irregularity of a material kind had occurred. *Khodeja Bebee* v. *Ram Narain Dass*, 12 W. R., 511.

Objections having been successfully raised, under Section 246, Act VIII of 1869, against a decree-holder's attachment of a tenure, as the property of his judgment-debtor, he brought a regular suit, and obtained a declaratory decree that the property belonged to his debtor. He then took out execution, attached, sold, and himself purchased the property in question. The objector in the meantime appealed to the Privy Council, and having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and wasilat. The opposite party objected, but the Judge allowed the execution to proceed, and deputed an Ameen to ascertain the amount of mesne profits collected.

Held that the decree of the Privy Council could not be held to include restitution of everything that the decree-holder would have enjoyed had the property not been sold in execution. *Gopal Chunder Chuckerbutty* v. *Odoy Chand Dey*, 12 W. R., 411.

Where certain properties (factories and lands) were numbered separately in the lotbundee of sale, an irregularity was held to have been committed by their being sold in a lump. *Held* (Glover, J., *dissentiente*) that such irregularity had caused damages to the judgment-debtor. *Urquhart* v *Nundeeput*, 12 W. R., 492.

The defendant, being the holder of a decree, whereby a certain sum was declared due as a lien on two mouzahs therein mentioned, sold his decree to the plaintiff in the present suit, who had purchased the proprietary right in the mouzahs subject

to the lien. Subsequently the defendant, who retained possession of the decree, sued out execution and realized the amount due under it, together with subsequent interest thereon. *Held* that the plaintiff was entitled to recover back the money paid by him as the consideration for the sale, together with damages proportionate to the loss sustained by reason of the subsequent improper execution of the decree, *viz.*, the amount of subsequent interest. *Rajah Goor Sahai* v. *Hur Sahai*, 3 Agra Rep., 202.

The recovery back of money taken in execution of a decree which is afterwards reversed on appeal is not the subject of a new suit. The matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. *Nursing Chunder Sein* v. *Bidyadharee Dossee*, 2 W. R., 275.

Money paid over at the instance of a judgment-creditor or under a wrongful order of Court may be recovered by means of a suit in the Civil Court. *Omanath Roy Chowdhry* v. *Suroop Chundra Bose*, 10 W. R., 485.

A sale in execution of a decree is not invalidated by the fact that the balance really due is overstated, there being no other irregularity in the publication and conduct of the sale. *Chutter Singh* v. *Musst. Dhurun Koonwar*, 1 N. W. R., par. 2, p. 1.

A decree-holder is entitled to prove, when his property has been sold without further notice on a date subsequent to that originally fixed, and especially when the execution-creditor is the purchaser for a very inadequate value, that he has been substantially injured by such sale. *Kishen Prossono Mozoomdar* v. *Nurdhma Dassee*, 17 S. W. R., C. R., 339.

Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when, no higher price being obtainable, it was concluded at the price bid on the first day; while as to the alleged inadequacy of the price, that was found to be owing to several claims being advanced, among them one by his own wife, against the right and title of the judgment-debtor. *Held* that there was no irregularity in the conduct of the sale which could prejudice the judgment-debtor; and that even if there were any, it was for the benefit of the judgment-debtor. *Nuddeah Kishore Dass* v. *Bungshee Mohun Dass*, 17 S. W. R., C. R., 210.

Held that the appellant could not complain of the order of the Subordinate Judge postponing a sale in execution of decree from the 25th to the 26th, unless he could show that he had suffered substantially by the postponement. But the attention of the Court was called to the importance of abiding by the date fixed in the proclamations of sale as far as possible, and not postponing sales without good reason. *Sen Asumtoonissa Bibee* v. *Sen Khudemoonissee Bibee*, 17 S. W. R., C. R., 278.

Where the right, title, and interest of a party had been sold in execution, but possession was delivered to the purchaser more than fifteen years after the sale, such irregularity was held not to entitle the party first mentioned to a decree in a suit to recover the property unless he could prove possession for a period of more than twelve years before he was dispossessed. *Ahoram Dass* v. *Baluku Dass*, 14 S. W. R., C. R., 357.

The silence of a judgment-debtor on a previous occasion is no bar to his being heard when he objects, alleging material irregularity, provided his allegation is made within the thirty days allowed by law. *Syud Nuzmooddeen Ahmed* v. *Abdool Azeez*, 15 S. W. R., C. R., 95.

Where objections to sale proceedings are presented by judgment-debtors, the Court ought to make a careful investigation into the circumstances attending such sale, and not rely on the mere report of a nuzir.

Each objection should be taken up separately and determined specifically, and the reasons for the finding duly recorded. *Sookh Roy Singh* v. *Moofta Tuffazool*, 2 N. W. R., 142.

An auction-sale under a decree can only be set aside for some material irregularity by which substantial injury has been sustained.

Where a sale was fixed for the 21st November, but delayed until the 22nd, without any order of postponement, or any fresh proclamation of the day of sale, there is a *primâ-facie* case of injury to the party whose property was sold. Such a postponement is in contravention of the provisions of Section 249 of Act VIII of 1859, as, when a sale is postponed, there must be fresh proclamation of the sale and date when it is to take place. *Sanwul Singh* v. *Makhun Pandey*, 2 N. W. R., 143.

Where an irregularity in an execution-sale (*e. g.*, a misstatement in the notification), produces a mistake, and the property is consequently sold at an inadequate price, the judgment-debtor is entitled to have the sale reversed. *Khodeja Bibee* v. *Johud Rohun*, 14 S. W. R., C. R., 320.

When an application to cancel a sale does not mention the specific grounds contemplated in Sections 256 and 257, Act VIII of 1859, the absence of such specifications does not take away the jurisdiction of the Court to enquire into the matter. Where a Judge in such a case sets aside a sale after finding material irregularity and substantial injury, his finding is final, and cannot be questioned by the High Court in the exercise of its extraordinary jurisdiction. *Sookoomar Singh* v. *Kushu Sing*, 13 S. W. R., C. R., 250.

A. obtained a money-decree upon a bond in a Small Cause Court against B., by which it was declared that certain landed property hypothecated by the bond was to be primarily liable for the debt. The decree was transferred to the Court of the Sudder Ameen of the same district; the property was put up for sale, and it was purchased by C. Prior to sale B. alienated the property to D., who after sale preferred his claim to it, under Section 246 of Act VIII of 1859, which was disallowed. More than a year after this D. brought this suit against C. to recover possession. In special appeal it was held that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. *Lala Gundar Lal* v. *Hubitunnissa*, 7 B. L. R., 235; and 15 S. W. R., C. R., 311.

The mere fact of the decree-holder having bid and purchased at the execution-sale, without having obtained the license of the Court, does not, *ipso facto*, invalidate the sale. *Veerapah Chetti* v. *Ag*

Syud Abdul Hossein, 6 B. L. R., Ap., 37 ; and 14 S. W. R., C. R., 405.

Under a decree passed by a Court which had no jurisdiction to try the suit, the right, title, and interest of the judgment-debtor, A., in a certain property was sold, and purchased by B. The decree was after the sale set aside as having been passed without jurisdiction. In a suit by A. against B. for confirmation of possession, on the ground that B. was about to take possession of the property under the purchase,—*Held* that the sale in execution was a nullity, as the decree had been passed without jurisdiction.

Jan Ali *v.* Jan Ali Chowdry (1), and Pearemonee Dassee *v.* the Collector of Beerbhoom, distinguished. *Jadu Nath Kundu Chowdry* v. *Braja Nanth Kundu*, 6 B. L. R., Ap., 90.

When property is advertised to be sold in separate lots, and is afterwards sold in a lump, this is an irregularity, but the person who wishes to set aside the sale on the ground of such irregularity must show affirmatively, to the satisfaction of the Court, that substantial damage has, in fact, been sustained by him on account of such irregularity. Where, therefore, such damage had not been distinctly proved,—*Held* that the sale could not be set aside on the ground of the irregularity complained of.

The conduct of a vakeel, who having acted in that capacity on behalf of a judgment-debtor in certain proceedings in execution of a decree, subsequently became partner with the decree-holder in the purchase of the property remarked upon.

Quære,—Whether, under such circumstances, the purchase by the vakeel, or the purchase by the decree-holder in conjunction with him, could not be set aside. *Roy Nandiput Mahata* v. *Urquhart*, 4 B. L. R., A. C., 181 ; 13 S. W. R., C. R., 209.

The plaintiff sued to establish his right to and to recover certain lands in the possession of which he had been obstructed by the defendant. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the 1st and 2nd defendants in the Court of the district Moonsiff of Tripassore. The sale was directed by the district Moonsiff of Tripassore. Between the date of the decree and the sale, the village in which the lands were situated was transferred from the jurisdiction of the district Moonsiff of Tripassore to the district Moonsiff of Conjeveram. *Held*, that the sale was a nullity and conferred no title upon the plaintiff; but that the plaintiff was entitled to recover from the 1st and 2nd defendants the amount of the purchase-money paid by him. *Narayana Sawamy Naick* v. *Saravana Mudaly*, 6 Mad. Rep., 58.

(*c*) *Stay of Sales.*

Where a judgment-debtor proved that a sale in execution might be stayed, as material injury would otherwise be caused to him from the circumstance that the day fixed for the sale was so near to the latest safe day for the payment of the Government revenue,—*Held* that good and sufficient cause was not shown for staying the sale. *Re Ahmed Reza*, 13 S. W. R., C. R., 281.

While a decree for money was being executed by the sale of immoveable property, the judgment-creditor petitioned the Court to stay the sale for two days, as the defendants, the judgment-debtors, had entered into a razinamah with him. On the same day the judgment-debtors petitioned the Court to continue the sale for three days. Two days afterwards the judgment-creditor presented a petition to the Court, stating that the judgment-debtors had executed a note in his favour for rupees 8,500 in part payment of the decree, and promising to execute a deed of sale on a stamp ; but a sum of rupees 9,600 having been subsequently offered, the judgment-debtors failed to execute the deed of sale ; and he prayed that the judgment-debtors might be examined in respect of the sale for rupees 8,500, and that the sale to him be confirmed.

The Civil Judge made an order refusing to accede to the prayer of the judgment-creditor. *Held* (Innes, J., dissenting) that the order of the Civil Judge was right. *A. Venkata Narasimha Apparowhaidee* v. *K. Venkatakristnia and another*, 5 Mad. Rep., 410.

Where circumstances indicate not merely irregularity, but irregularity brought about by the contrivance of the decree-holder, the Civil Court has jurisdiction to set the sale aside, and is right in doing so. *Tekaet Bhao Narain Deo* v. *The Court of Wards*, 15 S. W. R., C. R., 59.

The provision contained in Section 256 of the Code of Civil Procedure, that applications to set aside a Court's sale of immoveable property must be made within thirty days from the date of the sale, relates only to applications to set aside the sale for irregularity, and not to cases in which there has been a fraud committed by the officer of the Court who conducts the sale. *Vir Singáppá bin Baslingáppá* v. *Sadá Shiváppá Appá Golkhundi and Anantacháryа bin Hari Acháryu*, 7 Bom. Rep., A. C. J., 74.

(*d*) *Rulings under the Code.*

There is nothing in Section 248, Act VIII of 1859, which restricts claims under it to titles derived from the judgment-debtor, or out of the estate. It comprises all claims or objections to the sale of lands in execution of decrees. *Horish Chunder Roy* v. *Brojo Soondur Mozoomdar*, 6 W. R., 164.

In Section 248, Act VIII of 1859, the words "whom the Court may appoint" apply not only to the words "any other person," but also the officers of the Court.

In the absence of the Subordinate Judge it is not competent to the Judge, because he is a superior officer, to perform the duties required by Section 248. *Judoonath Roy* v. *Ram Buksh*, 12 W. R., 238.

The object of the proclamation under Section 249 is to give notice to intending purchasers, not to the judgment-debtors. *Lauk Ram* v. *Mohesh Dass*, 12 W. R., 488.

When a sale in execution of a decree is postponed indefinitely, it is necessary to issue a fresh proclamation under Section 249, Act VIII of 1859, giving notice of the time and place of sale. *Okhoy Chunder Dutt* v. *Erskine and Co.*, 3 W. R., Mis., 11.

The law (Section 252, Act VIII of 1859) provides that no irregularity in the sale of moveable property under an execution shall vitiate the sale, but that any person injured thereby may recover damages

by suit, but it does not follow that the right and interest of the judgment-debtor in such property may not be challenged and contested by any claimant within the period allowed by Clause 3, Section 1, Act XIV of 1859. *Mussamut Hirdey Bebee* v. *Beshesher Pershad and others*, 3 Agra Rep., 175.

The sale of moveable property belonging to one man, under an execution of a decree against another, is not a mere irregularity within the meaning of Section 252, Act VIII of 1859.

When a sale of moveable property belonging to one man, in execution of a decree against another, becomes absolute under Section 251, it transfers only the rights and interests of the debtor; and the owner of the property so sold is entitled to sue either for the restoration of the same specifically, or for damages. If he makes an alternative claim, it is in the option of the Court to award him either, according to its own view of the justice of the case. *Mohanund Haldar* v. *Akail Beshaldar*, 9 W. R., 118.

A Judge is not required by law to give notice at the time of the sale of the amount of the decree to be sold, and his omission to do so does not constitute an irregularity in the sale entitling the plaintiff to claim damages under Section 252, Act VIII of 1859. *Kassee Nath Roy Chowdhry* v. *Hullodhur Roy*, 2 W. R., 60.

The affixing, in the Principal Sudder Ameen's Court, of a notification of sale in execution of a decree of the Small Cause Court, was held to be no irregularity in the sale by reason of which damages could be recovered under Section 252, Code of Civil Procedure; the law making no provision for the service of the notification of sale on the judgment-debtor in person, or in the village in which he lives. *Romesh Chunder Banerjee* v. *Jadub Chunder Chatterjee*, 6 W. R., 14.

In a re-sale for default under Section 253, Act VIII of 1859, the officer conducting the sale is not bound to commence from the next highest bid below that made by the defaulter, instead of commencing the sale *de novo*. *Gour Mookh Singh* v. *Lalla Gour Sunkur*, 1 W. R., Mis., 11.

An appeal lies from an order holding the first defaulting purchaser liable for the difference arising from re-sale in execution of decree under Section 254, Act VIII of 1859. *Joobraj Singh* v. *Gour Buksh Lall and others*, 7 W. R., 110.

In computing the fifteen days allowed for payment of the balance of the purchase-money, under Section 254, Act VIII of 1859, the day of sale should be excluded. If the Judge exceeded his jurisdiction in hearing the appeal from the order of the Sudder Ameen setting aside a sale in execution on the ground of the non-payment of the purchase-money within the proper time,—*Held* that it was competent for the High Court, exercising its power under Section 35, Act XXIII of 1861, to set aside the order of the Sudder Ameen. *Amance Begum* v. *Koorban Ali*, 3 Agra Rep., 204.

A. bid for a property put up to sale in execution of a decree held by B., and the lot was knocked down to him. The next day the property was sold in execution of a decree held by C., who had a previous lien on the estate, and A. consequently refused to pay the purchase-money. The property having been re-sold under Section 254, Act VIII of 1859, for a sum less than that bid by A., he was held liable for the difference. *Sooruj Buksh Singh* v. *Sree Kishen Doss*, 6 W. R., Mis., 126.

The provisions of Section 253, Act VIII of 1859, were held applicable in a case where the re-sale did not forthwith take place on the day of the sale, but on a subsequent date. It is only on failure of a purchaser to pay in the balance of the purchase-money, under Section 254, and not in failure of the purchaser to make the deposit required by Section 253, that the purchaser can be compelled to pay up the difference between the first and second sales. *Ajoodhyd Persad* v. *Gopal Dutt Misser*, 17 S. W. R., C. R., 271.

A decree can be enforced against the representative of a deceased person only to the extent of the property inherited by the former from the latter. An objection by the representative that he has taken nothing by inheritance, however valid, is not an irregularity contemplated in Section 256, Act VIII of 1859, and must be raised before the sale in execution of the decree has taken place; otherwise the objector must seek to set aside the sale by suit in the Civil Court. *Chowdhry Shaikh Wahed Ali* v. *Mussamut Jumaye*, 6 W. R., Mis., 116.

A plaintiff is not debarred by reason of the failure of an application under Sections 256 and 257, Act VIII of 1859, from suing to set aside a sale on the allegation of fraud in connection with the irregularities first complained of; such fraud forming a distinct cause of action. *Nund Lall Doss* v. *Delawar Ali and others*, 11 W. R., 244.

Before a sale in execution can be set aside, under the provisions of Section 256, Act VIII of 1859, on the ground of material irregularity, the applicant must prove that he sustained substantial injury by reason of such irregularity. *Abdool Mahomed* v. *Shib Doolaree Tewaree*, 11 W. R., 114.

Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden alteration of programme, without notice to intending bidders, or the express consent of the judgment-debtor, is an irregularity under Section 256, Code of Civil Procedure, vitiating the sale. *Pokhraj Singh* v. *Gossain Munraj Pooree*, 12 W. R., 281.

An application for the reversal of a sale in execution of a decree made after its confirmation, and after the expiry of thirty days from the date of sale, is inadmissible under Section 256, Act VIII of 1859. *Ishan Chunder Dutt* v. *Mothooranath Doss*, 6 W. R., Mis., 122.

Objections by the judgment-debtor to a sale in execution of decree being made absolute, can be raised and disposed of only under Sections 256 and 257 of the Code of Civil Procedure, under which a sale can be set aside, on the ground of material irregularity in publishing or conducting it. *Nil Komul Chuckerbutty and others* v. *Snama Soondery and others*, 6 W. R., Mis., 46.

Directions as to the payment of the purchase-money at sales in execution of decree, arising under Section 254, Act VIII of 1859, are to be dealt with as provided by that section, and do not fall under Sections 256 and 257.

No appeal lies to the Judge from an order passed by a Subordinate Court under Section 254.

A default under Section 254 is not an "irregularity in conducting the sale" under Section 256,

Binda Debee Dossee v. *Gopee Soondery Dossia*, 6 W. R., Mis., 82.

On an application to set aside a sale of immoveable property in execution of a decree under Section 256, Act VIII of 1859, before ascertaining whether any substantial injury has accrued to the debtor, the Court must come to a distinct finding that there has been an irregularity in publishing or conducting the sale. *Mussamut Parbutty* v. *Girdharee Lall*, 6 W. R., Mis., 125.

Held that Section 256 refers to objections by judgment-debtors, and not to third parties purchasing at a sale, conducted regularly and with all formality, property which had been previously purchased at an illegal sale. *Luchmeeput Singh* v. *Mooktakashee Debia*, 9 W. R., 388.

A. being mortgagee of two properties, M. and P., obtained a decree under which both were attached and lotted for sale; P. to be sold first, and M. afterwards. On the application of the judgment-debtor, the Principal Sudder Ameen sold M. first, and P. afterwards.

After the sale a person who claimed M. under a conveyance by the owner, subject to A.'s mortgage, applied to set aside the execution sale as irregular. *Held* that he could not come in under Section 256, Act VIII of 1859 (*dissentiente*, Seton-Karr, J.) *Jogenarain Singh* v. *Bhugbano*, 2 W. R., Mis., 13.

Where the lower Court allows an objection and makes an order setting aside the sale, such order, according to Section 257, Act VIII of 1859, is final. *Moonshee Oodiot Zuman, petitioner*, 8 W. R., 109.

A special appeal does not lie from an order passed under Section 257, Act VIII of 1859, confirming or setting aside a sale in execution of a decree. *Bhujun Ram Tewaree* v. *Lalla Ajoodhya Pershad*, 2 W. R., Mis., 29; *Mudun Mohun Roy Chowdhry* v. *Ram Chunder Goopto*, 2 W. R., Mis., 41.

Under Section 257, Act VIII of 1859, no appeal lies from the order of a lower Appellate Court, affirming the order of the lower Court, rejecting a petition for the reversal of a sale in execution on the ground of irregularity. *Raj Narain Koer* v. *Inder Chunder Baboo*, W. R., 1864, Mis., 39.

Section 257, Act VIII of 1859, applies only to sales held after that Act came into operation. *Sheikh Abdool Hyd* v. *Lalla Nowah Roy*, 1 W. R., 204.

Under Section 257, Act VIII of 1859, the order of a Judge on appeal setting aside a sale of immoveable property, on the ground of irregularity, is final, unless, under Section 35, Act XXIII of 1861, the Judge is shown to have acted without jurisdiction. *Kooldeb Singh* v. *Juggunath Singh*, 2 W. R., Mis., 19.

Held (Jackson, J., dissenting) that no special appeal will lie against an order of the Judge, on appeal, setting aside a sale for irregularity under Section 257 of the Code of Civil Procedure. *Kooldeep Narain Singh* v. *Lukhun Singh*, 9 W. R., 218.

An order cannot be said to have been made under Section 257, Code of Civil Procedure, when the judgment-debtor was not aware of the proceedings. *Sreemonto Poramanic* v. *Obhoy Churn Manna*, 11 W. R., 297.

Section 257, Act VIII of 1859, does not bar the representative of a judgment-debtor from bringing a regular suit to set aside an execution sale, except on the score of its having been irregularly conducted. *Jummal Ali* v. *Tirhbhee Lall Doss*, 12 W. R., 41.

When an auction-purchaser at a sale in execution of a decree buys the right, title, and interest of the judgment-debtor in the property sold in execution, and it is subsequently found that the judgment-debtor has no right, title, or interest whatever in the property, no suit will lie against the decree-holder or the judgment-debtor to recover back the money which the auction-purchaser has paid. Although a purchaser may, under Section 258 of Act VIII of 1859, recover his purchase-money, it is only when the sale is set aside for irregularity under Section 257. *Sowdamini Chowdhrani* v. *Krishna Kishor Poddar*, 4 B. L. R., F. B., 11; S. C., 12 W. R., F. B., 8.

Under Section 258, Act VIII of 1859, when a sale of immoveable property is set aside the purchaser is entitled to recover back his purchase-money. If the Court reversing the sale omit to make such order, the purchaser can sue to recover the money from the person who has received it. *Greesh Chunder Pottar* v. *Sookhooda Moyee Dabee*, 1 W. R., 55.

Section 258, Act VIII of 1859, only applies to cases where a sale of immoveable property has been set aside under circumstances which would, under Act VIII of 1859, authorize such a proceeding. The fact that the party whose right, title, and interest were sold had no interest at all, or less than was supposed, is no ground for setting aside the sale. *Rajib Lochun* v. *Bimalamoni Dasi and others*, 2 B. L. R., A. C., 83.

No appeal lies from an order refusing to grant possession, under Sections 259 and 263, Act VIII of 1859. *Gopal Chunder Ghose* v. *Raj Chunder Dutt*, 2 W. R., Mis., 9.

The purchaser of immoveable property, sold in execution of a decree of a Civil Court, got a certificate under Section 259 of Act VIII of 1859, and subsequently sued for possession of that which he had purchased. *Held* that the defendant (who was in possession) was by Section 260 debarred from pleading that he himself was the real purchaser, and that the purchase was made benamee for him in the name of the plaintiff, the "certified purchaser." *Jokhee Lall and Buhoree Lall* v. *Musst. Huns Kooer*, 10 W. R., 167.

Held that Sections 259 and 260, Act VIII of 1859, did not apply, as the sale was made before that law came into operation. *Zoolficar Ali* v. *Mahomed Tukee and others*, 9 W. R., C., 438.

A purchaser of immoveable property, sold in execution of a decree, obtained a certificate under Section 259 of Act VIII of 1859. He then sued in ejectment to recover possession of the property purchased. *Held* (*dissentiente*, L. S. Jackson, J.) that the defendant was debarred, not only by Section 260, but by the general provisions of the Act, from pleading that the plaintiff, the certified purchaser purchased, not on his own behalf but benamee for him, the defendant. Such defendant must show a transfer of title to him from the purchaser, in whom alone, under the certificate, the title of the judgment-debtor was vested. The object of Section 260 is to prevent any enquiry between the purchaser *de facto* and any person on whose behalf he is alleged to have purchased.

Mussamut Bihans Kunwar v. *Bihari Lall*, 3 B. L. R., F. B., 15.

A. purchased at a Sheriff's sale, in the name of his son, the interest of a mortgagee in certain property, and, before Act VIII of 1859 came into operation, instituted a suit in his own name to recover the possession of the mortgaged property.

Held that the suit was rightly brought, if the son's consent could be shown.

Quære,—What is the effect of Section 260 of Act VIII of 1859 on suits of this character? *Bhaee Shunker Nurbheeyram* v. *Hurrebullud and others*, 1 Bom. Rep., 20.

Suits between the benameedar and the beneficial owner are alone referred to in Section 260, Act VIII of 1859. *Seetanath Ghose* v. *Madhub Narain Roy Chowdhry*, 1 W. R., 329.

Suit for possession of certain property alleged by plaintiff to be joint, but which defendant asserted was self-acquired. *Held* that, if any portion of ancestral property is found to be in the plaintiff's possession before the death of a third party, the defendant's allegation that the third party had virtually abandoned his rights in his own property, and divided it among his heirs, and that consequently properties in dispute, though acquired prior to a partition, were not brought in to be partitioned by reason of being self-acquired by the defendant, would become greatly confirmed whether the partition was effected by the deed produced by the defendant, or otherwise. Section 260, Act VIII of 1859, is not applicable to such a case. *Achumbeet Roy* v. *Sulabut Roy*, 6 W. R., 160.

Section 260 of Act VIII of 1859 does not preclude a person purchasing benamee, from setting up his title against a person not being the certified purchaser, or claiming through him. *Mussamut Shorosutty Dassee* v. *Gopeesoondary Dassee and others*, Marsh., 423.

Suit for possession by purchaser from certified purchaser at an execution sale. Defendant in possession not only denied plaintiff's title, but that of his vendor, whose purchase was clearly fraudulent, being made in collusion with the judgment-debtor to defraud creditors. *Held* that Section 260, Act VIII of 1859, did not prohibit a defendant under such circumstances from questioning the plaintiff's title; that it provided for the dismissal of a suit brought to question the title of the certified purchaser, but did not prohibit a defendant from questioning that title when the auction-purchaser sought to oust him. *Mirza Khyrat Ali and others* v. *Mirza Syfullah Khan and others*, 8 W. R., 130.

Held that the Moonsiff had jurisdiction to issue an order for khas possession under Section 263, Act VIII of 1859, although in the first instance he had ordered possession to be given under Section 264; and that the petitioner, if he was wrongfully dispossessed in the course of executing the Moonsiff's decree, had his remedy under Section 269; also, whether the Moonsiff was right or wrong, the High Court had no power to interfere under Section 15 of the Letters Patent. *Hur Kishore Audhicary* v. *Sudaj Chunder Nundee*, 17 S. W. R., C. R., 80.

No appeal lies from an order admitting the claim of a dur-putneedar who has intervened under Section 269, Act VIII of 1859. *Jadub Churn Thakoor* v. *Bholanath Singh Roy*, 5 W. R., Mis., 51.

The object of Courts of Justice, under the Code of Civil Procedure, is, if possible, to decide at one and the same time all questions which can justly be so decided, and not to assist in unnecessarily prolonging litigation.

Section 269, Act VIII of 1859, does not contemplate that the party in actual possession must sue regularly to get possession within one year, but that the person who is not in actual possession shall do so. *Tidaye Shikdar and others* v. *Oozeeroodeen and others*, 7 W. R., 87.

An auction-purchaser of the right, title, and interest of his judgment-debtor, plaintiff, got an award under Section 269, Code of Civil Procedure, but in attempting to get actual possession was successfully resisted by defendant, who claimed to have purchased the property previous to plaintiff's purchase. Upon this the plaintiff sued to obtain possession. *Held* that, as there was no dispossession, the terms of Section 269 would not apply. *Sudaram Majee* v. *Mirtunjoy Dey*, 12 W. R., 509.

The plaintiff purchased at an auction sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property. The sale was confirmed on Nov. 30, 1866. On proceeding to take possession he was opposed by the defendant, who asserted that he was in possession of the property and that it was his. In a suit under Section 258, Act VIII of 1859, for a refund of the purchase-money, the sale still remaining uncancelled,—*Held* that the suit must be dismissed; that Section 258 of Act VIII of 1859 only applied to cases where the auction sale had been cancelled; that the proper course for the plaintiff to have pursued was to have brought a suit under Section 269 of Act VIII of 1859, for a declaration of the judgment-debtor's right, title, and interest in the property. *Bissesswar Panday* v. *Bhagwan Doss*, 3 B. L. R., A. C., 301; 12 W. R., 176.

Where a second decree-holder is himself purchaser of a property sold in execution of his own decree, and instead of the money being deposited in Court, an order is obtained allowing the decree-holder as purchaser to pay the purchase-money by his decree being taken as a credit on account of the purchase, such order is not open to appeal under Section 270, Act VIII of 1859. *Raja Ram Chowdhry and others* v. *Seetola Buksh Misser and others*, 7 W. R., 113.

No suit or appeal will lie for a refund of the proceeds of sale realized in execution of a decree, paid to a wrong party by order of a competent Court under Section 270, Act VIII of 1859 (*dissentiente*, Levinge, J.) *Hurish Chunder Sircar* v. *Azimoodeen Shaha*, W. R., F. B., 180.

Priority of attachment does not give a decree-holder a right to set aside a sale made by another decree-holder on a subsequent attachment, but merely, as provided in Section 270, Act VIII of 1859, a right to be paid first out of the proceeds of sale. *Lalla Joogul Kishore Lall* v. *Bhukha Chowdhry*, 9 W. R., 243.

The decree-holder by whom the property is first attached, and not the decree-holder at whose instance the sale takes place, is the party entitled to be first paid under Section 270, Act VIII of 1859. *Kartick Chunder Singh* v. *Gogaram*, 2 W. R., Mis., 48.

Under Section 270 of the Code, the judgment-creditor, whose attachment subsists at the time of

sale, is entitled, according to priority of date of attachment, to be satisfied first; and where the attachment of A. under Clause 1, Section 5, Regulation II of 1866, of the Government promissory notes subsisted up to the date of sale, and the attachment of B., though prior in date to that of A., subsequently fell to by his case being struck off the file, it was held that A. was entitled to the whole of the sale proceeds of the notes. *Baboo Luchmeeput and others* v. *Baboo Lekraj Roy*, 8 W. R., 415.

Section 270 of the Civil Procedure Code does not apply to a case in which property has not been sold in execution of a decree. *Bishen Chunder Surma Chowdhry* v. *Mun Mohinee Dabee and others*, 8 W. R., C. R., 501.

An action will lie in the Civil Court by a decree-holder against the holder of another decree, in order to obtain a refund of money which has been paid to the latter under an order passed in the execution department, in contravention of the provisions of Section 270 of the Code of Civil Procedure. It is for the Court to decide whether, having regard to all the equities between the parties, the plaintiff is entitled to recover or not.

No appeal lies from an order directing the distribution of sale proceeds under Section 270 of Act VIII of 1859. *Gogaram* v. *Kartick Chunder Singh*, 9 W. R., 515.

Held that Section 270, Act VIII of 1859, applies only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree.

Where more persons than one are interested in a decree, any one or more of them may apply for execution of it under Section 207, but the Court, in passing an order in execution of such decree, ought to protect the interests of other decree-holders, and such other person ought not to apply for second attachment of the same property under the same decree, but should apply to share in the proceeds realized by the sale in the execution which has been ordered. *Mirza Abid Ali and Mirza Jafer Ali* v. *Munnoo Byas*, 2 Agra Rep., A. C., 183.

A manager may be appointed by the Court under Act VIII of 1859, Section 270, without the consent of the decree-holder.

The Court has no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders. *Thakoor Chunder* v. *Chowdhry Chotu Singh*, Marsh., 261.

A Court may try the issue of fraud under Section 272, Act VIII of 1859, without any charge of fraud against the decree appealed from. *Joorawun Singh* v. *Mussamut Jhoota*, 2 W. R., Mis., 29.

W. got a decree against M. in the Court of the Sudder Ameen, and in execution attached certain property of the judgment-debtor: J., who had a decree against the same judgment-debtor in the Court of the Principal Sudder Ameen, applied to the Court of the Sudder Ameen to stay its proceedings on the ground that W.'s decree had been obtained by fraud. The Sudder Ameen refusing the application, J. appealed to the Judge, who saw no ground for the imputation of fraud.

Held that, under Section 272, Act VIII of 1859, J.'s application should have been made to the Court which gave him the decree, *i.e.*, the Principal Sudder Ameen's Court,

Held (by Hobhouse, J.,) that the Judge's judgment was on the face of it good, and in a case within his jurisdiction; and that it did not call for an exercise of the extraordinary power given to the High Court by Section 15 of the Charter. *Jumal Ali* v. *Sheikh Wahid Aly*, 11 W. R., 97.

A suit to receive the proceeds of sale in execution of a decree alleged to have been drawn out by defendant by virtue of an order of a Civil Court, under Section 270, Act VIII of 1859, is in reality a suit to alter or set aside a summary decision of a Civil Court, and is governed by the limitation of one year prescribed by Clause 5, Section 1, Act XIV of 1859. *Dwarkanath Biswas* v. *Roy Dhunput Singh Bahadoor*, 17 S. W. R., C. R., 227.

(*e*) *Setting aside Sales.*

Where an estate has been sold at auction for less than its market value, the judgment-debtor is not entitled to have the sale set aside, unless he can show that such inadequate price has been directly and presumably the result of the irregularity of which he complains. *Hububool Hossein* v. *Land Mortgage Bank*, 14 S. W. R., C. R., 44.

The proper course to be adopted by a third party desirous of setting aside an order of attachment is not to proceed by motion, but to give notice of claim, which can then be investigated as laid down in Section 246.

In the event of a claimant appearing for property attached, the Court will in its discretion postpone all other business, and give precedence to the hearing of the claim. *Ramnaik Shaw* v. *Seebram Pautool*, 2 Hyde's Rep., 22.

Appellant, a lunatic's wife, as manager of his estate obtained a decree, in execution of which certain lands belonging to the judgment-debtor were sold and purchased by the manager, but before allowing actual possession to be given to her she was required to give security for the proceeds of the sale. Some time elapsed before she found the security, and meanwhile the lands were attached and sold in execution of the respondent's decree, and purchased by him, and possession given to him. *Held*, that the appellant's omission to give security (which was a proceeding not affecting the judgment-debtor, and entirely collateral to the suit between the judgment-creditor and him) could not in any way affect her title by the previous sale, and that the Judge was in error in granting the order for a second sale under the respondent's attachment, and confirming the purchase by him when the sale of the same lands had already taken place under the appellant's attachment, and the purchase by her under that sale had been confirmed and had not been set aside. *Saroda Pershad Mullick* v. *Luchmeeput Sing Doogar*, 17 S. W. R., C. R., 289.

(*f*) *Confirmation of Sale and Possession.*

The mere formal confirmation of a sale by the Court, after the expiration of 30 days, when no objection has been preferred, is not a proceeding for the purpose of enforcing a decree such as will keep execution alive. *Shib Ram Dey* v. *Banee Madhub Mitter*, 11 W. R., 117.

A party holding a decree against certain heirs having attached certain property, and applied to

have it sold in execution, objection was made to the sale by the judgment-debtors, who claimed it as their property. Their objections were overruled, and two out of three parcels of the property were sold. The objectors appealed to the High Court, but before their appeal came on the sale was confirmed. The Court, in ignorance of the confirmation of the sale, remanded the case, with a view to a determination of the objector's title. The Subordinate Judge passed no order as to the two parcels sold, but declared that evidence might be gone into as to the third. From this decision an appeal was laid.

Held that the sale having been confirmed it could not be set aside, but that before the third parcel was sold, the issue referred to the lower Court by the remand order should be tried. *Pootee Begum* v. *Maharanee Indurjeet Koocr*, 12 W. R., 201.

If when a judgment-debtor's rights and interests in property are sold the property is lawfully in the possession of tenants, the proper course is not to dispute their lawful possession and occupation, but to place the purchaser in a condition to receive from them the rents in the place of the judgment-debtor. *Uncovenanted Service Bank* v. *Palmer*, 2 N. W. R., 456.

Where the decree-holder takes no step whatever to cause an execution sale to be confirmed, the confirmation of the sale by the Court cannot be regarded as a proceeding on his part towards enforcing the decree. *Mullick Enaet Ali* v. *Waped Ali*, 13 S. W. R., C. R., 315.

(*g*) *Rights of Purchaser.*

The title of an auction-purchaser at a sale in execution of a decree accrues from the date of sale, and not from the date on which he may obtain his sale certificate. *Kalee Dass Neogee* v. *Hur Nath Roy Chowdhry*, W. R., 1864, 279.

Purchasers of the property of a judgment-debtor at a sale in execution of a decree do not become parties to the suit, or acquire a right of appeal regarding the sale.

A decree-holder is not prohibited at the time of sale from releasing a portion of the property advertised, should he have grounds for doing so. *Beet Bhunjun Singh* v. *Jowhur Doss*, 4 W. R., Mis., A., 17.

Where rights and interests are sold in execution, with notice of claims of previous purchasers of a portion thereof, and such previous purchasers are afterwards dispossessed by the heirs of the original owner, the purchaser in execution may sue such heirs for return of the property recovered by them, with mesne profits. *Deonarain Singh* v. *Toklum Singh*, 5 W. R., 30.

Where the rights and interests of a judgment-debtor are sold in execution, the purchaser takes the land to which they relate subject to such mortgages and leases as may be existing. *Oojogur Roy and another* v. *Ram Khelawan Singh*, 10 W. R., 384.

A sale by the Sheriff to a *bonâ-fide* purchaser for valuable consideration will not be set aside on the ground that the judgment-creditor had communicated with the Sheriff, and desired him to stay the sale.

The purchaser need not trace back his title beyond the *fi.-fa.* [Note.—The suit was originally brought in the late Supreme Court.] *Kaminee Dossee* v. *Gourmoney Dossee and others*, 1 Ind. Jur., N. S., 359.

Semble,—A purchaser at a sale in execution of a decree has no greater rights than a purchaser under a decree in Chancery, whose rights are liable to be defeated by a re-opening of the biddings by order of the Court. *Madhub Chunder Dutt* v. *Joy Kissen Mookerjee*, W. R., 1864, Mis., 29.

The purchaser at a sale in execution of the original proprietor's rights in a certain property pledged for the debt for which the decree executed was obtained, cannot be held bound by any encumbrance created by the proprietor subsequent to the pledge. *Bhugoban Chunder Doss* v. *Lalla Thakoor Pershad*, W. R., 1864, 359.

Property purchased in execution of a decree is not subject to any lien in favour of a person claiming under a bond and deposit of a hibbanamah pledged as security for a loan. *Syed Woozeer Ulbul Hossenee Chowdhry* v. *Mussamut Luckhee Bibee*, 1 W. R., 143.

Where a purchaser at a sale in execution was named in the sale certificate as "mother and guardian of her infant son," the title to the property was held to be vested by the certificate in the minor absolutely. *Hemanginee Dossee* v. *Jogendro Narain Roy*, 12 W. R., 236.

The purchaser at a sale in execution of a decree founded upon a bond which mortgaged the property was held not to have a preferential title over a prior purchaser because the liability of the property under the mortgage was not declared in the decree, which was only a money-decree. *Bromo Gopal Adhikaree* v. *Bholanath Poddar*, 10 W. R., 309.

A purchaser of property sold under a decree in favour of a mortgagee cannot claim to set aside, as prejudicial to his rights, a ticcah pottah granted by the mortgagee, when those rights were not in existence. *Banee Pershaud* v. *Reet Bhunjun Singh and others*, 10 W. R., 325.

A purchaser at a Sheriff's sale takes only such right, title, or interest as the judgment-debtor may possess in the property sold. *Bhaeebown* v. *Bhaeejee Prag*, 1 Bom. Rep., 19.

Purchasers at a Sheriff's sale cannot be bound to take notice of a suit against the execution-debtor in a Court which had no jurisdiction over them, or over or in respect of the lands purchased by them which were the subject-matter of the suit, except by consent of the execution-debtor. *Dhurundro Chunder Mookerjee* v. *Sreemutty Annund Moyee Dossee*, 1 W. R., 103.

An auction-purchaser of the judgment-debtor's rights and interest cannot seek to recover what his judgment-debtors could not have recovered. *Zalim and others* v. *Choonee Lall*, 2 Agra Rep., 194.

When there was a sale of a specified share belonging to judgment-debtor,—*Held* that the auction-purchaser was not entitled to claim property which had before sale descended to the judgment-debtor. *Mussamut Azadee* v. *Mussamut Ajmere Koonwar*, 1 Agra Rep., A. C., 282.

An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. *Sheikh Baichoo and others* v. *W. Howard*, 3 Agra Rep., A. C., 15.

Held that a purchaser at a Sheriff's sale is not

entitled to compensation under Act XI of 1855, if he had relied solely on the bill of sale. *Bhoyrubnath Khettry* v. *Doyalchunder Laha*, Bourke's Rep., O. C., 159.

In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution-creditor of the title of the judgment-debtor, the maxim "*caveat emptor*" applying. *Dhondu Mathuradas Naik* v. *Rami Valad Hanmanta Kakdu*, 4 Bom. Rep., A. C. J., 114.

Held that an auction-purchaser of the ryot's right and interest in his house in a village could not acquire more title than could have been transferred by private sale. It is necessary in such cases to enquire whether, according to the village custom, the ryot was competent to alienate the house, with its site, without the permission of the zemindar. *Shib Lall and Pershad* v. *Lochun Singh*, 3 Agra Rep., 7.

Held that when an auction sale is set aside for the reason of property sold being not saleable in execution, a fresh suit by the auction-purchaser would lie for refund of consideration-money, and the fact that the former decree failed to provide for refund thereof would not debar the auction-purchaser from claiming refund by a separate suit, notwithstanding that he was a party to that decree. *Mussamut Doolhin Hur Nath Koonwaree* v. *Bhoijhoo Oogho and Mahomed Ahah Khan*, 2 Agra Rep., 50.

If a sale takes place in execution of a decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser.

Per Norman, J.—If the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale, or the title of the purchaser. *Chundur Cant Surmah, talookdar, and another* v. *Bessesshur Surma Chukerbutty*, 7 W. R., 312.

Where a purchaser in execution claims more than the share of the person whose rights and interests he has purchased, his suit should be decreed to the extent to which those rights and interests are found to exist, and not be dismissed altogether. *Rhada Binode Dutt* v. *Kootabode Mundle*, 15 S. W. R., C. R., 363.

When an auction-purchaser at a sale in execution of a decree buys the right, title, and interest of the judgment-debtor in the property sold in execution, and it is subsequently found that the judgment-debtor had no right, title, or interest whatever in the property, no suit will lie against the decree-holder or the judgment-debtor to recover back the money which the auction-purchaser has paid.

Although a purchaser, under Section 258 of Act VIII of 1859, recover his purchase-money, it is only when the sale is set aside for irregularity under Section 257. *Sowdamini Chowdrain and others* v. *Krishna Kisber Poddar*, 4 B. L. R., F. B., 11; and 12 S. W. R., F. B., 8.

M. divided her estate among her children, retaining for herself one-seventh, which was afterwards increased by a portion of what had been given to one of the sons, who deceased. R.'s rights in the estate were sold in execution to B. B., who sold them to R., who sold them to B. K. brought a suit against certain parties, who held the estate in zur-i-peshgee from M. and her family, for possession of the whole estate, but obtained a decree for one-seventh only, giving him possession conditionally on his paying to the zur-i-peshgeedars M.'s proportion of the loan. This decree was confirmed on appeal, and K. made liable for the costs of those defendants in respect of whom his claim had been dismissed. Meantime B., an old judgment-creditor of R.'s father, took out execution against R., and applied for sale of K.'s rights on the estate, which were accordingly sold, the purchaser being B. himself. Subsequently one of M.'s daughters, a successful defendant in the suit brought by R., took out execution of her decree for costs, and put up R.'s rights for sale. The sale was opposed, under Section 246, Civil Procedure Code, by a son of B., whose claim was summarily rejected, and R.'s rights were bought by one M. A. B.'s son then brought a suit within one year to set aside the sale, and to have his own title declared. The suit was against the purchaser and against the representatives of the zur-i-peshgeedars; but on the petition of L., one of M.'s heirs, her name was added to the list of defendants. The first Court gave plaintiff a decree, but the Lower Appellate Court found that his claim was barred by limitation against L., on the ground of non-possession within twelve years, and in respect of the zur-i-peshgeedar because R.'s decree had lapsed by delay in execution. *Held* that L. was interested in the result of the suit, and the lower Courts committed no error in law in admitting her to be a defendant under Section 73.

Held that there was nothing in Section 246 to prevent a defendant in such a suit as that of B.'s son from pleading that whatever title plaintiff might have had at some previous time it was extinguished by his having had no possession for twelve years preceding the suit.

Held that what B. had bought was not K.'s right of suit (which as against a mortgagee would be governed by a limitation of 60 years) but a right fixed and determined by a decree to which Clause 15, Section 1, Act XIV of 1859, did not apply. *Ram Sarum Singh* v. *Mahomed Ameer*, 13 S. W. R., C. R., 78.

In a suit under the latter portion of Section 246 of the Civil Procedure Code, brought by the owner against the purchaser of property which has wrongfully been attached and sold in execution of a decree, the execution-creditor is properly made a party, the object being to restore all parties to the position which they occupied previously to such attachment and sale.

When a sale is set aside by reason of the execution-debtor having no interest in the property sold, the purchaser of such property is entitled to receive back his purchase-money as on a consideration that has failed. *Bank of Hindostan, China, and Japan* v. *Premchaund Raichaid; Ahmed bhai Habi bhai* v. *Premchund Raichaid*, 5 Bom. Rep., O. C., 83.

A purchaser at a Court auction sale (not set aside under the provisions of the Code of Civil Procedure) who has been ejected from the property he has purchased, cannot recover back the purchase-money from the judgment-creditor, there being no warranty on the part of the latter that his judgment-debtor had any interest in the property sold. *Dhondu* v. *Ramji*, (4 Bom. H. C. Rep., A. C. J., 114) commented on; *Krishnappa Valad Santu* v.

Panchupa Valad Gurapudappa et al., 6 Bom. Rep., A. C. J., 258.

As a purchaser at an auction sale held by a Court only acquires the right, title, and interest of the judgment-debtor in the property sold, a plea of limitation that would be good against the judgment-debtor is good also against the purchaser.

When a person fails to establish a prescriptive title in a suit in which he is plaintiff, it does not follow that the defendant is entitled to recover the subject-matter of such suit in an action brought by him. *Sridhur Vinayak* v. *Babujibin Jivaji*, 6 Bom. Rep., A. C. J., 220.

Held that the rule laid down in Ganput Bajashet *v.* Khandu Changshet, "that an unregistered mortgage without possession is not valid against a purchaser with possession," does not apply to a purchaser at a Court's sale whose instrument of purchase is not registered. *Mathurádás Ranchoddás Káliá Khushál*, 7 Bom. Rep., A. C., 24.

A purchaser at a judicial sale is in a position different from that of a mere representative of the old proprietor, or of one who comes by a voluntary sale made by the latter.

A judicial sale transfers to the purchaser the property of the judgment-debtor against the debtor's will, and places the purchaser in a higher position than that which the judgment-debtor, by any private alienation, could confer on him.

Such a purchaser is competent to defend his possession and title, by showing that the charge which it is sought to establish against the estate is fraudulent and collusive, and therefore void. *Oomrao Singh* v. *Shimboo Nath*, 2 N. W. R., 38.

It is not compulsory upon an auction-purchaser under a decree, when resistance is offered to his taking possession of the property purchased, to proceed under Section 269 of the Civil Procedure Code. It is open to him to proceed at once by regular suit against the person in possession of the property purchased by him. *Madaree* v. *Bulloo Kooree*, 2 N. W. R., 450.

A person coming in, under Section 269, Act VIII of 1869, more than a month after dispossession, has no *locus standi* under that section. Section 268 of Act VIII of 1859 is solely for the benefit of purchasers at a sale in execution, and no person has any ground to come in under the application of a purchaser except the party who is complained of as resisting or obstructing the purchaser in obtaining possession. *Peera Lall Bonnerjee* v. *Rajah Burroda Kant Roy; Onookool Chunder Mookerjee* v. *Rajah Burroda Kant*, 13 S. W. R., C. R. 467.

Where property is sold in execution, a *bonâ-fide* purchase must prevail over a purchase made benamee for the judgment-debtors; notwithstanding the priority of the latter in point of time. *Ingobunahoo Sein* v. *Bhugwan Chunder Dass*, 17 S. W. R., C. R., 15.

Suit by plaintiff as purchaser at a sale in execution of a money decree, against defendants who claimed on the allegation of a prior title. Plaintiff having only purchased the right, title, and interest of the judgment-debtor, stood in no better position towards the defendants than the judgment-debtors. Defendants proved that the shikmee pottah, which they alleged to have been given them by plaintiff's mortgagor, was executed four years before plaintiff's purchase, and was duly registered; and, moreover, adduced the testimony of witnesses who had collected the rent due on the pollah and paid it to the grantor, *i.e.*, plaintiff's mortgagor, thus establishing the *bona fides* of the transaction, against which the plaintiff, it was held, had failed to bring forward evidence of a rebutting character. *Ram Soondur Sahoy* v. *J. P. Deseenuy*, 17 S. W. R., C. R., 25.

The purchase of property in the mofussil at a sale in execution of decree is valid, notwithstanding a decree for sale of the property in a suit for foreclosure pending in the High Court at the time of sale, to which the purchaser was not a party.

The possession of a purchaser at a sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of the commencement of such possession. *Srimati Anand Maji Dass* v. *Dharandra Chundra Mookerjee*, 8 B. L. R., 122, and 16 S. W. R., P. C., 19.

Where the plaintiff purchased at an auction sale under decree the rights and interests of a person and his minor brother in certain property, and the decree was subsequently set aside as far as it concerned the minor brother's share,—*Held* that the purchaser was entitled to a refund of a proportionate share of the purchase-money, and that a decree for the same against the wrongdoers, the decree-holder and the judgment-debtor jointly, was a proper decree. *Neel Kunth Saha* v. *Asmun Mathod*, 3 N. W. R., 67.

(*h*) *Liabilities of Purchaser.*

A purchaser at a sale in execution of a decree is liable for damages caused by re-sale consequent on his not making the required deposit. An appeal lies to this Court from the order of the lower Courts absolving the purchaser from liability. *Sree Narain Mitter* v. *Maharajah Mahatab Chand Bahadoor*, 3 W. R., 3.

A purchaser in execution of a decree of a Civil or Revenue Court is not bound by any admission made by his execution-debtor, nor ordinarily by a decree against such person. *Rungo Monee Debia* v. *Raj Coomar Bebee and another*, 6 W. R., 197.

At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be required to make the deposit prescribed by Section 253, Act VIII of 1859, failing which the lot should at once be put up to sale at the risk of the first purchaser. The decree-holder, if the lot is knocked down to him, is as much bound to make the prescribed deposit as any other auction-purchaser. *Chulkoo Dutt Jha* v. *Rajah Leelanund Singh*, W. R., 1864, Mis., 30.

In a case of purchase after a decree, where the vendor is only a benameedar, and the vendor's husband (supposed to be the real owner) wrote the deed and received the purchase-money (thereby making himself a consenting party), the *onus* lies on the plaintiff to prove that he is a *bonâ-fide* purchaser for value, exercising due care and diligence. *Man Turunginee Dabee* v. *Boistub Churn Bhudder*, 1 W. R., 110.

An auction-purchaser at a sale in execution is bound to satisfy himself of the value and quality of the thing sold, just as much as if he were puchasing the same under private contract. *Jummal Ali* v. *Tirbhee Lall Doss*, 12 W. R., 41.

When a claim was made for rent by a purchaser of interest in lands sold under execution, he must prove that the judgment-debtor previously possessed such claim. *Trannauth Chatterjee* v. *Prem Chund Sirkar*, 1 Ind. Jur., 184.

A purchaser of another's rights and interests is bound to show what may be properly comprised under that denomination. *Ram Nath Roy* v. *Saleem Ahmed Khan and others; Jadoo Nath Roy and others* v. *Saleem Ahmed Khan and others*, 3 N. W. R., 188.

A purchaser at an execution sale having defaulted to pay in the purchase-money, the property was ordered to be re-sold. Before, however, the re-sale took place another sale of the same property was effected at the instance of another judgment-creditor, but at a lower price than on the first occasion.

Held that there was no re-sale such as is contemplated in Sections 253 and 254, Act VIII of 1859, and that the first purchaser was not liable for the difference between his bid and the price obtained at the same sale. *Bishoka Moyee Chowdrain* v. *Sonatun Dass*, 16 S. W. R., C. R., 14.

(*j*) *Certificate.*

Plaintiff purchased in execution of a decree the rights and interests of a judgment-debtor in a share of a mouzah, and was entitled to possession of that share. The sale certificate set forth what title passed by the sale to him and also the boundaries of the mouzah. *Held*, that the Judge, instead of dismissing the suit because the sale certificate did not prove the boundary and the plaintiff had not proved the boundary, ought to have enquired whether the boundaries as stated in the sale certificate included any land other than the mouzah in question, and to have decided accordingly. *Raj Bullub Mitter* v. *Bheem Denshu*, 17 S. W. R., C. R., 344.

Where a joint-decree for contribution which had been passed against a Hindu widow and the reversioner was executed against the latter as the sole surviving judgment-debtor, by the sale of his rights and interests in the property, the joint property was held to have been passed even though the sale certificate omitted the word "property." *Chowdhry Zahoorul Huq* v. *Gooroo Churn Roy*, 15 S. W. R., C. R., 329.

In construing a sale certificate, the Court must not merely look to the words of the certificate, but must endeavour to ascertain what was intended to be sold: a mere mis-description would not defeat the purchaser's rights. *W. B. Mansin* v. *Golam Kebria Moonshee*, 15 S. W. R., C. R., 490.

A certificate of sale of immoveable property of the value of more than one hundred rupees must be registered, and the fact of sale cannot be proved except by the production of such certificate.

The mere fact that an allegation is not traversed does not relieve a plaintiff from the burden of proving his case. *Mulji Bechar et al.* v. *Anupram Bechur*, 7 Bom. Rep., A. C. J., 136.

The ruling of the Full Bench in 11 W. R., p 16, F. B. R., that a benamee purchaser is debarred from setting up his title in opposition to a certified purchaser, was held not to apply in a suit in which the plaintiff was a certified purchaser who had bought at a sale for arrears of revenue under Act 1 of 1845.

It is not a principle of law that the issue to be framed in such cases is,—From what source the purchase-money came; though that is an excellent criterion and test for determining the character of the purchase. *Brijo Beharee Singh* v. *Shah Wazed Hossien*, 14 S. W. R., C. R., 372.

A mere general description of boundaries in a sale proclamation, or a sale certificate, does not of itself confer on the purchaser such a conclusive title as can be rebutted by no proof to the contrary. *Baluk Dass* v. *Nimaye Chunder Sircar*, 17 S. W. R., C. R., 511.

A sale certificate which in express terms passes to the purchaser the rights and interests of a father, does not necessarily transfer to him the interests of his minor sons. But if the minor sons have benefited to any extent by the decree or by the sale in execution of that decree, to that extent, the purchaser has an equitable claim against the minor sons. *Sirdar Dyul Singh* v. *Ram Budden Singh*, 17 S. W. R., C. R., 454.

XIII.—APPEAL.

(*a*) *Memorandum of Appeal.*

The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence in the decision. 5 Mad. Rep., Rul. XLIV.

Held, nem. con., that in a case where an appeal to the Privy Council has been admitted against a regular decree made in appeal, such proceedings, as applications for review of the judgment and the order of the Court thereon, ought not to form part of the records to be transmitted to England. *Raa Enaet Hossein* v. *Ranee Rowshan Jahan*, 10 W. R., F. B., 1.

Whenever a memorandum of appeal is rejected under the discretionary power vested in the Court, a judicial order to that effect, and the reasons for the same, ought to be recorded. *Lalla Jugset Sahoy* v. *Kassenauth Sein*, 1 Ind. Jur., O. S., 121.

If the period within which an appeal is required by law to be filed expires while the High Court is closed for the vacation, parties are allowed to file their petitions of appeal on the first open day after the vacation. *Luchmun Chunder Singh* v. *Kaleechurn Singh*, 12 W. R., 293.

Where an appeal on paper insufficiently stamped is admitted and heard, the Court is bound to deal with it on its merits, and cannot limit its relief to so much of the subject in suit as seems to be covered by the amount in respect of which the stamp was given. *Boloram Sircar and others* v. *Ram Narain Banerjee and others*, 10 W. R., 242.

Where a petition of appeal had been filed, time allowed for the issue of notice, and a day fixed for hearing, it was held to be the duty of the Judge, under Section 31, Act VIII of 1859, on finding that the petition was inadequately stamped, to give the appellant an opportunity of filing the proper stamp. *Nusserat Aly Chowdhry and others* v. *Mahomed Kanoo Sirdar and others*, 11 W. R., 541.

A petition of regular appeal was rejected by the Civil Court, because it did not state what amount of quit-rent was payable to Government on the

lands in dispute, and therefore did not contain the particulars required by the order of the High Court, dated 26th June, 1867. *Held* by the High Court, that the order of rejection was wrong. The utmost which the old rules justified was the non-receiving. *Arabhi Sé Shá Chellam Appa Ram* v. *Rámaya*, 6 Mad. Rep., 422.

An appeal must be presented to the Judge, and not to the Moonserah.

The placing a petition on a table when the officer is not present is not a presentation to him. *Taj Uldeen Khan* v. *Mussamut Ghufoor-ul-nissa*, 3 N. W. R., 341.

It is competent to an appellant appealing from the final judgment and decree, to include in his appeal any legal grounds of objection against a prior decretal order of remand. *Mussamut Mizajool Nissa* v. *Bunshee Dhur*, 1 N. W. R., p. 193.

When the last day for presenting an appeal falls upon a Sunday or close holiday, an additional day is to be allowed for the presentation of the memorandum of appeal. *Krishnu Padhe*, 6 Bom. Rep., A. C. J., 50.

An appeal which had been preferred to the Judge was withdrawn the next day through another pleader. Shortly after an application was made to have the appeal restored, on the ground that the second pleader had no authority to withdraw the appeal. The Judge refused the application.

Held, that no special appeal lay from the last order which was passed on an application for review of the former order.

Held, that as the only ground on which the Judge was asked to proceed was a petition said to have been sent to the petitioner's pleader by post, the Judge could not be directed to take further action in the matter. *Modhoomutty Debia* v. *Dhunput Singh*, 13 S. W. R., C. R., 167.

Per Norman and Hobhouse, JJ. (Bayley, J., dissenting), *held* that, in the present case, the defendant had not either in the written statement filed by him or by his statements in examination raised the question, whether he was entitled to the benefit of Section 4 of Act X of 1859.

Per Peacock, C. J., and Kemp and Macpherson, JJ.—A petition of appeal, under Section 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the original and Appellate Jurisdictions of the High Court contrasted. *Harrak Sing* v. *Tulsi Ram Sahee*, 5 B. L. R., 47, and 13 S. W. R., C. R., 216.

An appeal to the Judge from a decision of the Deputy Collector in a suit under Act X of 1859 must be presented by the appellant in person, or by a pleader, and not by a Mookhtear. *Zeenuth Ali* v. *Mahomed Ali*, 2 W. R., Act X R., 67.

The copy of a decision to which reference is made by the lower Appellate Court for the grounds on which an appeal is disposed of is not necessary at the time of filing a special appeal. *Anonymous*, 1 Ind. Jur., O. S., 50.

The first Court's decision dismissing the suit on the ground of limitation was reversed by the lower Appellate Court, who remanded the case for trial on the merits. The first Court on remand decreed the suit on the merits. The defendant appealed, and the lower Appellate Court dismissed the suit on the merits, refusing to try the issue of limitation, because no special appeal had been preferred against his former order. The plaintiff appeals specially, and the defendant, by way of cross-appeal, contends that the suit is barred by limitation. *Held* that, although the defendant might have appealed against the first decision of the lower Appellate Court on the question of limitation within 90 days from that decision, he was at liberty to appeal against it within 90 days from the time of the final decree disposing of the whole case. *Mirza Himmut Bahadoor* v. *Gobindo Panday*, 5 W. R., 91.

The time which intervenes between the putting in stamps and obtaining a copy of the decree should be excluded from the time prescribed for the presentation of an appeal. *Lall Gopalnath Sahee Deo* v. *Mussamut Pudum Koohwar*, 5 W. R., Mis., 44.

Where a suit for Rupees 13-777 was brought against defendants, whose interests were not identical, and the Judge ordered separate trials of the different causes involved, as provided in Section 9, Act VIII 1859, an appeal by the defendants from the decision in one of the suits valued at Rupees 149 was held not to lie to the High Court. *Ram Coomar Doss* v. *Bidhoo Mooku Dassee*, 15. S. W. R., C. R., 31.

The time during which an application for review is pending, is not to be taken into account within the 90 days allowed for appeal. *Poresh Nath Roy* v. *Gopaul Krist'Deb*, 15 S. W. R., C.R., 61.

Appeal, filing a petition of, beyond time—Act VIII of 1859, Section 333—sufficient cause for delay in filing an appeal. *Secretary of State for India in Council* v. *Mutee Swamy*, 4 B. L. R., Ap., 84; 13 S. W. R., C. R., 245.

In a suit for possession and wasilat, plaintiff obtained a decree declaring his right to possession upon the death of his father. Defendant appealed. *Held* that as the decree had given consequential relief, *i.e.*, relief from the operation of conveyances and mortgages, which on the face of them affected plaintiff's interest, an appeal from the decree should bear an *ad valorem* stamp duty. *Miller* v. *Akhoree Ram*, 15 S. W. R., C. R., 412.

(*b*) *Who may Appeal.*

The circumstance of the High Court calling up an appeal from the Court below, and trying it as a regular appeal, does not entitle the parties to appeal directly to the High Court in the proceedings in execution. *Ramanoorga Sahoy* v. *Byjnath Lall*, 15 S. W. R., C. R., 164.

No one but a party to a suit can appeal under Section 11 of Act XXIII of 1861 against an order passed in such suit. *Caemnerer* v. *Birch*, 1 Mad. Rep., 8.

An appeal by the alleged representative of a deceased plaintiff ought not to be admitted without an order of Court allowing the name of the representative to be entered in the register of suits. *Jugoo Lall* v. *Lalla Bhikun Lall*, 5 W. R., 133.

One of two defendants may appeal as respects the whole, and not half, of the property in dispute, in the absence of proof that they owned the pro-

perty in two equal shares. *Katyanee Chowdhrain* v. *Madhub Narain Roy Chowdhry*, 4 W. R., 68.

Persons not parties in the original suit are not entitled to have themselves added as appellants in the Appellate Court. *R. Watson and others* v. *Ranee Surnomoyee*, 9 W. R., 259.

An auction-purchaser of property sold in execution of decree is not "a party to the suit;" he is not therefore entitled to appeal from an order passed as to the execution of the decree. *Luchmee Narain* v. *Bairow Pershad*, 1 Agra Rep., Mis., 5.

One defendant cannot be allowed to appeal as against his co-defendants; but if he is allowed, and the appeal is decided against him, it does not lie in him to ask that the decision may be set aside on the ground that the Court had no jurisdiction. *Kashee Chundra Roy* v. *Sreemutty Doorga and others*, 11 W. R., 410.

A suit having been decided by the first Court after an intervenor had been made a party under Section 73, Code of Civil Procedure, it was remanded on the appeal of the intervenor, whose name was ordered to be expunged from the record. The suit was decided again in favour of the plaintiff, but the decision was reversed in appeal.

Held that the fact of the defendant having, in the first instance, allowed the intervenor alone to appeal, did not debar him, after the case was re-opened by remand, from appealing in his own person. *Bucha Singh* v. *Mirza Mashook Ali Beg*, 15 S. W. R., C. R., 572.

(*c*) *Where an Appeal Lies.*

A summary appeal does not lie from an order rejecting a plaint; nor is a miscellaneous or a special appeal admissible on an insufficient stamp. *Aboo Bibee* v. *The Collector of Zilla Jessore*, 1 W. R., Mis., 25.

Though the distribution of costs is, under the Civil Procedure Code, a matter within the discretion of the Court, yet there may be circumstances which will justify an appeal upon a mere question of costs. *Chethrayil* v. *Iroomanum Vittil Kanhamath Haji*, 3 Mad. Rep., A. C., 279.

By virtue of Section 11 of Act XXIII of 1861, and the provisions of Section 204 of the Code of Civil Procedure, an appeal lies from an order passed in a matter between a judgment-creditor and sureties on behalf of a judgment-debtor for the performance of the decree. *Bhikaji Vithal Ambikar, ex-parte*, 4 Bom. Rep., A. C., 119.

Held that an appeal lies to the High Court from the decision of a Judge in a Division Court rejecting a document tendered in evidence under Section 17, Clause 1 of Act X of 1862, on the ground that there had been an intention to evade the payment of stamp duty.

The point upon which the decision of the Court is to be final, under Section 17 of the Stamp Act, is as to what is the proper amount of stamp duty which the document ought to bear, and not as to whether the Court ought or ought not to receive the document in evidence.

A Court to which a document is entered in evidence, under Section 17, ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty. *Royal Bank of India* v. *Hormasji Khorsedji*, 3 Bom. Rep. O. C., 53.

The winning party is at liberty to appeal, if the decree of the Court has placed him in a worse position than he was before. *Soroop Chunder Paul* v. *Durup de Dombal*, 1 W. R., 72.

An appeal lies to the High Court from an order of the lower Court absolving a purchaser from liability for damages caused by a re-sale consequent on his *laches*. *Sree Narain Mitter* v. *Maharajah Mahtab Chand Bahadoor*, 3 W. R., 3.

Objectors (whose claim to a moiety of the property sought to be taken in execution has been admitted by an order of Court) are in a like position to decree-holders against the original decree-holder, and may therefore appeal from an order passed in execution of decree. *Motee Singh* v. *Rajah Leelanund Singh*, 2 W. R., Mis., 7.

When the execution of a decree is made over to a Court other than that which passed the decree, the Court executing the decree has authority to hear all objections, and to pass such orders as if it were executing its own decree; and an appeal will lie from any order so passed in the usual course to the Judge. *Mungle Pershad* v. *Gudooree Singh*, 2 W. R., Mis., 17.

Quære,- Whether an interlocutory can be made the subject of an appeal. *Bamasoondery* v. *Nilmoney Chunder*, Cor. Rep., 56.

An appeal will lie from an order passed by the High Court in the Miscellaneous Department, in a case of execution of decree, in which the amount or value involved exceeds Rs. 10,000, as well as in any other case in which the Court shall admit an appeal when the amount or value is below Rs. 10,000. *Mussamut Valedaty Begum* v. *Ruggoonath Pershad*, 8 W. R., 147.

An order relating to a question between the parties to a suit, arising in execution, comes under Section 11, Act XXIII of 1861, and is appealable. *Prannath Roy Chowdhry* v. *Preonath Roy Chowdhry*, 8 W. R., 398.

An appeal lies under Section 13, Act VI of 1862 (B. C.), from an order rejecting an application to set aside a judgment passed *ex-parte* against the defendant. *Chuttur Narain Roy* v. *Gopaul Lall Tagore*, 5 W. R., Act X R., 95.

Under Section 10, Act III of 1862, an appeal lies to the High Court in cases above Rs. 5,000 relating to measurement of land. *Khaja Abdool Gunee* v. *Rajah Sutto Churn Ghosal*, 2 W. R., Act X R., 86.

An appeal lies to the Judge in a suit for rent below Rs. 100, when the first Court has determined a question as to the right to receive the rent. *Noor Mahomed* v. *Khateeja Bewa; Sheikh Oojeer* v. *Khateeja Bewa*, 4 W. R., Act X R., 34.

An appeal lies to the Judge from the decision of a Collector in matters of survey and measurement falling within Sections 9 and 10, Act VI of 1862 (B. C.). No appeal lies from the decision of a Collector under Section 11 of the same Act. *Taruck-nath Mookerjee* v. *Meydee Biswas*, 5 W. R., X R., 17.

An appeal will lie from the order of a Moonsiff dismissing a suit as beyond his jurisdiction because it was under-valued. *Mussamut Bebee Johan Buksh and others* v. *Mussamut Meher Bibee and others*, 7 W. R., 183.

Where the first Court held a suit barred by limitation and on the ground of *res-judicata*, and the

lower Appellate Court (in reversal of that Court's judgment) remanded the case for trial on its merits,—*Held* that an appeal lay from the lower Appellate Court's order of remand. *Mussamut Kuromoonissa Bibee and others* v. *Gooroo Persaud Shah and others*, 7 W. R., 331.

A suit for possession having been decreed in the absence of the defendants, they applied for a re-hearing, and their application was rejected. They then, after the time allowed by law, applied for a review of judgment, which was granted, without any determination as to the goodness and sufficiency of the cause of delay. *Held* that the order granting the review was illegal, and that an appeal lay as to the sufficiency of the cause for the delay. *Kristo Gobind Joardals* v. *Juggobundoo Sircar*, 12 W. R., 94.

Where a Civil Judge, upon a petitioner applying under Section 18 of Act XX of 1863 for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor, reversing the former order, decided by an order upon the rights of the parties,—*Held* that, though both orders were made without jurisdiction, that fact does not give the High Court an appellate jurisdiction in the matter. *Kaviraja Sundra Martya Pillai* v. *Nalla Naikan Pillai, petitioner*, 3 Mad. Rep., A. C., 93.

An appeal lies from the decision of a Court upon the hearing of a cause that it has no jurisdiction on the ground that the suit has been instituted in the wrong district. *Maharajah Dheraj Mohatab* v. *Mudoosoodun Mookerjee and others*, Marsh., 572.

Where an enquiry has been held under Section 299, Code of Civil Procedure, and a regular appeal lies to the High Court under Section 231, a miscellaneous appeal cannot be entertained. *Gooroo Doss Roy* v. *Punchanun Bose and another*, 9 W. R., 337.

A lower Appellate Court may entertain an appeal as to matter in respect of which the first Court rejected a review of its own order. *Mothooranath Dutt* v. *Oodermonee Debee*, 4 W. R., Mis., 17.

An appeal lies from the order of a Judge refusing to execute a decree of a Small Cause Court. *Dellawar Ally* v. *Dabee Pershad*, 11 W. R., 203.

An appeal lies to the Judge from an order of a lower Court deciding that execution of a decree is barred by limitation. *Kebul Kishen Sein and others* v. *Obhoya Churn Doss*, alias *Titoo Ram Doss and others*, 6 W. R., Mis., 36.

An appeal lies from an order in such a case, Section 254, placing the decree-holder and the defaulting purchaser in the position of parties to a suit. *Baboo Sooruj Buksh Singh* v. *Sree Kishen Doss*, 6 W. R., Mis., 126.

In a case remanded to the lower Appellate Court for trial, by the Court of first instance, of the issue of limitation, which the appellant had not been allowed the opportunity of meeting, it was ruled that, upon the decision of that issue, it would be open to the parties to appeal upon the whole case, notwithstanding the appeal already had. *Rughoo Nundun Persad Singh* v. *Chuttorsal Singh and another*, 10 W. R., 335.

Where at the time of granting an application for review of judgment, the Court proceeded to dispose of the whole matter at once as on a re-hearing,—*Held* that so much of the order as granted the application for review was final and not open to appeal, but that so much of it as went to dispose of the case finally as on a re-hearing was a distinct order and open to appeal. *Ahmud Hossein Jan* v. *Shurbanund Tewaree*, 6 W. R., 301.

According to Section 11, Act XXIII of 1861, no appeal lies in a case of private dispute among the heirs of a deceased decree-holder as to their respective rights. The order of the Judge in appeal was accordingly reversed, and, by virtue of Section 35 of the same Act, the proper order passed, allowing the sons of the deceased decree-holder to represent him as his sons, without any determination of the genuineness of an alleged will by which different shares were allotted to the several sons, or of the extent of their respective shares. *Rajchunder Roy Chowdhry* v. *Greesh Chunder Roy*, 5 W. R., Mis., 45.

The purchaser of a decree has a right to appeal, even though not a party to the suit. *Tara Chand Hazara* v. *Doorga Churn Hazara and others*, 10 W. R., 205.

The fact of a defendant having, in the Court of first instance, disclaimed any right or interest in the land in a suit, does not deprive him of the right to apppeal, if a judgment is given against him with costs. *Nund Coomar Singh and others* v. *Gunga Persaud Narain Singh*, 10 W. R., 94.

When a Moonsiff acts without jurisdiction, the question may be the subject of an appeal to the Appellate Court of the district. *Altaf Hossein* v. *Greesh Chunder Roy*, 15 S. W. R., C. R., 556.

Where an application for review is disposed of as upon a re-hearing on the merits, an appeal lies from the order so passed.

Where an application is made to correct an error in a proceeding in which interest was calculated, the order passed on the application is open to appeal under Section 11 Act XXIII of 1861. *Amanut Ali* v. *Mussamut Bendhu*, 13 S. W. R., C. R., 138.

(*d*) *Where an Appeal does not Lie.*

No appeal lies from an order of a Court giving possession under Section 264 Act VIII of 1859 to a purchaser at a sale in execution of a decree. *Omirto Moyee Dussee* v. *Gooroo Dass Roy*, 17 S. W. R., C. R., 395.

After obtaining a judgment for possession, the judgment-creditor sued for wasilat. After decree an enquiry was made into the amount of wasilat, and on the report of an Ameen the decree-holder being present and the opposite party not appearing, the Court made an order for the payment of the sum therein mentioned. Subsequently the judgment-debtor appeared and petitioned that the award might be corrected by deductions to which he was entitled. On his application being refused, he appealed to the Judge, who remanded the case with a view to its being ascertained whether any and what amount should be deducted.

Held, that the Judge should not have interfered with the award of wasilat, which was a final award so far as the Appellate Court was concerned. *Punchunun Bose* v. *Oomanath Roy Chowdry*, 14 S. W. R., C. R., 160.

An appeal will not be allowed after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the

time of the decision of the original suit has subsequently been given by the High Court. *Makhun Náikih* v. *Mauchaund Ladhábhui*, 5 Bom. Rep., A. C., 107.

An appeal does not lie from an order passed under the Religious Endowments Act (XX of 1863), but the party dissatisfied with the order may seek to set it aside by a regular suit. *Khudeeram Singh* v. *Sham Singh Poojoory*, W. R., 1864, Mis., 25.

No appeal lies to the High Court from the order of a Small Cause Court in execution. *Mutee Lall* v. *Ram Doss*, W. R., 1864, Mis., 38.

There is no appeal from the order of a lower Appellate Court remanding a case a second time, on the ground that the former order of remand had not been carried out. *Radhabullub Surma* v. *Anundmoyee Debia*, W. R., 1864, Mis., 39.

A. filed a memorandum of appeal, but failed to deposit the sum required to defray the cost of issuing the usual notice on the respondent. When the case came on for hearing, it was found that, in consequence of A.'s failure to deposit, no notice had been served on the respondent; and the Judge dismissed the appeal under Section 6 of Act XXIII of 1861. Within 30 days after this, A. presented a petition explaining the reasons of his default, and praying that, on payment of the tulubana, the appeal might be restored to its place; but the Judge, without considering the reasons which A. had given in his petition, disallowed his prayer. *Held* that no appeal lay from the order of the Judge rejecting A.'s petition, which was of the nature of an application for a review of judgment. *Held* also that Section 37 of Act XXIII of 1861 does not apply to cases where the subject which is being dealt with by the Court is not the actual appeal itself, and cannot therefore be rightly treated as standing in an analogous position to that of the original suit itself; and, further, that the same section has not the effect of making Section 7 of the same Act applicable to cases where the Appellate Court has passed an order, under Sections 5 and 6, dismissing the appeal.

Semble,—The word "powers" in Section 37 of Act XXIII of 1861 is not synonymous with, and does not comprehend, jurisdiction. *Kalikrishna Chandra* v. *Harihar Chuckerbutty*, 1 B. L. R., A. C., 155; 10 W. R., 160.

A., a judgment-debtor, had funds in the hands of a public officer, which B., C., and D. severally attached in execution of decrees obtained by them respectively in the same Court against A.

B. attached before C. and D., and applied by petition that his decree might be first satisfied. C. and D. put in similar petitions. The Court below took up all the petitions together, and ordered that B., C., and D. should each receive, rateably, a part of the fund in question.

B., C., and D. now appeal separately, each making A., the judgment-debtor, and the other decree-holders respondents. *Held* that the decree-holders, B., C., and D. had no right of appeal as against the rival decree-holders; that the order of the lower Court, taking up all the cases together, practically made B., C., and D. parties to the hearing; and that, having been made parties regularly, they could not be struck off by the Appellate Court, on the ground that they should not have been made parties. *Held* by the majority (Macpherson, J., dissenting) that B., C., and D. have no right of appeal even against the judgment-debtor. *Kanya Lall Pundit* v. *Radha Muddun Mohun Doss*, 9 W. R., 223.

No appeal lies from an order of the Judge remanding an appeal case to the Court below for further investigation as to the facts. *Huromohun Mookerjee* v. *Sreemutty Shoonyanee Mohunt Thakooraney and others*, Marsh., 469.

No appeal lies from the refusal of the Judge of an Appellate Court to allow a fresh document to be filed. *Beckwith* v. *Kishto Jeebun Buxshee*, Marsh., 278.

An order of a District Court under Section 84 of Act XX of 1866 is not appealable to the High Court. *Salgram Misser* v. *Mussamut Jankee Koer*, 9 W. R., 122.

No appeal lies to the High Court from an order passed under the Registration Act. *Ramessur Mahatah* v. *Kublyanessuree Debia*, 9 W. R., 283.

No appeal lies from the order of a Collector refusing to execute a decree on the ground that the decree was barred by the Law of Limitation. *Nobo Kishore Roy* v. *Huro Soondery Dossee and others*, 9 W. R., 440.

A Moonsiff's order rejecting an application for review is not appealable. *Jewan Bibee* v. *Buddun Mundul and others*, 9 W. R., 489.

There is no appeal from an order as to the application and distribution of the proceeds of property sold in execution under a decree of a rival decree-holder. *Choonee Lall* v. *Pultoo Bhukut and others*, 6 W. R., Mis., 74.

An appeal will not lie against an order for execution merely on the ground that there is an error in the decree, and that the decree should have been in terms other than it is. *Mussamut Busseerun* v. *Mussamut Alfun*, 6 W. R., Mis., 122.

When a sale in execution was set aside, and the order directing the return of the purchase-money did not also direct the payment of interest thereon, —*Held* that there was no appeal from the order of the lower Court refusing to give interest. *Bishonath Doss* v. *Ahmed Ali*, W. R., 1864, Mis., 19.

The parties contemplated by Section 11, Act XXIII of 1861, are both the opposite parties to the suit or their representatives, but not one of the original parties divided and subsequently represented by two or more other individuals between whom a dispute may arise as to their respective shares or rights in the decree. Any order passed by the Judge in execution as between them cannot be the subject of an appeal, but their rights must be determined, as in the case of strangers, by separate suit. *Mirza Ally Hossein* v. *Dhunput Singh*, W. R., 1864, Mis., 19.

No appeal lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution. *Chowdhry Ruttun Persad* v. *Hunooman Jah*, W. R., 1864, Mis., 20.

In a suit against A. and B. for the recovery of the possession of property, the Court gave a decree against A. and in favour of B. The plaintiff appealed from that part of the decision which was in B.'s favour. *Held* that the Judge on appeal had no jurisdiction to reverse the decision of the Court below against A., he being no party to the appeal. *Hurro Chunder Roy* v. *Lallchund Banerjee*, Marsh., 256.

No appeal lies to the High Court from an order distributing sums realized in execution among various decree-holders. *Jungee Lallmahajun* v. *Brojo Beharee Singh*, 2 W. R., Mis., 21.

No appeal lies from the order of a lower Court suspending the execution of one decree, pending the result of an enquiry in a cross-decree, held by the judgment-debtor. *J. Smith* v. *Bulwant Singh*, 2 W. R., Mis., 24.

No appeal lies from an order passed after decree and in execution thereof. *Kishen Bullub Mohunt* v. *Konessur Singh*, 2 W. R., Mis., 33.

No appeal lies from an order of a Judge refusing to recognize the position of a purchaser of a decree. *Lalla Ojhee Lall* v. *Syed Looft Ali Khan*, 2 W. R., Mis., 33.

An appeal is not open under Section 11, Act XXIII of 1861, to the person who is found by the Court below not to be a *bonâ-fide* purchaser of a decree for valuable consideration. *Chunder Pershad Misser* v. *Rajah Nilanund Singh*, 2 W. R., Mis., 38.

No appeal lies to the Judge in a dispute between rival decree-holders in respect to the proceeds of property sold in execution of a decree. *Afzuloonissa Begum* v. *Parbutty Koonwar*, 2 W. R., Mis., 41.

No appeal lies to an intervenor whose objection has been disallowed by the lower Court. *Roghoonath Narain Singh* v. *Ram Churn Sahoo*, 2 W. R., Mis., 48.

No appeal lies from an interlocutory order obtained by a purchaser at a sale in execution of a decree, who was not a party to the original suit. *Bhoondur Mul* v. *Gunga Pershad*, 2 W. R., Mis., 50.

An appeal does not lie to an objector who is not one of the parties, *i.e.*, who is neither the decree-holder nor the judgment-debtor. *Luchmeeput Singh* v. *Lekraj Roy*, 2 W. R., Mis., 56; *Gossain Jhunmi Pooree* v. *Anund Moyee Dossee*, 3 W. R., Mis., 9; *Soodha Monee Dossee* v. *Brojonath Mozoomdar*, 4 W. R., Mis., 14.

No appeal lies from the order of a Court releasing a property from attachment, on the ground that it is in the possession of the judgment-debtor, not on his own account, but on account of, or in trust for, some other person. *Radha Kissen and others* v. *Shah Ameeroodeen*, 11 W. R., 204.

Certain property having been attached in execution as belonging to the judgment-debtor, a portion was claimed by a third party and released from attachment. *Held* that no appeal by the judgment-debtor lay from the order of release. *Sham Soonder Koonwar* v. *Rughoonath Suhaye*, 11 W. R., 264.

No appeal lies on the part of a decree-holder against the order of a Judge vesting the Official Assignee with the property of a judgment-debtor. *Neet Lall and another* v. *A. B. Miller*, 11 W. R., 420.

An appeal will not lie solely on a question of costs. *Chooneeloll Misser and others* v. *Patroo Deo and others*, 6 W. R., 19.

No appeal lies from an order passed in execution of a decree between either of the parties to the suit and the third party, but a regular suit may be brought to set aside the order. *Gobindnath Sandyal and others* v. *Ramcoomar Ghose*, 6 W. R., 21.

Quære,—Whether, when a lower Appellate Court reverses a decree of a lower Court on the plea of limitation, and remands the case to be tried upon the merits, such decision is an order prior to decree from which no appeal will lie. *Mahomed Anjob* v. *Gouree Pershad Sha*, 6 W. R., 61.

There is no appeal from the order of a Principal Sudder Ameen setting aside as a nullity the order of a Judge who, acting for him in his absence, had admitted an appellant as legal representative of the original plaintiff, who had died *pendente lite*, the Judge having no jurisdiction to make such substitution. *Bipro Chunder Joobraj* v. *Ramlochun Deb*, W. R., 1864, 121.

Section 11 of Act XXIII of 1861 does not give an appeal from an order made under Sections 270 and 271, Act VIII of 1859, as to the application and distribution of the proceeds of property sold in execution under a decree of a rival decree-holder. *Misree Koonwar* v. *Maharajah Moheshur Buksh Singh*, W. R., F. B., 116.

When a suit is thrown out by the first Court, on the ground of limitation, and the decree is reversed in appeal, and the suit decreed by the Appellate Court, no appeal lies on the merits from the Appellate Court's decision. *Seetaram* v. *Juggobundo Bose*, 2 W. R., 168.

One of several co-mortgagors cannot appeal against a foreclosure decree when the equity of redemption has been sold before the institution of the suit. *Kottale Uppi* v. *Kalleyatt Panol Kunne*, 1 Mad. Rep., 7.

No appeal lies from an award of compensation or release of attached property. *Hurosoonduree Dossee* v. *Bungseemohun Doss*, 3 W. R., Mis., 28.

No appeal lies from an order passed at the instance of a third party for excluding a particular property from sale in execution of a decree. *Beebee Saheb Jehan* v. *Syad Shah Asudoollah*, 5 W. R., Mis., 28.

An appeal will not lie from the separate determination of an isolated issue of law or fact before the taking of evidence on the remaining issues. *Petition of the Court of Wards, as representing the estate of the late Rajah Pertaub Chundra Singh, appealing against an order of the Judge of 24-Pergunnahs*, 7 W. R., 222.

No appeal lies from the order of a Court refusing an application to review its judgment. *Mohanund Mookerjee* v. *Durpo Narain Mahata*, 5 W. R., Mis., 58.

According to Section 11, Act XXIII of 1861, no appeal lies in a case of private dispute among the heirs of a deceased decree-holder as to their respective rights. *Rajchunder Roy Chowdhry* v. *Grishchunder Roy*, 5 W. R., Mis., 45.

An appeal will not lie in a question between rival decree-holders. *Nawab Hajee Mahomed Khan Kujulbash* v. *Thakkoor Singh*, 3 W. R., Mis., 1.

An appeal is not admissible against an order passed under Section 336, Act VIII of 1859. *In the matter of Gooroo Sonkur*, 11 W. R., 556.

An appeal does not lie, under Section 11, Act XXIII of 1861, from an order in execution, in which the representative of a decree-holder was on one side and a stranger (the auction-purchaser) on the other. *Luchmun Pershad* v. *Ameer Ali*, W. R., 1864, Mis., 15.

Where property attached in execution is released

at the instance of an intervenor, under Section 246, Civil Procedure Code, and retained in his possession, the decree-holder has no right of appeal. *Re Ajoodhya Dass*, 12 W. R., 354.

The Court will not interfere with a decree proceeding on a mistake as to the applicability of a law when such error does not affect the decision of the case. *Kureem Khan* v. *Sheikh Mufooz*, W. R. F. B., 1862, 16.

An appeal does not lie from the order of a Judge dismissing an appeal before him for default of prosecution. *Shaihh Mahomed Jan* v. *Mussamut Ameerun*, 17 S. W. R., C. R., 180.

The purchaser of the right, title, and interest of a defendant in a suit in and to the land, the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. *Gagadhar Prasad* v. *Ganesh Tewari*, 7 B. L. R., 149, and 15 S. W. R., C. R., 485.

(*e*) *Practice and Procedure in Appeal.*

If a party presents an application for review of judgment within the ordinary period limited for appealing, the time occupied by the Court in disposing of such application will not be reckoned among the number of days limited for appealing, but will be added thereto, and a memorandum of appeal presented within such extended period will be received as put in within time. *Petition of Brojendro Coomar Roy Chowdhry*, 7 W. R., 529.

Held, with reference to the decision of the Full Bench reported in 9 W. R., 181, that inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in appealing against a judgment. *Mouree Bewa* v. *Soorendranath Roy*, 2 B. L. R., A. C., 184; 10 W. R., 178.

There is nothing in strict law to prevent a party, acting for himself or through his guardian, from appealing against a decision in his favour. *Mary Eliza Stephenson and another* v. *Unnoda Dossee*, 6 W. R., Mis., 18.

Under Section 11 of Act XXIII of 1861 an appeal lies from the order of a lower Appellate Court rejecting an appeal in an execution case as presented out of time.

If the period within which an appeal ought to be filed expires on a Sunday, the practice is to admit the appeal on the following day. *Gopeenath Roy* v. *Gopeenath Chatterjee*, 6 W. R., Mis., 106.

The High Court has the power of extending the time for the presentation of an application for the admission of a special appeal (*dissentiente*, Trevor, J.) *Kashinath Roy* v. *Mynooddeen Chowdhry*, W. R., F. B., 146.

The appellant filed an appeal against the judgment of the Court of first instance without a copy of the decree. Subsequently the decree of the Court of first instance was filed within the time allowed for appeal, and accepted by the Judge. *Held* that the irregularity was cured, and the appeal should not have been dismissed on the ground of such irregularity. *Lullee* v. *Ram Pershad*, 1 Agra Rep., 35.

Where the appellant has neglected to file his memorandum of appeal within the time specified, the appeal will be dismissed with costs. *Mahomed Dhurumsey* v. *Bhanjee Topun*, 1 Ind. Jur., N. S., 96.

Delay in furnishing office copies of judgment affords no ground for not filing a memorandum of appeal within the period prescribed. *Joseph Ezra Simon Elias and others* v. *Habool Mooshee Mooshee*, 1 Ind. Jur., 18; S. C., 1 Bourke's Rep., O. S., 382.

An appellant must not make unnecessary delay by asking for copies of judgment and decree on different dates. The time requisite for obtaining a copy of the judgment must be excluded from the reckoning of the period for appeal. *Nursing Narain Singh* v. *Radhay Singh*, 2 W. R., Mis., 38.

An appellant whose time for appealing expires during holidays, may put in his appeal on the first day the Court opens after the holidays. *Mosuruf Ali Chowdhry* v. *Janokenath Odhicaree*, W. R., 1864, Mis., 40.

Petitions of special appeal to the High Court at Bombay on its appellate side must be stamped according to the scale contained in Clause 11 of Schedule B. of Act XXVI of 1867. *Desai Kalyanrai Hakumatrai et al. ex-parte*, 4 Bom. Rep., A. C. J., 145.

A petition of appeal is presented in time if presented within the time limited for appealing, exclusive of the time during which the application for a review of judgment was pending. The petition of appeal should be presented immediately after the application for a review is rejected. *Nobbo Kissen Singh* v. *Kaminee Dossee*, 2 W. R., Mis., 35.

The rule which requires pleaders to certify that the grounds taken in special appeal are good, also requires them to see that the grounds are full. *Ramkristo Deb and another* v. *Rajchundra Surmah and others*, 11 W. R., 246.

A mere plea of sickness is no cause for interference with an order of a Judge rejecting an appeal not filed within time. *Mazoom Ali Khan* v. *Panchoo Bibee*, 1 W. R., Mis., 23.

The time for rejecting an appeal is when it is presented, and not after it has once been admitted. *Goopee Bullub Roy* v. *Goluck Proshad Bose*, W. R., 1864, 135.

An appellant has no right to withdraw an appeal which has been regularly registered without the permission of the Court.

Where the appellant had given notice of the withdrawal of the appeal before the day of the hearing, and notice of withdrawal had been given to the respondent, but not until costs had been incurred,—*Held* that the appellant was not at liberty to withdraw the appeal, and the Court ordered that the appeal be set down for hearing. *Kareem Bee* v. *Beegam Bee*, 3 Mad. Rep., A. C., 368.

On appeal by the defendant, the Court allowed the objection to be raised that the suit was brought for a cause of action in respect of which the plaintiff had already obtained a decree in a former suit, notwithstanding this matter had not been pleaded in the Court below. *Kylashnath Chund* v. *Monmoheenee Dossee*, Marsh., 276.

An appeal from an order rejecting a plaint for misjoinder is a miscellaneous appeal; and if it is rejected an appeal from the order of rejection is also of the nature of a miscellaneous appeal. *Kosella Koer* v. *Behary Patuck*, 12 W. R., 70.

A petition for the re-admission of an appeal must be accompanied by evidence in support of the alle-

gations on which the petition is founded. *F. R. Miselbach, petitioner*, 6 W. R., Mis., 43.

Where a suit was dismissed by a Moonsiff for want of evidence on the side of the plaintiff (the plaintiff's pleader having stated that he had no instructions, and that he could not proceed with the case in the absence of his client),—*Held* that a regular appeal ought to have been preferred to the Zillah Judge from the judgment dismissing the case. *Kooraram Chuckerbutty* v. *Shama Soondery Debea and others*, 6 W. R., Mis., 129.

Pro formâ defendants, by making the real defendants, who did not appear, respondents as between themselves, cannot open out that portion of the case which, as between the plaintiff and the non-appealing defendants, has not been appealed against. *Gudadhur Banerjee* v. *Mussamut Monmohinee Dossea and another*, 7 W. R., 366; *Sreemutty Khemunkuree Dossee* v. *Nilambur Mundul*, 2 W. R., 227.

The High Court will not, on the application of the defendant, stay all proceedings in the appeal, on the ground that the plaintiff has no interest in the suit, that being a question which can more properly be raised in the suit or appeal itself. *In the Matter of the Petition of Khodejoonissa*, 7 W. R., 486.

A defendant who did not appear, although his interests are identical with those of the plaintiffs, who have not appealed, cannot appeal against the judgment passed in favour of his co-defendants. *Juggunath Chatterjee and others* v. *Gordon, Stuart, and Co.*, 6 W. R., 36.

Where, on the appeal of one of several judgment-debtors, the bond on which the plaintiff sued is found to be false and not binding at all, all the other parties to the bond are also released, notwithstanding that they did not appeal. *Sufur Ali Sowdagur* v. *Saseeroolla Sowdagur*, 6 W. R., 323.

The omission to appeal against an order of remand does not preclude a respondent on appeal from taking an objection to the order of remand as erroneous. *Kishenchunder Gaen* v. *Sreeshteedhur Khattah*, 8 W. R., 208.

A Judge can, on the appeal of one defendant, reverse an order against two defendants for a joint kubuleut. *Shibram Chunder* v. *Poranchunder Bagdee*, 2 W. R., Act X R., 31.

Pleaders will ordinarily be restricted to their written grounds of appeal, and not allowed to infer separate points from vague generalities. *J. P. Mackintosh* v. *R. Watson and others*, 3 W. R., Act X R., 123.

A certified copy of the Judge's notes not having been filed, and there being no certificate from the Prothonotary that security had been given for costs, the appeal was dismissed for non-compliance with the rules of the Court. *Bhimji Gridhar* v. *W. J. Morgan*, 3 Bom. Rep., O. C., 63.

An entire decree cannot be reversed on the appeal of one defendant having only a part interest in the decree. *Woomesh Chunder Bose* v. *Matunginee Debia*, 2 W. R., 170.

Where the plaintiffs could not recover on a policy for a partial loss, except as for jettison, and that point was not taken in the Court below, the point could not be raised in appeal. *Mackinnon and others* v. *Dundas*, Bourke's Rep., A. O. C., 155.

Where the Statute of Limitations was pleaded for the first time in a petition for a review of the judgment of the lower Appellate Court,—*Held* that the review being part of the proceedings in regular appeal, the question was whether the statute may be pleaded for the first time in regular appeal; and that where upon the admitted facts it is clear that the statute is a bar, it may be pleaded for the first time in regular appeal. *Sarasvati* v. *Pachanna Letti*, 3 Mad. Rep., A. C., 258.

Where there were two suits separately instituted in the Collector's Court for partition of two mouzahs, and defendants appeared in both cases, but preferred only one appeal relating to both mouzahs, instead of appealing separately,—*Held* that the Collector's decision as to one mouzah, of which no notice was taken by the Judge, must virtually be deemed as unappealed. *Allup Rai and others* v. *Sheo Dyal and others*, 2 Agra Rep., A. C., 142.

An Appellate Court has authority to permit an appeal to be withdrawn. *Ram Pershad Ojha and others* v. *Bhorosa Koonwar and others*, 9 W. R., 328.

The appellant being entitled to appeal specially from an order of the lower Court in the Execution Department, instituted a regular suit to set aside the order. Having elected that remedy, his present application to file a special miscellaneous appeal out of time was rejected. *Kaleekishore Sein* v. *Nilamber Sein*, 2 W. R., Mis., 35.

The mere preferring of an appeal against a judgment does not bar the admission of a review of that judgment. *Rash Beharee Singh* v. *Koonjo Beharee Singh*, W. R., 1864, Mis., 31.

It is not a condition precedent to the reception of further evidence by an Appellate Court that the reasons for doing so should be recorded. *W. Chardon* v. *Ajeet Singh*, 12 W. R., 52.

The order of an Appellate Court rejecting an application to re-enter an appeal struck out for default is final. *Fuzzoo Khan* v. *Issur Chunder Sircar*, Marsh., 30.

When an appeal is barred by law an Appellate Court cannot interfere in any matter legitimately arising out of the case, unless there is want of jurisdiction. *Kurum Chand Koleeah* v. *Huree Mohun Ghose*, 2 W. R., Mis., 45.

In order to satisfy the High Court that a point which the Judge omitted to notice was actually taken in the oral pleadings, a party may put in either an affidavit of some person who heard the point raised, or a copy of the petition to the Judge drawing attention to the omission with his order. *Yusoof Ali Chowdry* v. *Mussumut Fyzoonissa Khatoon Chowdry*, 15 S. W. R., C. R., 294.

A decision passed on appeal from a decision of a Moonsiff by an Assistant Judge, subsequent to the date on which Act XIV of 1869 came into operation (14th March, 1869), and prior to the date on which the Assistant Judges in the Bombay Presidency were invested with appellate powers under the Act (4th April, 1869), is not illegal, as the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the old Regulations, under which the Assistant Judges had power to hear appeals.

Also, when the parties neglect to get an error of law in a decree of the High Court corrected by a review, the High Court will decline to correct it when the case comes up before them again in a

subsequent special appeal. *Sakho Narayan Khundulkur* v. *Narayan Bhikuji Khundulkur*, 6 Bom. Rep., A. C. J., 238.

N. sued to set aside the sale of property which M. had attached in execution of a decree against N.'s husband's brother, plaintiff alleging that it belonged to her husband (though the latter's objections under Section 246, Civil Procedure Code, had been rejected), and asking for a declaration of her right and title. N. obtained a decree, and both M. and the auction-purchaser appealed to the Judge in *formâ pauperis*. *Held* that M. had good ground of appeal if he could prove that the property belonged to the judgment-debtor. *Moshavola Khan, In the matter of*, 14 S. W. R., C. R., 445.

In a suit by a Hindu widow for possession and declaration of title,—*Held* that defendant could not be allowed to come in and urge for the first time in appeal that, by a family custom or Koolachar, females were excluded from inheriting. *Tekait Doorga Pershad Singh* v. *Mussamut Doorga Koonwaree*, 13 S. W. R., C. R., 10.

When an appeal had been preferred by the plaintiff to the Judge which ought to have been preferred to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. *Maharini Adhirani Naran Kumari Rajrani of Burdwan* v. *Purikhit Rawtra*, 7 B. L. R., Ap. 15; S. C. 15 S. W. R., C. R., 426.

Reception of evidence in Appellate Court, though not produced in lower Court. *Maharaja Jagadindra Banwari Gobind Bahadur* v. *Bhubatarini Dasi*, 5 B. L. R., Ap., 54.

(*f*) *Where Special Appeal Lies.*

A finding of fact by a lower Appellate Court may be disturbed in special appeal, if, as in this case, the reasonings and the views upon which that finding is based are erroneous in law. *Juggurnath Deb* v. *Mahomed Mokum*, 17 S. W. R., C. R., 161.

A finding of fact arrived at upon reasons purely speculative amounts to a mis-trial, which can be set aside by the High Court in special appeal. *Mahomed Aizaddi Shaha* v. *Shaffi Mulla*, 8 B. L. R., 26.

Suit to set aside sale by Hindu widows.—*Held* by Peacock, C. J., that the High Court has the power in special appeal, but the remanding a case, to see whether there is any evidence on the record which would warrant a contrary finding to that already come to by the Judge below, and that it would be worse than useless to remand the present case to the Judge to find whether any necessity existed for the sale, when the Court sees that there is no evidence on the record to prove the existence of such necessity, and when the Judge has found that there was no necessity, if he were to come to a contrary finding upon the evidence, as it stands, his judgment would be reversed upon special appeal as being a finding without any evidence in support of it.

Held, *contra*, by Bayley, J., that, under Section 372, Act VIII of 1859, the Court in special appeal cannot try facts on the evidence on the record, or whether the evidence is sufficient to enable the Court to come to a conclusion of fact on the question of legal necessity, and that the case should be remanded to the Judge for a clear finding on that question. *Ram Pershad Sookal* v. *Rajunder Sahoy*, 6 W. R., 262.

In a suit for arrears of rent the defendant pleaded payment and filed receipts. The Collector distrusted the receipts, and gave a decree in favour of the plaintiff, saying that, as to three of the receipts evidence had been given which he did not believe; and that with respect to the other receipts no evidence had been offered. The Judge on appeal reversed the decree, and gave a decree in favour of the defendant, expressing an opinion that the distrust of the evidence in support of the three receipts was without sufficient reason. *Held* that, with respect to the receipts in support of which no evidence had been offered, the plaintiff was entitled to a decree for the rents to which they applied, and that the finding of the Judge that such rents had been paid without any evidence having then been given of such payments was an "error in the investigation of the case" which had produced error in the decision of the case upon the merits, within Section 372 of Act VIII of 1859, and was therefore ground of special appeal. *Mohun Chunder Dhur and others* v. *Kidge*, Marsh., 381.

Where the Courts below have avowedly abstained from examining into a plaintiff's claim of title to land, the subject of the suit, on the ground that the plaintiff was a party to the deed under which the defendant claims, when in fact the deed shows he was no party to it, this constitutes a defect "in the procedure and investigation of the case producing error in the decision of the case upon the merits" within Act VIII of 1859, Section 372, and a special appeal will lie. *Abdooz Salam* v. *Mussamut Imraloonissa Bibee*, Marsh., 6.

A special appeal lies from an order dismissing an appeal under Sections 5 and 6, Act XXIII of 1861. *Indur Chundra Baboo* v. *Oozeer Ally Khan*, 7 W. R., 338.

A special and not a regular appeal will lie from an order rejecting a respondent's application for the re-trial of an appeal heard in his absence. *Sreedhurchurn Nundee* v. *Juggobundoo Paul*, W. R., 1864, Mis., 37.

A special appeal lies from an order passed under Sections 5 and 6, Act XXIII of 1861 (dismissing an appeal for non-service of notice in consequence of failure to deposit the cost of issuing the same). A special appeal also lies from an order under Section 347, Act VIII of 1859 (re-admitting an appeal dismissed for default of prosecution). *Dinobundhoo Antterage* v. *Beharee Lall Mookerjee*, 3 W. R., Mis., 23.

A special appeal, and not a new suit, should be brought to contest a legal point involved in an adverse decree. *Bheem Rukheet* v. *Sartuck Chunder Rana*, W. R., 1864, 55.

A special appeal lies from an Appellate Court's judgment in which the decree of the Lower Court is reversed without any reasons given for differing as to facts. *Sheikh Goburdhun* v. *Sheikh Sadhoo*, 1 W. R., 244.

Special appeal will lie from an order rejecting an application to set aside an *ex-parte* decree passed under Act X of 1859. *Suderooddeen* v. *Huronath Sein*, 8 W. R., 87.

A suit to establish a surety's liability on account of arrears of rent due from a putneedar, where the non-payment of rent by the putneedar would have

to be established, is not cognizable by a Small Cause Court; and consequently a special appeal is not barred in such a case by Section 27, Act XXIII of 1861. *Maharajah Mahatab Chand Bahadoor* v. *Brojonath Mitter*, 8 W. R., 111.

Every Judge of a question of fact is bound to take into consideration all the allegations and proofs upon the record bearing upon that question, as well as the material presumptions arising therefrom, and to overlook them is a defect in law. But before such defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. *Gunee Biswas* v. *Sreegopal Paul Chowdhry*, 8 W. R., 395.

Section 2, Act XIII of 1860, refers to appeals, and also to suits, and as the suit of the special appellant, which had been decreed in the Court of first instance, was dismissed by the lower Appellate Court, the special appellant was held entitled to a revival of his suit.

Section 378, Act VIII of 1859, refers to applications for review of judgment, but this was not an application for revival of the suit under Section 2, Act XIII of 1860. Special appeal does lie in the latter case. *Bungsheedhur Mundul* v. *Puddo Lechun Roy*, W. R., 1862, F. B., p. 11, S. C., Ind. Jur., 5.

Under Section 11, Act XXIII of 1861, a special appeal lies from a decision passed in appeal from an order relating to the execution of a decree. *Mahomed Hossein* v. *Sheikh Afzul Ally*, W. R., F. B., 83; Marsh., 296.

A special appeal lies to the High Court from an order passed under Section 346 of the Civil Procedure Code, dismissing the appellant's regular appeal for non-appearance of the appellant in person or his pleader. *Devappa Setti* v. *Ramanandha Bhutt* (3 M. H. C. Report 109), commented on; *Chinnappa Chetti* v. *Nadaraja Pillali*, 6 Mad. Rep., 1.

A Judge is bound to give full effect to the terms of a sale certificate; and when he proceeds to limit the effect of that certificate by certain inferences and conclusions drawn from other documents he does that which he is not at liberty to do, and commits an error of law which it is in the power of the High Court to remedy on special appeal. *Mookhya Huruckraj Joshee* v. *Ram Lall Gomashta*, 14 S. W. R., C. R., 435.

Where a Subordinate Judge held, from the fact of one person carrying on a business firm and appearing to the world to be the only person carrying it on, that there could be no other person in partnership with him, he was considered to have committed an error which materially affected his decision on the merits, and was a good ground for special appeal. *Soobul Chunder Kulleah* v. *Koylas Chunder Mal*, 14 S. W. R., C. R., 23.

Special appeal is not barred in the case of a claim for money due under a bond for less than 500 rupees, where the property pledged under the bond is made liable. *Tripoora Soonduree* v. *Roylash Chunder Bose*, 15 S. W. R., C. R., 265.

Where, in a suit cognizable by a Court of Small Causes, in order to determine the question at issue between the parties, it was necessary for the Court of Appeal in the first instance to determine a question of title to land (which had been raised by the Moonsiff),—*Held* that a special appeal lay to the High Court, though the Court below had omitted to determine such question of title. *Kisandrám Valad Hirá Chaund* v. *Jethirám Valad Mugairám*, 5 Bom. Rep., A. C., 57.

Where a question of title arises in a suit of a nature triable by a Small Cause Court, which must be determined before plaintiff can get a decree, and the lower Appellate Court fails to determine it, a special appeal is admissible. *Pachoo Raree* v. *Gooroo Churn Dass*, 15 S. W. R., C. R., 556.

Held that a special appeal lies from an order of a District Judge passed in appeal in a matter relating to the execution of a decree. *Bagubái* v. *Kazi Sayad Nizmuddin et al.*, 6 Bom. Rep., A. C. J., 205.

(*g*) *Where Special Appeal does not Lie.*

Where a lessor sues to recover leased premises on the ground of breach of condition, *viz.*, sale of tenure, and lessee allows judgment to go by default, the vendee defending as intervenor, neither lessee nor vendee has a right of special appeal. *Mookta Dossia* v. *Shama Churn Ghose*, 3 W. R., Act X R., 164.

In a suit for a declaration of the right of user over the water of a tank, which right was denied, the finding of the lower Appellate Court, from the evidence of witnesses adduced by plaintiff, that plaintiff had used the water for many years, was held to be not open to special appeal, such evidence being sufficient to prove a continuous and uninterrupted user on the part of the plaintiff. *Toolsee Doss Kobeeraj and others* v. *Bhyrub Lall Tewarree and others*, 8 W. R., 311.

Held that, as the *bona fides* of the grantor was before the Court, or might have been if defendant's pleader had examined him, defendant could not appeal specially on the ground of the want of finding on the pottah. *Ram Sunkur Sein* v. *Nilkant Biswas*, 9 W. R., 392.

A father having executed a deed conveying certain ancestral property to two persons (D. and B.), who alienated it to several others, his son sued to have the conveyances by D. and B. to be set aside, on the ground that the deed given by the father was benamee, and that D. and B. never had possession. The suit was dismissed by both the lower Courts.

Held that, as plaintiff went to trial in the Courts below upon one issue only, *viz.*, whether D. and B. were ever really in occupation, he was not entitled in special appeal to complain that evidence had not been taken as to the passing of consideration-money.

Held that, as no issue was raised in the lower Courts which could have been the foundation for a declaration of right, the non-decision of a claim to such a declaration could not be made a ground of special appeal. *Puriag Dutt* v. *Brojo Koonwar and others*, 9 W. R., 503.

In a suit for damages on account of false charge and consequent arrest, in which the Court of first instance found that there were probable and reasonable grounds for bringing the charge, and the lower Appellate Court took a different view of the evidence, it was held that the difference of view was not a subject for special appeal. *Hera Chand Banerjee* v. *Banee Madhub Chatterjee*, 10 W. R., 164.

No special appeal lies on a suit for damages below 500 rupees, whether the damages are on account of moveable or immoveable property. *Bheenuk Lall Mahatoon* v. *Rung Lall Mahatoon and others*, 11 W. R., 369.

Where a Court of special appeal finds that a lower Court has really gone through the evidence, and has come to the same opinion as that of the Court of first instance for the same reasons, it is no ground of special appeal that the Judge has not written these reasons on his own account. *Kaloomutee Kooer and others* v. *Jowahir Lall and others*, 11 W. R., 318.

As a matter of law, the decision of a lower Appellate Court cannot be said to be erroneous or fit to be reversed because the Judge has not, in reversing the decision of the Court below, categorically met and refuted the reasons on which that decision had proceeded ; but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded. *Golam Hossein* v. *Ram Doyal Ghose*, 12 W. R., 152.

No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. *Doorga Churn Sett* v. *Shamanund Gossain*, 12 W. R., 376.

No appeal lies against an order rejecting an application for the re-admission of an appeal under Section 347, Act VIII of 1859. *Amiruddin* v. *Jiban Bibee*, 1 B. L. R., F. B., 101 ; 10 W. R., F. B., 39.

The widow and heiress of a deceased person sued the defendants to recover personal property, valued at Rs. 200, said to have been taken by them from deceased in his life-time.

Held that a special appeal was barred by Section 27, Act XXIII of 1861. *Khapi Bewa* v. *Keshram Kuch*, 2 B. L. R., Ap., 23 ; 11 W. R., 93.

In the absence of any statement that the case had been decided *ex-parte* by the Deputy Collector for default of the defendant's appearance, the Judge on appeal by the defendant dismissed it on the merits. *Held* that no special appeal will lie on the ground that the Judge should have dismissed the appeal without going into the merits. *Gholam Eshak* v. *Hyder Moollah*, W. R., F. B., 46.

The Judge decided that the plaintiff was barred by limitation, but his judgment did not disclose the grounds on which he held that plaintiff was not entitled to deduct, in calculating the twelve years' limitation, the time occupied by certain suits brought for the same property, in which he was not suited. *Held* that it was no ground of special appeal that the judgment was silent on the subject of the claim to deduction, and that whether the point was urged in the lower Court or not, the plaintiff had no ground of special appeal in respect of omission of all notice of it in the judgment. *Ramsoonder Dass* v. *Mahomed Abbed*, 1 Ind. Jur., O. S., 102.

Held that the suit to recover Rs. 200 paid in respect of the purchase of land which was not completed, was a suit of the description cognizable by the Small Cause Court, and special appeal would not lie. *Khoob Chund* v. *Hazaree Lall*, 1 Agra Rep., A. C., 275.

Held that a suit for division of debts due to the deceased's estate (the sum being ascertained) was cognizable by a Small Cause Court, and no special appeal lies to the High Court. *Mussamut Oodeyta and Choonee* v. *Gopal*, 2 Agra Rep., A. C., 234.

Where a suit was brought for the recovery of the value of the fruit of certain mangoe trees alleged to have been misappropriated by the defendants,—*Held* that, as the suit was of the nature of a suit cognizable by Courts of Small Causes, a special appeal would not lie. *Shamabund and others* v. *Nundkoomar*, 4 Agra Rep., 290.

A special appeal will not lie against an order of the Judge refusing to admit a regular appeal presented after the expiration of the time provided for preferring appeals. *Mussamut Phoolharee* v. *Bisheshur Pershad*, 4 Agra Rep., 301.

The decision of an Appellate Court, on a preliminary issue of fact, which was not at the time appealed against, and which on a subsequent special appeal was not altered or noticed by the Special Appellate Court, is conclusive between the parties, and the issue determined cannot be re-opened on a second special appeal.

An award of the late Rajah of Satara, founded upon a deed of consent, set aside on proof being given that the consent had been obtained by duress. *Subhanjee Bin Baherjee and another* v. *Bhowaurav Bin Anandrao and others*, 1 Bom. Rep., 173.

The refusal of a Court to award damages under Section 2, Act VI of 1862 (B. C.), is not a ground for special appeal. *Maharajah Dheeraj Mahatab Chand Bahadoor* v. *Debender Nath Thakoor*, W. R., Act X R., 1864, 68.

Suit by a creditor holding a decree against a Mahomedan husband regarding property standing in the name of his wife.

Held by Jackson, J., that a distinct finding of fact had been arrived at by the lower Appellate Court (which could not be disturbed in special appeal) that the property was acquired by the wife.

Held (*contra* by Campbell, J.) that the finding of the Judge was not sufficient, inasmuch as he had found that part of the purchase-money was paid by the husband, but had not found whether the remainder of the money was also paid by the husband. *Ranee Surnomoye* v. *Luchmee Put Chutter Singh*, 6 W. R., 118.

A special appeal will not lie merely on the ground that the lower Appellate Court has disbelieved a witness by reason of his being an interested person, or for any other reason within its discretion. *Dwarkanath Doss Biswas* v. *Moddun Mohun Chuckerbutty*, 6 W. R., 292.

A special appeal will not lie in a case for damages for value of crops misappropriated under Rs. 500 cognizable by a Small Cause Court, notwithstanding that the case involved a question of title. *Hedactollah and others* v. *Sheikh Karloo*, 7 W. R., 73.

As a general rule, a special appeal will not lie on a question of costs alone, particularly when it is not shown that the Court has exercised its jurisdiction illegally or contrary to any rule having the force of law. *Achumbit Singh* v. *Kanhye Lall Mahajun and others*, 7 W. R., 208.

No appeal to the Judge, or no special appeal to the High Court, will lie from the decision of a Deputy Collector under Section 11, Act VI of 1862,

B. C., on the question of the standard pole of measurement. *Rakhal Doss Mookerjee* v. *Tunoo Poramanic*, 7 W. R., 239.

A special appeal does not lie from the order of a Judge declaring that sufficient cause has not been shown to his satisfaction for presenting after time an appeal from an *ex-parte* judgment of a Deputy Collector. *Rughoonath Singh and another* v. *Roy Mohun Lall Mittra*, 7 W. R., 296.

The refusal of a Moonsiff to inflict a fine upon recusant witnesses is no ground for special appeal. *Pran Kristo Deo* v. *Kally Doss Deo and others*, 7 W. R., 460.

The parties in an appeal are not entitled as of right to put in additional evidence. The Appellate Court allow additional evidence in certain cases; but a special appeal will not lie in the event of the Court refusing to allow it. *Golam Muckdom* v. *Mussamut Hafeejoonissa*, 7 W. R., 489.

Under Section 3, Act XLII of 1860, a suit for damages of any kind below Rs. 500 (*e.g.*, a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) is cognizable by a Small Cause Court; and, consequently, under Section 27, Act XXIII of 1861, no special appeal will lie in such a case. *Gopeenath Paul* v. *Lieutenant George and others*, 6 W. R., 7.

The deciding of an appeal a few days before the day fixed for hearing it (the pleader being present) is no such defect in procedure as to render interference in special appeal necessary. *Mussamut Hukeemunissa* v. *Mussamut Bibee Muckdoonum*, 1 W. R., 246.

No special appeal lies from an order of a Judge rejecting a claim of an auction-purchaser against another; nor is an appeal admissible when the dispute is not between the parties to the suit. *Anund Chunder Pareal* v. *Juggut Chunder Koond*, 1 W. R., Mis., 31.

The Court of first instance being satisfied that the plaintiff's case could not be established, refused to examine the defendant's witnesses. The lower Appellate Court, differing from the Moonsiff, gave the plaintiff a decree.

Held that, although the Moonsiff had committed a great irregularity, still as that point was not raised in the lower Appellate Court, it could not be taken in special appeal. *Goorodass Akhoolee* v. *Poran Mundle*, 12 W. R., 364.

In a suit for possession of land after purchase, where defendant pleaded that he had long held under a miras pottah, which both the Courts below found to be false, — *Held* that the defendant could not be allowed in special appeal to come in for the first time with an allegation of a new and separate title; *viz.*, a right of occupancy under Section 6, Act X of 1859. *Soorjo Koomar* v. *Gungadhur Roy*, 12 W. R., 80.

The refusal of an application by a plaintiff to withdraw his suit is no ground for special appeal. *Raj Kishen Roy* v. *Raj Kishen Deo and others*, 6 W. R., Act X R., 24.

The High Court refused on special appeal to convert an order rejecting an appeal into one returning it for amendment. *Bussunt Singh* v. *Zalem Singh*, W. R., 1864, 386.

The omission of a lower Appellate Court to give its reasons for believing witnesses disbelieved by the first Court, does not constitute a ground of special appeal. *Lukhee Monee Dossia* v. *Rajkishore Paul*, 4 W. R., 106.

A defendant cannot appeal specially against a decision passed on the appeal of his co-defendant, affirming the decision of the first Court, which was not appealed against by the former. *Modhoosoodun Roy* v. *Shurno Moye Debee*, 5 W. R., 106.

When a Judge states as a fact that an admission was made before him by one of the parties to the suit, the High Court cannot in special appeal enquire whether the Judge was right or not in making that statement. *Bykuntnath Goopto* v. *Prosunno Moye Debia*, 5 W. R., 196.

When a plaintiff has ineffectually sued for a declaration that certain property was his own self-acquired property, he cannot in special appeal ask for a declaration of his title to a moiety of the property as a member of a joint Hindu family. *Dhun Kristo Roy* v. *Huro Chunder Roy*, 5 W. R., 197.

No special appeal will lie under Section 27, Act XXIII of 1861, for damages for inadequate sale of a decree. *Kristomonee Thakoor* v. *Bishambur Doss*, 5 W. R., 215.

Where a decree is passed *ex-parte* in an original suit the defendant has no right to a special appeal, even though his appeal have been entertained by the Civil Court. *Chidambara Pillai* v. *Kaman*, 1 Mad. Rep., 189.

The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant.

Held that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal. *Shama Charan Ghose* v. *Tarak Nath Mukhopadhya*, 3 B. L. R., Ap., 115.

An error of valuation, which does not affect the jurisdiction of the Courts in which a suit is tried, and does not lead to a defect in the decision on the merits, is not sufficient ground for interference in special appeal. *Kisto Churn Mozoomdar and others* v. *Dwarka Nath Biswas*, 10 W. R., 32.

It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon the point. *Rakhal Dass Mundal* v. *Protap Chunder Hazara*, 12 W. R., 455.

In a suit by a purchaser of an estate to have his name registered in the collectorate and his possession confirmed, which failed in the Court of first instance, but was decreed in the lower Appellate Court, it was held to be too late for the defendant, after contesting the suit in two Courts, to urge in special appeal that the plaint disclosed no cause of action. *Buksh Aly Sowdagur* v. *Joyaput Khan*, 11 W. R., 248.

Where a Judge found on evidence that the notices in certain execution proceedings were not caused to be properly served, and that those notices were not made in good faith, the finding was held to be a finding of fact which could not be disturbed in special appeal. *Abdool Azeez* v. *Shumsunissa and another*, 11 W. R., 263.

The reasons of a Judge for not giving any weight to documents offered as evidence cannot be questioned in special appeal. *Munee Dutt Singh* v. *William Campbell*, 11 W. R., 278.

Parties who did not appeal from the decision of the first Court cannot appeal specially against the decision of the lower Appellate Court on the ground that the decision of the first Court prejudiced their rights. *Boykant Ram Sahoo* v. *Poorno Chunder Dass*, W. R., 1864, Act X R., 97.

The omission to record an opinion on one of many items of evidence (*e.g.*, an Ameen's report) is not such an error in law as to come within the scope of the provisions for special appeals. *Sreemutty Bundhoo Sookolany* v. *Maharajah Joy Prokash Singh Bahadoor*, W. R., 1864, 367.

The question of how costs have been awarded is not a point for special appeal. *Beer Pershad* v. *Doorga Pershad*, W. R., 1864, 215.

In a suit by a lessee upon a contract for a refund of excess revenue remitted by Government, a special appeal is not admissible if the amount claimed be under Rs. 500. *J. White* v. *Tripora Sunkur Mookerjee*, W. R., 1864, 297.

No special appeal lies to the High Court from the order of a Judge refusing to re-admit an appeal dismissed for default by a Principal Sudder Ameen. The application for re-admission should be made to the Principal Sudder Ameen. *Kisto Persad Dutt* v. *T. H. Cowie*, W. R., 1864, 315.

No special appeal lies in a suit for damages for breach of a private arrangement by which the parties agree to control the terms of a decree, when the amount is within the jurisdiction of the Small Cause Court. *Chundy Persad Dutt* v. *Kaseenath Doss*, W. R., 1864, 346.

The directing of a local investigation is a mere matter of discretion in which no special appeal will lie of right. *Graham* v. *F. Lopez*, 1 W. R., 141.

The not making a local investigation is no ground of special appeal. *Bykant Nath Sein* v. *Pearee Monee Dassee*, 1 W. R., 196.

A Judge's exercise of his discretion as to making further local enquiry cannot be interfered with in special appeal. *Poorno Persad Roy* v. *Chundernath Chatterjee*, 1 W. R., 249.

Under Clause 1, Section 17, Act X of 1862, no special appeal lies from the order of a Judge admitting an insufficiently-stamped pottah on payment of full stamp and penalty. *Goluck Chunder Sein* v. *Sheikh Khan Mahomed Khansama*, 3 W. R., Act X R., 158.

The question whether there was a sufficient ground for the dismissal of a pagoda hereditary servant by a Dharma Karta is one of degree and not of principle, and must therefore depend upon the circumstances of each case.

The finding of the lower Courts upon such matters must be treated by the High Court on special appeal as a conclusive finding upon a matter of fact, unless it be supported by no evidence whatever. *Kristnasamy Tatachurry* v. *Gomatum Rangachurry*, 4 Mad. Rep., 63.

A defendant complained, under Section 257 of the Civil Procedure Code, of irregularity in conducting the sale of his lands taken in execution of a decree against him. The sale was confirmed by the Court of first instance, and the order was affirmed on appeal by the Civil Judge.

Held, that a special appeal to the High Court did not lie. *Varudha Reddi* v. *Venkuta Subba Reddi*, 5 Mad. Rep., 213.

A special appeal cannot be entertained by one defendant against another. *Ramessur Ghose* v. *Azum Jourdar*, 17 S. W. R., C. R., 373.

In a suit for rent the lower Appellate Court decreed the suit as against the tenant but dismissed it as against his vendee, who had wrongly been added by the first Court as a defendant in the suit, and who now specially appeals, praying for a declaration of her liability for rent as purchaser from the tenant. *Held* that the appeal would not lie. *Mussumat Oognu Chowdrain* v. *Shaikh Keramatullah*, 17 S. W. R., C. R., 219.

In a suit for damages for defamation of character caused by a criminal charge preferred by defendant against plaintiff, where the lower Court finds as a fact from the probabilities, inferences, and circumstances in the case that there was no reasonable or probable cause for the charge, the finding cannot be interfered with in special appeal. *Gour Hurree Dass Mohunt* v. *Hyagrib Dass Mohunt*, 14 S. W. R., C. R., 425.

A special appeal will not lie from the order of an Appellate Court, refusing, in the exercise of its discretion, to admit additional evidence. *Kulpo Singh* v. *Thakoor Singh*, 15 S. W. R., C. R., 429.

If the reasons in a judgment are such as can be rightly given, and the inferences such as can be legally drawn, it cannot be set aside in special appeal, even if the Appellate Court cannot agree with or support all the reasons given. *Rummeezooddeen Bhoorgan* v. *Iujmala*, 15 S. W. R., C. R., 303.

No special appeal lies from the order of a Judge refusing an application to restore an appeal that had been withdrawn. *Modhoomutty Debia* v. *Dhunput Singh*, 13 S. W. R., C. R., 167.

A party to a certain proceeding instituted under Section 246, Act VIII of 1859, having been summoned to give evidence did not attend. The Court, considering that his absence was without lawful excuse, decided the matter before it with reference to the provisions of Section 170 of the Civil Procedure Code. It was then attempted to move the High Court under Section 15 of 24 and 25 Victoria, c. 104, to set aside the order as passed without legal evidence.

Held, that such action would be substantially a special appeal, which could not be allowed with reference to Section 246. *Dhunput Sing* v. *Indurchunder Doogur*, 13 S. W. R., C. R., 121.

When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. *Mussamut Bemu* v. *Narayan Saha*, 4 B. L. R., Ap., 82; 13 S. W. R., C. R., 233.

Under Act VIII of 1859 there is no special appeal from orders passed in execution of a decree. *Anonymous*, 1 Ind. Jur., O. S., 50.

Where a Judge, instead of remanding a case under Section 352 of Act VIII of 1859, when the Moonsiff had not disposed of the case upon any preliminary point, ought to have disposed of it under Section 354, keeping the case on his own file, and ordering the Moonsiff, after taking the necessary evidence and deciding any issue fixed by

him, to send up his finding with the evidence to his Court, and then proceeding to try the case as an appeal,—*Held* that the irregularity was not one which affected the merits of the case or the jurisdiction of the Court, so as to justify interference with the Judge's decision in special appeal. *Gunga Monee Dassee* v. *Issur Chunder Shaha*, 17 S. W. R., C. R., 465.

The Court cannot in special appeal go behind a decree for ejectment, and hold that the tenure in question was of that character that no order for ejectment could pass. *Bejoo Roy* v. *Bal Mokund Misser*, 17 S. W. R., C. R., 421.

Weight of evidence is not a point on which the High Court can interfere in special appeal. *Dhomdh Bahadoor Singh* v. *Priaj Singh*, 17 S. W. R., C. R., 314.

The validity of a Civil Court's decree is not open to question in special appeal, after it has become final and conclusive by operation of law. *Ramessur Singh* v. *Ajoodhya Pershad Singh*, 13 S. W. R., 294.

(*h*) *Practice and Procedure in Special Appeal.*

When a plaintiff in special appeal complains of the refusal of the Court of first instance to summon witnesses named by him, he is bound to show that he has insisted upon his right at every stage of the case, both in the lower Court and in the first Appellate Court. *Unooroop Chunder Mookerjee* v. *Heera Monee Dossee and another*, 11 W. R., 418.

A case which is tried in special appeal is subject to all rules provided for regular appeals so far as the same may be applicable.

The question whether evidence on the record is legally or reasonably sufficient to support the findings of the lower Appellate Court may be dealt with in special appeal without a remand or rehearing. *Joy Ram Roy* v. *Omrao Roy*, 12 W. R., 431.

In special appeal a new ground may be taken, if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. *Kalimohun Chatterjee* v. *Kali Krishto Roy Chowdhry*, 2 B. L. R., Ap., 39; 11 W. R., 183.

A special appeal will lie from an order of a Judge rejecting an application for the re-admission of an appeal dismissed for default of prosecution, provided the order be shown to be illegal. *Mussamut Bebee Haloo* v. *Mussamut Atware and others*, 7 W. R., 81.

A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. *Shiu Das Narayan Singh* v. *Bhugwan Dutt*, 2 B. L. R., Ap., 15.

The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobala from a Mohammedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower.

Held that the defendants could not, in special appeal, set up for the first time that the widow was entitled to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no enquiry asked for into the state of the family, or whether any and what share came to the widow. *Ambika Churn Dutt and others* v. *Nadir Hossein*, 2 B. L. R., A. C., 258; 11 W. R., 133.

In a suit for kubuleut at an enhanced rate, the Court of first instance gave a decree for an amount less than that of the claim. No objection was taken before the lower Appellate Court that, under the Full Bench ruling in *Gholam Mahomed* v. *Asmut Ali Khan Chowdhry*, the suit was liable to be dismissed. This objection was taken for the first time in special appeal. *Held* that the objection could not be entertained. *Nizamut Ali* v. *Romesh Chundra Roy*, 3 B. L. R., A. C., 78; 11 W. R., 430.

The High Court will not, even with consent of parties, pronounce a decree on the facts in a special appeal. *Kadambinee Dossee* v. *Doorga Churn Dutt*, Marsh., 4.

The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. *Dwarkadas Lulubhai* v. *Adam Ali Sultan Ali*, 3 Bom. Rep., A. C., 1.

Held, in suppression of the ruling and resolution of the late Sudder Court, that on due cause being shown for delay to the Court's satisfaction the prescribed period for admission of special appeal may be extended. *P. Howest* v. *Syud Kootub Hossein and others*, 1 Agra Rep., F. B., 100.

In a suit for possession by right of foreclosed mortgage, plaintiff having obtained a decree which was *ex-parte* against any of the defendants, the lower Appellate Court found as a fact, on the appeal of the defendants, that the mortgage transaction was benamee and collusive (the defendant A. having been a sharer in the fraud), and dismissed the claim.

Held that plaintiff could not in special appeal be allowed, under the finding of the lower Appellate Court, to urge that his suit should not have been dismissed as against the share of A., on the technical ground that A. had not appealed. *Ramlochun Soor* v. *Nittyea Kallee Debai*, 12 W. R., 210.

Suit against three sets of defendants interested in three different plots of land, A., B., and C. The first Court decreed the suit only as regards A. On appeal, in respect of A., the Judge not only reversed the lower Court's decision as regards A., but also as regards B. and C., by giving the plaintiff a decree in respect of them. On special appeal, as regards A., the plaintiff was unsuccessful; but the defendants interested in B., having been served with a notice to appear, were treated as respondents, and upon their objection, under Section 348, Code of Civil Procedure, the Judge's decision was reversed, not only as regards B., but also as regards C., although the defendants interested in C. did not appear. *Chunder Kulla Dossee and others* v. *Jotendro Mohun Tagore and others*, 6 W. R., 104.

A plaintiff or defendant, successful in the Court of first instance, who does not appear in the Court of regular appeal, is not debarred by such non-appearance from preferring a special appeal. *Ramshet bin Bácháset* v. *Balkrishna bin Abábhat*, 6 Bom. Rep., A. C. J., 161.

Plaintiff sued as heir of Juggobundhoo to set aside certain sales by his widow. The property was found to have belonged to the widows, and then the

plaintiff claimed the share of one of them as her heir. But as he did not make this claim in the Court below, he was not allowed to advance it in special appeal. *Kripa Nath Mozoomdar* v. *Saroda Chowdhrain*, 1 W. R., 283.

On a special appeal the respondent has no right to take any objection to the decision appealed against which he might have taken if he had preferred a separate special appeal. *Makudu Ravullan* v. *Mastan Sahib and others*, 1 Mad. Rep., 102.

Where a landlord's claim for arrears of rent at enhanced rates was dismissed *in toto* by the first Court, and in his appeal to the Judge he advanced no claim for arrears at the old rates, he cannot in special appeal object to the Judge's decision on the ground that such arrears were not decreed to him. *Beejoy Gobind Bural and others* v. *Jannokee Burmonya*, 8 W. R., 252.

A finding of a fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in favour of the defendant, which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. *Surbeshur Ghose* v. *Choto Arizollah*, 8 B. L. R., Ap. 78; 17 S. W. R., C. R., 213.

The grounds of special appeal must not be vague and indistinct, conveying no information to the respondent what the point of law is that he has to meet. *Nand Kishor Das Mohunt* v. *Ram Kulp Roy*, 6 B. L. R., Ap., 49; and 15 S. W. R., C. R., 8.

Held by the majority of the Court, that in special appeal, where there is an error of law in the judgment of the lower Appellate Court, if the facts have been sufficiently found by the lower Courts, the High Court is bound to pass the proper judgment in the case, instead of sending the case back to the lower Appellate Court for a fresh judgment. *Shaikh Muksood Ali* v. *Shah Waris Ali and others*, 6 W. R., 197.

When important evidence has not been carefully examined by the Judge in the lower Court, the Appellate Court will, on special appeal, remand the suit under Section 372 of Act VIII of 1859. *Mussamut Degumber Dassee and others* v. *Kissen Dhur Nundy and others*, 1 Ind. Jur., N. S., 35.

Section 25 of Act XXIII of 1861 gives no rights inconsistent with Section 372 of Act VIII of 1859. *Nilaatche and others* v. *Vankatachallam Mudali*, Mad. Rep., A. C., 250.

When an Appellate Court appears not to have taken into its consideration a presumption of fact arising out of the circumstances of the case, that is such "omission and defect" (Sections 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue. *Anonymous*, 2 Ind. Jur., O. S., 13.

A party wishing to be heard in support of new grounds must apply for permission under Section 375, Act VIII of 1859; he cannot be permitted to raise them in an application for review. *Fakeerooddeen* v. *Rajah Annundnath Roy*, 9 W. R., 370.

A petition which does not state the real point recited or adjudicated, is inadmissible under Section 347, Act VIII of 1859. The law gives no authority to add oral pleas. *Secunder Sikdar* v. *Futteh Ally*, 1 W. R., 247.

Section 374 leaves it in the discretion of the Court to admit any new ground of appeal arising out of the proceedings, though it may have been omitted in the petition of special appeal. *Joykishen Mookerjee* v. *Rajkishen Mookerjee*, 5 W. R., 147.

The High Court ought not, under Section 374, Act VIII of 1859, to allow a point of law to be argued in special appeal when it was not distinctly raised in the first Court, nor alluded to in the lower Appellate Court. *Lalla Jowahir Lall Pandey* v. *The Court of Wards on behalf of Shiva Sunkur Pershad Sahoo*, 17 S. W. R., C. R., 214.

The High Court refused to show indulgence to a special appellant whose time for appealing had expired by his not exercising due diligence, and intimated that the vacations were not to be added to the prescribed period for appealing. *Kishtoproshaud Chuckerbutty* v. *Radha Kanto Bhuttacharjee*, W. R., 1864, Mis., 13.

A claim as heir to a widow cannot be heard on special appeal when the plaintiff did not sue on that ground in the Court below. *Kripanath Mojoomdar* v. *Saroda Chowdhrain*, 1 W. R., 283.

An objection (that an adoption was invalid, because the party adopted was the eldest son of his natural father) was rejected in special appeal, because not urged in the lower Courts at any stage of the trial, and not specifically taken in the petition of special appeal. *Joy Tara Dossee Chowdrain* v. *Roy Chunder Ghose*, 1 W. R., 136.

The lower Appellate Court (that of the 24-Pergunnahs) found that, though the defendant lived in Calcutta, he had a dwelling-house within its jurisdiction. In special appeal it was urged that the defendant had transferred to other parties his rights and interests in that dwelling-house. *Held* that such an objection was not admissible in special appeal. *Ramanund Roy Chowdhry* v. *Urnokalee Debia*, 2 W. R., 257.

Pleas in special appeal should by law be taken distinctly in the memorandum of appeal. *Bustee Narain Roy* v. *Sham Soonder Nundee*, 2 W. R., Act X R., 43.

A plea not taken before the lower Appellate Court may be allowed to plaintiff, appellant, on special appeal, when some of the defendants have been released by the first Court from all liability, without any trial on the merits as between them and the plaintiff. *Lall Mohun Sein* v. *Anund Chunder Chuckerbutty*, 4 W. R., Act X R., 3.

The Court would not allow points not raised before the lower Appellate Court, or in the written grounds of special appeal, to be argued. *Meer Bahadoor Ali and others* v. *Mussamut Suneecheroo and others*, 6 W. R., 157.

A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court. *Sheikh Ahmed Mundul* v. *Sheikh Sonaoollah and others*, 8 W. R., 5.

An objection having been taken to a decree of a lower Court, on the ground that it decreed the claim against each shareholder in a talook, without disclosing the extent of his share, it was held by Kemp, J., (dismissing the appeal) that this ground

could not be permitted to be taken by the pleader, as it had not been taken in special appeal.

Held by Mitter, J. (*contra*), that it was immaterial whether the point had been taken or not, and that the case should be remanded, because the decree was incapable of execution. *Maharajah Mohessur Buksh Singh Bahadoor* v. *Muthoorapershad and others*, 8 W. R., 515.

The finding of a lower Appellate Court pronouncing, on evidence, on the genuineness of a deed on the production of a copy (the original having been lost) is not open to interference in special appeal.

One of the defendants to a suit having relied on the validity of a hibbanamah and a will, the former of which was alone contested below by the plaintiff, the lower Court was right in not trying the issue as to the will, which was one raised between co-defendants, and the plaintiff was not allowed to contest that point in special appeal. *Bhugwan Chunder Banerjee* v. *Sreemuttee Dukhina Debia*, 8 W. R., 356.

Where a lower Appellate Court's refusal to examine witnesses in a suit for damages for assault is made a ground of special appeal, it is not sufficient to put in an affidavit to the effect that a verbal request of the vakeel to examine the witnesses was refused by the Judge. *Ramessur Bhuttacharjee* v. *Shib Narain Chuckerbutty*, 14 S. W. R., C. R., 419.

The question of competency of an agent to sue, if not raised in the initial stage of a suit, cannot be permitted to be raised in special appeal. *Soorendernauth Roy* v. *Rughoobur Dyal Awustu*, 15 S. W. R., C. R., 392.

The High Court is bound to notice an argument on a point of law raised in special appeal, even though it was not raised before the Court on a previous occasion, when it passed an order of remand *Durimba Debia* v. *Nilumrey Singh Dos*, 15 S. W. R., C. R., 180.

Where a Hindu widow, jointly with her sons, sued for confirmation of title, and both the Courts below found adversely to her title to hold the land in dispute as separate property, it was held that her sons who had no interest in the result of the suit were not competent without her to prefer a special appeal. *Doorga Pershad Mohupattur* v. *Radhamohun Mytee*, 15 S. W. R., C. R., 536.

It is most essential in special appeal that the High Court should be very careful in not interfering with inference of fact drawn by a lower Appellate Court. *Humur Mahomed Chowdry* v. *Fool Mahomed Chowdry*, 16 S. W. R., C. R., 311.

Under Section 350, Act VIII of 1859, is not for the High Court to interfere when the decision of the lower Appellate Court on the question of stamps does not affect the case on the merits. *Khan Mahomed Shaha* v. *Lall Mahomed*, 15 S. W. R., C. R., 179.

In a special appeal the general affirmation of a judgment can only refer to the points raised by the appellant, the rejection of the appeal not necessarily affirming the other findings of fact or law incidentally arrived at by the lower Appellate Court. *Shaikh Ahmed Hossein* v. *Mussamut Bunda*, 15 S. W. R., C. R., 91.

Where any real grievance or other just cause of complaint arises to a plaintiff from the first Court's refusal to examine his witnesses, his first duty is to bring the matter prominently to the notice of the lower Appellate Court in his grounds of appeal. Failing to do so, he cannot be allowed to urge it as a plea in special appeal. *Osman Singh* v. *Chummun Mahtoon*, 15 S. W. R., C. R., 87.

A plaint presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court, in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits. The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time.

Held, that the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and although no special appeal was preferred against the decree of the District Judge in which he remanded the case for re-trial, it was still open to the defendant in special appeal to raise the plea of jurisdiction. *Ganputráu Ranchodji* v. *Bái Suraj*, 7 Bom. Rep., A. C. J., 79.

The Court of first instance rejected a claim on the ground that it was barred by limitation. The Court of Appeal, however, entertaining a contrary opinion, remanded the case for trial on the merits. The case was, accordingly, in both Courts, tried upon the merits.

Held, that the omission to prefer a special appeal from the order of remand did not preclude the party aggrieved by that order from objecting to it in a special appeal preferred against the final decree of the Appellate Court. *Vithal Vishoanáth Prulhu* v. *Rám Chundra Sada Shiv Kirkin*, 7 Bom. Rep., A. C. J., 149.

A mortgagee claiming title otherwise than from the execution-debtor is competent, on behalf of himself and his mortgagor, to sue to raise an attachment on the property of which he is mortgagee.

The Court of first instance found against the defendant on a matter of fact, but decreed in his favour on a point of law; and on appeal by the plaintiff, the defendant omitted to file a memorandum of objections to the adverse finding of fact of the Court of first instance. The Appellate Court, without going into the question of fact, confirmed the decree of the Court of first instance on the point of law.

Held, that the High Court, in special appeal, could under these circumstances give judgment in favour of the plaintiff without a remand. *R. S. Waignkar* v. *B. B. Wádekur*, 5 Bom. Rep., A. C., 194.

The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts. *Bhubun Chundra Shome* v. *Ramdyal Shamuntu*, 5 B. L. R., Ap., 62; 14 S. W. R., C. R., 55.

The admissibility of a special appeal in a case of the Small Cause Court claim for contribution in respect of costs, is a matter which ought not to be decided by an officer of the Court, but judicially by the Court itself. *Kisto Koomar Chowdhry* v. *Annundmoyee Chowdhrain*, 6 W. R., Mis., 128.

The Moonsiff, on the application of a judgment-debtor, set aside a sale held in execution of a decree passed against him, on the ground that the decree was barred by lapse of time. The judgment-creditor appealed to the Judge, who rejected the appeal on the ground that no appeal was allowed from such an order.

Held, in special appeal, that, under Section 11 of Act XXIII of 1861, an appeal lay from the order of the Moonsiff. *Dhun Bibee* v. *Haradhun Ram*, 2 B. L. R., Ap., 11; 11 W. R., 4.

(j) *Rulings under the Code.*

Section 337, Civil Procedure Code, does not empower an Appellate Court to exercise the power with which it invests such Court when it finds that the ground on which it proposes to base its own decision is common to all the defendants, but only when it finds that the decision of the lower Court has proceeded on such common ground. *Protab Chunder Dutt* v. *Koorbanissa Bibee*, 14 S. W. R., C. R., 31.

Held that Section 337, Act VIII of 1859, applies as well to *ex-parte* decrees as to other decrees, the only question being whether the decision of the lower Court proceeded on a ground common to all the defendants. *Sreenath Chowdry* v. *J. J. Grey*, 13 S. W. R., C. R., 114.

When one of several defendants appeals at any time against the judgment of a Court of first instance, the Appellate Court is competent, under the circumstances set forth in Section 337, Code of Civil Procedure, to reverse the judgment appealed against in favour of all the defendants. *Sremunjuree Dossee* v. *Poorusuttum Doss*, 9 W. R., 499.

Held that, as the judgment (which was erroneous) was on a ground common to all the defendants, and the appeal was substantially against the whole decree, the High Court was competent, under Section 337, Civil Procedure Code, to reverse the decree, though only some of the defendants had appealed, and though the one who had appealed as to costs had engrossed his appeal only on a stamp to cover the amount of those costs. *Badul Singh* v. *Chutterdharee Singh and others*, 9 W. R., 558.

Where a decree of a Court of first instance affects all the defendants, the Appellate Court is competent, under Section 337 of the Code of Civil Procedure, to reverse it in respect to all the defendants, including any who have not appealed or defended the suit. *Mohuntrung Lall Gossami* v. *Gouree Mundul and others*, 10 W. R., 285.

Section 346, Act VIII of 1859 (providing for the dismissal of an appeal for default), even if it applies to miscellaneous cases, does not apply to a case in which it is not shown distinctly that the appellant had any notice that his appeal would be heard on the day to which the case was adjourned, and on which the Judge disposed of it. *Shib Chunder Goopto* v. *Allad Monee Dassia*, 5 W. R., Mis., 22.

A decree-holder, driven by an order of the Court, under Section 346 of the Civil Procedure Code, made in the execution proceedings, to seek a remedy in a regular suit, sued to establish his right to certain property, as being that of his judgment-debtor. The defendant, admitting that the property had been the judgment-debtor's, alleged that it had passed to himself by conveyance. Plaintiff, admitting the fact of such a deed of sale, alleged that it was fraudulently executed, in order to deprive him of his just rights. *Held* that plaintiff was bound to prove the fraud. *Lala Roodro Prosaud* v. *Binode Ram Sein and others*, 10 W. R., 321.

A petition of objection under Section 348 of Act VIII of 1859 filed by a pauper respondent will be received, but will not be heard till the stamp duty is paid. Act XXVI of 1867 contains no reservation as to the stamp only to be used on such a petition. *Rashmonee Dossee* v. *Chowdhry Junmonjoy Mullick*, 9 W. R., 356.

Section 348, Act VIII of 1859, is as applicable to special as to regular appeals. *Narayan Ayyar* v. *Lakashmi Mammal*, 3 Mad. Rep., A. C., 216.

Section 348, Act VIII of 1859, is wide enough to empower an Appellate Court on cross-appeal to reopen the whole case, and assess damages on defendants who had been acquitted in the original suit, and who were not parties to the appeal. *Anund Chunder Goopto* v. *Mohesh Chunder Mozoomdar*, 1 W. R., 229.

A plaintiff (respondent) cannot be allowed by way of cross-appeal to take objections, under Section 348, Act VIII of 1859, to the finding of a lower Court as to a defendant who has not appealed, and who is not before the Appellate Court. *Hossein Buksh Patooah* v. *Sheikh Baroo Beparee*, 5 W. R., 50.

Under Section 348, Act VIII of 1859, a defendant may take the objection of limitation without filing an appeal.

The pendency of a suit in Court without jurisdiction, under Section 14, Regulation III of 1793, does not entitle a party to any deduction in computing the period of limitation. *Okhetoonissa* v. *Koochil Sirdar*, 2 W. R., 45.

A. sued B. to recover possession of a hereditary jote, of which he alleged he had been dispossessed by B. during his minority. B. raised the defence of limitation and relinquishment by A.'s grandmother and guardian. The Moonsiff held that the suit was not barred, on the ground that it had been brought within three years from the date on which A. had attained his majority, but decided against A. on the merits. On appeal the question of limitation was not raised; but on the merits the Judge also found against A. On special appeal by A., B. took an objection, under Section 348 of Act VIII of 1859, that A.'s suit was barred. *Held* that B. could not take the objection at that stage. *Held* also that to make the relinquishment, if any, valid against A., it ought to have been shown that it was for A.'s benefit. Decision of the lower Court reversed. *Kedarnath Mookerjee* v. *Mathooranath Dutt*, 1 B. L. R., A. C., 17.

Though a notice of a cross-appeal may be lodged

with the Registrar of the High Court, previously, the cross-appeal itself must, under Section 348, Act VIII of 1859, be taken at the hearing of the appeal, and must bear the stamp required by Section 6, Act XXVII of 1867. *Lulut Singh and others* v. *Mirza Ali Reza and others*, 8 W. R., 322.

A respondent, making a cross-appeal, can take objection to any part of the judgment of the first Court adverse to him to which the appellant can answer, and which affects the appellant's interests only; but the cross-appeal of a respondent does not open up any question between himself and his co-respondents, for they cannot be allowed to interplead. The law gives a respondent a right to raise objections at the hearing of the appeal; but, under Section 348, Civil Procedure Code, reasonably construed, the contest is between two parties equally interested, and not with third parties. *Mahboob Ali and others* v. *Zur Banoo Bibee*, 9 W. R., 78.

Where a plaintiff's suit is dismissed, and a defendant appeals, seeking no relief whatever, but acting in the same interest with the plaintiff, the latter is not entitled, by way of cross-appeal, under Section 348, to argue that his suit was wrongly dismissed. *Sabtoollah Meah* v. *Rohim Dewan*, 9 W. R., 273.

A party wishing to file a cross-appeal should do so at the commencement of the hearing of the appeal, and the objection should be put in, in a written form, on a properly stamped paper. It is too late to take an objection, under Section 348, Act VIII of 1859, when the Appellate Court has given its decision. *Khajah Abdool Gunnee* v. *Gour Monee Debia*, 9 W. R., 375.

Where a respondent in the lower Appellate Court formally, under Section 348, Act VIII of 1859, took an objection in writing on the ground of jurisdiction, and that Court did not notice the objection,—*Held* in special appeal that the party was entitled to a remand to the lower Appellate Court for an adjudication on that point. *Joy Kissen Mookerjee and others* v. *Hureehur Mookerjee*, 6 W. R., 289.

Unsuccessful intervenors (defendants) who have not appealed cannot raise questions under Section 348, Act VIII of 1859. *Bypro Pershad Mytee* v. *Mussamut Kanye Deyee*, 1 W. R., 341.

A respondent may file with the Registrar, before the hearing of the appeal, written notice of the objections which he intends, under Section 348, Act VIII of 1859, to take at the hearing. *Madhobee Dassee, petitioner*, 6 W. R., Mis., 102.

Section 348, Act VIII of 1859, is as applicable to special as to regular appeals. *Gopalayyan* v. *Raghupute Ayyan*, 3 Mad. Rep., A. C., 216.

Where, in the course of the hearing of an appeal, the appellant desired to withdraw, in order to avoid the decision of a question raised by the respondent at the hearing,—*Held* that, under Section 348 of the Civil Procedure Code, the respondent was entitled to have the question heard and determined. *Venkalaramanaiya* v. *Kuppi*, 3 Mad. Rep., A. C., 302.

One defendant cannot take an objection, under Section 348, on the appeal of a co-defendant. *Burroda Soonduree Dossee* v. *Nobogopal Mullick*, W. R., 1864, 29.

A respondent may take any objection under Section 348. *Mudhoo Mokee Dabee* v. *Gunga Govind Mundle*, W. R., 1864, 299.

Section 348 in no way restricts respondents as to the points on which they may, by way of cross-appeal, object to the decision appealed against. *Hunnooman Singh* v. *Baboo Suddolall*, W. R., 1864, 232.

The mere calling on of a case to be heard does not mean the same thing as the hearing of the case in the sense of Section 348, Act VIII of 1859. *Ram Pershad Ojha* v. *Bhurosa Koonwar*, 9 W. R., 328.

A defendant or respondent cannot be heard by way of cross-appeal, under Section 348, Act VIII of 1859, as against a co-defendant or co-respondent. *Maharajah Turrucknath Roy* v. *Taburunissa Chowdhrain and others*, 7 W. R., 39.

A plaintiff (respondent) may take an objection, under Section 348, against defendants, who have not appealed, but who are *pro-formâ* brought in as co-respondents. *Ram Lall Mookerjee* v. *Mussamut Tarra Soonduree Debia*, W. R., 1864, 3.

Held that objections under Section 348, Act VIII of 1859, can only be heard when the opposite party being appellant prosecutes his appeal, and not when he withdraws from it. *Bahadur Singh and others* v. *Bhugwan Doss and others*, 1 Agra Rep., A. C., 23.

An Appellate Court may, under Section 355, Act VIII of 1859, admit additional evidence.

In this case the Judge in appeal declined to do so, on the ground that application for the admission of additional evidence should have been made to the lower Court. *Held* that instead of applying for the admission of a special appeal, the proper course would have been to apply to the Judge for a review of his order. *Ram Lall* v. *Rung Lall*, 17 S. W. R., C. R., 47.

Where a decree makes a party liable who is not liable (*e.g.* an agent instead of the corporate body whose agent he is), the error is one affecting the merits within the meaning of Section 350, Civil Procedure Code. *Nobin Chunder Paul* v. *C. Stephenson, Agent of the East India Railway Co.*, 15 S. W. R., C. R., 534.

The true interpretation of Section 355, Act VIII of 1859, is that, when a Court sees that by some inadvertence or mistake a party has not produced some evidence which he was capable of adducing, and that he is likely to be prejudiced by that omission or mistake, which was simply unintentional, undesigned, and accidental, the Court will allow such further evidence to be taken. *Gowhur Ali Khan* v. *Mussamut Sakheenee Khanum*, 15 S. W. R., C. R., 507.

In a suit to establish title to 3 annas and a fraction of an estate, plaintiff having obtained a decree for 2 annas appealed; but the lower Appellate Court reduced the share allotted to the plaintiff. *Held* that, as no question of the share to be awarded was raised before the lower Appellate Court by the defendant under Section 348, Code of Civil Procedure, that Court should not have interfered with the decision in the way it did. *Mussamut Ritooraj* v. *Oojagur Singh*, 15 S. W. R., C. R., 227.

Objections under Section 348, Act VIII of 1859, may be urged at any time in the course of hearing of an appeal. *Thakoor Dass Goshamee* v. *Gopee Kristo Gossamee*, 15 S. W. R., C. R., 18.

A respondent in taking advantage of the provisions of Section 348 of the Civil Procedure Code

can only take such objections as have reference to the party appealing. If he wishes to raise objections against parties who do not appeal, he must do so by independent appeal. *Ganesh Pandurnaung Agli* v. *Gangadhur Ramkrish*, 6 Bom. Rep., A. C. I., 244.

(*k*) *Re-hearing of Appeals.*

There is no provision in Section 6, Act XXIII of 1861, for the re-admission of appeals once dismissed under the provisions of that section. *Ramessur Dutt* v. *Lootfunnissa*, 6 W. R., Mis., 130.

An application to a Court, asking it to set aside a decree by which it dismissed an appeal for default of prosecution, ought to be made, by the terms of Section 347, Act VIII of 1859, within thirty days from the date of such dismissal. *Tarakalee Dabee* v. *Nitye Moyee Dabee*, 10 W. R., 437.

A special appeal lies from an order passed under Section 347, Act VIII of 1859, rejecting an application for the re-hearing of an appeal dismissed for default of prosecution. *Ramjad Jemadar* v. *Bissessur Bhuttacharjee*, 2 W. R., Mis., 23.

To bring an appellant within the terms of Section 347 of the Code of Civil Procedure so as to give the Court jurisdiction, his application for re-admission of the appeal dismissed for default of prosecution must be made within 30 days from the date of the dismissal.

Previous rulings allowing a special appeal from an order under Section 347 followed, but doubted. *Sheikh Mittoo Khan* v. *Ruhmun Khan and others*, 8 W. R., 361.

A special appeal lies from an order refusing to revive, under Section 347, Act VIII of 1859, an appeal struck off for default. *Sheikh Gholam Mahomed Akbar* v. *Koonjo Beharee Lall*, 5 W. R., Mis., 27.

One of several defendants, who appeals in respect only of the sum decreed against her, is not entitled to take advantage of Section 337, Act VIII of 1859, and question the full amount claimed. *Sheeroo Coomaree Dabee* v. *Maharajah Mahatab Chund Bahadoor*, W. R., 1864, 380.

A special appeal lies from an order passed under Section 347 of Act VIII of 1859, rejecting an application for the re-hearing of an appeal dismissed for default of prosecution. The reasons for rejecting such an application should be stated. *Huro Chunder Doss Chowdhry* v. *Ram Coomar Chowdhry*, 2 W. R., 254.

The time allowed by Section 347 of Act VIII of 1859 within which to apply for the re-admission of an appeal dismissed for default of prosecution, should not, where the appellant's pleader has died without his hearing of it, be counted as commencing until the appellant has an opportunity of coming in under the provision of Regulation II of 1827, Section 54, Clause 2. *Alikhan Umarkhan, ex-parte*, 4 Bom. Rep., A. C., 92.

When a lower Appellate Court, after eleven months' delay, and without fixing any time for disposing of the appeal, made an order dismissing the case for default, the High Court set aside the order as erroneous, holding that it was the subject of an appeal, notwithstanding Section 347, Act VIII of 1859, which only applies to cases of involuntary failure to comply with a Court's order. *Soodhamonee Dossee* v. *Gooroopersaud Dutt*, W. R., 1864, 176.

(*l*) *Duties of Appellate Court.*

It is not the duty of a Court of Special Appeal to make that clear which is obscure in the judgment of a lower Appellate Court. *Shumbhoonath Singh* v. *Mooktaram Kolal*, 11 W. R., 381.

It is objectionable to disturb or vary a decree properly made by the lower Court for the mere purpose of guarding against the possible error of some other tribunal in some future suit.

Two suits were heard together. On objection made in appeal that the evidence taken in one suit (to which the objector was not a party) had been irregularly read in the other,—*Held* that, having regard to all the circumstances, the suits having been tried together, and the evidence objected to having been commented on by the objector, or on his behalf, it sufficiently appeared that the evidence had been substantially taken in both suits.

A Court of Appeal has to determine whether the decision of the lower Court when pronounced was a correct decision of the issues then pending before it between the then parties to the suit.

An admission by an adoptive mother, in a suit brought by her mother-in-law to set aside the adoption, that an alleged unomuttee-puttur under which her mother-in-law had previously professed to adopt a son to her deceased husband was valid, would not estop her adoptive son from denying the validity of that instrument, in a suit subsequently brought by him for the assertion of his rights under the adoption. *Annundmoye Chowdhrain* v. *Shib Chunder Roy*, Marsh., 455.

In a suit for collection papers and moneys against a gomastah and his surety, a decree was given against the gomastah, and the surety was absolved from liability.

Plaintiff appealed to make the surety liable; and the Judge on appeal dismissed the claim against both defendants.

Held that, as the decision of the first Court did not proceed on a ground common to the two defendants, the Judge was wrong in reversing it as against the gomastah. *Ram Mohinee Debia* v. *Jabed Sircar and another*, 6 W. R., Act X R., 32.

Where a Court of first instance does not proceed on ground altogether common to all the defendants, the Appellate Court is not justified in law, on the appeal of one of those defendants, in giving virtually a decree in favour of the other defendants. *Boydonath Surmah and others* v. *Ojan Bibee and others*, 11 W. R., 238.

Upon the appeal of one of several parties, an Appellate Court cannot reverse the decree appealed from as against any other of the parties. *Koolada Pershad Misru* v. *Goura Chand Misru*, 17 S. W. R., C. R., 353.

An Appellate Court is not justified in reversing a decision on an important question of fact without showing distinctly the ground on which it acts. *Munsoob Bibee* v. *Ali Meah*, 17 S. W. R., C. R., 358.

Where a quite new and different issue is raised in the Appellate Court, it ought to be done in such a way as to give the parties the fullest opportunity

of producing evidence upon it, because if it is at all likely that, in consequence of the issues framed in the first Court, the parties were induced to abstain from giving evidence, it would not be right to decide the issues against them on account of the absence of evidence. *Latoo Mundle* v. *Bhoobun Mohun Chatterjee*, 17 S. W. R., C. R., 361.

A Court of Appeal cannot raise on appeal an issue which was not raised in the Court of first instance, the functions of a Court of Appeal being not to interfere upon mere points of form, but to rectify a judgment where there has been error on the merits, whether that error has arisen from a misapprehension of the facts or misapplication of the law. *Brojo Soondur Mitter* v. *Futtick Chunder Roy*, 17 S. W. R., C. R., 407.

The trial of the issue of limitation after the issue on the merits is an irregularity which, if committed in an Appellate Court, is not necessarily productive of any disadvantage even to the defendant. *Sham Churn Doss* v. *Goono Moya Chowdrain*, 14 S. W. R., C. R., 267.

An appeal having been made from an order relating to the execution of a decree, the High Court directed that an Ameen should deliver over possession and make a map of the property so delivered over, and a map showing the boundaries laid down in the decree. The Ameen went to the spot and made a map. That map was not transmitted to the Court; but, in consequence of certain proceedings in the Subordinate Judge's Court, a second Ameen was sent and a second map made. These proceedings were wholly disregarded by the High Court, which proceeded upon the first Ameen's map and report, against which no exception was filed in the High Court. *Lalljee Sahoo* v. *Maharaja Rujender Purtaub Sahu*, 14 S. W. R., C. R., 418.

A Judge has no power to order a Subordinate Judge, whose judgment is before him on appeal, to go and inspect the locality and make a report. Such a report cannot be treated as evidence one way or the other. If the Judge was of opinion that it was necessary to take further evidence, he ought to have proceeded as directed by Sections 354 and 355, Act VIII of 1859, and it was competent to him, if necessary, to order an Ameen or any suitable person to make a local investigation under Section 180. But a Judge from whose decision an appeal is pending is the most unsuitable person to make such investigation. *Roy Sooltan Bahadoor* v. *Mussumat Laloo Kooer*, 17 S. W. R., C. R., 300.

Two suits having been instituted by a purchaser of two different portions of the same tenure for enhancement of the rent of the respective portions, the first Court treated them as if they constituted one suit and give one decision in both,—*Held* that in doing so the Court acted sensibly and reasonably, and that there could be no objection to one appeal being filed from what was substantially one decree. *Ennyoottallah* v. *Radha Churn Roy*, 15 S. W. R., C. R., 395.

Where a party fails to file a memorandum of objections under Section 354, Act VIII of 1859, the Appellate Court is not at liberty to decide the case *ex-parte* without considering the evidence. *Woomesh Chunder Roy* v. *Jonurdun Hajra*, 15 S. W. R., C. R., 235.

Where the Court of first instance decides both on the general merits and the plea of limitation, and the Judge of the Appellate Court considers that the evidence upon the record is not sufficient to allow of a satisfactory judgment, and that he is in a position legally to order further evidence to be taken, he ought to proceed in the manner provided in Sections 354 to 357 of the Code of Civil Procedure, but has no right to set aside the first Court's decree and remand the case for re-trial. *Gooroo Pershad Dutt* v. *Sreenauth Bannerjee*, 15 S. W. R., C. R., 314.

Where an Appellate Court finds that there is no evidence upon the record to enable it to decide a question at issue between the parties, and remands the case under Section 354 of the Code for additional evidence, it ought to require such evidence with the finding of the first Court to be sent up to it for decision. *Shunboo Chunder Surnokar* v. *Russic Chunder Chung*, 15 S. W. R., C. R., 346.

An Appellate Court has no authority to strike out a respondent's name, and in lieu of it to make other parties defendants and then send the case down to the lower Court for re-trial as against those parties. *Bal Gobind Tewaree* v. *Hureenauth Pershad Sahoo*, 16 S. W. R., C. R., 183.

Where, in the lower Appellate Court, no objection to the decree of the Court of first instance was urged by the plaintiff, it is not competent to such Court to disturb the decree, by giving plaintiff a larger sum than that awarded by the Court of first instance. *Assee* v. *Heeru Nund*, 2 N. W. R., 44.

It is incumbent on the Judge to look at the plaintiff's documents when they have been accepted by, and form the basis of the decree of the Court below. He should not reject them merely because they had not been filed with the plaint. *Mohabeer Doss* v. *Lalla Roy*, 1 W. R., 12.

The lower Court found the suit barred by limitation, but also heard and dismissed the suit on its merits. *Held* that, though in appeal limitation be held not to bar the suit, there should be no remand for re-trial on the merits. *Kerteenarain Chowdhry* v. *Perthenarain Chowdhry*, 1 W. R., 32.

An Appellate Court cannot remand a case for trial with instructions to frame new issues. It may refer any issues for trial by the lower Court, whose finding and evidence are to be returned to the Appellate Court for a final decision. *Chundernath Surma* v. *Romanath Surma*, 1 W. R., 69.

When a suit has been heard and determined by a Court of first instance, the Appellate Court should not adjudge the case merely upon the allegations contained in the plaint. *Suttrooghur Putte* v. *Manick Ram Gangooly*, 1 W. R., 199.

An Appellate Court, if dissatisfied with the lower Court's finding, that the genuineness of a deed has been established by the testimony of witnesses, should state reasons for its dissatisfaction: merely remarking that the deed does not appear to have been proved by the testimony of reliable witnesses is insufficient. *Dwarkanath Bose* v. *Cnundee Churn Mookerjee*, 1 W. R., 339.

When the parties themselves and the first Court have treated a certain question as the most important one in the suit, the Appellate Court should not decide the case on a totally different point, and ignore the original question. *Lukhee Dossee* v. *Mahomed Afzul*, 2 W. R., 2.

Both the lower Courts having found that the

alleged sale of the property (in the possession of the defendant, a mortgagee) to a wife by her husband was not *bonâ-fide*, the *bona-fides* of the mortgage entered into by the wife, with the knowledge of her husband, became a material issue in the case. The first Court found that it was not a *bonâ-fide* transaction, and the Judge concurred in the finding. *Held* that the mere expression of concurrence by the Judge (the finding concurred in being supported by no satisfactory reasons) was not sufficient, and that the Judge should have stated the grounds of his agreement. *Khelluck Chunder Ghose* v. *Nund Ram Sein*, 2 W. R., 7.

It is the duty of an Appellate Court, in reversing the decision of an inferior Court, to explain its reasons for so doing. *Kartick Nepit* v. *Personomoyee Neptinee*, 2 W. R., 77.

A lower Appellate Court need not remand a suit to the first Court to try an issue in bar overlooked by the first Court, but may determine the issue itself, if there is sufficient evidence to enable the Court to do so. *Brojo Soondur Hoom Roy* v. *Gour Kishore Hoom Roy*, 2 W. R., 161.

An Appellate Court has no power to interfere with an order of a Court of first instance enlarging the time for filing documents. *Gour Surun Doss* v. *Kanhya Singh*, 2 W. R., 237.

When a Court of first instance decrees against two defendants on a ground not common to both, the lower Appellate Court cannot, on appeal by one of the defendants only, reverse the whole decree. *Abdool Ali* v. *Syed Banoo*, 2 W. R., 287.

An Appellate Court is not competent to remand a case for re-trial after a local investigation. *Jeebun Kissen Roy* v. *Dwarkanath Roy Chowdhry*, W. R., 1864, 363.

It is open to an Appellate Court to consider the question whether a document which the Court of first instance has declared to be liable to a stamp under Act X of 1862, is properly so liable. *Doorga Lall* v. *Srinivasa Pillai*, 3 Mad. Rep., A. C., 71.

The suit being one not cognizable (with reference to pecuniary limitation) by the Moonsiff,—*Held* that the Principal Sudder Ameen was right in taking up the point in appeal, even at a late stage, after having himself remanded the suit for local investigation. *Ramruttun Bhuggut* v. *Bukaoollah*, 1 W. R., 259.

An Appellate Court should take notice of all the specific objections argued before it, and not content itself with recording a general assent to a first Court's finding. *Shumbhoonath Chowdhry and others* v. *Prokash Chunder Dutt and others*, 8 W. R., 272.

A Judge has discretion in the matter of adding a fresh respondent to the record, the latter having been a party to the original suit. *Chowdaminee Dossee* v. *Ram Roodro Gangooly and others*, 8 W. R., 367.

A suit dismissed on the ground of the pottah on which the plaintiff relies being found a forgery, cannot be decreed in appeal without trial of the issue as to the genuineness of the pottah. *Kema Kishen* v. *Achaiten Roy*, W. R., 1864, Act X R., 55.

Before rejecting a petition of appeal on the ground that it is insufficiently stamped, the Court ought to require the appellant to supply additional stamp paper. *Anund Mohun Ghose* v. *Doorga Doss Dutt*, W. R., 1864, Mis., 4.

The High Court, sitting in appeal on questions of fact, is guided by the same rules as those of the Privy Council when they sit upon motions for a rule for new trials from the old Supreme Court.

The High Court, sitting in appeal, will not disturb a judgment upon a question as to the credibility of witnesses, unless it be manifestly clear, from the probabilities attached to certain circumstances in the case, that the Court was wrong in the conclusion drawn from such evidence.

The High Court, sitting in appeal, will look upon the decree of a Judge as to facts in the same light as the verdict of a Jury; and though some of the reasons given for the conclusion arrived at be erroneous, the High Court in appeal will not say that the decree is against the weight of evidence, if sufficient reason for such decree still remain. *Heeralall Chuckerbutty and another* v. *Mohesh Chunder Ghosaul and another*, 1 Hyde's Rep., 105.

On a question arising under Section 92, Act X of 1859, the Deputy Collector held that the judgment was for a sum exceeding Rs. 500, by including the value of stamp incurred in taking out execution. The Judge, on appeal, held that the value of the stamps should not be taken into account, and reversed the Deputy Collector's order. The Judge had no authority to entertain an appeal from an order of the Deputy Collector passed in execution; and the High Court, under Section 34, Act XXIII of 1861, and following the principle of Sections 187 and 188 of Act VIII of 1859 (according to which the value of stamps used in enforcing a decree is required to be included in the judgment), restored the order of the Deputy Collector. *R. C. Bell Campbell* v. *Cazee Abdool Huq*, 6 W. R., Act X R., 8.

Where a plaintiff, dissatisfied with so much of the decision of the first Court as is adverse to him, appeals, making the party in whose favour the decree is made the sole respondent, the Judge of the Appellate Court has only to determine whether, as between the appellant and respondent, the order of the first Court is correct. *Kishoree Singh* v. *Pookhun Singh*, 10 W. R., 432.

The directions of the law as to appeals from orders and appeals from sentences are distinct. *Emam Ali* v. *Sudderuddeen and others*, 9 W. R., Cr., 18.

A suit to cancel an order refusing to allow an estate to be sold under an attachment was taken before the Judge, without its appearing to have been called up from the Sudder Ameen in accordance with law, and was disposed of by the Judge without any issue being settled, and without any evidence being taken. The Court remanded the case to the Judge, to settle issues and dispose of the case properly. *Syed Alleroodeen* v. *Moulvie Mahomed Abusen*, Marsh., 307.

In a suit by a ryot against a zemindar for rent, the Court of first instance gave the plaintiff a decree for a part of his claim. The plaintiff appealed against the disallowance of the residue. The Judge on appeal reversed the decree, and dismissed the suit, although no objection was made by the defendant to the judgment of the Court below, merely saying that a claim for rent by a ryot against a zemindar was absurd. On appeal to this Court, the decree of the Judge was reversed, and the original decree established. *Hem*

Chunder v. *Syed Ahmed Reza and others*, Marsh., 332.

A. and B. were sued on a joint liability to pay rent. A. did not defend, B. did, and a decree passed against both. B. appealed. *Held* that it was competent to the Judge on appeal to reverse the decree, on the ground that there was no joint liability, but that B. occupied a separate estate at a separate rent. *Lukhee Cant Sein* v. *Ramdyal and others*, Marsh., 281.

Held by the majority of the Court (Glover, J., dissenting) that an Appellate Court, after admitting and registering an appeal and serving notice on the opposite party, has no power at the hearing to reject the appeal upon the ground that it was not preferred within the prescribed period. *Bharutt-chunder Roy and others* v. *Issurchunder Sircar and others*, 8 W. R., 141.

An Appellate Court should not ordinarily travel beyond the record, or take up points which are not the subject of appeal before it. *Kashinath Roy Chowdhry and others* v. *Roy Dwarkanath Chucker-butty and another*, 7 W. R., 61.

When one of the pleaders for an appellant states his inability to go on with an appeal, the Judge is not bound to send for any other pleader for the appellant and ask him if he is ready to proceed with the case, but may at once dismiss the appeal. *Brojo Soondery Dossia* v. *D. L. Gilmore*, 7 W. R., 336.

It is in the discretion of the Judge to consider whether sufficient cause has been shown for the non-presentation of an appeal in proper time, owing to delay on the part of the Collector, to whom the appeal was wrongly preferred in the first instance, and the High Court has no authority to interfere with such exercise of discretion by the Judge. *Raj-coomar Roy* v. *Sheikh Mahomed Wais and others*, 7 W. R., 337.

Where a plaintiff appeals from a Court's finding on a certain question, the Appellate Court is bound to determine expressly the point appealed. *Hur-reehur Mookerjee* v. *Oomar Moyee Dossia*, 12 W. R., 525.

If a lower Court, with power under a particular law only, passes an order opposed to the procedure enjoined in that law, it is the duty of the lower Appellate Court at once to rectify the order of the lower Court. *Huree Bundhoo Mytcebhoomee* v. *Soorjo Monee Pat Mahadaye*, 4 W. R., Act X R., 37.

An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. *Maha-deo Ojha* v. *Parmeswar Panday*, 2 B. L. R., Ap., 20.

An Appellate Court is bound to give reasons for deciding a specific point (in this case limitation) raised before it in appeal, even if it confirm gene-rally the order of the Court below. *Radha Gobind Kur and others* v. *Ram Kishore Dutt and others*, 8 W. R., 340.

A plaintiff is entitled to some opinion by the lower Appellate Court upon the oral testimony on his side. The mere affirmance of the decision of the first Court which considered the oral evidence in detail does not involve the adoption by the lower Appellate Court of the first Court's view of the oral testimony. *Mussamut Rajoo and others* v. *Raj Coomar Singh and others*, 7 W. R., 137.

Where a lower Appellate Court, by the terms of its order on a petition for the apprehension of witnesses, under Section 168, Code of Civil Proce-dure, undertakes to see that proper orders shall be passed, it is bound to pass such orders as may, in its judicial discretion, be necessary under that section. *Mohadeb Shaha and others* v. *Sheo Suhoy Geer*, 9 W. R., 359.

An Appellate Court will not interfere with the discretion of a lower Court as to costs, unless satis-fied that there has been some miscarriage or mis-take. *Luchmun Ram Unooj* v. *R. Watson and others*, W. R., 1864, 146.

An Appellate Court is bound to give the reasons for its judgment when it differs from the judgment of the lower Court. *Lalla Sookloll Sing* v. *Bun-seedhur; Sheikh Noor Ally* v. *Lalla Sookloll*, W. R., 1864, 347.

The grounds urged in a petition of appeal to a lower Appellate Court, and the reasons for rejecting them, should be distinctly and concisely recorded by the Court. *Kishenchunder Putronovis* v. *Tara Monee Chowdhrain*, 3 W. R., 4.

When issues in bar are pleaded and averments traversed, the lower Appellate Court should record some reasons for its endorsing the opinion of the first Court. *Khettur Mohun Gossain* v. *Bhyrub Chunder Sheet*, 3 W. R., 126.

The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. *Bhagbut Khan* v. *Puddo Bewa*, 3 W. R., 192.

The judgment of an Appellate Court (instead of merely endorsing the opinion of the Court of first instance) should contain the point or points for determination, the decision thereupon, and the reasons for such decision. *Korban Ali* v. *Ashan Ali*, 4 W. R., 4.

When a Judge on appeal reverses the judgment of a lower Court, he should make full mention of all the evidence relied on by the first Court, and record his own opinion upon it. *Shathuk Paul* v. *Gudadhur Roy*, 4 W. R., 100.

In a suit for share of ancestral property, when the first Court tries whether the plaintiff ever had joint possession, and dismisses the claim as barred by limitation, the lower Appellate Court is bound to try the same issue. *Gopalchunder Chatterjea* v. *Raj Goomaree Debia*, 4 W. R., 101.

An Appellate Court has jurisdiction under Sec-tion 37, Act XXIII of 1861, to separate misjoined suits, and to try them separately. *Shoroop Chunder Paul* v. *Moothoor Mohun Paul Chowdhry*, 4 W. R., 109.

An Appellate Court ought not to interfere with the judgment of the lower Court until perfectly satisfied that the conclusion arrived at by the Court below is erroneous. It is a presumption of law that the judg-ment appealed against is right until the contrary is shown; and, when there is a doubt about it, the benefit of that doubt should be given by the Appellate Court to the respondent. *Tayubuissa Bibi* v. *Kumoor Sham Kishore Roy*, 7 B. L. R., 621; and 15 S. W. R., 228.

A Judge in appeal was held to have done wrong in dismissing a plaintiff's case *in toto* with all costs, on the ground that he had monstrously exaggerated his claim in the first instance, when there was a

ground, although small, for the plaintiff's contention. *Ramchunder Chuckerbutty* v. *Capt. Mariott*, 15 S. W. R., C. R., 465.

Where a ground of appeal stated in the written memorandum is not alluded to when the appeal comes on for hearing, the Court is not at fault if no decision is passed upon it. If, having had his attention called to it, a Judge fails to decide such point, the proper course for the parties aggrieved is to ask him to review his judgment. *Zusoof Ali Chowdry* v. *Mussumut Fyzoonissa Khatoon Chowdry*, 15 S. W. R., C. R., 276.

Appellate Court ought not to interfere with the result of a local enquiry, except upon very clearly defined and sufficient grounds. *Monkee Dumber Sahee* v. *Monkee Bhullundur Sahee*, 15 S. W. R., C. R., 423.

Section 359, Code of Civil Procedure, makes it incumbent upon an Appellate Court to set down distinctly the point or points on which it has to decide the appeal, and record its reasons for the decision it arrives at in each and all of these points. *Shurbessur Ghose* v. *Sadhoo Churn Ghose*, 15 S. W. R., C. R., 130.

It is not obligatory on an Appellate Court to meet categorically every one of the arguments advanced by the first Court in support of its decision. *Krishendro Roy Chowdry* v. *Digumburu Debia Chowdrain*, 16 S. W. R., C. R., 15.

Power of the Court of Appeal, under Section 337 of Act VIII of 1859, to reverse the whole of the decree of the Court below upon the appeal of one only of the parties against whom the decree was passed. *Srimati Jadumani Dasi* v. *Srimati Fadu Bibi*, 7 B. L. R., Ap., 28.

In a suit for delivery over to plaintiff of papers said to be in the possession of defendant, the answer of the latter was that he had made over the papers to the plaintiff's son. This plea was put in issue in the first Court, which found that some papers had been delivered as alleged, and made a decree ordering the delivery of certain other of the papers. In appeal, the attention of the Judge was principally directed to the point whether the receipt of the papers by the plaintiff's son was a receipt by him as plaintiff's agent. *Held* that this point was a departure wholly from the case made below, and ought not to have been entertained in appeal. *Punchanun Roy* v. *Troylukhomohinee Dassee*, 14 S. W. R., C. R., 466.

Where the decision of a case involves issues of facts, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited in which it concurs. *Lalla Juggeshur Saheyd* v. *Gopal Lall*, 15 S. W. R., C. R., 54.

A Judge is bound to go into all the matters raised before him in an appeal, even if the appellant appears to have made a false statement, or if he sought to palm off a spurious document upon the Appellate Court. *Jeanund Chowdry* v. *Syud Abdool Luteef*, 15 S. W. R., C. R., 242.

An appeal having been struck off for default, application was made for re-admission under Section 347 Act VIII of 1859; but the Judge refused the application because the appellant had not conformed to a rule which he had passed, that two pleaders should be engaged in every appeal. *Held* that the Judge was bound to see whether the reasons set forth for re-admission of the appeal were satisfactory or not. *Shomaed Ali Soodagur* v. *Eusoof Khan Chowdry*, 15 S. W. R., C. R., 80.

Where a Moonsiff, without framing issues or examining the plaintiff, passed a decree in his favour upon an admission made by the defendant, and upon inspection of a document that was upon the record of a former suit: but the Judge, on appeal, reversed the decree of the Moonsiff on account of the insufficiency of evidence, the document, in his opinion, not being admissible.

It was held that the Judge ought not to have reversed the Moonsiff's decree without first exercising his power of taking fresh evidence, under Section 355 of the Code of Civil Procedure. *Appu Valad Kashinath* v. *Vithoba Valad Tukuram*, 6 Bom. Rep., A. C. J., 88.

Section 359, Act VIII of 1859, requires the points for determination—those in appeal as well as those in the original pleadings—to be stated, and the reasons upon which the decision was arrived at thereon. *Roop Chand Roy* v. *Ram Kant Kobeeraj*, W. R., 1864, 98.

The judgment of an Appellate Court must contain the points for determination, the decision thereupon, and the reasons therefor. It need not, under Section 359 of the Code, contain a review or setting forth of the whole of the evidence. The propriety of giving an intelligent and clear account of the evidence in the judgment laid down. *Noor Mahomed* v. *Zuhoor Ally and others*, 11 W. R., 34.

Where a lower Appellate Court took no notice in its decision of a large quantity of evidence of very considerable importance which had been urged before it as of the highest possible character, and gave no reasons for agreeing with the Court of first instance that the evidence in question had very little connection with the case, its judgment was held to be not a legal decision in the terms of Section 359, Act VIII of 1859. *Adheen Misser and others* v. *Jograj Misser and others*, 11 W. R., 312.

Held, by Markby, J., that, in saying that the "reasons" for the decision of an Appellate Court must be stated, Section 359, Act VIII of 1859, means not the reasons for coming to any conclusion of fact, but the reasons showing upon what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. *Ramessur Bhuttacharjee* v. *Shaikh Bhanoo*, 12 W. R., 272.

A Judge's decision not being in conformity with the provision of Section 359, Act VIII of 1859, is illegal and defective. *Rughobur Suhai and others* v. *Chattrapat*, 1 Agra Rep., A. C., 73.

(*m*) *Duties of Parties in Appeal.*

Where both parties make default in appearing at the hearing of an appeal the Court must dismiss the appeal. *Manickram* v. *Roopnarain Singh*, Marsh., 5.

When the parties in two or more suits are the same, and the decision in one case governs all the cases, the filing of copies of the judgment and decree passed in the principal case is a sufficient compliance

with the law. *Bhyrubnath Sandyal* v. *Huro Soondery Dossee*, W. R., 1864, Mis., 28.

A *pro-formâ* defendant cannot be allowed to raise in appeal objections which he neglected to raise in the suit. *Deokeenundun Roy* v. *Kalee Pershad*, W. R., 1864, Mis., 34.

The depositing of tulubana in a wrong Court is no ground for the revival of an appeal dismissed for want of prosecution. *Moheschunder Bose* v. *Bhugobanchunder Mookerjee*, 3 W. R., Mis., 29.

The plaintiff's omission to appeal against an interlocutory order of the Sudder Court, remanding his suit for re-trial on the production of the mortgage accounts, did not preclude him from insisting before the Privy Council that the remand for the production of the accounts was erroneous, and that the cause should have been decided in his favour, notwithstanding the non-production of the accounts. *A. J. Forbes* v. *Ameeroonissa Begum*, 5 W. R., P. C., 47.

When a notice of appeal is transmitted by the High Court to a Court below, with instructions to make a return within a specified time, the appellant is entitled to the whole of the time allowed, and may deposit his tulubana, and cause service of the notice any time within the period limited. Where the appellant is denied this liberty by the lower Court, he ought to come before the High Court with a substantial application for orders. *Bungobibee Boistobee* v. *Huree Narain Oopadhya*, 11 W. R., 138.

(*n*) *Security pending Appeal.*

Appeal dismissed, as the appellants had not given security for costs, and as the appeal had not been filed within the time required by the rules of the Court. It is sufficient for the respondent to object at the hearing of the appeal for non-compliance with the rules of Court, and he need not apply specially to have the appeal rejected, when the memorandum of appeal is preferred. *Muhammedbhai Dharamsi* v. *Bhanji Topav*, 3 Bom. Rep., O. C., 64.

There is no reason why a respondent, who is admittedly the legal heir of the deceased proprietor, should be required to give security at the instance of the appellants, who are mere strangers. *Bhugobutty Churn Bhuttacharjee* v. *Issur Chunder Chatterjee*, 16 S. W. R., C. R., 311.

The High Court having ordered a judgment-debtor, pending an appeal to the Privy Council, to furnish security within two months, he put in a petition in the Zillah Court on the last day allowed by the order, tendering a durputnee mehal as security, and on the day following gave an unregistered security bond. The Judge rejected the bond.

Held, that the bond was not required to be registered until the security had been accepted; and that the Judge should have directed an investigation into the goodness and sufficiency or otherwise of the property tendered. *Dunne* v. *Ameeroonissa Khatoon*, 13 S. W. R., C. R., 41.

A plaint having been dismissed by the first Court, which decreed that the costs of all the defendants who had filed answers were to be borne by the plaintiff, the plaintiff appealed to the High Court, which reversed the decree. One of the defendants then appealed to the Privy Council, which reversed the decree of the High Court and restored that of the Zillah Court.

Held that the decree of the first Court by being restored as it was made was re-affirmed in its integrity, and the defendants generally were entitled to execute it, though only one had appealed to the Privy Council. *Luchmeeputt Singh* v. *Khoobunnissa*, 14 S. W. R., C. R., 280.

Held (Mitter, J. *dubitante*) that as the Deputy Collector's decision proceeded on a ground common to all the defendants, the Judge had jurisdiction under Section 337 of the Code of Civil Procedure to reverse the decree on the appeal of only one of the defendants. *Doorga Chunder Dass* v. *Mahomed Abbas Bhooyan*, 14 S. W. R., C. R., 121.

(*o*) *Cross Appeals.*

In the case of an appeal to the Privy Council, the Court has no power, on failure of both parties to furnish security as required by Section 4, Regulation XXI of 1797, to attach any property held by the appellant beyond that decreed. *Baboo Khoroo Lall* v. *Kant Lall*, 5 W. R., Mis., 37.

Plaintiff sued two tenants and his co-sharer for joint rents. His suit was dismissed, and the dakhilas produced by the tenant defendants were declared to be false. The latter appealed, making the former and his co-sharer respondents. Plaintiff then appeared and made a cross-appeal under Section 348, Act VIII of 1859. *Held* that plaintiff had no *locus standi* to entitle him to make a cross-appeal against his co-sharer upon the appeal of the tenant defendants. *Aunonto Doss Sein* v. *Ram Joy Sein*, 11 W. R., 435.

If a decree is passed partly in favour of and partly against a plaintiff, and one of the defendants alone appeals as against the decree in favour of the plaintiff, making a co-defendant a respondent, there is no reason why the latter should appear or interest himself in the result, nor why the plaintiff should be allowed at the hearing to raise objections to his suit having been dismissed against the other defendant. *Goonomonee Dossee* v. *Parbutty Dossee and others*, 10 W. R., 326.

When a decree gives title to land to defendant and right of way to plaintiff, and plaintiff alone appeals, Appellate Court must not raise an issue as to right of way without cross-appeal from defendant. *Sookhanundamoyee Debia* v. *Baney Madhub Mookerjee*, 1 W. R., 73.

An application to file a cross-appeal orally was rejected, firstly, because a written memorandum of its grounds had not been filed previously; secondly, because the objection, when taken, was not filed on the regulated stamp; and lastly, because the ground now urged had not been advanced as an objection in a regular appeal previously filed. *Mussamut Hoolas Kooeree and others* v. *Mussamut Bibee Sufeebun*, 8 W. R., 379.

In a suit to recover possession of certain land against A., who claimed to be its proprietor, in which J. B., who claimed to be a ryot, was made co-defendant, plaintiff obtained a decree against the former, but his suit as against the latter was dismissed. A. appealed from the decree, and during the course of the appeal the plaintiff was allowed to take a cross-appeal with regard to the

dismissal of his suit against J. B. *Held* that the cross-appeal should not have been admitted. *Anwar Jan Bibee* v. *Azmut Ali*, 15 S. W. R., C. R., 26.

A plaintiff who obtains a decree which is appealed against, is not bound to bring a cross-appeal because the Court of first instance did not accept a portion of the evidence; but it is for the Appellate Court to examine such portion and consider whether it proves plaintiff's case. *Oomabuttee* v. *Parushnauth Pandey*, 15 S. W. R., C. R., 135.

There can be no cross-appeal after the appeal is withdrawn. *Shamachum Ghose* v. *Radhu Kristo Chaklauj*, 14 S. W. R., C. R., 210.

A party who purchases the rights and interests of the plaintiffs after a suit has been dismissed, is not entitled to appeal against the order of dismissal without joining the original plaintiffs in the suit as appellants. *Dhunno Sowdagur* v. *Sunnoo Bibee*, 15 S. W. R., C. R., 106.

Where the whole interest of a sole plaintiff had been transferred with his unqualified assent, and the transferee was substituted for the original plaintiff in the very inception of the case, the defendant's written defence being afterwards put in without demur, it was held not to be necessary for the original plaintiff to be associated with the transferee in an appeal by the latter. *Muneeroodeen Mojoomdar* v. *Parbutty Churn Ghose*, 15 S. W. R., C. R., 121.

(*p*) *Appeals under the High Court Charters.*

An appeal lies from the decision of a Judge exercising original jurisdiction refusing to give leave to institute a suit on the original side of the High Court, in a case in which the cause of action has arisen in part within the ordinary original jurisdiction of the High Court; but the Appellate Court ought not to interfere with the discretion exercised by the Judge in such a matter. *De Souza* v. *Coles*, 3 Mad. Rep., A. C., 384.

Where two Judges decided a case of original civil jurisdiction under the original Letters Patent, but the decree was sealed, and appeal preferred after the amended Letters Patent had come into operation,—*Held* that the right of appeal to the High Court, constituted so as to hear an appeal from two Judges, which existed in such a case under Section 14 of the old Charter, was taken away by Section 15 of the new Charter, as there was no reservation therein that parties should retain any right of appeal which existed before its publication in respect of suits then pending, of judgments given, or of decrees made but not executed. A right of action is not taken away by a change in the law, unless by express enactment; but in the case of mere procedure, unless something is said to the contrary, the new law, where its language is general in its terms, applies without reference to the former law or procedure. *Framji Bomanji* v. *Hormasji Barjorji*, 3 Bom. Rep., O. C., 49.

If an appeal is presented under Section 15 of the Letters Patent within 30 days from the time at which a written judgment is put in, the applicant has a reasonable ground to apply to the Court in its discretion to admit the appeal, though filed after 30 days from the time when the judgment was delivered orally in Court. *Huruck Singh* v. *Toolseeram Sahoo*, 12 W. R., 458.

Quære,—Whether, under the provisions of the new Letters Patent of the High Court, an appeal lies from the judgment (not being a sentence or order passed or made in a criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges. *Ranee Surnomoye* v. *Luchmeeput Doogur and others*, 7 W. R., 52.

An appeal lies under Section 15 of the Letters Patent of the High Court to the Court at large from the judgment (not being a sentence or order passed or made in a criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion and do not amount in number to a majority of the whole of the Judges. *Ranee Shurnomoye* v. *Luchmeeput Doogur and others*, 7 W. R., 512.

Under Section 39 of the Letters Patent of the High Court, an appeal lies to Her Majesty in Council against an order of the High Court in a case of execution of a decree. *Mussamut Yellyety Begum* v. *Raghoonauth Pershad*, 2 Ind. Jur., N. S., 263.

Held (Jackson, J., *dubitante*) that an order made by the High Court on an application to review its judgment in a case of appeal to the Privy Council previously heard is not an order made on appeal within the terms of Clause 39 of the Court's Charter, so as to enable the Court to admit an appeal against such order to Her Majesty in Council. *Raj Enaet Hossein* v. *Ranee Roushan Ishan*, 10 W. R., F. B., 1.

In a suit in a Moonsiff's Court it was found, after issues had been fixed and some evidence recorded, that the claim had been under-valued, and that the proper valuation would carry it beyond the jurisdiction of the Moonsiff. The plaint was accordingly returned; and additional stamps having been filed, the case was tried by the Principal Sudder Ameen. The Judge, in appeal, held that the plaint had been illegally returned by the Moonsiff, and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal. He accordingly dismissed the suit.

Held, with reference to Section 350, Act VIII of 1859, that the Judge was wrong in reversing the decree of the Principal Sudder Ameen. *Ram Gutty and others* v. *Goono Monee Dabee and others*, 11 W. R., 177.

An error in a matter of stamp is no ground for appeal, and is no reason for interfering with the decision of the Court below, under Section 350 of the Code of Civil Procedure. *Showdaminee Dossee* v. *Ram Roodro Gangooly and others*, 8 W. R., 367.

The objection that papers were admitted as evidence which were not legally admissible, is not ground sufficient under Section 350 of the Code of Civil Procedure to warrant a decree being reversed or modified, or a case being remanded, when it is admitted that there was other evidence to support the lower Court's finding, and the insufficiency of such other evidence is not alleged in the grounds of appeal. *Kenaram Samont* v. *Gopeenath Geeree*, 10 W. R., 130.

XIV.—REVIEW.

(a) *Petition of Review.*

The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree; the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. *Ajonnissa Bibee* v. *Surja Kant Acharjee*, 2 B. L. R., A. C., 181; 11 W. R., 56.

A Deputy Collector may entertain an application for review of a judgment of his predecessor.

When a plaintiff who has obtained a decree against one of two defendants appeals to the Judge to make the other jointly liable, the decree may in the meantime be reversed on an application for review by the defendant against whom the decree was given. *Laljee Mul* v. *Dhunput Singh*, 5 W. R., Act X R., 94.

An application for review of judgment passed on special appeal, upon the ground of the discovery of material evidence since the judgment was passed on special appeal, cannot be entertained, inasmuch as the ground relied upon in the application for review could not be successfully relied upon in the special appeal itself. *Jackammal and others* v. *Palneappa Chetty*, 5 Mad. Rep., 464.

A reference cannot be made upon an application for a review of judgment. *Salim Mundal* v. *R. Watson and Co.*, 17 S. W. R., C. R., 94.

A Judge admitting a review of judgment on the ground of the discovery of new evidence must first satisfy himself on legal evidence (not upon an unverified petition nor even perhaps upon a simple affidavit) that the new matter was not known to the applicant or could not be adduced by him when the decree was passed. *Nudar Chand Bhooju* v. *Reedaj Mundle*, 17 S. W. R., C. R., 458.

Parties applying for a review of judgment are not absolutely debarred from asking for a re-hearing of a matter which has been already argued and considered, nor are they debarred from raising a point which has not, but which might have been, raised previously; but in every such case it lies upon the party making the application to show the Court some good ground upon which that indulgence is asked for, and it is in the discretion of the Court to allow or to refuse such an application. *Huru Pershad Mundle* v. *Nund Kishore Singh*, 17 S. W. R., C. R., 479.

An application for review of judgment, if out of time, cannot be admitted without special and sufficient cause being shown for the delay.

Nor can a review be admitted for the purpose of having a further investigation when there is nothing to show that the further evidence sought to be laid before the Court might not have been produced at the original trial.

Time for obtaining copies of judgments should not be allowed in applications for review. *Jhubhoo Sahoo* v. *Mussamut Jussoda Kooer*, 17 S. W. R., C. R., 230.

A decision of the Privy Council in 1871 as to a question of fact in another suit, or the tendency of the appeal in the High Court, is no cause (under Section 379, Act VIII of 1859) for not having preferred an application for review of a judgment passed in May, 1866, within ninety days from the date of the decree. *Bolaka Lall* v. *Monju Lall*, 17 S. W. R., C. R., 163.

It is not a sufficient ground for a review of judgment passed on special appeal that the point which was then raised, and on which the Court's decision was based, was one not raised in either of the lower Courts, and especially, as in this case, where the question was pointedly raised in the special appeal, and the respondent had ample time to prepare himself to meet the statement therein. *H. Cowell* v. *Mohadeb Mundle*, 17 S. W. R., C. R., 182.

A petition for the rectification of a decree is not different from an application for a review, when the object of the rectification is to alter the decision of the Court, and such a petition cannot be received after ninety days without just and reasonable cause for the delay being shown to the satisfaction of the Court. *Assur Ali* v. *Woolfutoonissa*, 13 S. W. R., C. R., 33.

The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the decision, without recording that just and reasonable cause for the delay had been shown.

On an application, under Section 15 of the Charter Act, to the High Court to set aside the order of the lower Court, on the ground that that Court had no jurisdiction to entertain an application for review after a lapse of ninety days, without recording that there was just and reasonable cause for the delay, the High Court refused to interfere. *Asrajannissa Begum* v. *Syad Inaet Hossein*, 5 B. L. R., 316; 13 S. W. R., C. R., 439.

This was an application for review of judgment of three out of five analogous cases decided by the High Court, the judgment in two of which had been reversed by the Privy Council. The application was made after a lapse of more than 90 days from the date of judgment.

Held that a lapse of 90 days, under the circumstances, would not be a bar to the granting of the review. *Satto Saran Ghosal Bahadur* v. *Tarini Charan Ghose*, 3 B. L. R., A. C., 287; S. C., 12 W. R., 154.

Where an application to be allowed to sue as a pauper was rejected as barred by the Statute of Limitations, and an application for review of that judgment was granted and the pauper plaintiff's suit was decreed,—*Held* that the application for review not having been made within 90 days of the order to which it referred, and no just and reasonable cause having been shown for the delay, the application could not be entertained, and the Court's decision in the suit was without jurisdiction.

Quære,—When a Court refuses to allow a plaintiff to sue as a pauper, can an application of review of that order be entertained? *Mahomed Gazee Chowdhry and others* v. *Dooltub Bebee*, 11 W. R., 22.

Held (by Phear, J.) that an application for review ought to be rejected if no matter is brought to notice which might not have been brought before the Court when the appeal was heard.

Held (by Mitter, J.) that the Court is bound to administer the law as it is, and to take notice of a

Full Bench decision applicable to the case, whether it is referred to or not by the pleaders. *Collector of Tipperah* v. *Mussamut Mofazoonissa*, 14 S. W. R., C. R., 84.

In applying for a review, it is not sufficient for the applicant to make an affidavit that he was not aware of the existence of a document filed by the other party; the law requires that he also showed due diligence and made enquiries to ascertain its existence, and found that it was not available. *Seetanath Ghose* v. *Shama Soondura Dassee*, 14 S. W. R., C. R., 26.

On application for review of judgment,—*Held*, a party applying for a review of judgment must show that there is good and sufficient cause for granting the review before he can be heard to argue that the decision is erroneous. In so showing cause (first) no point can be raised which has been already discussed and decided on the original hearing of the appeal; and (secondly) no new point which has not been raised at the hearing of the appeal can be argued on the application for review. *Bhawabul Singh* v. *Maharajah Rajendro Pratab Sahoy Bahadur*, 5 B. L. R., 321; 13 S. W. R., C. R., 157.

When the ninety days within which an application for review of judgment may ordinarily be filed expired on a Sunday or holiday, or in the middle of a holiday extending over more than one day,—*Held* that the applicant has a right to file his petition for review on the first day on which the Court sits after the holiday.

Per Kemp, J. (dissenting), that he has no such absolute right; that the admission of an application for review after the expiration of the ninety days can only be allowed when a just and reasonable ground for delay has been shown to the satisfaction of the Court. *Narayan Mandal and others* v. *Beni Madhub Sirkar*, 4 B. L. R., F. B., 32; and 12 S. W. R., F. B., 21.

Applications for review of judgment should set forth concisely the grounds of objection to the decision of which a review is sought, without argument or narrative, and such grounds should be numbered consecutively. *Mahadajee Ramchundra Mul* v. *Vithal Viswanath*, 1 Bom. Rep., 185.

A second application for review of judgment can be admitted, although the first application has been rejected as founded on insufficient grounds. *Fakeerooddeen* v. *Kalachund Sircar*, 1 W. R., 287.

After an application for a review of judgment has been struck off, a second application may be admitted. *Doorganath Shoor* v. *Sookhmoy Biswas*, 2 W. R., 62.

A second application for review admitted erroneously may be rejected by the Court. *Nund Lall Poddar* v. *Debnath Chowdhry*, 3 W. R., 191.

An application for a review of judgment need not be founded solely on the ground of fresh evidence, but may be for "any other good and sufficient reason." *Islam Khan* v. *Mussamut Sahoo Khanum*, 6 W. R., 248.

An application for review, with the object of introducing fresh matter into a case, cannot be admitted, unless verified and supported by proof of the kind referred to in the case reported in 10 W. R., 432. *Khelat Chunder Ghose* v. *Prankisto Roy*, 12 W. R., 461.

Where a review is applied for on the ground of the discovery of new evidence, the applicant must satisfy the Court that the evidence tendered was not within the knowledge of the applicant, or could not be adduced by him at the time when the decree was passed, and that it is *primâ-facie* evidence in the cause. *Ramdhun Chuckerbutty* v. *Joynarain Panjah*, 12 W. R., 536.

Merely adding to a decree an order that it should bear interest from its date, is not an act done by way of review, and an application for such an order is not governed by the limitation prescribed in Section 377, Act VIII of 1859. *Zuhoor Hossein and others* v. *Mussamut Sydeen*, 11 W. R., 142.

An application for a review, on the ground of the discovery of new evidence, of a judgment of the late Sudder Court rejecting a special appeal, ought not to be made to the High Court, but to the Court of original jurisdiction. *Rao Banecram* v. *Newaz Bibee and others*, 8 W. R., 511.

The order of a Court is final as to the admission of an application for review of judgment, under Section 13, Act VI of 1862 (B.C.). *Lall Mohun Sein* v. *Anund Chunder Chuckerbutty*, 4 W. R., Act X R., 3.

(*b*) *Procedure in Review.*

It is not competent to a Court, when the application for a review of judgment is based on the discovery of new evidence, to dispense with proof that the new evidence has come to the knowledge or the reach of the applicant since the first hearing; and if a Court does re-hear a case when an application has been granted without such proof it is a valid ground of appeal, both regular and special, that the judgment arrived at upon the review has been arrived at contrary to law. *Shunshere Ali Khan* v. *Ram Chunder Goopto*, 2 W. R., 174

A case should not be decided on the mere admission of an application for review of judgment. After the admission of the application for review a day should be fixed and notified for the hearing of the case so admitted to be reviewed. *Parbutty* v. *Khoobun*, 3 W. R., 134.

Junior pleaders of the High Court should be cautious how they certify for a review, when they find that the case has been in the hands of members of the bar, and of pleaders more experienced than they, who, they ought to consider, have declined to certify to the review. *Rousseau and another* v. *Pinto*, 10 W. R., 54.

When a case is admitted to review by the deciding Judge, and tried afterwards by another Judge, the new Judge ought to try only the point directed by the order of review. *Hurro Chunder Chuckerbutty* v. *Ramkissore Chuckerbutty*, W. R., 1864, 142.

That there is a difference of opinion between two decisions of the High Court on questions of fact is no reason why, on review, a reference to a Full Bench shall be made. *W. Fergusson* v. *The Government*, 9 W. R., 158.

Where a lower Court granting a review re-opened the original case, took fresh evidence, and upheld its former decision, it was held that an appeal did lie to the Judge. *Rughoonath Roy* v. *Anundo Pauray*, 10 W. R., 387.

Where a review has been admitted by the sole remaining Judge of the Bench which heard the case originally, it is not open to counsel on the

re-hearing of the appeal to question the propriety of the order for admission. If such order is wrong the error cannot be corrected by the Bench appointed to hear the appeal after its restoration to its original number on the file. *Jardine, Skinner, and Co.* v. *Dhun Kissen Sein*, 13 S. W. R., C. R., 82.

Where an application for review of an order in execution, made after ninety days from the order, was granted simply on the ground that in the execution case of another person upon the same decree the decision, which apparently proceeded upon the same ground as the decision in this case, had been reversed by the High Court,—*Held* that the order admitting the review was open to appeal and must be set aside. *Roy Goodur Suhaya* v. *Achebur Lall*, 13 S. W. R., C. R., 120.

It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided on the original hearing of the appeal; or that no new point, which has not been raised on the hearing of the appeal, can be argued on the application for a review. In each case the Court to which the application is made must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice. *In the matter of Chintamony Paul Chintammi Pal* v. *Pyari Mohun Mookerjee. In the matter of the Petition of Saleb Shubi Sabi-ud-din Abu Saleh, Saleh Shabi-uddin Abu Saleh* v. *Asadunissa Bibee*, 6 B. L. R., 126, and 15 S.W. R., F. B., 1.

Whereas by the law in force, previous to the Code of Civil Procedure, the subordinate Courts could not review their judgment without the permission of a superior Court, the Code removed that inability, and the removal extended to suits past and pending, as well as future.

A party petitioning, after the Code of Civil Procedure came into force, for the review of a judgment in appeal passed in 1849, is entitled to be governed by the terms of the old law (Regulation XXVI of 1814), which allows a review in respect to a decree from which "no further appeal" may have been admitted by a superior Court; and a "further appeal" included both a second or special appeal and a summary appeal. *Joogul Kishore Singh and others* v. *Oogur Narain Singh and others*, 8 W. R., 483.

On application by a defendant for the review of an *ex-parte* judgment by a Deputy Collector, on the ground of non-service of notice, the suit was ordered to be replaced on the file, and a notice was issued to the plaintiff that a day had been fixed for the re-hearing of the case, and intimating that if he had any objections he might make them on that day. The plaintiff appeared on the day fixed, but failed to show that the notice had been served by the defendant. *Held* that the admission of the review was not a contravention of Section 58 of Act X of 1859. *Ali Azim* v. *Ram Manick Roy*, 12 W. R., 195.

If a review of judgment be applied for in proper time, and before an appeal has been preferred, the Judge is not prevented from proceeding upon the application for review by the subsequent presentation of appeal, and he has full power, and is bound to proceed with the application for review.

Quære,—Whether a review can be admitted by a lower Court after an appeal has been preferred therefrom. *Bhurrut Chunder Mozoomdar* v. *Ram Gunga Sein*, 5 W. R., 59.

A suit for possession having been decreed in the absence of the defendants, they applied for a re-hearing, and their application was rejected. They then, after the time allowed by law, applied for a review of judgment, which was granted; without any determination as to the goodness and sufficiency of the cause of delay. *Held* that the order granting the review was illegal, and that an appeal lay as to the sufficiency of the cause for the delay. *Kristo Gobind Joatdar* v. *Juggabundhoo Sircar*, 12 W. R., 94.

A lower Court acts without jurisdiction if it admits a review of its predecessor's judgment, unless either the party apply for review within ninety days, or the Court is satisfied that there is just and reasonable cause for not having preferred the application within the limited period. *Gossie Doss* v. *Narain Doss*, W. R., 1864, 287.

R. D. having obtained a judgment against S. M., the latter petitioned for a review thereof, on the ground that he had obtained additional evidence in support of his case. Application refused, on the ground that it was the duty of the defendant to have been prepared with such evidence at the former hearing.

Held that, when an issue which decides the case on the merits has been found in favour of either party, a review of judgment will not be granted merely because there has been an erroneous decision on a point affecting an issue which, in consequence of the finding, has become immaterial; that, when a Judge exceeds his jurisdiction, a party claiming costs in consequence thereof must apply for them when objecting thereto. *Rakub Doss* v. *Sooraj Mull and Soobaj Mull*, Bourke's Rep., O. C., 131.

After rejection of an application made within ninety days for review of the judgment of a Division Court, which turned upon the construction of a "teep" or indigo contract, a Full Court, sitting in appeal under Section 15 of the Charter, gave a decision upon a similar "teep" upon which a second application was filed for review of the original decision. *Held* that such second application should have been made within ninety days from the date of the decision of the Full Court, that having been the judgment which gave cause to the review. *A. J. Forbes* v. *Sheikh Dyanutoolah Lall and others*, 10 W. R., 415.

A Judge ought not to admit a review for the purpose of receiving fresh evidence in the suit, except upon being satisfied by legal evidence that the fresh evidence was not known to the applicant, or could not be obtained by him at the time of the original trial. *Nuffer Chand Paul Chowdhry and others* v. *A. D. Sandes and another*, 10 W. R., 432.

Where an application for review was rejected and no appeal to the Privy Council was filed against the order of rejection, papers filed with the application for review will not be forwarded with the record to the Privy Council on the appeal of the case. *Fukeeruddeen Mahomed Chowdhry* v. *Najumunissa Chowdhrain*, 2 B. L. R., A. C., 264; 11 W. R., 145.

Held that Judges of the Sudder Court admitting an application for review were competent to make a qualified order, leaving in the Court which was to review the decision a discretion as to the extent to

which the review should be carried. *Bhugwandeen Doobey* v. *Myna Baee*, 9 W. R., P. C., 23.

A Court should give reasons, on review of judgment, for coming to a different conclusion from that which it had previously formed. *Anundmoyee Dossee* v. *Kalee Coomar Rokheet and others*, 6 W. R., 18.

Procedure in admitting a review of a predecessor's judgment applied for after ninety days from the date of the decree sought to be reviewed. *Doohkoo Pasee* v. *Sheikh Mahomed Hossein and others*, 6 W. R., 98.

A review of judgment may be proceeded with after an appeal has been filed against it. *Syud Asadooddeen Hyder and others* v. *Khaja Abdool Kureem and others*, 6 W. R., 110.

A record should always be kept by a Judge of all orders passed by him, rejecting application for review of judgment. *Shumbhoonath Barooree and others, petitioners*, 6 W. R., Mis., 108.

An order rejecting or admitting a review is not final; but the Court may, in the exercise of its discretion, admit a second review, even after a prior order rejecting it. (*Dissentiente* Seton-Karr, J.)

Applications for review dismissed for mere default may be re-admitted like appeals dismissed for default. *Nusseerooddeen Khan* v. *Indurnarain Chowdhry*, 5 W. R., 93.

An order rejecting an application for review of a judgment or order passed by the Court is final. Application for re-consideration of such orders should not be received in the office, but the applicants should be referred to the Bench receiving motions. *Kanto Lall Singh* v. *Brojo Lall Singh*, 3 W. R., Mis., 3.

When the decision of a lower Court is admitted to review, the suit becomes in all respects a new one, and its decision will be guided by precedents then in force,—*e. g.*, by a subsequent Full Bench ruling of the High Court containing an exposition of the law contrary to that which prevailed at the time when the decision sought to be reviewed was passed. *Alladmonee Dossia* v. *Joysunkur Roy*, 7 W. R., 408.

Where a Court has granted a review, the High Court on appeal will not interfere, though the grounds for granting the review may have been improper or insufficient. *Gorrumostu Nayada* v. *Pappa Nayada*, 1 Mad. Rep., A. C., 250.

A Court has the power, for any reason that it may consider good and sufficient, to grant a review of its judgment; and if the application is made within ninety days, the Court's estimate of those reasons cannot be interfered with by an Appellate Court. The procedure is not different when there has been a change (during the ninety days) of office incumbents. *Mussamut Muntoora* v. *Ablack Roy and others*, 11 W. R., 197.

A review is not to be sought upon the arguments and facts already placed before the Court, and upon which judgment has been given, nor should it be allowed on a new point not taken at all at the first hearing, though full opportunity existed for doing so. *Jonab Aly* v. *Chundee Churn Dey and others*, 11 W. R., 202.

To reject an application for a review is not a function which can be performed by the High Court generally, but merely by the Court which passed the original decision; and the order of rejection is not a judgment within the meaning of Section 15 of the Letters Patent. *Mussamut Rughoo Bibee* v. *Noor Jehan Begum*, 12 W. R., 459.

Where a review had been granted for the purpose of seeing whether a chitta ought not to be used, and the case was remanded for re-hearing, the party was held to be concluded from objecting that the chitta was improperly made use of upon the re-hearing. *Makhun Kooer* v. *Tincowry Dutt*, 14 S. W. R., C. R., 22.

Where a Subordinate Judge admitted a review on the representation of plaintiff that he (the Judge) had made a mistake as to the subject of a certain dagh in a Government halabadee chitta, the applicant filing with his petition for review another chitta and other evidence for the purpose of convincing the Court that it had made an error,—*Held* that an error of this kind was sufficient to found the jurisdiction of the Court to entertain the review. *Gunnesh Rum Surmah* v. *Rohinee Dussee*, 14 S. W. R., C. R., 236.

Held (Mitter, J. *dissentiente*) that in cases of review, Judges are not required to re-adjudicate points which were considered and adjudicated when brought before them by a pleader then employed, although they may be better argued, and put in a different light, by another pleader subsequently; but are to be guided in their admissions of reviews in Indian Courts by the definite terms of the Sections (367 and 378) of the Code of Civil Procedure. *Choonee Mundur* v. *Chundee Lull Dass*, 14 S. W. R., C. R., 178.

In a suit for confirmation of title to a village alleged to be in the possession of plaintiff under a mokururee pottah, the first Court found the pottah to be genuine, and gave plaintiff a decree. The lower Appellate Court at first doubted the genuineness of the pottah and reversed that decision, but on an application for review admitted additional evidence on both sides and dismissed the appeal. *Held* that the lower Appellate Court ought not to have allowed points to be explained away in the review stage by admitting additional evidence thereon, though in this particular case injustice was not done. *Tekaet Khood Narain Singh* v. *Toolsey Roy*, 15 S. W. R., C. R., 9.

Where an appellant is refused postponement and his appeal is dismissed in his absence, the case must be looked upon as one of default, even though the Judge looked into the facts with such light as he could obtain from other sources.

The appellant in such a case might apply for a re-hearing or for a review of judgment, but is not entitled to a special appeal. *Buldeo Misser* v. *Syud Ahmed Hossein*, 15 S. W. R., C. R., 143.

Where an applicant for review is not informed at the time of his application that his petition is insufficiently stamped, he cannot at the time of hearing be refused permission to make up the proper valuation. *Shahazadar Fukuroodeen Ahmed*, 15 S. W. R., C. R., 278.

(*c*) *When Review is allowed.*

A Judge has power to review an order relating to the execution of a decree. (*Dissentiente*, Morgan, J.) *Haradhone Mookerjee* v. *Chunder Mohun Roy*, Marsh., 205, W. R., F. B., 66.

A review of judgment can only be granted as

regards those parties who appear or have applied for the review. *Doorga Pershad Ghose* v. *Greesh Chunder Bose*, 1 W. R., 222.

Before a review can be granted upon the ground of the discovery of new matter, it must be stated in the petition and proved that the new matter was not within the applicant's knowledge, or could not be adduced at the time when the decree was passed. *Dwarkanath Chowdhry* v. *Kishenlall Chowdhry*, Marsh., 553.

An error on a point of law is a ground for a review of judgment. *Koh Poh* v. *Moung Tay and others*, 10 W. R., 143.

Where the decision of a lower Court follows a view of the law taken by the High Court, and that view is set aside by a ruling of Her Majesty in Council, the judgment-creditor has a right to have his case re-tried upon that ruling. *Banee Pershad* v. *Radha Pershad Singh*, 15 S. W. R., C. R., 143.

Where a Judge has omitted to try a point which was urged before him, it is the duty of the pleader, after the decision, to point out to the Judge the omission, and, if necessary, an application for review may be filed. *Hossein Ali Chowdry* v. *Nasiroodeen*, 16 S. W. R., C. R., 134.

Quære,—Can a judgment under Act X of 1859 be reviewed on the principles laid down in Act VIII of 1859? *Moneekurnika Chowdrain* v. *The Collector of Mymensing*, 16 S. W. R., C. R., 159.

A suit having been brought before a Subordinate Judge against co-sharers in a joint property for contribution on account of costs levied from plaintiffs in a suit which had been preferred by all the co-sharers (plaintiffs and defendants) together, a decree was given ordering the defendents to contribute *per capita* in equal shares. On application made to the Subordinate Judge's successor a review was granted, and additional evidence called for as to the respective shares of the parties in the property. *Held* that the Subordinate Judge was legally competent to admit the review and call for the evidence. *Shaikh Murdan Ali* v. *Shaikh Tufuzzul Hossein*, 16 S. W. R., C. R., 78.

Where there is an omission on the part of the lower Appellate Court to try any point from mistake, the non-decision of such point is not a ground for special appeal, but for review. If the Judge refuses to admit a review in such a case, an application to the High Court may be made. *Wise, J. P.* v. *Huro Lall Giru Gossain*, 16 S. W. R., C.R., 150.

Where an appellant discovers fresh evidence after a special appeal has been admitted, the proper course for him to pursue is to ask to have the special appeal dismissed, and to apply to the lower Court for a review. *Pandurang Sadashia* v. *Moro Vasudea*, 6 Bom. Rep., A. C. J., 68.

Where a defendant, in the presence of the mookhtears on both sides, gives evidence that no summons was served on him in a case leading to the *ex-parte* decree against him, the Court's order to enter the case on the register of reviews is a proper order admitting the review. *Annund Moyee Dassee Chowdrain* v. *Annund Soondur Mookerjee*, 13 S. W. R., C. R., 237.

Review, ground of. *In the matter of the petition of Tufani Singh*, 6 B. L. R., Ap., 141.

A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue in *formâ pauperis*. Under Section 15 of 24 and 25 Vict., c., 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain such an application on the ground that the Court had no jurisdiction to entertain it. *Rani Umasunduri Dabi, in the matter of the petition of*, 5 B. L. R., Ap., 29.

On an application for review of a judgment, passed by the High Court in a special appeal, confirming the decision of the lower Appellate Court, on the ground of discovery of new evidence,—*Held*, this might be a good ground for moving the lower Appellate Court for a review of its judgment, but was not a sufficient ground for asking for a review of a judgment passed in special appeal. *Panchanan Mookerjee* v. *Radha Nath Mookerjee*, 4 B. L. R., A. C., 213.

(*d*) *When Review is not allowed.*

Reviews are not granted merely to supply defects on the part of pleaders in the conduct of appeals. *Prosunnonath Dutt* v. *Judoonath Paul*, 9 W. R., 589.

A Judge cannot, by transferring a case to his own file, confer on himself the power to review an order of dismissal pronounced by a Principal Sudder Ameen. *Golam Esha* v. *Hurrish Chunder Mookerjee*, W. R., 1864, Mis., 29.

A Court has no jurisdiction to grant a second review of judgment on the application of the same party under the Code of Civil Procedure. *Vencuma Shetty* v. *Pamoo Shetty*, 5 Mad. Rep., 323.

The Court declined, in the absence of some satisfactory explanation, to entertain an application for a review of an order rejecting an application to admit a special appeal. *Burramoollah* v. *Nil Chund Dutt*, 17 S. W. R., C. R., 484.

Upon the dismissal of a special appeal by the High Court, the appellant in special appeal applied to the High Court for a review of judgment upon the ground of discovery of fresh evidence. This application was rejected on the ground that the Court could not take cognizance of the merits of a case in special appeal, and therefore could not admit a review upon fresh evidence. The special appellant then applied to the lower Appellate Court for a review of its judgment on the ground of discovery of fresh evidence. This application was admitted, and a review of the judgment was allowed.

On application to the High Court, under Section 15 of the Charter Act,—*Held*, the lower Appellate Court had no jurisdiction to admit the application for review. *Jadunath Mookerjee, in the matter of the petition of*, 6 B. L. R., 333, and 14 S. W R., C. R., 438.

Held that the lower Court had no power to admit a review of its judgment after special appeal has been filed, registered, and admitted on the file. *Lallmun and others* v. *Manick Chund and others*, 1 Agra Rep., A. C., 133.

Revenue Courts are not competent to admit reviews against decrees passed by them in appealable cases. *Sookhanunda Moyee Debia* v. *Baneymadhub Mookerjee*, 1 W. R., 73.

A second review of judgment was refused as not contemplated either by the law itself or the Full Bench ruling of 12th February, 1866; the first review being neither appealed against nor shown to be wrong. *Taranath Roy* v. *Raj Bulhub Bhunje*, 7 W. R., 464.

An application for review of judgment of a lower Court is not admissible after the limited period, merely in consequence of a decision of the High Court or of the Privy Council modifying the law or practice which prevailed at the time when the judgment sought to be reviewed was passed. *Onoop Chunder Paul and others* v. *Ekkowree Singh and others*, 6 W. R., 167.

That the lower Court should have improperly neglected to examine a witness, is not a ground for a review of judgment, if the objection was not taken when the case was heard by the Court in regular appeal. *Munshad Bibee* v. *Luchmeeput Singh*, 9 W. R., 129.

That one Division Bench of the High Court has decided a point at variance with the decision of another Division Bench, is no reason for applying for a review of judgment.

A zemindar has a perfect right to bring a tenure to sale for arrears of rent, without regard to the rights of the new tenant, while he is yet unregistered. *Nobeen Kishen Mookerjee* v. *Shib Pershad Pattuck*, 9 W. R., 161.

No review can be admitted of a judgment passed on a compromise. A Moonsiff cannot grant a review of and reverse his predecessor's judgment on personal grounds and after eight months' delay. *Purmessuree Narain Singh* v. *Syud Romeezoodeen Ahmed Cazee*, 5 W. R., 226.

An application for a review of judgment by the High Court on a reference from a Small Cause Court is not admissible. *J. J. Doyle* v. *Khosal Mundle*, 3 W. R., S. C. C. Ref., 8.

A case having been remanded for the trial of an issue under the specific provisions of Clause 1, Section 4, Regulation XI of 1825, an application for review was made on the ground that it was requisite for the ends of justice to remand the case upon an issue under Clause 3, which, it was alleged, was the issue to which the applicant had directed all his evidence.

Held that, as the correctness of this allegation could not be ascertained without going through the record again, the application could not be granted, for to grant it would in fact be to grant a second special appeal, which is not the object of a review. *Juggobundoo Bose* v. *Wise*, 12 W. R., 409.

A Deputy Collector acts without jurisdiction in reviewing his order passed in execution of decree. *Rajah Protap Chunder Singh* v. *Kanaye Lall Doss*, 3 W. R., Act X R., 7.

Though a Judge ought not to admit (merely on the facts and without any new evidence being adduced) a review of judgment passed by his predecessor, yet his doing so is not *per se* a ground of special appeal. *Sheikh Gholam Hossein* v. *Okhoy Coomar Ghose*, 3 W. R., Act X R., 169.

The order of the lower Appellate Court admitting a review of judgment, after the expiration of ninety days from the date of the decree, without showing whether there was sufficient cause proved to its satisfaction for the delay, was held to be illegal, and was set aside with the subsequent proceedings thereon (Shumbhoonath Pundit, J., dissenting). *Ganganarain Roy* v. *Goonomoonee*, 8 W. R., 184.

The High Court has no authority to admit a review of a judgment passed in special appeal merely on the ground that new evidence to prove a fact has been discovered. *Bhyrub Nath Toll* v. *Kally Chunder Chowdhry*, 16 S. W. R., C. R., 112.

(*e*) *Rulings under the Code.*

On a rule *nisi* for review of judgment, obtained by a defendant, against whom a decree had been given on an affidavit that he was not, at the institution of the suit, residing within the jurisdiction of the Court; that after putting in his written statement he had to go to Agra, and was prevented by illness from attending at the trial; that he believed the evidence adduced by the plaintiff was untrue, and further believed he had a good defence on the merits, cause was shown that such an application should not be favourably entertained; and that the facts disclosed did not bring the defendant within the requirements of Chapter XI of Act VIII of 1859. The rule was discharged with costs.

Held that a review of judgment will be granted only on proof of one of the grounds specified in Section 376 of Act VIII of 1859.

That the facts disclosed did not establish the existence of any of their grounds; that the affidavit of a party alleging inability to attend from illness is not enough to satisfy the Court, but for this purpose there must be a medical certificate, or the affidavits of third parties; that the words "ends of justice," in Section 378 of Act VIII of 1859, mean that the new evidence referred to in Section 376 would probably alter the decision of the Court; that the affidavit on which an application for review is grounded must state what the new evidence to be relied on is; that in such an affidavit no reliance can be placed on a statement of belief of good defence on the merits, but the facts to be relied on as such must be set out; and that the application was of a dangerous nature. *Dhunsook Doss* v. *Hurry Baboo*, Bourke's Rep., O. C., 115.

A review of judgment under Section 376 of Act VIII of 1859, on the ground of discovery of new evidence not within the applicant's knowledge at the hearing of the case, should not be admitted without proof of the truth of the ground alleged. *Umrao Thakur* v. *Gokul Mandul*, 8 B. L. R., Ap., 34; and 16 S. W. R., C. R., 7.

A Judge is right in refusing to entertain an application for review where a special appeal has been admitted, tried, and disposed of. The words of Section 376, Act VIII of 1859, "special appeal shall have been admitted," refer to cases which have advanced beyond the inchoate stage of appeals, and in which it has been shown *primâ-facie* that there were errors in law. *Raj Dhuree Lall* v. *Mohadeo Singh and others*, 11 W. R., 511.

Section 376, Act VIII of 1859 (relating to review of judgment), applies to cases heard and decided in the presence of both parties, but not to the case of a person coming in under Section 119, and alleging that he had no knowledge of the suit. *Motee Chand Baboo* v. *Radha Madhub Chand Baboo*, 2 W. R., Mis., 34.

A second application for review after rejection of the first may be admitted. The word "final" used in Section 376 was construed to apply to appeal. *Nusseeroodeen Khan* v. *Indernaryan Chowdhry*, 1 Ind. Jur., N. S., 147.

The mere fact that a special appeal has been admitted in the High Court against a decretal order

of a lower Appellate Court, prevents any party to the suit, no matter whether or not he be the party who preferred the special appeal, from having the right, under Section 376, Act VIII of 1859, of applying to the lower Appellate Court for a review of the judgment upon which its decree was passed. *L. T. Lucas* v. *W. Stephen and others*, 9 W. R., 301.

When a suit has been dismissed for want of evidence, and the plaintiff's special appeal was dismissed, and the evidence wanting was subsequently discovered, the High Court's special permission is not necessary to enable the plaintiff to apply for a review to the Court in which the suit was brought. And, *semble*, he has no right to make such application under Act VIII of 1859, Section 376. *Ex-parte Bashiyagarahe Nayudu*, 1 Mad. Rep., 256.

Section 367 of the Code of Civil Procedure authorizes reviews of judgment in respect to decrees of Court, and also in respect to orders which are not decrees. *Deen Dyal Poramanic* v. *Ram Coomar Poramanic and others*, 10 W. R., 345.

An application having been made for a review of a judgment passed three years previously, it was found to be a renewal of an application made within that time, the renewed application being on the ground that a judgment of a Full Bench had, since the death of the former applicant, laid down the law in conformity with petitioner's contention in his former application.

Held that the fact pleaded did not constitute a "just and reasonable cause" within the meaning of Section 377, Act VIII of 1859. A Full Bench decision does not warrant interference in review, with a determination of the law come to prior to such decision. *Dwarkanath Doss Biswas* v. *Manick Chunder Doss*, 9 W. R., 102.

A lower Appellate Court has no power to interfere with the discretion vested in a lower Court by Section 377, Code of Civil Procedure, of admitting a review of judgment after ninety days.

Remarks on the admission of reviews after the prescribed period. *Sheikh Bura Boodho* v. *Koylash Chunder Nundee and others*, 6 W. R., 99.

A petition of review ought not to be admitted after the time prescribed in Section 377, Act VIII of 1859, without the leave of the Court or a Judge. *Omrao Singh* v. *Mungula Bibee*, 3 W. R., 113.

Where the only cause for admitting a review after the ninety days prescribed by Section 377, Act VIII of 1859, was that the High Court construed the law differently from the way in which it had been laid down in the decision admitted to review,—*Held* that the cause alleged was no excuse for the delay. *Pran Kissen Bhuttacharjee* v. *Bukshee Cazee*, 10 W. R., 26.

A decree for wasilat was passed against "the defendant" in a case where there were several defendants; and as soon as one of them, who was not the person against whom the plaintiff sought for wasilat in the original plaint, found that the decree was to be executed against him, he applied to the Court for a review, though after the time prescribed by Section 377, Act VIII of 1859. *Held* that the Court was quite right in holding that there was reasonable cause, within the meaning of that section, for the application for review not being preferred within the limited time.

The preferring of an appeal against a decision by one defendant does not deprive another defendant of his right to apply for a review of the same decision with reference to Section 376. *Bunkoo Lall Singh* v. *Basoomunissa Bibee and others*, 7 W. R., 166.

Where an application for review is not made within the ninety days provided by Act VIII of 1859, the pendency of a special appeal is not "a just and reasonable cause" for the loss of time, such as the Court to which the application is made is bound to arrive at under Section 377, before it can entertain the application at all. *L. F. Lucas* v. *W. Stephen*, 9 W. R., 301.

An appeal lies from the order of a lower Court deciding what is just and reasonable cause for admitting an application for review after the prescribed period of 90 days have elapsed, and an Appellate Court has power to look at the reasonableness or sufficiency of the cause assigned for admitting such review. Sections 377 and 378 of Act VIII of 1859 must be read separately, the words "whether for rejecting the application or granting the review shall be final" applying solely to the application under Section 378, and not to the application under Section 377; and the latter section relates only to the question of the time at which the Court is first asked to review its judgment. A new exposition of the law by the High Court is not a just and reasonable cause for not having applied for a review within the period of 90 days; but, when a review has been properly granted, the case should be governed by any new exposition of the law which may have been laid down since the date of the original decision. *Shama Churn Chuckerbutty* v. *Bindabun Chunder Roy*, 9 W. R., 187.

Section 378, Act VIII of 1859, refers to applications for review of judgment, but this was not an application for revival of the suit under Section 2, Act XIII of 1860. A special appeal does lie in the latter case. *Bungsheedhur Mundul* v. *Puddo Lochun Roy*, W. R., 1864, F. B., 11; Ind. Jur., 5.

Under Section 378, Act VIII of 1859, an order rejecting an application for review of judgment is final. *Cally Dass Sircar* v. *Janokeenath Roy*, 1 W. R., Mis., 7.

Section 378, Act VIII of 1859, does not bar a second application for review of judgment being entertained after the dismissal of the first.

Whenever a petition for review of judgment is presented after 90 days, it is indispensable that the party preferring such petition should in the first instance account for the delay. *Kasheenath Roy* v. *Luckheenarain Chatterjea*, W. R., 1864, 91.

There is nothing irregular in granting in 1862 a review of a decision passed in 1854 Such an order is final under Section 378, Act VIII of 1859. *Mahadeo Lall* v. *Lalla Gour Persad*, W. R., 1864, 232.

A proceeding admitting a review, without notice to the opposite party, as required by Section 378 of the Code of Civil Procedure, is wholly vitiated by such defect, and not binding on that party. *Mussamut Goaboo* v. *Ramdoyal Singh*, 8 W. R., 304.

The High Court cannot interfere with a review granted by a lower Court. Under Section 378, Act VIII of 1859, an order for rejecting or granting a review is final, and not open to appeal. *Radhakant Bhuttacharjee* v. *Kishon Pershad Chuckerbutty*, 5 W. R., 89.

In a suit to recover land on a document described

as a lease, Moonsiff M. decided that the document created a mortgage, and that the suit should be for redemption. In a subsequent suit to redeem, Moonsiff D. decided that the same document operated as a sale, and threw out the claim, which decision was affirmed by the District Judge in appeal. Plaintiff then applied to Moonsiff L. The review was granted, the claim re-heard, and plaintiff had judgment to recover the land as heir of his uncle, on the ground that his uncle's widow, who passed the document sued upon, had no right to alienate the land. This decree was affirmed by a new District Judge.

Held, that though L.'s act in granting the review was of a very questionable character, his order thereon was final, under Section 378 of Act VIII of 1859, and that the propriety of the order could not be enquired into on a special appeal from the decision passed after the review had been admitted. *Dhunká Devlá* v. *Hirá Rámlá*, 4 Bom. Rep., A. C. J., 57.

Section 378 does not apply to judgments on review, but only to orders rejecting reviews. *Apcar* v. *Howah Bye*, 1 Ind. Jur., N. S., 231.

Section 378, Act VIII of 1859, bars an appeal from the decision of a Principal Sudder Ameen, granting a review of his predecessor's judgment. *Ranee Surut Soondury Debia and another* v. *Rajendor Kishor Roy Chowdhry and others*, 9 W. R., 125.

Under Sections 378, 379, and 380, Act VIII of 1859, before an applicant for review is entitled to re-open the case, he must show some good and sufficient reason why he should be re-heard. A re-hearing cannot be allowed upon the possibility of an alteration of opinion on new points being put and new arguments urged, by a pleader not present at the first hearing. *Rajendro Protab Sahee* v. *Bhorrabul Singh*, 14 S. W. R., C. R., 105.

The law makes no distinction between the power of a Judge who originally heard a case, and subsequently has an application for review before him, and the power of a Judge subsequently succeeding to the same office who has such an application before him, and is not barred by the circumstances stated in Section 379, Act VIII of 1859, from considering that application. *Aman Ali Chowdhry* v. *Kasim Ali and others*, 6 W. R., 316.

XV.—REMAND.

In a case decided on pure questions of fact, no point being left undetermined, in which the Judge in appeal endorsed the opinion of the first Court, without giving detailed reasons, the High Court did not consider it right to remand the case to the Judge to set forth in his judgment the same reasons which influenced the Court of first instance. *Imrit Lall Thakoor and others* v. *Nuckshed Suhaye*, 10 W. R., 100.

In a suit for enhancement of rent, which had been remanded to the lower Appellate Court, with the instruction that the defendant had produced sufficient evidence to raise the presumption that he held his tenure at a fixed rate from the Permanent Settlement, and that it was for the Judge to give an opinion how far the plaintiff was able to rebut that presumption,—*Held* that there was nothing objectionable in the Judge directing the first Court to hear further evidence upon the point. *Rakhal Chunder Tewaree* v. *Koonooram Haldar*, 10 W. R., 442.

Where the ground of regular appeal to the lower Appellate Court was that the Court of first instance ought to have found that an ijara existed, it was the duty of the Appellate Court to determine whether that fact had been proved, and not to remand the case for re-trial. *Mahomed Ahsan* v. *Mahomed Yasin*, 9 W. R., 106.

Where a lower Appellate Court has before it all the evidence which the parties wish to adduce, and decides upon a preliminary point (*e. g.*, the genuineness of a pottah), it has no authority to remand the case, but should itself try it. *Ram Joy Sein* v. *Nundmoyee Dabea and others*, 10 W. R., 374.

A lower Appellate Court which remanded a suit to the first Court for decision of the substantial part of the dispute, should not have confirmed the decision of the first Court regarding only one part of the claim. *Madhub Chunder Dey and others* v. *Ram Dyal Gooho and others*, 8 W. R., 303.

Where a suit which had been tried by the lower Court on its merits, without the omission of any issue or question of fact essential to those merits, was remanded by the lower Appellate Court with a view to additional evidence being taken, the order of remand was held to be not in accordance with any of the provisions of the Civil Procedure Code, and in opposition to the terms of Section 352 of the Code. *Mohesh Chunder Dass* v. *Madhub Chunder Sirdar*, 10 W. R., 388.

Where a suit for rent was decided and dismissed by the lower Court, on the issue whether or not the plaintiff's title to sue could be made out,—*Held* that it was not competent to the lower Appellate Court to remand the case in order that it might be tried on its merits. *Gopal Chunder Gooho* v. *Joggodenna Dassea*, 10 W. R., 410.

When the decision of a lower Court is not on a preliminary point, the lower Appellate Court cannot remand the suit to that Court, with directions to take further evidence and to re-try the case, but the appeal must be kept pending on the file, and the record must be sent to the lower Court, with orders to take the necessary evidence. *Kallee Shunker Roy* v. *Kishto Doolal Chowdhry*, W. R., 1864, 296.

The order of a Judge overruling the defence of limitation, and remanding the suit for trial on the merits, if not immediately appealed against as a decree, may as an interlocutory order be objected to when the ultimate decision is appealed against. *Mussamut Wuzeerun Bibee* v. *Sheikh Wazris Ali*, 1 W. R., 51.

In a remanded case, a fresh vakeelutnama is not necessary. *Sreemutty Nobinmonee Dossee* v. *Joy Gopal Gossur*, 1 W. R., 276.

When a plaintiff has been offered a remand by an Appellate Court to enable him to produce fresh evidence, and has elected to go to trial on the record as it stands, he cannot, after failing to prove his case, be permitted what he once refused. *Nobbo Lall Khan* v. *Maharanee Odheeranee Narainee Koomaree*, 3 W. R., 5.

The effect of an order of remand for a new trial is entirely to nullify the first decision and to re-open the whole case. *Tarinee Kant Lahooree* v. *Koonjo Beharee Aostee*, 12 W. R., 112.

Held, in accordance with a former ruling of the

High Court (1 W. R., 140) that, as the case was admitted and investigated (though partially) by the first Court, that fact gave jurisdiction to the Appellate Court, which should have remanded the case to be registered and tried as a regular suit. *Russool Bibee* v. *Mobaruk Aly*, 11 W. R., 187; S. C., 2 B. L. R., A. C., 303.

Held by the majority of the Court that, when a suit is remanded in part, the appellant is entitled to only a proportionate refund of stamp duty. *In the matter of Doorga Dossa Dutt*, 6 W. R., Mis., 65.

In a suit brought by A. to recover a half share in certain ancestral land which he claimed, first by right of inheritance, and secondly under a deed of settlement executed by the other half sharer B., since deceased, the widow of B. answered that the whole of the land had been assigned for the purpose of a mosque by B.'s father; and the lower Appellate Court found that it was so, and reversed the decree of the Moonsiff who had allowed A.'s claim.

Held on special appeal, that the document relied upon as creating an endowment had been improperly admitted in evidence, it being only a copy, and the absence of the original not having been accounted for; the Court further observing that the document only purported to be a mortgage, and did not create any religious endowment. On the suit being remanded, the lower Appellate Court found no reason to alter its former decree, the absence of the original mortgage deed executed in 1834 having been accounted for, and a second deed, bearing date 1846, having been produced, by which B.'s father assigned the whole of the land in dispute to the jamat of the community as trustees of religious property. *Held* on a second special appeal that the deed of 1846, being unstamped, was inadmissible in evidence; and that the deed of 1834 being only a mortgage, the equity of redemption was not lost, notwithstanding the failure of the condition that the property was to be considered as sold if the mortgage debt was not paid before A. D. 1846. *Ranji* v. *Chinta*, 1 Bourke's Rep., 119, followed. 3 Bom. Rep., A. C. G., 160.

The High Court will not in a special appeal remand the case where there has been a distinct finding by the District Judge on the only issue framed by him, though he may have omitted to find on another issue raised before the Moonsiff, but not called for by either party in appeal. *Moti Bhagvan* v. *Harjivan Girdhurdas*, 2 Bom. Rep., 34.

A party who submits without resistance to a remand, cannot afterwards be allowed to complain of the legality of the step as an integral part of the proceedings. *Gholam Murteza Chowdhry* v. *Goluck Chunder Roy*, 3 W. R., 191.

If a lower Appellate Court finds a suit to have been undervalued, when its proper value would have placed it beyond the jurisdiction of the Court of first instance where it was instituted, it should dismiss the case, and not remand it with a view to the deficient stamp duty being made up. *Augopura Chowdhry* v. *Meah Zibee and others*, 10 W. R., 207.

The Civil Judge dismissed an appeal on the ground that the appellant fraudulently presented a stamp insufficient to cover the stamp duty, properly payable by him on appeal, although the appellant offered to supply additional stamps to make up the proper amount. On special appeal, the proper stamp duty having been paid, the High Court held that the course taken by the Civil Judge amounted to such a substantial error in the investigation of the case as called for the interference of the High Court, and remanded the case for investigation on the merits. *Ambalu Ramusawmy Iyengur* v. *Muhumdulli Ravutam*, 5 Mad. Rep., 330.

An Appellate Court can remand a case a second time on account of error, defect, or irregularity of procedure in keeping a decree or order, provided the error, defect, or irregularity by such as to affect the merits of the case or the jurisdiction of the Court. When a suit has been regularly heard and determined, and on appeal the decree is reversed, the Appellate Court has the discretionary power to remand the case, only if the decree should have been upon a preliminary point and have the effect of excluding the consideration of evidence essential to the rights of the parties. *Muniappah Naidu* v. *Iyasamy Mudeey*, 5 Mad. Rep., 313.

Held that the Judge was perfectly justified in remanding the case where the suit was instituted on the 9th of February, the 28th fixed for trial, the issues recorded, and defendant's written statement put in on the 28th, and the case decided the next day without a fair opportunity being given to the plaintiff to know the line of defence he had to meet. *Shib Pershad Pattuck* v. *Nubo Kishen Mookerjee*, 17 S. W. R., C. R., 446.

The Judge after disposing of the case on the only point in which the Moonsiff had decided, *viz.*, whether there was a cause of action, and having satisfied himself that there was not sufficient evidence on the record to enable him to pass a proper decision upon the merits, was held clearly right in remanding the case to the Moonsiff. *Brommo Meyer Debia Chowdhry* v. *Koomodinee Kant Bonnerjee Chowdhry*, 17 S. W. R., C. R., 466.

A case should not be remanded when the Appellate Court is of opinion that the lower Court cannot properly come to a different decision upon the evidence than that to which it has already come. *Bonomally Churn Mytee* v. *Shoroop Hootait*, 14 S. W. R., C. R., 60.

Where no preliminary point has been wrongly decided by the Court of first instance, and no evidence has been included, and the Appellate Court considers the issues, nevertheless, to have been defective or insufficient, it is the duty of the latter not to remand the case, but to re settle the issues and to determine the case itself. *Shaikh Futtehoollah* v. *Oomdunissa Bibee*, 14 S. W. R., C. R., 69.

An order of remand by a Subordinate Judge is final so far as the purpose of the remand goes, and cannot be set aside by his successor. *Lubut Pandey* v. *Byjrath Singh*, 14 S. W. R., C. R., 285.

The meagreness of the judgment of a lower Appellate Court can only warrant a remand when the judgment does not show that the Court has considered the evidence. *Krishendro Roy Chowdry* v. *Digumbeeree Debia Chowdrain*, 16 S. W. R., C. R., 15.

A remand order made on special appeal is (unless a review of it be obtained within the prescribed time) a conclusive determination of the points of law involved in it; and the correctness of law laid down upon a remand cannot be questioned on a

second special appeal; nor is the fact of the Courts adopting a different view of the law after an order has been made, in general a good ground for allowing a review of such order after the time for a review has elapsed. *Ramkuvarbai* v. *Damodhur Narthcram*, 6 Bom. Rep., A. C. J., 146.

It is an error in law for a lower Appellate Court to remand a case except in accordance with Section 351 of the Civil Procedure Code. A special appeal will lie against a decree remanding a suit. *Nanabhai Narotomdas* v. *Ramshet Govindshet*, 6 Bom. Rep., A. C. J., 156.

The terms of Section 148, Act VIII of 1859, do not prevent an Appellate Court, on good and sufficient cause shown, from remanding a case disposed of thereunder, in order that justice may be done between the parties. *Lochun Mundle* v. *Wurzeer Puramanick*, 13 S. W. R., C. R., 464.

A lower Appellate Court has no authority to remand a case except when the Court of first instance has so disposed of it on a preliminary point as to exclude any evidence which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree of the first Court, on such preliminary point, has been reversed by the Appellate Court. *Brindabun Day* v. *Bisona Bibee*, 13 S. W. R., C. R., 107.

Where the High Court had been misled into making an order of remand upon an issue other than that on which the case at the time ought to have been made to depend as between the parties, and the lower Appellate Court on remand came to a finding of fact which correctly disposed of the case, it was held that though the latter did not deal properly with the evidence on the record with reference to the precise issue sent down to it, its default ought not to govern the final result between plaintiff and defendant. *Mahomed Hossein* v. *Kaleechurn Bonnerjee*, 13 S. W. R., C. R., 91.

If a case after being decided in appeal by the Zillah Court is brought before the High Court in special appeal and is remanded, the costs of the special appeal can only be recovered if the High Court's order of remand provides that they are to abide the decision on appeal below. *Digambur Chatterjee* v. *Ram Roodra Gungopadhya*, 13 S. W. R., C. R., 39.

In a suit to recover accounts and papers, instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers, if any, were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts, if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and if so, decide the case accordingly. *Jugger Nath Panee* v. *Rajah Chutter Narain Deb*, 17 S. W. R., C. R., 410.

(a) *Duties of the Lower Court.*

An Acting District Judge, having made a decree reversing the decree of the Moonsiff, who threw out the plaintiff's claim, omitted to pass a decree himself in favour of the plaintiff, which his finding showed he intended to do. The case was remanded on special appeal by the High Court to the District Judge (who had meanwhile returned to his appointment), who re-opened the whole case, and passed a decree directly opposed to that of his predecessor, in which he confirmed the Moonsiff's decree.

Held that the decree of the Judge should be reversed, and the suit again remanded, in order that he might pass a decree for the plaintiff, in accordance with the view of the case expressed by the Acting Judge, with which the High Court saw no ground, upon the special appeal before it, to interfere. *Baiba Bin Ramji* v. *Kasimbhai Valud Azambhai and others*, 3 Bom. Rep., A. C. J., 60.

When it was found that the lower Appellate Court had not determined material questions of law and fact necessary for the decision of the suit, the Court framed certain issues for its guidance, and again remanded the case. *Muhammed Valad Abdul Mulna* v. *Ibrahim Valad Hasun and others*, 3 Bom. Rep., A. C. J., 160.

The District Judge not having come to any positive finding in his decree on the point for decision laid down by himself in appeal, the suit was remanded for a trial on the merits. *Ramdossakharlal* v. *Gungadhur Raghunath Dangree*, 2 Bom. Rep., 186.

A respondent must be held to the grounds on which he rested his case when the appeal was before the Court prior to the case being remanded to enable him to prove a particular allegation. *Radkakishore Bose* v. *Maharajah Mahatab Chand Bahadoor*, 3 W. R., Mis., A., 5.

Case remanded for trial on the proper issues on the merits, the merits not having been entered into in the Courts below, so as to enable the Privy Council to dispose of the suit. *Tarakant Banerjea* v. *Puddomonee Dassee*, 5 W. R., P. C., 63.

An order of remand to a lower Appellate Court implies a reversal of the first judgment of that Court. *Kebul Kishen Mozoomdar* v. *Mussamut Ambula*, 7 W. R., 326.

The remand of a case for trial on the merits (after an affirmative decision on the point of jurisdiction) does not prevent adjudication upon any other issue arising in the case (*e.g.*, the issue of limitation). *Rajah Tejkishen Roy* v. *Shib Chunder Bose*, 3 W. R., Act X R., 158.

A case had been remanded for the Judge to give his reasons for reversing the decision of the first Court. The Judge who tried it had left India, and his successor, without any order from the High Court, re-decided the case *de novo* on the merits, on the ground that his predecessor, being no longer in the country, could not certify his reasons. On special appeal the decision of the succeeding Judge was quashed as made without jurisdiction. The original judgment of the lower Appellate Court having been based on documents not seen by the first Court, the case was remanded, in order to be remitted to the first Court for the purpose of re-deciding the case *de novo*, with reference to the new evidence adduced before the lower Appellate Court. *Lalla Bhoyro Lall* v. *Lalla Mokhoond Lall*, 2 W. R., 275.

A case was remanded in appeal (in the presence of both parties) for a local investigation. A reasonable time was given, after the records had come, to the parties to appear and conduct their case. The petitioner not having appeared, the lower Court treated it as a case of default, whereupon petitioner made application under Section 376, Act VIII of

1859. As that was not the proper form for him to apply, and as the time within which he ought to have came in the proper form had expired, the lower Court declined to grant the application, the High Court approving of the order. *In re Kalee Mohun Dass*, 17 S. W. R., C. R., 70.

In a case which was remanded to be tried on its merits, the remanding Judges being of opinion that it was not barred, the Additional Judge of the Zillah adhered to his former opinion, that the plaintiff's claim was barred by limitation; but found as a fact that she had been a party to a solehnamah and other acts by which she was stopped from her present claim. *Held* that the Additional Judge was wrong in entering again into the question of limitation; but that his finding of fact could not be interfered with in special appeal, and that the plaintiff was barred by the solehnamah from maintaining this suit.

Case distinguished from *Bhugwan Deen Dobey* v. *Myna Ball*, 9 W. R., Privy Council, p. 23. *Mussamut Judoobunsee Kooer* v. *Mussamut Asmun Kooer*, 14 S. W. R., C. R., 370.

A case remanded to a District Judge for the purpose of a local enquiry cannot be transferred to a Subordinate Judge for disposal. *Chowdry Hamedoollah* v. *Mutunoossa Bibee*, 15 S. W. R., C. R., 574.

Where the evidence of a defendant has been taken by the Court of first instance so imperfectly that the lower Appellate Court cannot pass a satisfactory judgment between the parties, it is competent to the Judge of that Court, under the provisions of Section 355, Civil Procedure Code, to have the defendant fully examined before himself, but not to remand the case for re-hearing and re-trial. If he examines the defendant, he is bound to record his reasons for so doing, in order that the High Court may be enabled on appeal to decide whether or not the new evidence has been rightly admitted. *Mohesh Chunder Dass* v. *Madhub Chunder Sirdar*, 13 S. W. R., C. R., 85.

In a suit for a pottah, the Deputy Collector having failed to take evidence of certain witnesses produced by the plaintiff for examination, the lower Appellate Court remanded the case with a view to the evidence being taken. This was done, and the case was re-tried by the Deputy Collector, who again dismissed the plaint. On appeal the decision was reversed. *Held* that the Judge may have been so far in error, in that while remanding the case he did not direct the lower Court to send the case back to him with the additional evidence; yet, as the error did not interfere with the merits of the case or the jurisdiction of the Court (the evidence having been before the Judge in appeal), it would not warrant interference with his decision in special appeal. *Nusseroodeen Hossein Chowdry* v. *Lall Mahomed Puramanick*, 13 S. W. R., C. R., 234.

If a case is remanded for the attendance and examination of the plaintiff, the lower Court may dispense with his attendance and accept the evidence of his agent instead, if the plaintiff be ill and unable to attend. *Rajah Syud Ahmed Rezza* v. *Rajah Enaet Hossein*, 1 W. R., 330.

Where a Judge enters into the merits of a case remanded to his predecessor for a legal judgment, if he admits further evidence on the part of the defendant, he cannot refuse to admit that offered by the plaintiff. *Boola Singh* v. *Bibee Reazoonissa*, 6 W. R., Act X R., 16.

Where a case is remanded with a view to some special evidence being taken, the Court receiving the order of remand is not at liberty to allow the parties to produce additional evidence. *Ram Jeewan Lall* v. *Arjoon Chowbey and another*, 10 W. R., 303.

A rent case having been remanded to a lower Appellate Court with a view to its being ascertained whether an ammulnamah produced by the plaintiff was the same as a pottah filed in a survey case, the Judge found that it was the same, but the pottah was not the one which the defendant had given to the plaintiff to file in the survey case. He accordingly reversed his predecessor's decree for rent, and adjudged plaintiff to pay damages under Section 3, Act VI of 1862. *Held* that the additional finding was not opposed to the order of remand; that the whole case was re-opened; and that the Judge had authority to award the damages without appeal on that point. *Ram Chundra Surmah Chowdhry* v. *Dagoo Khan and others*, 10 W. R., 339.

Where a case is remanded for the trial of an issue which had not been laid down by the Court which tried the case, the parties are entitled to have the opportunity of giving evidence upon it, although the order of remand contains no express direction to that effect. *Kisto Churn Chuckerbutty* v. *Muggun Chuckerbutty and others*, 10 W. R., 491.

Where the lower Court had not fully carried out an order of the High Court remanding the case, yet, as the case appeared to have been substantially tried fully on its merits, the High Court thought there should not be a second remand. *Kasheenath Deb* v. *Maharanee Sibessuree Debia and others*, 8 W. R., 503.

When fresh issues are fixed by the Appellate Court, and remanded to the lower Court to be tried, the parties are entitled to have a day fixed for the reception of any further evidence which they may wish to adduce thereon. *R. Watson* v. *Kunlye Bahadoor and others*, 9 W. R., 294.

Where the High Court, proceeding on the assumption that appellants (plaintiffs) were in possession, remanded a case to a Zillah Court, with instructions to pass a declaratory decree, if that Court was satisfied that the act complained of was so recent and of such a nature as to entitle plaintiffs to a declaratory decree, it was *held* (by Kemp, J., decreeing the appeal) that the Zillah Judge was wrong in re-opening the whole question of possession. *Held* (by Jackson, J.) that the issue of possession being one which clearly arose on the statements of the parties, the Zillah Judge was not in error in trying it. *Puree Jan Khatoom and others* v. *Bykant Chunder Chuckerbutty*, 9 W. R., 380.

In a case remanded for a finding as to whether a confirmatory pottah had been really given or not, it was held that, as the order of remand did not restrict the Judge to the evidence on the record, he was at liberty to examine witnesses who were in Court. *Held* also that, as the *bona fides* of the grantor was before the Court, or might have been if defendant's pleader had examined him, defendant could not appeal specially, on the ground of the want of a finding on the point. *Ram Sunkur Sein and another* v. *Nilkant Biswas*, 9 W. R., 392.

Where a case is remanded to the lower Court to record reasons for its judgment, if the Judge who passed the decree is absent, the superior Court should be informed of it by his successor. Under such circumstances, his successor has no jurisdiction. Application should be made to the Bench which granted the order of remand for an order for the present Judge to re-try the case *de novo*. *Manich Sett and others* v. *Khettermohun Gossamee and others*, 1 Ind. Jur., N. S., 101.

Where the Appellate Court remands a case for a specific enquiry, it will not receive any statement on the part of the Zillah Judge as to what he considers the merits of the whole case. *M. Dauzelle* v. *Rajah Ramnarain Singh*, 1 Ind. Jur., N. S., 51.

This suit was remanded (at the instance of the defendants) to the first Court to examine one of the plaintiffs, and to allow the defendants to have certain unstamped receipts (before rejected by the first Court) stamped, and then put in. *Held* that it was too late then for the defendants to insist upon the attendance and examination of the other plaintiff also. *Bolakee Loll* v. *Radha Singh*, 1 W. R., 357.

A case remanded to a lower Appellate Court for a statement of the Judge's reasons must not be decided *de novo* on its merits by succession. *Lall Bhyro Lall* v. *Lalla Mookoond Lall*, 2 W. R., 275.

When a case is remanded for the trial of the lawfulness or unlawfulness of an alleged act, the Court is wrong in allowing the litigation at the last moment of a question never before raised, *viz.*, whether the act was committed. *Norendro Coomar Dutt Chowdhry* v. *G. French*, 3 W. R., 198.

The remand of a case to a lower Appellate Court for the purpose of stating good and substantial reasons for reversing a careful and clear judgment of the first Court, is no warrant to the lower Appellate Court to suppose that the case was remanded to it for the purpose of confirming the judgment of the first Court. *Moolchand Shah* v. *Thakoor Doss Dutt*, 4 W. R., 33.

The Court of Appeal directed a remand to try the issue on a plea of payment. The lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that, on this ground, its decision might be set aside on special appeal. *Syed Moltan* v. *Shew Buksh*, Marsh., 603.

When a case is remanded to a particular Judge merely for him to record the reasons of his finding, his successor, if the deciding Judge has left the district, acts without jurisdiction when he re-hears the whole appeal *de novo*. *Bhyrub Sheet* v. *Khetter Mohun Gossain*, 5 W. R., 124.

When the High Court has remanded a suit for re-trial on the merits, the lower Appellate Court has no authority to raise a question of jurisdiction for the first time. *Temulji Rustamji* v. *Fardunji Kávasji et al.*, 5 Bom. Rep., A. C., 137

Where on a case coming on for hearing before a Court to which it had been remanded, the Judge observed that the evidence of witnesses would be unnecessary, the declaration was held to have sufficiently justified the plaintiffs in making no further application for a summons on their witnesses. *Ram Jewan Singh* v. *Radha Pershad Singh*, 16 S. W. R., C. R., 109.

When an Appellate Court remands a case under Section 351 for the trial of an issue which the lower Court may have omitted to raise or to try, it is not limited to the evidence then on the record, but may keep the case pending on its own file until the return of the first Court's finding on the issue with the evidence recorded on the trial thereof, or the Appellate Court may itself try the issue so raised. *Wise* v. *Ishan Chunder Bonnerjee*, 14 S. W. R., C. R., 380.

S. sued to establish his claim to certain property, as the next heir of its former owner, on the death of whose grandmother, the property had been taken possession of by defendant P., and obtained a decree. Upon this, P. appealed, and while the case was under appeal S. sold his rights to H., who on application to the Court was made a party to the suit. The case was then remanded for further enquiry to the first Court, which dismissed the claim on account of default of both plaintiff and defendant. H. then applied for opportunity to show that he had not been in default, but his application was rejected on the ground that he was no party to the suit. He then appealed, but the Judge also ruled that he was no party. *Held* that when the case was remanded for re-trial, some date should have been fixed for the re-hearing which would have given the parties opportunity to appear and take measures to carry on the suit, and that the Judge's decision must be set aside, H. having been in reality a party to the suit. *Haradhun Chuckerbutty* v. *Protap Narain Chowdry*, 14 S. W. R., C. R., 401.

(*b*) *Rulings under the Code.*

When a case is remanded by an Appellate Court for re-trial, under Section 148, Act VIII of 1859, the Court of first instance has no authority to receive new evidence, nor the lower Appellate Court to decide thereupon. *Padma Lochan* v. *Sirdar Khan*, 3 B. L. R., Ap., 91 ; 11 W. R., 457.

Quære,—Whether, under Sections 351 and 352, Act VIII of 1859, when several cases are tried together, remand can be allowed for a new trial, on the ground that the plaintiff's evidence had not been completely heard, and that it was an error in the Court below to determine all the cases at once. *R. Snadden* v. *Todd, Finlay and Co., and others*, 7 W. R., 313.

Section 351, Act VIII of 1859, is meant for those cases in which a lower Court has disposed of a case on a purely preliminary point. When abundant evidence has been taken, if the lower Appellate Court think any further enquiry necessary, the proper course is not to remand the case to the lower Court, but to frame an issue, and to refer the same to the lower Court for trial under Section 354. *Ram Chunder Goopta* v. *Bhugessur Surma*, W. R., 1864, 357.

When the first Court dismissed a suit on the ground of limitation, and the lower Appellate Court reversed that order, and remanded the case to the first Court for trial on its merits,—*Held*, that if there was sufficient evidence to enable the Appellate Court to dispose of the case on its merits, that Court should have tried the case, as prescribed by Section 353, Act VIII of 1859; but that, if further evidence were required, the Court should have followed the rule prescribed in Section 354. *Luchmun*

Lall Doobey Gowally v. *Hursohoy Lall*, W. R., 1864, 361.

A Judge on appeal in a suit to open roads leading to a kotee, expressing an opinion that the facts had not been sufficiently ascertained, directed a further local enquiry to be made, and remanded the case to the lower Court to be again decided there after such local enquiry. *Held* that he had no authority upon such a ground to remand the case for re-decision, there being no suggestion under Act VIII of 1859, Section 351, that the lower Court had erroneously decided a preliminary point excluding evidence, and the reference not being of an issue framed by the Appellate Court under Section 354. *Nundocoomar Bannerjee* v. *Burry*, Marsh, 121.

A special appeal does lie where a lower Appellate Court remands a case under Section 351, Act VIII of 1859, instead of calling for additional evidence under Section 255. *Ram Kant Pandey* v. *Mussamut Guneshee Koonwar and others*, 6 W. R., 47.

Held that the Judge ought to have received a note in evidence, which was "produced in Court by the plaintiff when the plaint was presented" (Section 39); that the plaintiff's counsel was not bound, under the circumstances, to apply to withdraw the suit, and the Judge was not justified in dismissing the suit, which was accordingly remanded under Section 351 of the Code, with a direction that it should be restored to its original place on the register, and be tried by one of the Judges of the Court. *W. B. Thomson* v. *Jehangir Hormasji*, 3 Bom. Rep., O. C., 66.

A remand is allowable only under the circumstances contemplated in Section 351. When the Judge requires further evidence, he should call for it under Section 354. *Hureenarain Gossain* v. *Shumboonath Mundul*, 1 W. R., 6.

A Court of special appeal has, indirectly, the same powers as are vested in a Court of regular appeal by Sections 351, 354, and 355 Act VIII of 1859, in respect to a wrong order passed by a lower Appellate Court. *Wujeer Ali and others* v. *Kalee Coomar Chuckerbutty*, 11 W. R., 228.

In a suit on a bond executed under a mooktearnamah, which was not produced, the Court of first instance admitted secondary evidence of it, and decreed the suit. In special appeal, the High Court was of opinion that the secondary evidence had been improperly admitted, and therefore the decree in the plaintiff's favour could not stand. Upon this it was contended that the suit should be dismissed, as the Court hearing a case in special appeal had no power, under such circumstances, either to remand the case or to call for additional evidence.

Held that, although the powers conferred by Sections 351, 354, and 355 of Act VIII of 1859, on the Court of Regular Appeal, are not directly given to the Court of Special Appeal, yet the Court, when it found the order of a lower Appellate Court was wrong, could point out the error and direct the lower Appellate Court to make such order as would rectify the error. *Syed Azur Ali and others* v. *Kali Kumar Chuckerbutty*, 2 B. L. R., A. C., 315.

An Appellate Court ought not to receive and consider additional evidence which was not before the Court of first instance, without special reasons for doing so, which reasons it is bound, by the provisions of Act VIII of 1859, to record.

An Appellate Court is not justified in sending back a case for re-trial under Section 351 of the Code of Civil Procedure, merely because the lower Court has disposed of it upon a preliminary point, unless such point has been so disposed of as to exclude evidence of fact which appears to the Appellate Court essential to the rights of the parties. *Joogmaya Dabea* v. *Ramchunder Chatterjee*, 10 W. R., 236.

In remanding a case to a Court of first instance for the trial of an issue which that Court had been directed to try, but had not tried, a Judge was held to have acted with strict propriety and in conformity with the provisions of Sections 351 and 352, Act VIII of 1859. *Ram Chund Mookerjee and others* v. *Kamenee Dabea*, 10 W. R., 236.

A special appeal does not lie merely because the lower Appellate Court remanded a case under Section 351 of Act VIII of 1859, instead of calling for additional evidence under Section 355, without proof that the special appellant has been prejudiced. *Nowcowree Mundul* v. *Mookta Bibee*, 2 W. R., 181.

Every order passed by a Court is not void for want of jurisdiction simply because it is illegal,—*e. g.*, where a Court remands a case, under Section 351, Act VIII of 1859, instead of following the provisions of Section 355. *Mirza Jowad Ali* v. *Hossein Bibee*, 8 W. R., 207.

After a case is closed in the lower Court, and is brought up in appeal to the superior Court, it cannot be remanded for re-trial on fresh evidence, on the ground that the Judge below failed to try one of the issues. The Court of Appeal is bound, under Section 353, Act VIII of 1859, to decide the case itself. *Fugeebun Bibee* v. *Omdah Bibee and Ahab Jonab Aly*, 10 W. R., 469.

Section 354, Act VIII of 1859 (relating to the trial of additional issues), is only applicable to Courts hearing regular and not special appeals. *Kebul Kishen Mozoomdar* v. *Mussamut Ambala*, 7 W. R., 326.

Sufficient time must be allowed to the parties under Section 354, Act VIII of 1859, to file their objections to the revised finding of the lower Court. *Bukhtouree* v. *Meheen Lall and others*, 3 Agra Rep., 96.

Held by Jackson, J. (whose opinion prevailed), that where a lower Appellate Court is of opinion that further evidence should be taken, it may take such evidence itself, or require the first Court to do so, but it is not competent to remand a case for a second decision upon any of the issues, such a course being forbidden by Section 352, Act VIII of 1859.

Held by Markby, J. (dissenting), that a lower Appellate Court has power, under Section 354, to send back a case for trial upon an issue not satisfactorily tried by the Court of first instance. *Umbica Churn Mundul* v. *Ramdhone Mohurrir*, 11 W. R., 35.

An Appellate Court cannot remand a case, unless the lower Court has disposed of it upon a preliminary point, so as to exclude any evidence of fact which appears to the Appellate Court essential to the rights of the parties. If the Judge finds the evidence on the record insufficient to enable him to come to a right determination of any question, he should proceed under Section 354, Act VIII of 1859. *Herrikosima* v. *W. Stephenson*, 1 W. R., 298.

When a case has been remanded under Section 354, Act VIII of 1859, and a time fixed within which objections to the findings on remand are to be taken, the Appellate Court is not competent to alter such of the findings in respect of which no objection is preferred within the time fixed. Where a person executes a deed as witness with full knowledge of its contents, such execution may be taken to be evidence of his assent to the statements contained in the deed. *Mussamut Noorum* v. *Khoda Buksh and others*, 1 Agra Rep., A. C., 50.

In a case in which an issue referred under Section 354 of Act VIII of 1859 to the lower Court was tried there, and the finding was returned with the evidence, as no memorandum of objection was filed within the time fixed by the Court, the Court declined to allow objections to be taken when the appeal came on for final determination. *Ashroofunissa Begum* v. *Stewart and others*, 9 W. R., 438.

The object of a remand under Section 354, Act VIII of 1859, is not that the Judge should try the issues on the evidence already taken, because that the Court sitting in regular appeal can do for itself, but that he should take such evidence as the parties may have to offer for the determination of the issues. *Abdool Khyrat* v. *Jamaloodeen Hossein*, 10 W. R., 244.

The failure of a party to take advantage of a postponement for the purpose of tendering further evidence cannot afterwards give him a right to a remand for such further evidence to be taken: without such postponement, he would have been entitled to a remand under Section 354, Act VIII of 1859. *Teen Cowree Kharah* v. *Luckhee Monee Dassee*, 5 W. R., Act X R., 8.

If a plaint discloses a cause of action, a Judge on appeal ought not to dismiss the suit, on the ground merely of defect in the allegations in the plaint. If the subject-matter of the absent allegation has not been tried in the Court below, the proper course is for the Judge to frame an issue, and refer it to the lower Court for trial, under Act VIII of 1859, Section 354. *Kasseenauth Moor* v. *Beebee Rujoonissa*, Marsh., 198.

In a suit for a declaration of plaintiff's title to and possession of a share of certain property, she alleged that her title was derived by purchase from one R., who held under a deed of gift from T., the wife of the original holder. Defendants' case was that their title was derived from the three grandsons of one R. K. by his daughter C. The first Court dismissed the suit, considering that the defendants' title was proved, and that T. was not competent to dispose of the property by gift to plaintiff's vendor. The lower Appellate Court, finding that it was not satisfactorily proved that the defendants' alleged three vendors were really the daughter's sons of R. K., remanded the case for a finding on that issue. *Held*, with reference to Section 354, Act VIII of 1859, that the order of remand was illegal. *Hurosoondery Dabee* v. *Unno Poorna Dabee and others*, 11 W. R., 550.

Defendant pleaded payment, and produced a letter of acknowledgment said to have been written by plaintiff. Plaintiff denied its genuineness, and the Principal Sudder Ameen rejected the testimony of two peadahs who deposed to the payment. On appeal, the Judge remanded the case, requiring the lower Court to give appellant the opportunity of proving the letter, and after recording a fresh finding to return the case to his Court. *Held* that the Judge was wrong in remanding the case under Section 354, Act VIII of 1859, as he could have decided the case himself, taking such additional evidence as might appear necessary. *Runpal Singh* v. *Maharajah Joy Mungle Singh*, 11 W. R., 106.

The High Court decided a case irrespective of certain documents brought forward by a party at the hearing of the appeal, and afterwards rejected an application for a review of that judgment. In an application to the Privy Council for special leave to bring in those documents,—*Held* that further evidence ought not to be admitted under Section 355, Act VIII of 1859; that there was great danger in the Court of ultimate appeal lightly introducing evidence which had not been under the consideration of the Courts below, and which the parties had had no means of testing. *Gobind Sundari Debia* v. *Jagadamba Debia*, 3 B. L. R., P. C., 25.

The plaintiff claimed to succeed to the Shoosung estate as sole proprietor, alleging a family custom according to which the property was a raj and indivisible, and descended to the eldest son or nearest male heir of the party in possession. *Held* that there was no satisfactory proof of such a custom. *Held* also that a lower Court, in taking evidence ordered under Section 355, Act VIII of 1859, acts in a ministerial capacity; that a defendant may raise any objection he pleases to the documentary evidence produced by the plaintiff, when it is submitted to the consideration of the Appellate Court, though no objections were taken to it in the lower Court; and that a plaintiff filing copies of documents is bound to explain why the originals have not been filed. *Ram Joy Surmah* v. *Rajah Prankishen Singh; Buroda Debia* v. *Rajah Prankishen Singh; Oronnoda Debia* v. *Rajah Prankishen Singh*, 2 W. R., 81.

Where a party obtained a decree which was appealed from, and in transit from the first to the second Court, the record was irrecoverably lost, the High Court directed the lower Appellate Court to receive secondary evidence from both parties of the papers which made up the entire record, or, failing this, additional evidence under Section 355, Act VIII of 1859. *Gooroo Doyal Singh* v. *Durbaree Lall Tewaree*, 7 W. R., 18.

A Judge who called up a defendant and examined him in appeal, because he had failed to give material evidence which it was in his power to give in the Court below, was held to have acted erroneously; the Privy Council having laid down that Section 355, Act VIII of 1859, does not authorize the Appellate Court to introduce into the record substantially new evidence to mend the case of either party, and that that Court ought, unless some special reason to the contrary occurs, to decide the case on those materials alone which the disputants furnish. *Juggobundhoo Deb* v. *Goluck Chunder Holdar*, 10 W. R., 228.

It is incumbent on a Court taking additional evidence under Section 355, Act VIII of 1859, to record its reasons for admitting such evidence, but such record is not a condition precedent to the reception of fresh evidence. *Banee Pershad* v. *Lalla Joggeshur Dass and others*, 11 W. R., 47.

Under Section 355, Act VIII of 1859, the Government Gazette containing the advertisement of sale and a printed paper purporting to be the conditions of sale alluded to in the Gazette, and issued from the Master's office in the name of the Master, were admitted in evidence to prove the actual conditions of the deed of sale. *Jotendro Mohun Tagore* v. *Ranee Brojosoondery*, W. R., 1864, 50.

The High Court cannot interfere with the refusal of a lower Court to comply with an application, under Section 355, Act VIII of 1859, to file additional exhibits. *Mohesh Chunder Sett* v. *Shoshee Mookhee Debia*, 6 W. R., 196.

In a suit for possession of certain lands under a howla tenure, khas possession of which for some generations was alleged, no special documentary title was set up in the plaint; but one of the plaintiffs in his deposition referred the title to a particular pottah which he said had existed and had been lost in the time of his grandfather.

Two of the defendants were the zemindars of the talook in which the howla tenure was said to exist, and had transferred their proprietary right to the other two defendants. The zemindars did not defend the suit, and were not examined in the Court of first instance.

The lower Appellate Court "considered it necessary, for the proper decision of the case," to examine the zemindars, and relying mainly on their evidence, reversed the decision of the Moonsiff, and gave a decree in favour of the plaintiff. *Held*, in appeal, that the lower Appellate Court had sufficiently recorded its reasons within the meaning of Section 355 of Act VIII of 1859 for requiring the additional evidence; that it was right in so doing; and that, although no special title had been set up in the plaint, the decree which was given on the evidence in favour of the plaintiffs could not be reversed in special appeal. *Radhanath Dhubi and Mahes Chandra Dhubi* v. *Ram Gobind Paul*, 3 B. L. R., A. C., 218.

The omission of a Court to take into consideration a material issue is a sufficient ground to admit an application for review of judgment.

When an application for review is admitted upon other grounds, fresh evidence not produced at the trial may be received, although no reason, as required by Section 376, Act VIII of 1859, had been assigned for the non-production at the trial. *Bihari Lal Nandi* v. *Srimati Trailakhomayi Barmani*, 3 B. L. R., A. C., 346; S. C., 12 W. R., 223.

A special appeal is not converted into a regular appeal, because the Judge, sitting as a Court of Appeal, recorded further evidence under Section 356, Act VIII of 1859, or pronounced a judgment on the evidence recorded, which had not been considered by the first Court as described in Section 353. *Lalla Heera Lall* v. *Gouree Byjnath Pershad*, 4 W. R., 43.

When defendant appealed in a suit to recover arrears of rent in which the genuineness of the kubuleut was in issue, and the defendant asked the Deputy Collector to summon certain witnesses to prove that he had been paying at particular rate, the Judge ought, under Section 356, Act VIII of 1859, to have directed the Deputy Collector to send up either the witnesses or their evidence, and, under Section 357, to have directed the evidence to be confined to the rate and time of payment, and the rent to which the payment had been appropriated. *Mohun Mundur* v. *Brij Bhookun Singh*, 9 W. R., 127.

An appeal having gone down on remand from the High Court, the Zillah Judge considered he was bound to proceed with it, notwithstanding a representation made to him by petition that a compromise had been entered into between the parties. *Held* that, by Section 363 of the Civil Procedure Code, an appeal could not be preferred against this order of the Judge. *Soroop Narain Pandah* v. *Soondur Poraya and others*, 11 W. R., 505.

XVI.—Miscellaneous Rulings.

When an objection is taken to an application for partition under Act XIX of 1863, the Collector may either decline the application until the question has been decided, or proceed to investigate it. If he adopts the latter course, he is bound to follow the procedure prescribed by Act VIII of 1859.

But his failure to follow that procedure will not deprive the parties of their right of appeal to the Judge, who must dispose of the appeal in due course. *Rameshur Rai* v. *Subhoo Rai*, 1, 4, N. W. R., 81.

It is competent to the High Court, under Act XXIII of 1840, to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction. *Abraham R. J. In re*, 6 Bom. Rep., A. C. J., 170.

A Judge cannot under Section 6, Act VIII of 1859, call up a case to his own file after the evidence has been taken by a Subordinate Court. *Dumree Sahoo* v. *Jugdharee*, 13 S. W. R., C. R., 398.

In a suit on a registered bond in which defendant asked the Court to send for the registration books, with a view to prove the non-existence of the bond at the time it purported to be certified,—*Held*, that as defendant had failed to summon the Deputy Registrar, it was not necessary for the Judge to use the discretion given in Section 138, Act VIII of 1859. *Monmohinee Dabee* v. *Srudhama Churn Rana*, 14 S. W. R., C. R., 302.

When a decree-holder wishes to execute his decree against the heirs of his judgment-debtor to the extent of property inherited from the debtor and not duly applied by the heirs, he must, before he can put Section 203, Act VIII of 1859, in force, satisfy the Court that no such property of the deceased can be found as he can sell in execution. *Judro Narain Misser* v. *Kristo Chunder Mabto*, 14 S. W. R., C. R., 362.

Dismissal of petition for non-appearance, when no day had been fixed for hearing it. Act VIII of 1859, S. 217. *Rujballab Saha* v. *Ramsady Ghose*, 5 B. L. R., Ap. 65; 14 S. W. R., C. R., 155.

Regulation IV of 1831, extended by Act XXIII of 1838, is not impliedly repealed by Section 237 of the Code of Civil Procedure. *Mahomed Abdul Vakub Sahib* v. *Comundur Rumuseeny Aiyangar*, 4 Mad. Rep., 277.

Section 237 of the Code of Civil Procedure gives no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor does

Section 242 give a Court authority to dispose of claims to money under attachment. *Brojanauth Mitter, In re*, 13 S. W. R., C. R., 301.

The plaintiff sued on a mortgage bond executed by the first defendant. The second defendant, who claimed the property under a mortgage from the first defendant, was admitted a defendant on his own application, but afterwards excluded from the suit. Before this was done he had incurred certain costs, which, by the Moonsiff's decree, he was ordered to bear himself. Upon appeal by the first defendant the Civil Judge found that the mortgage bond sued upon was not proved, dismissed the suit, and ordered the plaintiff to pay all costs, those of the second defendant included.

Held, that under Section 337 of the Civil Procedure Code it was competent to the Civil Judge so to modify the Moonsiff's decree, as the main ground of the whole decision, *viz.*, the validity of the mortgage bond, affected all the defendants in common, and the appeal of the first defendant and the decision of the Appellate Court had reference to that common ground. *Yerrabalu Virarâguoad Reddi* v. *Abdul Khadir Sahib*, 4 Mad. Rep., 26.

An Appellate Court is restrained under Section 350, Act VIII of 1859, from reversing a decree on account of any error in the valuation of a claim which does not also affect the jurisdiction of the Court which originally tried the suit. *Ramessur Dyal Singh* v. *Raj Kishore Singh*, 13 S. W. R., C. R., 325.

In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower Appellate Court, in confirming the decision on the substantial issue raised, went further, and found that one of the defendants was plaintiff's ryot, contrary to the allegation set up by the plaintiff himself,—*Held* in special appeal, that the error did not affect the merits of the case or the jurisdiction of the lower Court; and the High Court could not therefore interfere under Section 350 of the Code of Civil Procedure. *Ram Chunder Chatterjee* v. *Ram Jeetun Dass*, 14 S. W. R., C. R., 141.

The right reserved to parties in pending suits under Section 387 of Act VIII of 1859 does not refer to Section 7 of Regulation VII of 1832, which bars a special appeal in Small Cause Court cases. *Bholanath Dutt* v. *Mohadeb Sheet*, 3 W. R., Mis., 19.

A defendant in a suit instituted before the passing of Act VIII of 1859 is entitled, under Section 387, to any advantage of right which he might have possessed under the old procedure; but this does not bar him from availing himself of any advantages which he may obtain from the new procedure,—*e.g.*, a re-hearing, under Section 119, in the case of an *ex-parte* decree. *Mussamut Russoolun* v. *Mussamut Fuzeelut-oonnissa*, W. R., 1864, Mis., 36.

A suit must be held to be pending under Section 387, Act VIII of 1859, if anything remains to be done which might have been done under the old law, and a party in such a case is entitled to ask the Court to proceed under the old law, inasmuch as the application of the new Code would deprive him of a right, in reference to the procedure of the case, which but for the passing of the Code would have belonged to him. *Captain Parrott* v. *Ram Shahye Singh*, W. R., 1864, 35.

The correct interpretation of Section 360, Act VIII of 1859, is to the effect that a suit by a party claiming to be the real purchaser of immoveable property sold in execution of a decree, cannot be brought against the certified auction-purchaser, even though claimant has had previous possession. *Bykunt Chunder Moostafee* v. *Khema Moyee Debia*, 9 W. R., 360.

By the words of Section 365 of Act VIII of 1859, the Legislature must have intended to give the person aggrieved by any order of a Civil Court imposing a fine on him as a punishment for keeping out of the way in order to avoid service of summons to attend as a witness, the right of appeal to the High Court, whether the order be strictly referable to Section 160 of that Act or not. *In re Gajadhur Prasad Narayan Singh*, 1 B. L. R., A. C., 187; 10 W. R., 233.

XVII.—Rulings under Act XXIII of 1861.

Quære,—Is a refusal to make an order on an application for the appointment of a manager, an order under Section 2, Act XXIII of 1861? *Nuzmooddeen Ahmed* v. *Abdool Azeez*, 13 S. W. R., C. R., 242.

Under Section 2, Act XXIII of 1861, no appeal lies from an order passed under Section 208, Act VIII of 1859, substituting the assignee of a decree in the place of the original decree-holder. *Megh Narayan Sing* v. *Radha Prasad Sing*, 4 B. L. R, A. C., 200; 13 S. W. R., C. R., 224.

A plaintiff in the Moonsiff's Court filed a list of witnesses, but failed to deposit tulubana or cost of the service of summons for their attendance. The Court failed to fix a time for the service of tulubana. The processes were not served, and the Court dismissed the suit, because the plaintiff had produced no evidence in support of his claim. *Held* that, under Act XXIII of 1861, Section 2, the lower Court should first have fixed a time for the deposit of tulubana. Case remanded. *Lalla Prasadi Lall* v. *Lalla Ambika Prasad*, 3 B. L. R., Ap., 25.

The words in Section 2, Act XXIII of 1861, "questions arising between the parties to suit," cannot be limited to questions arising between those who were parties to the suit at the date of the decree, but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under Sections 210 and 216 of the Code, become parties to the suit for the purpose of execution, and questions arising between the parties to the suit within the meaning of Section 2 of the amending Act. *Buddu Ramaiya* v. *C. Venkaiya*, 3 Mad. Rep., A. C., 263.

The omission by a plaintiff to deposit tulubana required by the Court in a case pending for some time, was held not to warrant a dismissal of the suit, inasmuch as the Court had not fixed a period for the deposit, as it was bound to do under Section 2, Act XXIII of 1861. *Purshadee Lall* v. *Umbica Pershad Lall and others*, 11 W. R., 290.

The wrongful addition of a resident defendant cannot bring a case under the operation of Section

4 of Act XXIII of 1861. *Atmakuri Bhavanna Setti* v. *M. Suniasi Setti*, 3 Mad. Rep., A., 222.

A suit for debt against two defendants whose liability is joint, but one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of the jurisdiction, may be tried by a Small Cause Court within whose jurisdiction the other defendant is resident at the time of the commencement of the suit, provided an order is obtained from the High Court under Section 4 of Act XXIII of 1861. *Rungiah Pillai* v. *Chinnasami Pillai*, 3 Mad. Rep., A. C., 374.

The provisions of Section 4 of Act XXIII of 1861 are applicable to Courts of Small Causes in the Mofussil. *Anpurnabai* v. *Sakhuram Jagannath*, 6 Bom. Rep., A. C. J., 256.

When a cause of action has arisen within the local jurisdiction of a Small Cause Court, but one of several defendants resides out of such jurisdiction, sanction may be given, under Section 4 of Act XXIII of 1861, by the High Court to the Small Cause Court to try the suit. *Mathuradus Juggivunds* v. *Nathur Baji Nal*, 6 Bom. Rep., A. C. J., 131.

Where the Court of first instance ordered a co-defendant to be joined in the suit, but the plaintiff failed to pay the allowance necessary for the purpose of causing a notice to be served on such co-defendant, who accordingly did not appear at the hearing, —*Held* that the proper course for the Court to have adopted was to dismiss the suit under Section 5 of Act XXIII of 1861. Where the Court did not adopt that course, but proceeded with the suit, and passed a decree from which the original defendant appealed on the merits to the Assistant Judge, without taking the objection that the suit ought to have been dismissed, it was held that he could not raise the objection for the first time in special appeal.

Semble,—The provisions contained in the first portion of Section 5 of Act XXIII of 1861 are imperative. *Shek Abás* v. *Ibrahimji*, 5 Bom. Rep., A. C., 119.

A notice to a respondent having been returned unreserved, owing to the omission on the part of the appellant to deposit the requisite tulubana in the proper Court, the default under Sections 5 and 6, Act XXIII of 1861, was held to be in no way excused by the fact of its having been committed by an ignorant kurpurdaz, or man of business, whom appellant chose to employ rather than a vakeel. *Pran Chunder Roy* v. *Juggeshur Mookerjee*, 11 W. R., 417.

The discretionary power of a Judge to detain a defendant in custody otherwise than by committing him to prison in execution of a decree is confined to the case provided for in Act XXIII of 1861, Section 8. *Sahib Rautan* v. *Ibrahim Rautan and others*, 1 Mad. Rep., A. C., 441.

When the Court orders further interest under Act XXIII of 1861, Section 10, it is to be from the date of the decree to the date of the payment of the principal sum adjudged, and not for a limited period. *Rámáswámi Ayyan* v. *Appávaiyan*, 1 Mad. Rep., A. C., 211.

Held that an order discharging a judgment-debtor under Section 8, Act XXIII of 1861, being illegal on account of non-compliance with the procedure prescribed by law, may be quashed and afterwards treated as a nullity, so as not to bar any subsequent application for arrest. *Luchmee Narain* v. *Bhairow Persiad*, 1 Agra Rep., Mis., 4.

A decree-holder having allowed the term of three years to run within a very few days of expiry before applying for execution, and then, though allowed five days to pay tulubana, having neglected to do so, his application was found to be not *bonâ fide*,—*Held* that Section 7, Act XXIII of 1861, did not apply to the case, that Section applying only to suits dismissed under the provisions of Section 5 of that Act. *Taruck Chunder Chuckerbutty* v. *Huro Chunder Chuckerbutty*, 15 S. W. R., C. R., 473.

A surety-bond taken by the Court under Section 8, of Act XXIII of 1861, after judgment has been pronounced, can be enforced under Section 204 of Act VIII of 1859. *Abdul Kureem* v. *Abdul Huq Kazee*, 8 B. L. R., 205; 15 S. W. R., C. R., 21.

Section 8 of Act XXIII applies only to applications made under Section 273 of Act VIII of 1859, not to applications made under Section 280. *Smith* v. *Boggs*, 5 B. L. R., Ap., 21.

Where no liability to mesne profits is imposed by a decree, Section 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine questions regarding the amount thereof when the right thereto has been ascertained by the decree. *Subbu Ven Rutrumaijan* v. *Subraya Aiyan*, 4 Mad. Rep., 257.

A suit does not lie to enforce a liability specifically imposed by the decree of a Civil Court in the Mofussil, the right of suit in such case being taken away by Section 11 of Act XXIII of 1861. *K. Sangeeviyah* v. *Nangiyah*, 4 Mad. Rep., 453.

Where no liability to mesne profits is imposed by a decree, Section 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine questions regarding the amount thereof when the right thereto has been ascertained by the decree. *Subbu Ven Kataramaiyan* v. *Subraya Aiyan*, 4 Mad. Rep., 257.

The plaintiff sued to recover certain land of which the defendant obtained possession in execution of a decree in a former suit, in which the plaintiff was a defendant, although it was not part of the land mentioned in the plaint or decree in the former suit. *Held*, that the plaintiff's suit could not be maintained, and that his only remedy for the wrongful dispossession was a proceeding under Section 11, Act XXIII of 1861. *Muthevelu Pillai* v. *Vythilinga Pillai*, 5 Mad. Rep., 185.

The ancestors of the plaintiff brought a suit in 1821 before the Registrar of the Adawlut Court to eject the defendant's grandfather from a piece of ground. The Registrar found that the defendant was a tenant under the plaintiff at a monthly rent, and the Court decreed that defendant should remain in possession so long as he should continue to pay the rent regularly, and that in default of payment the plaintiff should be placed in possession.

An attempt to obtain possession in execution of that decree in 1861 failed, and the plaintiff brought a suit to recover possession with arrears of rent. *Held* that Section 11 of Act XXIII of 1861 precluded the plaintiff from maintaining the suit. *Rungunsary* v. *Shappani Asary*, 5 Mad. Rep., 375.

Plaintiff, the zamindar of Shivaganga, sued to

recover two villages which she alleged formed part of the Shivaganga Zamindari. The villages originally belonged to Pitchama Náchiar, mother of the present defendant, Bothagurnsámi Zévar, the ex-Zamindar of Shivaganga. In 1856 they were purchased by the Court of Wards on behalf of Bothagurnsámi, who was then a minor, with part of the rents and profits of the Zamindari, and in 1860 were given by him to his mother. In 1864 Bothagurnsámi was ousted by a decree of the Privy Council, and became liable to the present plaintiff for the mesne profits of the Zamindari. In the account taken of mesne profits due, the amount expended on the purchase of these villages was excluded by plaintiff's consent from the sum debited to the ex-Zamindár. Plaintiff now sued Pitchama Náchiar, and, she dying, the suit was continued against Bothagurnsámi, as her representative. *Held* that the plaintiff was not entitled to maintain the suit. The decree of the Privy Council did not directly give the plaintiff a right to maintain the suit, for the adjudication of the Zamindári related only to the permanently settled estate acquired under the Istimrara Sannad of the Madras Government, and even if it could be said to include the villages in dispute, process of execution would, under Section 11, Act XXIII of 1861, be the plaintiff's only remedy. There was but one ground upon which the suit could be supposed to lie, namely, the existence of the relation of trustee and beneficiary between the Collector and the plaintiff at the time of the purchase, and such relation did not exist. *Rani Kuttama Náchiar* v. *Bothagurnsámi Téviar*, 6 Mad. Rep., 293.

Suit brought to recover the amount to which plaintiff was entitled under a decree passed in favour of himself and defendant as co-plaintiffs in a former suit. It appeared that defendant purchased the property sold in execution of the decree, and that the price for which the sale took place was sufficient to satisfy the decree. Instead of paying the purchase-money into Court, defendant, with the knowledge and assent of plaintiff, retained the whole sum upon the understanding that he should give the Court a receipt for himself and on behalf of plaintiff, and afterwards pay to plaintiff his portion of the amount decreed. Accordingly, defendant presented a petition to that effect and obtained a certificate confirming the sale. Defendant having failed to pay plaintiff his portion, the present suit was brought. Upon these facts, in was held, in special appeal, that the decree was satisfied by sale of the judgment-debtor's property, and that the execution proceedings were completely at an end, the defendant having been, by the assent of the plaintiff, made his agent for the acknowledgment of the satisfaction of the decree. No subsequent application under the decree could have been entertained by the Court which executed it. Therefore plaintiff's claim was not a matter determinable under Section 11 of Act XXIII of 1861. *Rámanádan Chetti* v. *Kunnappu Chetti*, 6 Mad. Rep., 304.

By the terms of a decree passed by the District Moonsiff the plaintiff was declared entitled to the possession of certain land, together with the crops upon it. The plaintiff asked for execution of the decree in respect of the land and the crops, which he alleged had been unlawfully taken away by the defendants, and possession of the land was given to the plaintiff, but he was referred to a separate suit for the damage sustained by him by reason of the removal of the crop. *Held* that no separate suit could be maintained, but the plaintiff's remedy was by a proceeding in execution under Section 11 of Act XXIII of 1861 (Civil Procedure Code). *Sunguru Narayana Pillay* v. *Sandria Pillay*, 6 Mad. Rep., 13.

The word "payable" in Sec. 11 of Act XXIII of 1861, held to mean "payable by virtue of the decree." Therefore, an application in execution for mesne profits which have accrued between the institution of the suit and the execution of the decree will be dismissed. *Hur Churun Lal* v. *Toorab Khan*, 2 N. W. R., 176.

A female plaintiff obtained a decree against certain defendants, declaring certain ekrarnamahs, &c., void as against her husband and his representatives. After his death she proceeded to execute the decree as one for possession, and obtained an order, under Section 223, Act VIII of 1859, for delivery of possession of property in the possession of a third party as being a person claiming under a title created by the defendants subsequently to the institution of the suit. The third party appealed from that order. *Held* that this was not a case in which an appeal lay under Section 11, Act XXIII of 1861, inasmuch as the questions raised by the appeal were not questions between the parties to the suit. *Ameeroonissa Khatoon* v. *Abedoonissa Khatoon*, 16 S. W. R., C. R., 307.

The judgment of the Privy Council reported in 14, *Weekly Reporter*, page 23, in no way militates against the Full Bench ruling (6 *Weekly Reporter*, Miscellaneous, page 109), which laid it down that under Section 11, Act XXIII of 1861, the Court executing a decree is not to determine whether mesne profits are to be awarded or not, but only the amount of such profits. *Rumkanye Ghose* v. *Gooroo Prosseno Roy*, 16 S. W. R., C. R., 30.

The question whether the execution of a decree is barred by limitation is a question arising between the parties to the suit; and an appeal lies under Section 11 of Act XXIII of 1861, from a decision on such question, whether it be raised by the Court *proprio motu*, or by the parties. *Hari Vishnu* v. *Gopál bin Rúgjietal*, 6 Bom. Rep., A. C. J., 118.

N. obtained a decree against A. for certain lands, and was put in possession of them in execution of the decree.

On appeal the decree against A. was reversed, and the lands were accordingly restored to him, but no provision was made as to the mesne profits received by N. when he was in possession of the lands under the decree of the lower Court. In a suit brought by A. against N. to recover such mesne profits, it was held that the suit would lie, and was not prohibited by Section 11 of Act XXIII of 1861. *Abhrúm Alli* v. *Náthú Jállam*, 5 Bom. Rep., A. C., 74.

A., a judgment-debtor, paid to B., the decree-holder, a sum of money by way of compromise in full satisfaction of the decree. B. failed to certify this payment to the Court, and afterwards executed her decree for the full amount.

In a suit by A. against B. for recovery of the amount previously paid out of Court in satisfaction of the decree, held that, notwithstanding Section 11 of Act XXIII of 1861, the suit was maintainable.

Gunamani Dasi v. *Prankishore Dasi*, 5 B. L. R., 223; 13 S. W. R., F. B. R., 69.

Section 11 of Act XXIII of 1861 does not give an appeal from an order made, under Sections 270 and 271, Act VIII of 1859, as to the application and distribution of the proceeds of property sold in execution under a decree of a rival decree-holder. *Misree Kowur* v. *Maharajah Buksh Singh*, 1 Marsh., 527.

Where by a decree the plaintiff's right to a monthly allowance was declared,—*Held* that any failure on the part of the person bound to pay by the terms of the decree would constitute a good cause of action; and a fresh suit brought on the assertion of payment being withheld, would not be affected by the provisions of Section 11, Act XXIII of 1861. *Nawarish Aly Beg* v. *Bhilayete Khanum and others*, 1 Agra Rep., 23.

The order of a Moonsiff declining to put the purchaser, at a judicial sale of immoveable property, in possession thereof, is open to appeal under Section 11, Act XXIII of 1861. *In the matter of Gooruppa Bin Rachapa*, 1 Bom. Rep., 90.

Section 11 of Act XXIII of 1861 does not allow an appeal in matters already specifically provided for in the different sections of the Procedure Code (*e.g.*, Sections 243 and 364). *Greejanund Oopadhya* v. *Ruttee Ramun Oopadhya and others*, 8 W. R., 136.

A claim for damages in respect of injury sustained by goods while under attachment in execution of a decree which was afterwards set aside, is not a matter to be disposed of under Section 11, Act XXIII of 1861, but must be made the subject of a separate suit. *Kashee Kishore Roy* v. *Noor Khan*, 7 W. R., 45.

The words "party to a suit" in Section 11, Act XXIII of 1861, include the heirs, assignees, and representatives of such party, and consequently give the purchaser of a decree all the rights of appeal, &c., which his vendor had. *Huro Lall Dass* v. *Soojawut Ali*, 8 W. R., 197.

A decree-holder took out execution against A. and B. When B.'s property was attached, his widow, C., came forward and laid claim to it on the part of her minor son, urging that, as B. was not liable under the decree, his property could not be sold. The objection was disallowed, and the property was sold. *Held* that Section 11, Act XXIII of 1861, did not prevent C. from suing to set aside that sale and recover B.'s property, on the ground that B. was not liable under the decree. *Issan Chunder Dass* v. *Chundro Bodinee and others*, 7 W. R., 361.

Held that Section 11, Act XXIII of 1861, does not apply to suits brought by a decree-holder to question an alienation made by the judgment-debtor, inasmuch as the transferee was not a party to the former suit, and only questions between the parties to the suit must of necessity be determined in the Execution Department. *Sumbsookh* v. *Usgur Ally Khan and others*, 2 Agra Rep., 180.

Where the object of the suit was to set aside orders passed in the Miscellaneous Department relating to execution of decree,—*Held* that such suit was untenable; Section 11, Act XIII of 1861, having distinctly prohibited all remedy by separate suit, and the remedy provided being an appeal from the order complained of. *Mussamut Amrit Koonwar and others* v. *Luchmee Narain and others*, 1 Agra Rep., A. C., 93.

The words in Section 11, Act XXIII of 1861, "questions arising between the parties to the suit," cannot be limited to questions arising between those who were parties to the suit at the date of the decree; but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under Sections 210 and 216 of the Code, become parties to the suit for the purpose of execution, and questions arising between them are questions arising between the parties to the suit within the meaning of Section 11 of the Amending Act. *Buddu Ramaiya* v. *C. Vencaiya*, 3 Mad. Rep., A., 263.

A decree was obtained in 1849, and execution issued in 1862. Several subsequent applications for execution were made, against one of which objection was raised by some of the representatives of the judgment-debtor that the decree was barred by lapse of time; but the objection was overruled by the High Court in special appeal. A further application was made, and was opposed by one of the representatives who had since attained his majority, upon the ground that the suit was barred. The Moonsiff disallowed the objection. On appeal the Judge reversed his decision.

Held in special appeal that the terms of Section 11, Act XXIII of 1861, do not prohibit an appeal by a representative of a deceased judgment-debtor against an order passed in execution of a decree against his ancestor. *Bishtu Narayan Bandopadhya* v. *Ganga Narayan Biswas*, 3 B. L. R., A. C., 40; S. C., 11 W. R., 368.

A plaintiff, in possession under a decree for land and mesne profits, applied for further execution as to mesne profits, and obtained an order from the Court of first instance (the District Moonsiff's Court).

This order was reversed by the Appellate Court (the Civil Court) leaving still open to the Court of first instance to make a further order. Plaintiff, however, instead of applying again for execution, instituted a fresh suit for mesne profits in the Civil Court. The Civil Judge rejected the plaint.

Held that Section 11, Act XXIII of 1861, warranted the rejection of the plaint, on the ground that the mesne profits to which plaintiff laid claim in the suit were payable in respect of the subject-matter of the former suit. *B. Lakshaie Narasimhalu* v. *Chatrazu Nadham Pantalu*, 3 Mad. Rep., A., 287.

An appeal does not lie under Section 11, Act XXIII of 1861, from an order in execution, in which the representative of a decree-holder was on one side, and a stranger (the auction-purchaser) on the other. *Luchmun Persad* v. *Ameer Ali*, W. R., 1864, Mis. R., 15.

Held, under Section 11, Act XXIII of 1861, that a separate suit could not be maintained to recover mesne profits, or interest payable in respect of the subject-matter of a suit between the date of the institution of the suit and the execution of the decree, but that all questions relating thereto ought to be urged before, and be determined by, the Court executing the decree passed in such suit. *Jiva Patti Rahinna* v. *Mabekje M. Nathuna and others*, 3 Bom. Rep., A. C. J., 31.

In a former suit brought for possession of im-

moveable property against J. and her father, and subsequently revived against J. as the representative of her father, possession and mesne profits were decreed against J. in her representative capacity; while as against her in her individual capacity, the suit was dismissed. The decree-holder, after obtaining possession, attached and sold, in satisfaction of his decree for mesne profits, J.'s private property, notwithstanding her objections, and himself became the purchaser, but never obtained possession. This sale, ordered on the 8th October, 1863, was confirmed by the Judge on 15th March, 1864. The present suit was brought by J. for confirmation of her possession of her private property by cancellation of the execution sale.

Held (Macpherson and Glover, JJ., dissenting), that such suit was maintainable, and that J. in her individual capacity was not a party to the suit in which execution issued within the meaning of Section 11 of Act XXIII of 1861. *Sheikh Wahid Ali* v. *Mussamut Jumay*, 2 B. L. R., F. B., 73.

Section 14 of Act XXIII of 1861 is not applicable to permanently-settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto. *Abdul Jabel* v. *Khelatchundra Ghose*, 1 B. L. R., A. C., 105.

Act XXIII of 1861, Section 15, gives no rights inconsistent with Section 372 of Act VIII of 1859. *Nilayatalchi* v. *Venkatachalam Mudali*, 1 Mad. Rep., A. C., 250.

Under Section 15, Act XXIII of 1861, if an application for execution corresponds with the terms of a decree, it should be admitted. If the decree needs correction, the Court executing cannot correct it; but it is for defendant to apply to the Court which made the decree. *Bisheshur Roy Chowdhry and others* v. *Bisheshur Bose*, 8 W. R., 277.

Section 15, Act XXIII of 1861, does not authorize a Judge to reject an application for the execution of a decree, on the ground of an irregularity in form. Where the application is irregular, the Judge should either return it immediately to the applicant for correction, or with his consent cause the necessary correction to be made. *Chowdhry Purladh Mahapattar and others* v. *Chowdhry Jonardon Mahapattar*, 6 W. R., Mis., 15.

Under Sections 16 and 19, Act XXIII of 1861, Civil Courts have power to refer to Magistrates, or to make commitments to the Sessions in cases of perjury or forgery, only when they have come to some conclusion in respect of the guilt of the party concerned, or the truth or otherwise of the document or evidence. *Huronath Roy and others, petitioners*, 7 W. R., 482.

Where a Moonsiff, under the provisions of Section 19 of Act XXIII of 1861, makes a matter over to a Magistrate for investigation, the Magistrate has no power to transfer to a Deputy Magistrate a case so duly sent to him. *Queen* v. *Syud Assuf Ali Khan*, 3 N. W. R., 126.

Section 23 of Act XXIII of 1861 refers only to the late Sudder Court, and although this Act forms part of the Code of Civil Procedure, it is clear that Section 23 cannot apply to Judges sitting in appeal from the original civil jurisdiction, for this reason, that all the Judges of the Court so sitting in appeal are supposed in law to be equal, whereas Section 23 of Act XXIII of 1861 only contemplates an appeal from a Court of inferior jurisdiction to the late Sudder Court, and has nothing at all to do with the Court of appeal from the original civil jurisdiction as that Court is now constituted. *Greenway* v. *Hogg and others*, Bourke's Rep., A. O. C., 139.

Section 27, Act XXIII of 1861, bars a special appeal in execution proceedings arising out of decisions passed on regular appeal in suits of a nature cognizable by Courts of Small Causes. *Anund Chunder Roy and others* v. *Sidhy Gopal Misser*, 8 W. R., 112.

Section 27, Act XXIII of 1861, which bars a special appeal in suits below 500 rupees, as being of a nature cognizable by a Small Cause Court, does not apply to a case in which the Lower Appellate Court has wrongly decided that the case is not cognizable by any Civil Court. *Sheikh Goreeboollah* v. *Sheikh Syefoollah*, 7 W. R., 41.

A suit to recover plaintiff's share of malikana out of a sum which the principal defendant had realized from the other defendant (the Collector of the district) was held to be a suit for damages cognizable by a Court of Small Causes. The fact of a question of right having been incidentally raised in the case, did not put it beyond the provisions of Section 27, Act XXIII of 1861. *Rasmonee Debia* v. *Hufeezoolah*, 12 W. R., 29.

A decree-holder having taken out execution, the judgment-debtor paid a sum of money in satisfaction of the decree, and got a surety to execute a security bond on his behalf. The decree-holder thereupon took out proceedings under Section 204, Act VIII of 1859, had the surety arrested, and realized from him the amount due under the decree. The surety then brought an action to recover damages for illegal arrest, the sum claimed not exceeding Rs. 500.

Held that the suit was cognizable by a Small Cause Court, and that under Section 27, Act XXIII of 1861, no appeal would lie. *Toolsee Ram* v. *Nund Kishore Lall*, 12 W. R., 471.

Under Section 27, Act XXIII of 1861, no special appeal lies in execution proceedings where the original decree was for a sum less than 500 rupees, and in a suit cognizable by a Court of Small Causes. *Debee Pershad Singh* v. *Syud Delawar Ali*, 12 W. R., 86.

Section 27, Act XXIII of 1861, takes away special appeal in all those cases that are expressly alluded to therein, thus overriding Section 387, Act VIII of 1859. The provision applies in execution of decree, as well as in suits themselves, and to suits and proceedings in execution commenced before 1861, or even before 1859. *Ram Jabub Chatterjee* v. *Rash Monee Dassee*, 8 W. R., 321.

Under Section 27, no special appeal lies from suits cognizable in the Small Cause Court. *Joynarain Manjee* v. *Modoosoodun Gorait*, 2 W. R., 134; *Kenoo Mundul* v. *Mohwa Mahomed*, 2 W. R., 136.

The decision or order mentioned in Section 27 is confined to those decrees which, if made in a Small Cause Court, would be conclusively binding on the parties, and does not include a decree based upon an issue affecting the proprietary relations between the parties, which, if it had properly arisen incidentally in a suit brought in a Small Cause Court, could not then have been finally concluded between the parties. *Bhoopnarin Sahoo* v. *Meer Mahomed Hosscin*, 4 W. R., 60.

Under Section 27, Act XXIII of 1861, no special

appeal lies from a regular appeal against an order passed in a suit of a nature cognizable by Courts of Small Causes, no matter how long ago the suit was instituted, provided the appeal was decided after the passing of Act VIII of 1859. *Moharukoonissa Begum* v. *Ozeer Jemadar*, 8 W. R., 107.

A suit for mesne profits only is a suit for damages within the meaning of Section 6, Act XI of 1865, and if the demand does not exceed 500 rupees, no special appeal will lie with reference to Section 27, Act XXIII of 1861. *Ram Peary Dabee and another* v. *Denonath Mookerjee*, 10 W. R., 375.

In a suit for recovery of a sum of money below Rs. 500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly. In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment-debtor to the High Court,—*Held* that, under Section 27, Act XXIII of 1861, no special appeal lay to the High Court. *Srimuti Talan Bibi* v. *Srimuti Tenu Bibi*, 6 B. L. R., Ap. 82, and 15 S. W. R., C. R., 65.

A sum of money was stolen from the Judge's Court of Tippera while A. was the Nazir. A. paid the amount to Government, and died, leaving B. his heir. B. sued Government for recovery of the amount paid by A., on the ground that as there was no negligence of A., and as the amount was under the custody of the guards of Government, at the time of the theft, A. was not responsible for the loss thereof. *Held*, the suit was cognizable by a Small Cause Court, and therefore, under Section 27, Act XXIII of 1861, no special appeal lay to the High Court. *Collector of Tippera* v. *Mussamut Mafizunissa Bibe*, 4 B. L. R., Ap., 46.

Held that, notwithstanding Section 387 of Act VIII of 1859, Section 27, Act XXIII of 1861 bars a special appeal in a suit of the nature cognizable by a Court of Small Causes instituted before Act XXIII of 1861 came into operation. *Soorjee Coomer Surmah Roy* v. *Kristo Coomar Chowdry*, 14 S. W. R., F. B., 30.

Section 28 Act XXIII of 1861 merely authorizes the reference of such questions as may arise in the trial of the suit, and not of questions arising on an application for a review of judgment, which cannot in any sense be considered as the trial of a suit. *Benemally Deo* v. *Bam Sadoy Chuckerbutty*, 17 S. W. R., C. R., 95.

The provisions of Section 35 of Act XXIII of 1861 extend to the Courts of Revenue Officers acting without jurisdiction under Act X of 1859. *Hurpersand* v. *Lalu*, 3 N. W. R., 60.

An application to the High Court, under Section 35 of Act XXIII of 1861, to order a Subordinate Court to receive an appeal, which in ordinary course ought to have been received within 15 days of the original decision, ought to be made either immediately upon the quashing of the order of the Subordinate Appellate Court, or promptly and without any avoidable delay. *Russic Lall Chutterjee, in the matter of*, 15 S. W. R., C. R., 519.

Petitioner bought at Court sale certain property which had been attached in O. S. No. 30 of 1860 on the file of the District Munsif's Court. Before, however, the sale certificate was issued to him, the plaintiff in O. S. No. 79 of 1866 presented a petition praying for a re-sale of the property on the ground that it had been sold at an undervalue. On this petition the Munsif cancelled the former sale and ordered a re-sale. Before this re-sale took place the property was sold in execution of the decree in suit No. 3 of 1866 on the file of the Civil Court and purchased by the plaintiff in that suit. Thereupon petitioner applied to the Munsif to re-sell the property in satisfaction of his claim. The Munsif refused to do so, and the Civil Judge, upon appeal, confirmed the Munsif's order. *Held*, on special appeal, that the Munsif's first order, annulling the sale, was a nullity, and the subsequent attachment and sale under the decree in O. S. No. 3 of 1866 inoperative against the property. That, consequently, the appellant was entitled to have these proceedings set aside and the validity of his sale upheld, if the respondent's objection that the orders were not open to question in the High Court should not prevail. Upon the latter point, held, that no right of appeal existed, but that, therefore, the Civil Court had no jurisdiction to entertain the appeal to that Court, and, giving effect to the petition of special appeal as a petition under Section 35 of Act XXIII of 1861, that the orders of the lower Courts should be annulled and the petitioner declared entitled to an order and certificate perfecting his title. *Annamalai Chetti* v. *Muthulinger Pillai and Rangappa Naick*, 6 Mad. Rep., 360.

In execution of a decree, the District Munsif made an order which he was not legally authorized to make at the instance of the purchaser of the property sold in execution. No appeal could be made against the order, but the Civil Judge entertained an appeal and reversed the order of the District Munsif.

The High Court set aside the order of the Civil Judge under Section 35, Act XXIII of 1861, but, by virtue of the powers given by the section, the order of the District Munsif was also annulled. *Subraya Gounden* v. *Venkatagiri Aiyar*, 6 Mad. Rep., 22.

Held by the majority of the Court (Jackson, J., dissenting) that, under Section 35, Act XXIII of 1861, the High Court has power to interfere, either in a case in which a Subordinate Court exercises an appellate jurisdiction which it has no power to exercise, or in a case in which the subordinate Court, in the exercise of a jurisdiction which it has, exceeds its jurisdiction; that where a Court exceeds its jurisdiction, the High Court may set aside that part of the order which is in excess of jurisdiction; that where the decision of the subordinate Court is made on appeal in a case in which it has no appellate jurisdiction, the proper order is to set aside the decision altogether; and that where an appeal is heard by a subordinate Court which has no jurisdiction to hear it when it ought to be heard by another subordinate Court which has jurisdiction to hear it, the High Court may set aside the decision of the Court which has no jurisdiction, and may, if they think it right, refer the case to the Court which had jurisdiction, even if it be too late to prefer a fresh appeal to that Court. *Subjaun Ostagar* v. *Promothonath Ghose and others*, 6 W. R., Mis. R., 77.

Where a Collector on appeal affirmed an order of a Deputy Collector for the sale of an under-tenure in execution of a decree for rent, but afterwards, upon review of judgment, set aside his former order

as made without jurisdiction,—*Held* that the High Court had no power, under Section 35, Act XXIII of 1861, to interfere with the order of the Deputy-Collector, which was final; and that, even if the Collector had not set aside his former order, the mere circumstance of his having by mistake assumed jurisdiction on appeal would not make it right for the High Court, in setting aside the Collector's order for want of jurisdiction, to interfere with the order of the Deputy Collector, which the law intended to be final, and with which the High Court, but for the mistake of the Collector, could not have interfered.

Quære,—Whether the Collector is a Court subordinate to the High Court within the meaning of Section 35, Act XXIII of 1861. *Docowree Cazee* v. *Hurrosoonderee Debea and another*, 6 W. R., Act X R., 53.

The High Court cannot interfere, under Section 35, Act XXIII of 1861, where a subordinate Court has not exceeded its jurisdiction. *Abdool Kureem* v. *Ooghun Lal*, 6 W. R., 119.

Suit by an executor of an alleged adopted son of a party upon a bond executed in favour of that party for an account (including interest) below Rs. 500. The defendant having questioned the plaintiff's title,—*Held* that it was sufficient for the plaintiff either to show that he had obtained a certificate under Section 2, Act XXVII of 1860, or to prove that he was in *de facto* possession of the deed, and that the lower Appellate Court acted beyond jurisdiction in directing an enquiry into the plaintiff's *de jure* title.

Although the case was one cognizable by a Small Cause Court, and no special appeal therefor lay to this Court under Section 27, Act XXIII of 1861, yet under Section 35 of that Act, the Court set aside so much of the lower Appellate Court's order as was beyond jurisdiction. *Bhowanee Pershad Surmah Khan* v. *Dhurm Narain Neogy*, 3 W. R., 24.

When a ganteedar on the suit of the putneedar is ejected from his holding, notwithstanding a right of occupancy independent of his gantee, an appeal lies to the Collector, whose order can only be questioned by a civil suit, and not under Section 35, Act XXIII of 1861. *Rughoonath Mitter* v. *Woomanath Chowdhry*, W. R., 1864, Act X R., 47.

When a Collector decides upon the genuineness of a deed of sale, he exceeds his authority, and his order can be set aside by the High Court under Section 35, Act XXIII of 1861. *Toyluckonath Sirdar* v. *Baluck Ram Doss*, W. R., 1864, Act X R., 26.

No appeal lies from the order of a Collector passed after decree, and relating to the execution thereof.

In annulling an illegal order of a Judge passed on such an appeal, the High Court cannot, under Section 35, Act XXIII of 1861, look into the legality or otherwise of the Collector's order regarding the sale of an estate for arrears of rent, when the judgment-debtor has not preferred his appeal in the first instance to the Commissioner of Revenue. *Sirdar Golab Singh* v. *Ram Buddun Singh*, 4 W. R., Act X R., 28.

Where a Judge without jurisdiction heard an appeal from the order of a Deputy Collector in a suit for rent below Rs. 100, the High Court in special appeal set aside the order of the Judge, and under Section 35, Act XXIII of 1861, transferred the case to the Collector for the purpose of hearing the appeal. *Kristoinder Roy Chowdhry* v. *Roopeenee Bebee and others*, 6 W. R., Act X R., 56.

Where a respondent in a Collector's Court applied in special appeal to the High Court to exercise the general powers of supervision vested in it by Section 35, Act XXIII of 1861, and Section 15 of 24 and 25 Vict., Cap. 104, to set aside the Collector's proceedings as without jurisdiction, it was held that as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought. *Drobo Moyee Dabee* v. *Bipin Mundul*, 10 W. R., 6.

A Civil Court has no power, under Section 35 of Act XXIII of 1861, to reverse a sale for arrears of rent under Act X of 1859 on account of irregularity or damage, without the aggrieved party having first appealed to the Commissioner of Revenue. Act XXIII of 1861 gives no power to the High Court to consider the legality or otherwise of the Collector's order without such appeal. *Sudder Dojar Singh* v. *Rambudden Singh*, 1 Ind. Jur., N. S., 1.

Where application was made for leave to withdraw a suit, with leave to bring a fresh one, it being contended that the fact of a notarial protest on inland bills, and of their being in the hands of the holder without signature, was proof of dishonour; and further, that defendant being a Hindu, there was no necessity for notice of dishonour,—the Appellate Court, reversing the decision of the Court below, granted the application under the power given by Section 37, Act XXIII of 1861. *The Bombay City Bank, Limited*, v. *Moonjee Hurridoss*, Bourke's Rep., A. O. C., 99.

The word "powers" is not synonymous with, and does not comprehend, "jurisdiction." *Kalikrishna Chandra* v. *Harihar Chuckerbutty*, 1 B. L. R., A. C., 155.

Section 38, Act XXIII of 1861, was not intended to make the procedure and the powers of the Court which may be applicable in suits before decree applicable to proceedings in suits after decree, but to provide a procedure as nearly resembling Act VIII of 1859 as possible for other cases not being suits. *Jadu Mony Dossee, petitioner*, 11 W. R., 494.

After property, the subject of litigation, has been given over in execution of a decree to the plaintiff, it is not within the scope of Section 36 of Act XXIII of 1861, to exact security from the plaintiff for the restitution of such property in the event of a successful appeal. *Mansukhrám Purshetam et al.* *Javarevshu*, 7 Bom. Rep., A. C. J., 122.

Under Section 37, Act XXIII of 1861, the High Court, upon appeal from a Judge sitting in the exercise of the ordinary original jurisdiction of the Court, has power, before pronouncing final judgment in appeal, to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit. *Gregory* v. *Dooley Chund Kundary Mull*, 14 S. W. R., A. C., 17.

V.

THE COURTS AND THEIR OFFICERS.

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1.—THE PRIVY COUNCIL AND ITS PRACTICE.

In the examination of such questions as whether, as alleged, the consent of one of the parties to an arbitration was obtained by threats, the Privy Council will look to the broad principles of justice and equity, and discourage mere technical objections, and the invention of new grounds of dispute which were not even mentioned at the commencement of the suit. *Ranee Purvatha Vurdhay Nauchiar* v. *Jayavera Ramakomara Ettyapa Naicker*, 4 W. R., P. C., 31.

The Privy Council in cases depending upon facts which have received the concurring judgments of two Courts in India, will not set aside the last judgment, unless it can see very clearly that that judgment was wrong. *Petamber Manikjee* v. *Moteechund Manikjee*, 5 W. R., P. C., 53; *Khokshedjee Manikjee* v. *Mehewanjee Khokshedjee*, 5 W. R., P. C., 57; *Raja Row Vencata Niladry Row* v. *Enoogoonty Sooriah*, 5 W. R., P. C., 79.

It is not the habit of the Privy Council, unless in very extraordinary cases, to advise the reversal of a decision of the Courts of India merely on the effect of evidence, or the credit due to witnesses. *Naraganty Luchmedovamah* v. *Vengama Naidoo*, 1 W. R., P. C., 30.

It is not the practice of the Privy Council to disturb the finding of the Court below upon mere issues of fact, unless it is clearly satisfied that there has been some miscarriage either in the reception or in the appreciation of evidence. In cases that turn upon the credibility of the testimony given, it is disposed to defer to the judgment of those who, with the advantage of local experience, have had the means of seeing witnesses under examination and of inspecting the original documents. *Richardson and others* v. *The Government*, 1 W. R., P. C., 47; *Cheyt Ram* v. *Chowdhry Nowbut Ram*, 5 W. R., P. C., 3.

The Privy Council objected to disturb or vary decrees properly made by the Zillah and Sudder Courts for the mere purpose of guarding against the possible error of some other tribunal in some future suit. *Annundmoyee Chowdhrain* v. *Shib Chunder Roy*, 2 W. R., P. C., 19.

When the Privy Council remits a case with directions that the Zillah Court may arrive at certain results by certain enquiries, the objects and reasons of those enquiries, as set forth in the judgment of the Privy Council, are part of the judicial record, and may be forwarded to the Zillah Court with the decree of the Privy Council. *Goluck Chunder Dutt* v. *Mohun Lall Sookul*, 5 W. R., 271.

Where there is a manifest discordance between a decision of the Judicial Committee of the Privy Council and the Common Law Courts at Westminster, the decision of the Judicial Committee is entitled to the greater weight. *Per* Holloway, *J. DeSouza* v. *Coles*, 3 Mad. Rep., O.A.J., 384.

Where the Court of Appeal in India concurs in the finding of the Court of first instance on a question of fact, the Privy Council will not disturb that finding, unless satisfied, beyond all reasonable question, that there was some miscarriage in respect of the principle on which the decision rested, of a presumption to which too much weight was given, or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the Court in other cases. *Gabindsunduri Debi* v. *Jugadambu Debi*, 6 B. L. R., 168; 15 S. W. R., P. C., 5.

An infant appellant, in an appeal pending in the Privy Council, having come of age, and having petitioned the High Court in India to be allowed to withdraw from the suit,—*Held*, that it was competent to the respondent in England to have the appeal dismissed for want of prosecution, although the guardian had given security for the costs and paid the expenses of the appeal, and although the (former) infant was not served with notice of the motion, the Council being satisfied that he had in the High Court petitioned for leave to withdraw. *Rani Bistuprya Patmadaye* v. *Basudeb Dhall*, 6 B. L. R., 190; 15 S. W. R., P. C., 19.

When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the enquiry necessary to ascertain what is comprised therein, and to proceed in the suit as upon the result of such enquiry may appear to be just, the High Court on being applied to for execution ought, besides giving possession, to ascertain and award mesne profits up to the date of giving possession.

An appeal will lie as of right from the order of a single Judge of the High Court as to execution of a decree of the Privy Council where the property is over Rs. 10,000. *Rajah Lilanand Sing* v. *Maharaja Luckimpur Singh Bahadur*, 5 B. L. R., 605; 14 S. W. R., P. C., 23.

The practice of the Privy Council has been never to favour objections merely of form. *The Mokuddim of Mouza Kunkundady* v. *The Enamdar Brahmins of Mouza Soorpal*, 7 W. R., P. C., 8.

Considering the advantages which the Judges in India generally possess of forming a correct opinion of the probability of a transaction and in some cases of the credit due to the witnesses, the fact that the Courts below have decided against the validity of an instrument affords a strong presumption of the correctness of their decisions, but does not and ought not to relieve the Privy Council, as the Court of last resort, from the duty of examining the whole evidence, and forming for itself an opinion upon the whole case. *Modhoosoodun Sundial* v. *Sorup Chunder Sircar Chowdhry*, 7 W. R., P. C., 73.

In reviewing proceedings of the Courts in India where the Hindu and Mahomedan laws are the rule, and where the forms of pleadings are wholly different from those in use in Courts where the law of England prevails, the Privy Council will look to the essential justice of the case, not considering whether matters of form have been strictly attended to. *Ghridharee Singh* v. *Koolahal Singh and others*, 6 W. R., P. C., 1.

In a suit by A. for possession of property which belonged to her uncle B., the defendants C. and D. each alleged herself to be the wife of B., and each said that the other was his concubine. C. also set up a will in her favour by B. C. admitted that she had been once B.'s concubine, but alleged that she had been subsequently married to B.

The evidence was conflicting, and the Courts below pronounced against both the marriages and also against the will. C. alone appealed to the Privy Council, who held that lapse of time and propriety of conduct, and the enjoyment of confidence, with powers of management reposed in her, are not sufficient to raise the presumption that A. was a lawful wife; and there was wanting in this case that clear indication of error in the finding which was necessary to take the case out of the rule laid down by the Privy Council, in the case cited, that the Judicial Committee would not interfere with the decision of the Courts in India, when they have concurred in opinion, merely on the effect of evidence, or the credit due to witnesses. *Mussamut Jarintool Butool* v. *Mussamut Hossein Begum*, 10 W. R., P. C., 10.

The decree-holder (respondent to England) was required immediately to elect between furnishing security and drawing the sum deposited by the appellant on account of wasilat and costs, and (upon her failure to do so) allowing the appellant to obtain a refund of the deposit upon giving the like security. *Juggo Lall Oopadhyu* v. *Jankee Bibee*, 17 S. W. R., C. R., 521.

Where the decision of the first Court upon a question of fact has been affirmed on appeal, the Privy Council will not reverse such finding on a mere balance of testimony: there must be so strong a preponderance of testimony that they can confidently pronounce it to be wrong. *Rani Sarat Sundari Debi* v. *Kumar Paresnarayan Roy*, 8 B. L. R., 113; and 16 S. W. R., P. C., 9

In this appeal the Privy Council, in confirming the decree of the High Court, were doubtful as to whether the respondents to England were, on the face of the plaint, entitled by Mahomedan law to the full amount claimed, and left the matter to be determined by the High Court in execution. It appearing that the doubt raised in the Privy Council was owing to the word shohodur in the plaint being wrongly translated "sons" instead of "uterine brothers," the High Court allowed the respondents to take out execution for the whole amount. *Meer Mazuffer Hossein Chowdry* v. *Ameeroonissa Khatoon*, 17 S. W. R., C. R., 340.

With reference to the laxity prevailing in the Indian Courts in admitting documents, the Privy Council remarked that, whilst it might not be desirable in all cases to apply strict and technical rules to the admissibility of evidence in the Courts in India, the substantial principles on which the authenticity and value of all evidence rest should be observed. *Ramalakhmi Ammal* v. *Siranantha Perumal Sethurayer*, 17 S. W. R., C. R., 553.

The Privy Council will never interfere with the finding of an Indian Court upon a question of boundary, unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands, and make it the ground for an order reversing or varying the decree. *Ram Gopal Roy* v. *Gordon, Stuart & Co.*, 17 S. W. R., C. R., 285.

Quære,—Whether the so-called "decrees of the Privy Council" are not subject to any law of limitation; or whether they are not merely orders of Her Majesty in Council made on the recommendation of a Committee of the Privy Council, and do no more than prescribe what shall be the final decree in the cause, leaving them to be executed by the ordinary process of the Courts in India. The presentation of a petition of appeal to England, which is a proceeding taken to destroy the decree appealed from, cannot of itself be treated as a proceeding to keep it in force; though, if the appeal to England be allowed, the respondent to it supporting the decree appealed from is entitled to sue out execution at any time within three years after the final dismissal of the appeal. *Kristo Kinkur Ghose Roy* v. *Burroda Kant Sing Roy*, 17 S. W. R., C. R., 292.

Suit to set aside a sale of ancestral property by a minor's father and guardian as made without necessity and for the father's profligate expenditure, and without enquiry by the purchasers as to whether it was for the infant's benefit. Defendants alleged that the sale was made under pressure of a foreclosure suit on account of a demand under a former mortgage for an ancestral debt. Plaintiff having failed to establish his case, sought to go back and open the consideration for the mortgage made so long as twenty years ago; but the Privy Council (agreeing with the High Court) declined to allow plaintiff to do so, observing that whereas in this case the question of fact has been tried upon evidence fairly warranting the conclusion to which the High Court has come, and there has been no adverse findings of facts, their Lordships will require a strong case to be made out before they will recommend Her Majesty to reverse such a decision. Their Lordships referred to the extent to which the

record in this case had been swelled with a quantity of documents, and expressed a hope that some means might be taken in India to prevent such a waste of the suitor's money. *Mussumat Hameeda alias Beboo Khasso* v. *Mussumut Amatool Mehdu Begum*, 17 S. W. R., C. R., 106.

Although it is open to parties before the Privy Council to allege that a mistake has been made in point of law which they did not raise in the Court below, they must clearly make it appear before the Privy Council that the mistake was really made by the Judge below, and that the decision is in fact attributable to such mistake. *Phulwan Singh* v. *Mohessur Baksh*, 16 S. W. R., C. R., 5.

The Privy Council will not interfere in a case in which objections are taken to matters of practice, unless they see very clearly that justice has not been done. *Moulvie Abdool Ali* v. *Mozuffer Hossein Chowdry*, 16 S. W. R., P. C., 22.

Order in Council as to the employment of agents before Privy Council. 13 S. W. R., P. C., 45.

Where there are concurrent decisions on a question of fact, the Judicial Committee will not (especially in a question of fact as to boundaries) reverse the decision unless there was no evidence, or there has been in the conduct of the trial, or in the mode in which evidence was adduced, or in the course of deciding the case, a clear departure from the ordinary principles which regulate judicial proceedings. *Maharaj Kumar Baboo Ganeshwar Sing* v. *Durga Dutt*, 7 B. L. R., 651, and 15 S. W. R., P. C., 37.

The manager of the Court of Wards effected a compromise with claimants on the estate; a decree was passed on the basis of that compromise, but before the parties wished the decree to be made; in the decree, leave was reserved to apply for a review, if the compromise was not sanctioned by the Commissioner, and was prejudicial to the parties. The compromise was sanctioned by the Commissioner, but afterwards the manager found that he had been deceived by his servants, and that the claim had been allowed erroneously. *Held*, that the Court having granted a review, and the claim being proved to be exaggerated, a decree was properly given for the true amount. Where both the lower Courts had agreed as to the facts, the Privy Council refused to examine the evidence, the controversy being merely as to the weight to be attributed to it. *Lalji Sahee* v. *The Collector of Tirhoot*, 6 B. L. R., 648, and 15 S. W. R., P. C., 23.

2.—Appeals to the Privy Council.

A suit for the recovery of possession of land was valued at a sum less than Rs. 10,000, being the value of the land; but the plaintiff claimed in the suit, in addition to the land, wasilat, which, when added to the value of the land, amounted to more than Rs. 10,000. *Held* that an appeal lay to the Judicial Committee of the Privy Council. *Gooroodoss Roy* v. *Gholam Mowlah*, Marsh., 24.

Until a petition of appeal to the Privy Council presented to the High Court has been admitted and allowed, a party has no right of appeal to the Privy Council. If the petition is allowed to remain on the file of the Court, and is not prosecuted within a reasonable time, the Court has power to order its removal from the file. *Goburdhan Burmono* v. *Srimati Mano Bibi*, 5 B. L. R., 76; 14 S. W. R., A. O., 34.

Special leave to appeal granted, notwithstanding that no application had been made for such leave to the Court below, upon the allegation that, although the amount decreed was much under the appealable value, the original demand being necessarily limited by the jurisdiction of the Court in which the suit was originally instituted, yet the subject-matter at issue exceeded in value the appealable amount. *Mutusawmy Jagavera Yettapa Naiker* v. *Venkataswara Yettia*, Ind. Jur., N. S., 205.

A suit was instituted in a Zillah Court in Bengal by the respondent against the appellant, involving questions both of law and fact, and on the 19th of November, 1860, a decree was made on the points of law in the appellant's favour. The respondent appealed to the High Court of Judicature, which Court, on the 14th of January, 1864, reversed the decree of the Zillah Court, and remitted the suit to that Court for the trial of the issues of fact. In June, 1865, the appellant petitioned the High Court for leave to appeal, and also prayed that, pending the appeal, all further proceedings in the suit might be stayed. The High Court granted leave to appeal, but made an order refusing to stay the proceedings; and from this order there was no appeal. The appellant then petitioned the Judicial Committee to stay all further proceedings in India, pending the appeal. *Held* (without deciding the question as to an appeal from the order of the High Court) that it is essential to the establishment of such an application, first, that an irreparable injury will result to a party applying unless the delay be granted; secondly, that a party has come promptly to make the application: and their Lordships dismissed the petition with costs. *Nawab Sidhee Nuzur Aly Khan* v. *Ojoodhyaram Khan*, 1 Ind. Jur., N. S., 185.

A Court of Appeal cannot refer to the evidence in another case, or act upon the impression made by it in the Court below.

The rule of the Privy Council not to disturb a judgment of a Court in India upon a question of fact, unless it is clear from the probabilities of the case that the judgment is wrong, however necessary as regards a Court of Appeal far removed from India, would hardly be extended as one equally necessary and applicable with the same strictness to a Court of Appeal in India. *Saroda Soondery* v. *Tincowry Nundy*, 1 Hyde's Rep., 223.

An appeal to the Privy Council involving a question or demand respecting property which on the whole is of the value of more than Rs. 10,000, is admissible, although the portion of the property to which the appeal relates is below that value. *Onooroop Chunder Mookerjee* v. *Pertab Chunder Paul and others*, 6 W. R., Mis., 4.

When an appeal to the Privy Council has been admitted, all that the High Court can do is to proceed, under Section 4, Regulation XVI of 1797, to stay the execution of the decree, on the appellant giving security for the due performance of the decree of the Privy Council. But the Court cannot continue an attachment of money made under Regulation II of 1806 during the pendency of the suit in the Zillah Court, after the decree of the Zillah Court has been reversed by the High Court on appeal. *Petition of Ramnath Chowdhry and Rughoobur Dutt Chowdhry*, 6 W. R., Mis., 17.

An appeal to the Privy Council being once admitted, whether properly or erroneously, the High Court has no further jurisdiction to review its order and declare the appeal rejected. *Ameerunissa Begum and others* v. *Ranee Inderjeet Koonwar*, 6 W. R., Mis., 97.

The High Court cannot, by reason merely of a different view of the law subsequently taken by a Full Bench, recall an order admitting an appeal to the Privy Council. *Woomatara Debea, petitioner*, 6 W. R., Mis., 120.

The High Court has no authority to restore appeals to her Majesty in Council, dismissed or struck off the file for default in making deposit. *Petition of Sreekunt Roy*, 7 W. R., 47.

Where it was impossible to say whether certain account-books and papers were material or relevant, or even were part of the evidence in the case, the High Court declined to put the appellant in an appeal to England to the expense of translating and transcribing them, but gave the respondent the option of translating them at his own expense, with a view to their being sent to England as an appendix to the record, leaving it to the Privy Council, in the event of the respondent being successful, to make any order they pleased as to the costs of translation. *Petition. Raj Coomar Baboo Deo Nund Singh*, 7 W. R., 90.

Razeenamas and safeenamas, as well as security bonds, connected with appeals to England, need not be in English. *Meer Mahomed Tuke Chowdhry* v. *Luchmeput Singh Doogur and others*, 7 W. R., 291.

The High Court has no authority to receive a petition of appeal to England tendered without the usual security bond duly registered, as provided by the 8th Rule of the 7th December, 1858. *Rajah Saheb Persaud Sein* v. *Rajah Rajendra Kishore*, 7 W. R., 338.

An order rejecting an application to review a judgment passed on appeal is not an order made on appeal, from which an appeal lies to the Privy Council, under Section 39 of the Charter of the High Court. *Soudamonee Dossee* v. *Maharajah Dheraj Mahatab Chand Bahadoor*, 6 W. R., Mis., 102.

Quære,—Whether the leave given by the Courts in India to a party to sue in *formâ pauperis* would enable him to prosecute the appeal to the Privy Council without obtaining the leave of the Privy Council. *Munin Ram Awasty* v. *Sheo Churn Awasty*, 7 W. R., P. C., 29.

An application to appeal to the Privy Council in *formâ pauperis* may be made to the High Court on unstamped paper, and accompanied by a certificate of Counsel that there is a reasonable ground of appeal; the usual security for costs being given, and the costs of translation deposited. *Jowad Ali and another*, 8 W. R., 48.

In an appeal from part of a decree, the whole decree is not open to the respondents. Under the peculiar circumstances of this case, however, leave was given to present a cross-appeal, and the appellants not objecting, the appeal was heard from the whole decree. *Myna Boyee* v. *Ootoram*, 2 W. R., P. C., 4.

In this case, the Privy Council originally gave leave to appeal, provided satisfactory evidence were supplied by the appellants to the Registrar of the Sudder Court that the real or market value of the land in dispute exceeded Rs. 10,000. This order was subsequently discharged as obtained upon an incorrect statement of the facts, it appearing afterwards that the appellants had satisfied the Registrar that the real or market value of the land exceeded Rs. 10,000. The appeal was restored, with a general suggestion that the terms of the Bengal Stamp Regulation X of 1829 upon the subject of value should be carefully attended to. *Mohunlall Sookul* v. *Debeedoss Dutt*, 2 W. R., P. C., 9.

No subsequent event or devolution of interest can affect the decision of a question as it stood at the time the decision was pronounced. To give effect to these, should justice require it, would be the office, not of an appeal, but of some supplemental proceeding. *Anundmoyee Chowdhrain* v. *Sheeb Chunder Roy*, 2 W. R., P. C., 19.

Leave to appeal to the Privy Council is to be given in cases where the petition is presented within the prescribed period, and the value of the matter in dispute in the appeal amounts to Rs. 10,000, including interest up to the decree.

The grant of leave to appeal in cases where the specified amount of Rs. 10,000 can only be reached by the addition of interest subsequent to the decree, is in the discretion of the Privy Council. *Maharajah Suteeschunder Roy* v. *Gunes Chunder; Maharajah Suteeschunder Roy* v. *Ranee Surnomoyee; Gooroopursad Khoond* v. *Juggut Chunder*, 3 W. R., P. C., 14.

Application for restoration of appeal acceded to in consideration of the interests of infants being involved in the case, and of the state of that part of India when the matter arose in and after 1857, on the condition of deposit of further security, and of the prosecution of the appeal within a certain time.

The security in India was held to have gone by the dismissal of the appeal for default of prosecution. *Ranee Birjobuttee* v. *Pertab Singh, Government, and others*, 3 W. R., P. C., 36.

There is no law which requires a suitor to appeal from interlocutory orders under penalty of forfeiting for ever the benefit of the consideration of the Appellate Court. The Privy Council have, in many cases, corrected erroneous interlocutory orders on the appeal of the whole cause coming before them. *Maharajah Mohesur Singh* v. *The Government of India*, 3 W. R., P. C., 45.

By Act III of 1843, the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a special appeal was final so far as the Sudder Court was concerned; but the Act did not extend to take away the right of appeal to the Privy Council. *Modur Kaikhoosrow Hormuyzee* v. *Cooverball*, 4 W. R., P. C., 94.

Upon the construction of the Statute 21 Geo. III, c. 70, s. 21, it was held that two suits (each for less than Rs. 50,000, but both for more than that amount), in which separate judgments were given, could not be consolidated for the purpose of permitting an appeal to the Privy Council; each judgment, when pronounced, having been final and conclusive. *Moofti Mahummud Ubdoollah* v. *Moteechund*, 5 W. R., P. C., 34.

The plaintiff's omission to appeal against an interlocutory order of the Sudder Court remanding his suit for re-trial on the production of the mortgage accounts, did not preclude him from insisting before the Privy Council that the remand for the production of the accounts was erroneous, and that

the cause should have been decided in his favour, notwithstanding the non-production of the accounts. *A. J. Jones* v. *Ameeroonissa Begum*, 5 W. R., P. C., 47.

When a discretion is vested in a Court as to costs, the Privy Council will not allow any appeal against the exercise of that discretion, because no appeal lies against a mere decree as to costs. *Mussamut Keemee Baee* v. *Luchmun Doss Narain Doss*, 5 W. R., P. C., 59.

An appeal lies to the Privy Council, under Section 39 of the Charter of the High Court, from an order rejecting an application for a review of judgment. The petition of appeal must be presented within six months from the date of the said order. *Nazur Ali Khan* v. *Rajah Ojoodhyaram Khan*, 1 W. R., Mis., 13.

The plaintiff obtained a decree for possession of a zemindary, which was reversed on appeal by the High Court. The plaintiff then appealed to the Privy Council. Under such circumstances, the High Court has no power under Section 4, Regulation XVI of 1797, to order security to be taken from the defendant (respondent) in the appeal to the Privy Council for the due performance of such orders as the Privy Council may pass in the appeal, or to suspend the decree reversing the decision of the first Court. *Nilkissen Thakoor* v. *Beerchunder Thakoor Gossain*, 2 W. R., Mis., 23.

The High Court has no power to consolidate appeals to the Privy Council or to admit appeals to the Privy Council in cases in which the time for filing an appeal has expired: such consolidation or admission cannot be made without the permission of the Privy Council. *Pran Nath Roy Chowdhry* v. *Kasheenath Chowdhry*, 2 W. R., Mis., 26.

The pendency of an appeal to the Privy Council does not put the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties. *Rajah Saheb Perhlad Sen* v. *Budoo Singh*, 2 B. L. R., P. C., 111; 12 W. R., P. C., 6.

No provision by Statute or Charter being made for appeal to Her Majesty in Council from judgments of the Court of the Judicial Commissioner of Oude, created on the annexation of that kingdom in the year 1858, the Judicial Committee, to prevent the denial of justice, admitted an appeal under Statute 3 and 4, Will. IV., Cap. 41. *Salik Ram* v. *Azim Ali Beg*, 1 Ind. Jur., O. S., 117.

There were four respondents in an appeal to the Privy Council. At the hearing, the appeal was allowed *ex-parte* against all the respondents. One respondent afterwards petitioned for a re-hearing, on the ground that neither he nor his agents had notice that the appeal had been entered or fixed for hearing until after it had been decided.

On enquiry, it appeared that the petitioner had inaccurately described the suit to his agents as an appeal against himself only, without mentioning the names of the other respondents; and the agents, on being told at the Privy Council office that no appeal so entitled was pending, had taken no further steps.

Held that there had been omission and neglect on the petitioner's part and on the part of his agents such as to prevent the Judicial Committee from recommending a re-hearing of the case. *Rani Swarnamayi* v. *Sashi Mukhi Barmani*, 2 B. L. R., P. C., 60; 11 W. R., P. C., 5.

Petition for leave to appeal against a conviction and sentence of the Sudder Nizamut Adawlut of Bengal, on the ground of alleged irregularities in the proceedings causing great hardship and injustice. *Held* that, assuming that the prerogative of the Crown extended to the granting of leave to appeal in such a case, and was not curtailed by the operation of the Indian Act XXV of 1861, and that this was *primâ-facie* a cause of great grievance, yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in advising Her Majesty in the exercise of her discretion to refuse to grant the prayer of the petition. *Joykissen Mookerjee* v. *Queen*, 1 Ind. Jur., O. S., 61.

The High Court has no power to allow an appeal to Her Majesty in Council when the petition is not presented within six calendar months from the date of the decree complained of.

When the six months expired during the Durga Pooja vacation, and the petition of appeal was presented on the first day the Court resumed its sittings,—*Held* that the petition was too late, and leave could not be given to appeal. *Tamvaco* v. *Skinner*, 1 B. L. R., O. C., 39.

An order of the High Court rejecting an application for a review of judgment, is a final order from which an appeal lies to the Privy Council under Section 39 of the Court's Charter; the petition of appeal being presented within six months from the date of the said order. *Nuzeer Ali Khan* v. *Rajah Ojoodhyarum Khan*, 1 W. R., Mis., 13.

In the case of a petition of appeal to the Privy Council being filed, due diligence must be shown in transmitting the appeal to the Privy Council, otherwise, on the application of the respondent, the High Court has the power to strike the petition off the file. *Goberdhan Barmono* v. *Srimati Munun Bibi*, 3 B. L. R., 126.

Judges should not transmit to the High Court documents used before them to make out the title of parties offering immoveable property as security in Privy Council cases; but should, in reporting upon the securities, state particulars of the documents upon which the title of the surety appears to be made out. *Ameeroonissu Khatoon, in the matter of*, 14 S. W. R., C. R., 94.

In a case where the period within which applications for leave to appeal to England expired during the Dusserah vacation, and the application was presented on the first day of the Court sitting after the vacation, when, though notice was served under the rules—no cause being shown to the contrary—the appeal was admitted and the applicant allowed to incur large costs for translation and transcription, and the record was nearly ready for transmission,—*Held* that the plea of limitation could not at this stage be heard in bar to the admission of the appeal, and that the High Court was bound to allow it to go on subject to the orders of the Privy Council. *Rajah Roy Kishen Singh* v. *Huro Soondoory Dassee*, 15 S. W. R., C. R., 255.

When an appeal is preferred to Her Majesty in Council from a decree of the High Court, the security to be taken from the decree-holder must be regulated by Section 4, Regulation XVI of 1797; the practice being to calculate for an amount suffi-

cient to meet the mesne profits which are to go to his hands from the date of his obtaining possession to the probable date of the eventual execution of the decree of the Privy Council, which period is generally taken to be three years. *Ameeroonissa Khatoon* v. *A. D. Dunne*, 14 S. W. R., C. R., 361.

In calculating the period of six months allowed for appealing to the Privy Council, the date on which the decree was pronounced or dated should be excluded. *Re Rama Norgu Narain*, 13 S. W. R., P. C., 17.

An appeal lies directly to the Privy Council from the decree of a Division Bench of the High Court on an appeal from the Mofussil, although the Judges differed, and upon the points of difference a further appeal to the High Court is given under Clause 15 of the Letters Patent. *In the matter of the petition of the Court of Wards on behalf of the Raja of Durbangu*, 7 B. L. R., 730, and 16 S. W. R., C. R., 191.

3.—The High Courts and their Jurisdiction.

Held that the High Court can interfere, under Section 35, Act XXIII of 1861, with the order of the Court of first instance, as well as of the Appellate Court, where the orders of both the Courts appear to be without jurisdiction. *Sheo Doyal Singh* v. *Sheikh Mahomed Kamil*, 3 Agra Rep., Mis., 2.

If, in the course of hearing a suit, a Civil Court commits a party to the suit for trial on a charge of perjury or forgery, or directs that the case be made over to a Magistrate for investigation of such a charge, the High Court, in the exercise, either of civil or criminal jurisdiction, cannot, in the event of a regular or special appeal being lodged against the decision of the lower Court, interfere to stay the criminal proceedings, until the appeal shall have been heard and determined. *Ram Pershad Hazaree* v. *Soomuthra Dabee*, 5 W. R., Mis., 24.

The High Court cannot interfere with the order of a lower Court, setting aside a sale of moveable property in execution of a decree, even though the lower Court has thereby acted wholly without jurisdiction, and done injury to a *bonâ-fide* purchaser. *J. DaCosta* v. *M. M. Hall*, 5 W. R., Mis., 25.

The High Court can, on cause shown, require security from a decree-holder who has been put in possession in execution of a decree against which an appeal has been preferred to Her Majesty in Council and is still pending. *Sooruj Monee Dayee* v. *Sudanund Mohapattur*, 12 W. R., 296.

The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. Ind Jur., N. S., 106.

An order rejecting a review of judgment is not an "order made on appeal" within the meaning of Clause 39 of the Letters Patent of the High Court. In cases of appeal made under Clause 42 of the Letters Patent, the Court ought not, in transmitting the proceedings connected therewith, also to send such proceedings as applications for review of the judgment of the High Court and the orders of the Court thereupon. *Raja Syud Enayet Hossein* v. *Ranee Rousheen Jehan*, 1 B. L. R., F. B., 1; S. C., 10 W. R., F. B., 1.

Where a Full Bench ruling is brought to the notice of a Judge re-trying a case on remand, he is bound, whether the ruling has been published or not, either to ask the pleader to produce the decision relied on, or to take other means for satisfying himself as to the ruling of the High Court, so as to apply the correct law to the case. *Tumeezoodeen Khondor* v. *Mohema Chunder Mookerjee and others*, 11 W. R., 227.

Under Clause 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land, whether the land is situated wholly or in part only within the local limits of its ordinary original jurisdiction, leave of the Courts having been first obtained in the latter case. *Sen Jagadamba Dasi* v. *Sen Padmamani Dusi*, 6 B. L. R., 686.

The High Court has jurisdiction to hear appeals in testamentary cases. *Sarodasoondorey Dassee* v. *Tincowry Nundy*, 1 Hyde's Rep., 70.

The High Court cannot exercise jurisdiction in respect to land which is situate out of its local limits, even though it be in possession of the Receiver. *Denonauth Sreemany* v. *Hogg*, 1 Hyde's Rep., 141.

The High Court, under Letters Patent, 1862, Section 12, has jurisdiction in all cases where the amount claimed is over Rs. 100, whatever may be the amount received. *Sikur Chund* v. *Soorijmull*, 1 Hyde's Rep., 272.

A collision had taken place at sea in the Bay of Bengal off Juggernauth Pagoda, between the ship *Garland* and the ship *Dragoon*, both foreign vessels, which afterwards came within the jurisdiction of the Court. *Held* that the High Court at Calcutta had jurisdiction to try an action in respect of such collision. *Garland* v. *Dragoon*, 1 Hyde's Rep., 275.

Although the High Court, in the original jurisdiction, has no jurisdiction over land or other immoveable property situate beyond the limits of Calcutta, and can make no adjudication of the right and title to such land, yet where a party is personally subject to the jurisdiction, the Court has power to declare whether or not such party holds such land subject to a trust.

When an objection to a jurisdiction is first taken at a late stage of the suit, instead of being brought forward as it should be at the first stage of the suit when the plaint is presented for admission, the proper course is, even if the jurisdiction be doubtful, to proceed to determine the suit. *Bagram* v. *Moses and Gasper*, 1 Hyde's Rep., 284.

The High Court previously to the issue of the order in Council No. 4366, dated 22nd November, 1865, had jurisdiction in cases in which the cause of action arose in a district in which British subjects were formerly subject to the jurisdiction of the Supreme Court. *Indian Carrying Co. Limited* v. *McCarthey*, Cor. Rep., 116.

The Court will, at the hearing of a suit, order foreclosure of mortgaged property situate beyond the limit of its ordinary original civil jurisdiction under the powers conferred on it by Section 12 of Act VIII of 1859. *Khettro Mohun Doss* v. *S. M. Chundra Money Dabee*, Cor. Rep., 125.

A. sued B. for goods sold in Madras and delivered to B. personally outside the local limits of the High Court's original jurisdiction. B. dwelt in the outside of those limits; the goods were sent to him at his request, sometimes by sea, sometimes

through the post office, but always at A.'s risk during the journey. *Held* that the suit must be dismissed for want of jurisdiction. *Winter* v. *Way*, 1 Mad. Rep., 200.

Where part of the property was situated within, and part out of, the jurisdiction of the Court,—*Held* that the Court had jurisdiction to try the suit according to the true construction of Section 12 of the Charter 1865 in reference to the whole of the property. *Prosono Moyi Dasi* v. *Kadumbeni Dasi*, 3 B. L. R., O. C., 85.

Judges of the High Court do not try cases in which they have any personal interest. *Calcutta Steam Tug Co.* v. *Hadee Hossein Ibrahim Bin Johur*, Bourke's Rep., O. C., 273.

The High Court, in the exercise of its civil jurisdiction, has not the power to execute its own decree, or serve its own process, out of the local limits of such jurisdiction *Sagore Dutt* v. *Ram Chunder Mitter*, 1 Hyde's Rep., 136.

The High Court has no authority to re-admit an appeal to the Privy Council which has once been dismissed for default. *Mussamut Bolakan, petitioner*, 6 W. R., Mis., 121.

The High Court cannot admit an appeal which Act VIII of 1859, and Section 11, Act XXIII of 1861, do not allow. Section 15 of the Charter does not apply to the question. *Gobindnath Sandyal* v. *Ram Coomar Ghose*, 9 W. R., 115.

The general powers of the High Court do not enable it to hear an appeal from an order of a Zillah Judge refusing to rectify a decree. *Mahomed Busheeroollah* v. *Ramkant Chowdhry*, 9 W. R., 394.

The High Court at Calcutta has no jurisdiction over the Court of the Sessions Judge at Allahabad, such Court not being subject to the superintendence of the High Court under the 13th Section of the Charter. *Great Eastern Hotel Company Limited* v. *The Secretary of State for India*, 1 Ind. Jur., N. S., 219.

No appeal lies from an order of a Judge proceeding under Act XIX of 1841.

The fact that the Judge may have rejected evidence which ought to have been received and considered does not warrant the High Court in interfering to set aside an order of such Judge. *Venkatachella Chetti and others* v. *Parvatammal*, 2 Mad. Rep., 418.

Of three suits by different parties against the same defendant, the appeal lay in one to the High Court, and in the other two to the Judge. The Judge postponed the two cases before him until the decision of the High Court, when, taking it as a precedent, he decided it accordingly in favour of the defendant. *Held* that the decision of the one case, though not strictly binding on the two other plaintiffs, was nevertheless a good guide to enable the Judge to arrive at a correct finding on the facts. *G. Gregory* v. *Huree Kishore Roy*, 3 W. R., 2.

The High Court can raise and adjudicate upon certain points in special appeal, when they are apparent on the face of the pleadings, even though the parties to the suit are silent. *Molk Enaet Hossein* v. *Mussamut Kureemoonissa*, 3 W. R., 40.

The High Court cannot interfere to require security from a party who has formally been put in possession of the property in dispute in execution of a decree, where execution was taken out before an appeal to the Privy Council was preferred and admitted. *Huro Soonduree Debia* v. *J. Stevenson*, 5 W. R., Mis., 13.

The High Court cannot express any judicial opinion upon a question submitted to it when it does not arise in the course of a trial of a suit. *Suroop Chunder Patre* v. *Jadoo Moytee*, 5 W. R., S. C. C. Ref., 8.

Only questions which arise in the trial of a suit, and not such as arise on applications for execution of decree, can be referred, under Section 22, Act XI of 1865, for the opinion of the High Court. *Annundchunder Mozoomdar* v. *Goburdhun Khan*, 5 W. R., S. C. C. Ref., 19.

Case in which the High Court formed an independent opinion upon the evidence, and came to an opposite conclusion to that of the Court below, the Judge who decided the case not having heard the witnesses. *Opendernarain Ghose* v. *Bajpayee Rajah*, 6 W. R., 25.

The High Court may, on sufficient cause being shown, make an order upon motion to compel a lower Court to make absolute a sale which had been made by that Court, but which the Court had not confirmed and thought it not expedient to confirm. *Petition of Oodiut Zuman*, 8 W. R., 109.

A certificated purchaser of property sold in execution of a decree, applied to the Judge for an order of confirmation of sale, and was refused. *Held* that the High Court had no power to interfere with a Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from which there is no appeal. *Re petition of Doorga Churn Sircar*, 2 B. L. R., A. C., 165.

The High Court has jurisdiction to direct a lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by that Court, and to see that the lower Court does not pervert the order or do that which was not intended to be done, even when such order constitutes a part of the order in execution of a decree which the lower Court ought to have passed. *Kalee Doss Sandyal* v. *Roy Luchmeeput Doogur*, 14 S. W. R., C. R., 145.

Construction,—The judgment of the Division Bench, reported in 10 *Weekly Reporter*, page 38 (*Shoudaminee Dassee* v. *Ram Chand Baidoo*) was not intended to lay down that the High Court had no jurisdiction to entertain an appeal from a lower Court of regular appeal in the event of that Court's decision being passed without jurisdiction. *Dibakur Soondur Roy, in the matter of*, 14 S. W. R., C. R., 8.

The High Court cannot interfere under Section 15 of the High Courts' Act, where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit. *Khorshed Ali* v. *Chowdry Wahid Aly*, 15 S. W. R., C. R., 170.

A. sued B., a ryot, for arrears of rent. C. was added as a party under Section 77, Act X of 1859. The Collector in appeal refused to try C.'s claim under Section 77, because she had not produced her title-deed.

Held, that the refusal to try C.'s claim by the Collector was a denial of jurisdiction on his part, and the High Court sent back the case to the Collector for trial of C.'s claim. *In the matter of the petition of Srimati Nassir Jan*, 7 B. L. R., 145, and 15 S. W. R., C. R., 418.

A. obtained a decree against B. in her repre-

sentative character for a debt contracted by her mother. The decree declared that execution should be taken out against the property of the mother, and not against any part of her (the mother's) deceased husband's estate. In execution, A. attached and put up to sale certain property as belonging to the mother. B. objected to the sale, alleging that the property was not her mother's, but was inherited by her from her father. The Moonsiff disallowed her objection on the ground that only the right, title, and interest of the defendant's mother was put up for sale. On appeal, the Judge set aside the Moonsiff's order. *Held*, that for the purposes of her objection, B. was a third party unconnected with the decree, and that her objection should have been disposed of under Section 246 of Act VIII of 1859. Section 11 of Act XXIII of 1861 did not apply. There being, therefore, no appeal, the Zillah Judge's order was set aside as passed without jurisdiction, and the Moonsiff's order was also set aside as not having been passed under Section 246, Act VIII of 1859, under which section the objection had been preferred. *Haris Chandra Gupto* v. *Srimati Shashi Mala Gupti*, 6 B. L. R., 721, and 15 S. W. R., C. R., 163.

The plaintiff brought a suit, which was cognizable by a Small Cause Court in a Moonsiff's Court having jurisdiction within the local limits of the jurisdiction of the Small Cause Court. He obtained a decree, but the decree was reversed on appeal. On special appeal, the Court set aside the decrees of both the lower Courts as having been passed without jurisdiction. *Tarini Churn Mookerjee* v. *Rajah Purna Chandra Roy*, 6 B. L. R., 717, and 15 S. W. R., C. R., 397.

4.—Subjection to Jurisdiction of High Court.

The obtaining of probate or letters of administration from the late Supreme Court is no ground for subjecting the party obtaining them to the jurisdiction of the High Court, in matters connected with the estate in respect to which probate or letters of administration were so obtained. *Leslie* v. *Inglis*, 1 Hyde's Rep., 67.

The influence of his habits, calling, and the nature of his establishment, may be considered in deciding whether a defendant is resident within the jurisdiction. *Emrit Lall* v. *Kidd*, Cor. Rep., 46; 2 Hyde's Rep., 117.

A party spending his time alternately in the mofussil and Calcutta, and resident in the latter for some days previous to, and on the day of, filing his plaint, is subject to the jurisdiction of the High Court in its ordinary original civil jurisdiction. *S. M. Nishadiney Dossee* v. *Cally Kristo Ghose*, Cor. Rep. 24.

Where the payee sued the maker of a note which was dated "Madras, 27th September, 1860," and delivered to the plaintiff at Madras,—*Held* that the High Court had jurisdiction to entertain the suit, though the defendant had signed the note at Secunderabad, whence he had sent it by post to the plaintiff. *Winter* v. *Round*, 1 Mad. Rep., 202.

Semble,—The jurisdiction to entertain suits against the Government under Section 5 of Act VIII of 1859 exists only where the cause of action arose.

A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet, in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras. *Subbaraya Mudali and others* v. *The Government and Cunliffe*, 1 Mad. Rep., 286.

The High Court has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally, when the defendant resides beyond the local limits, and such instrument was signed by him beyond those limits.

Jurisdiction to entertain a suit on a promissory note is *primâ-facie* shown upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras.

Remarks on the maxim "*Debitum et contractus sunt nullius loci.*" *Rajendra Ram* v. *Sama Ram and another*, 1 Mad. Rep., 436.

A trader in the mofussil habitually sent grain to Madras for sale by a general agent for the sale of goods sent to him by different persons. On some occasions the trader himself accompanied the loaded bandies. Since his death the first defendant, his widow, carried on his business. The grain so sent for sale was never stored, but remained in the bandies until sold by the agent, who acted himself as broker, the purchasers paying his brokerage commission, and the consignors of the grain paying nothing.

Held that the first defendant did not "carry on business" within the jurisdiction of the High Court of Madras within the meaning of Section 12 of the Letters Patent. *Chintamal* v. *Tulukánnathummal*, 3 Mad. Rep., O. C., 146.

A suit for foreclosure of land out of the jurisdiction cannot be brought in the High Court at Calcutta on the ground that defendant is living in Calcutta. In such cases the Court will return the plaint. *Bibee Jaun* v. *Meerza Mahommed Hadee*, 1 Ind. Jur., N. S., 40.

Where A. obtained a decree in the late Supreme Court, and subsequently resided out of the local limits, and then executed a compromise in an action brought by B. to prevent A. from proceeding upon the decree of the Supreme Court,—*Held* that the whole cause of action did not arise within the local limits provided by the Letters Patent, and that the Court had no jurisdiction. *Feda Hossein* v. *Syedoonissa*, 1 Ind. Jur., N. S., 80.

M., residing at Meerut, sued B., in respect of a cause of action which did not arise in Calcutta. It appeared that B. usually resided at Mussoorie from March to October, but attended races at Meerut, Calcutta, and elsewhere, at which races he ran horses, but not for gain. B. had no pursuit or occupation, other than that afforded by his horses. He had come to Calcutta to attend a race meeting, and had been living in Calcutta for some days previous to and on the day the plaint was filed. The Court decided that he was amenable to its jurisdiction. *Held* that such racing transactions do not constitute a "carrying on business" or "personally working for gain" within the meaning of Section 12 of the High Court Charter.

That a temporary residence in Calcutta, for purposes of pleasure, with intention of remaining there a month, without having at the time a residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy Section 12 of the Charter. *Morris* v. *Baumgarten*, Bourke's Rep., O. C., 127; S. C., 1 Cor. Rep., 152.

S. M. D. executed an agreement in Calcutta to sell R. S. certain lands out of Calcutta. R. S. sued for specific performance and obtained a decree.

Held that the Court had jurisdiction to entertain a suit upon the contract, it having been made in Calcutta. *Ram Dhone Shaw* v. *Sreemutty Nobeenmony Dossee, Sumbhoonath Ghosh, and others*, Bourke's Rep., O. C., 218.

The jurisdiction of the High Court is as extensive as the jurisdiction of the late Supreme Court. Under Section 12, the Secretary of State may be sued in such Court as may have jurisdiction in each particular cause of action. The Secretary of State may be treated as Government itself. Universal presence of Government cannot be said to give every Court concurrent jurisdiction in all cases in which Government is a party. The Secretary of State in Council cannot be said to be within the ordinary jurisdiction of this Court. The words "personally working for gain" were intended to give the Court jurisdiction over individuals only. Officers of Government are subject to jurisdiction of mofussil Courts. Suits instituted there may be heard in the High Court by way of appeal, or removed there for trial in the first instance as a Court of extraordinary original jurisdiction. *Rundle* v. *Secretary of State*, 1 Hyde's Rep., 37.

A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot be said to carry on business or personally to work for gain within the local limits of a Court where the commission agent resides. *Gopee Mohun Roy* v. *Protap Chunder Roy and another*, 11 W. R., 530.

The High Court at Calcutta in its matrimonial jurisdiction, has jurisdiction only over parties actually resident within its local limits. *Thompson* v. *Thompson*, Bourke's Rep., M. J., 1.

Under Clause 12 of the Letters Patent (1862) constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carry on business," in that clause, imply a personal and regular attendance to business within the local limits. *Subbaraya Mudali and others* v. *The Government and Cunliffe*, 1 Mad. Rep., 286.

Held that the proclamation of the Governor-General in Council, dated 26th August 1865, did not revive the jurisdiction of the late Supreme Court, or affect the local limits under the Letters Patent. *The Indian Carrying Company* v. *McCarry*, 1 Ind. Jur., N. S., 61.

Under Section 12 of the Charter of the High Court, 1865, when the cause of action arises only partly within the local limits, the leave of the Court must be obtained before the institution of the suit. *Sheikh Abdool Hamed* v. *Promothonath Bose and another*, 1 Ind. Jur., N. S., 218.

5.—Their Extraordinary Powers.

The High Court refused to interfere, in the exercise of its general powers of superintendence, with an order of a lower Court which, though apparently arbitrary and indiscreet, that Court was authorized by law to make. *Janokee Bullub Sein* v. *Dukhina Mohun Chowdhry*, 7 W. R., 519.

Where, in execution of a summary decree for rent obtained under Regulation VII of 1799 in 1851 against the father of the petitioner and another, the petitioner was arrested and lodged in jail in January 1867,—*Held* by the majority of the Court (Norman, J., dissenting) that the High Court could not, under the general powers of superintendence vested in it by Section 15 of the High Courts' Act, or Section 16 of the Letters Patent, interfere to order the release of the petitioner. *Gopal Singh* v. *The Court of Wards, on behalf of the Maharajah of Dhurbhangah*, 7 W. R., 430.

A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn. Such an order, if made, is made without jurisdiction, and is not an order of that description in respect of which the Legislature intended either to give or to deny the right of appeal. But the order is one which the High Court may set aside in the exercise of the superintendence vested in it by Section 15 of 24 and 25 Vict., c. 104. *Juddooputtee Chatterjee and others* v. *Chunder Kant Bhuttacharjee*, 9 W. R., 309.

Where there is a remedy by a regular suit, the High Court cannot exercise its extraordinary powers under Section 15 of the Charter Act. *In the matter of A. B. Miller*, 12 W. R., 103.

It was not the intention of Section 15 of the Charter Act to confer any rights upon litigant parties, its whole object being to give the High Court some control over the Courts subject to its appellate jurisdiction.

Quære,—Is a conflict between a Judge's order and a direction of law, ground for the High Court to exercise its powers of interference? *Sreemutty Dossee* v. *Sreenebash Dey*, 12 W. R., 74.

Section 15 of the High Courts' Act does not give the Court a superintendence over a Collector's Court. *Huro Mohun Mookerjee* v. *Kedarnath Doss*, 5 W. R., Act X R., 25.

W. got a decree against M. in the Court of the Sudder Ameen, and, in execution attached certain property of the judgment-debtor. J., who had a decree against the same judgment-debtor in the Court of the Principal Sudder Ameen, applied to the Court of the Sudder Ameen to stay its proceedings, on the ground that W.'s decree had been obtained by fraud. The Sudder Ameen refusing the application, J. appealed to the Judge, who saw no ground for the imputation of fraud. *Held* (by Hobhouse, J.) that the Judge's judgment was on the face of it good and in a case within his jurisdiction, and that it did not call for an exercise of the extraordinary power given to the High Court by Section 15 of the Charter. *Jumal Ali* v. *Sheikh Wahed Ali*, 11 W. R., 97.

Under Section 15 of the High Court's Act, the High Court has a power of superintendence over Collector's Courts, and can interfere to restrain a

Collector from exercising a jurisdiction which properly belongs to a Zillah Judge. *Bhyrub Chunder Chunder and others* v. *Shama Soondery Debia and another*, 6 W. R., Act X R., 68.

Where a Small Cause Court acts without jurisdiction in a suit, the High Court cannot interfere, unless the Small Cause Court has been moved to refer the case for the decision of the High Court, under Section 22, Act XI of 1865. *R. E. Bell and Campbell* v. *Thakoor Doss Gossain*, 6 W. R. Mis., 26.

The High Court cannot, where an inferior Court has jurisdiction to try a case, and has tried it, merely because there is an error apparent in the decision on the facts, alter that decision, where the law allows no appeal. *Petition of Pearee Lall Shahoo*, 7 W. R., 130.

Section 15 of the 24 and 25 Vict., cap. 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases where the latter has jurisdiction, and the law declares that its order should be final. *Sowdaminee Dossee* v. *Manick Ram Chowdhry*, 9 W. R., 386.

The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none. Nor should the Court in the exercise of these powers interfere when such interference would have the effect of working an injustice. *Narayan Lallbhai* v. *Gangakrishna Balkrishna*, 4 Bom. Rep., A. C., 87.

The High Court has no power to interfere with the discretion of a Deputy Collector refusing to add another person to the record, except it sees that the refusal was capricious, or the addition was absolutely necessary for the purpose of doing justice. *Juggodumba Dosse* v. *Haran Chundra Dutt and others*, 10 W. R., 108.

A claim was disallowed to certain property which had been attached in execution of a decree. The property was sold; and after satisfaction of the decree, it was ordered that the surplus proceeds should be rateably distributed among other judgment creditors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameen made another order, setting aside the previous order for distribution, so far as it affected some of the creditors. *Held* that the Principal Sudder Ameen had no jurisdiction to make the latter order. The High Court would, therefore, interfere to set it aside under its general power of superintendence. *Re Maharajah Mahatab Chand Bahadoor*, 2 B. L. R., A. C., 217.

Held that the High Court, under its general powers of superintendence, has power to quash an order made by a Magistrate for the issue of a warrant in a case in which he had no jurisdiction whatever so to proceed. *In the matter of Bunkoo Behary Ghosh*, 11 W. R., 26.

Held that the High Court's interference, under Section 15 of the High Courts' Act, should be confined to cases in which the lower Court has acted without jurisdiction, or improperly declined jurisdiction, and ought not to extend to cases in which that Court has put an erroneous interpretation upon a provision of law. *Kasheenath Roy Chowdhry* v. *Shabitree Soonderee Dossee and others*, 11 W. R., 402.

Where the security offered by a judgment-debtor, with a view to execution against her being stayed until the decision of a suit for an account which she had brought against the decree-holder was rejected by the lower Court, it was held that the order of rejection could not be interfered with by the High Court, under Section 15 of the High Courts' Act. *Jodumonee Dossee, petitioner*, 11 W. R., 494.

The High Court, as a Court of general supervision, can declare the order of a Moonsiff null and void. *Joy Ram* v. *Bulwunt Singh*, 5 W. R., Mis., 3.

An *ex-parte* decree for an arrear of rent having been passed by a Revenue Court against certain tenants, and their land having been put up for sale in execution and bought by the decree-holders, the tenants brought a civil suit to get rid of the sale as well as of the decree. The lower Courts, finding that the whole of the proceedings had been conducted without the knowledge of the plaintiffs and that a fraud had been intended, gave them a decree setting aside the sale, and affirming plaintiffs' title in the disputed land.

Held in special appeal, that as the parties came up on a ground of equity, the High Court could interfere without prejudice to the jurisdiction of the Revenue Courts. Accordingly, on the principle that the defendants should not be allowed to take advantage of their own fraud, it was decreed (the purchase-money being still in deposit in the Collectorate) that the defendants should re-convey the property to the plaintiff. *Shiboo Soondoorey Dassee* v. *Panchowree Chandra*, 14 S. W. R., 158.

Where a Deputy Collector who had passed an informal decree refused to execute it on application, the decree-holder was held to be entitled to an order from the High Court, in the exercise of the powers it possesses under Section 15 of the High Courts' Act, directing the Deputy Collector to do his duty. *Khenumkuree Dabee* v. *Ranee Shurut Soonduree Debia*, 14 S. W. R., C. R., 9.

The High Court declined to exercise the extraordinary powers described in Section 15 of the High Courts' Act, where a Magistrate did not interfere with the arrest in his Court, under a civil process, of a person who had been accused before the Magistrate, but was acquitted at the time of his arrest. *Re Guzaree Lall*, 13 S. W. R., C. R., 393.

Where an Acting Judge of a Small Cause Court had made an order which the permanent incumbent on his return considered to have been made without authority of law,—*Held*, that the High Court was not competent to take up the case on a reference from the Judge; but that the party aggrieved should apply to the High Court, if he thought fit, to exercise its extraordinary powers under Section 15 of the High Court Act. *Deep Chand* v. *Gouree and Beharee*, 13 S. W. R., C. R., 98.

When a Court, subject to the appellate jurisdiction of the High Court, refuses to entertain a suit over which it has jurisdiction, the High Court may, under its general power of superintendence, order the Court below to entertain such suit, notwithstanding that no appeal would lie to the High Court from the decree in such suit. *Hardayal Mandal* v. *Tirthannu Thakur*, 4 B. L. R., Ap., 28, 13 S. W. R., C. R., 34.

In an action brought to recover a third share of arrears of a varshasan or annual allowance paid by

the Gaikwar of Baroda to the defendant, and in which the plaintiff alleged that he was entitled to a third share,—*Held* that such an action can be maintained in a Moonsiff's Court, although it may be necessary to determine the title of the plaintiff to share in such varshasan.

Semble,—That such an action can be maintained in a Moonsiff's Court of Small Causes.

Where the District Judge reversed the decree of the Moonsiff for want of jurisdiction, although the amount of the claim was under Rs. 500, the Court, in the exercise of its extraordinary jurisdiction, interfered. *Ratanshankar Renashankar* v. *Gulabshankar Lalshankar*, 4 Bom. Rep., 173.

Where a suit was originally instituted in the Hooghly Court, and H. S., who was a defendant, and not subject to the jurisdiction of that Court, joined in an application to have the case tried by the High Court in the exercise of its extraordinary original civil jurisdiction, which application was granted,—*Held* that the suit must be treated as if the plaint had been originally filed in the High Court, the proceedings in the Hooghly Court being without jurisdiction, and the cause of action having arisen wholly within the jurisdiction of the High Court; that the defendant H. S., by joining in the application to have the suit removed to the High Court, admitted the jurisdiction of that Court to try the suit in the exercise of its extraordinary original civil jurisdiction, and could not afterwards dispute the jurisdiction. The law therefore to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hooghly. The law which would have been applicable to the case if it had been tried at Hooghly is practically the same as the English law, whatever may be the nationality of the parties. *Grose* v. *Amirtamayi Dassee*, 4 B. L. R., O. C., 1; S. C., 12 W. R., O. C., 13.

The Court will order a suit to be removed from the mofussil, and tried in the High Court, when difficult points of English law arise, and when generally it appears to be an unfit case to be tried in the mofussil. *Doucett* v. *Wise*, 1 Ind. Jur., N. S., 94.

A suit will not be removed from the Zillah Court in which it is instituted, to the ordinary original jurisdiction of the High Court, unless it be clearly shown that the interests of the party petitioning for such removal will be prejudiced by a non-removal. *Borradaile and Co.* v. *Gregory and others*, Bourke's Rep., A. O. C., 1.

An application to the High Court to remove a case from a District Court, and to try it as a Court of extraordinary original jurisdiction, under Section 13 of the Charter, should be made to a Judge sitting on the original side of the Court. *T. R. Doucett* v. *J. P. Wise*, 4 W. R., Mis., 7.

In a suit cognizable by the Small Cause Court, and in which no special appeal lies to the High Court under Section 13, Act XXIII of 1861, the High Court exercised its extraordinary powers and dismissed the suit. *Maharaja Dhiraj Mahtab Chund Bahadoor* v. *Shagor Kundu*, 5 B. L. R., Ap., 91.

An application to the High Court to exercise its extraordinary powers in respect to a finding of the Moonsiff, that a summons had not been served, which finding was disputed by the petitioners, was refused because the affidavit on which they came into Court omitted to state that the summons was served. *Biddyabuttee Dossia, in the matter of*, 14 S. W. R., C. R., 8.

In cases not appealable the High Court will not usually interfere in the exercise of its extraordinary jurisdiction where the petitioner is applying his remedy by regular suit. *Mahushunkur Harishunker* v. *Valilbrai Umanyi*, 6 Bom. Rep., A. C. J., 174.

All applications to the High Court in the exercise of its extraordinary civil jurisdiction should be accompanied by a copy of the orders of the lower Courts made in respect of the matter of such application, and should be presented within the time allowed for the presentation of special appeals. *Nagappa bin Hulgappa* (applicant), 5 Bom. Rep., A. C., 215.

Petitioner, a decree-holder, allowed another decree-holder to obtain a decree upon a regular suit declaring him entitled to follow the properties in dispute in execution of his decree, and did nothing even after that decree was obtained until another decree-holder applied for the attachment and sale of the properties in execution of his decree, and the lower Court having all the parties arrayed before it, and having passed an order rejecting the petitioner's application, petitioner, after more than ninety days (the period limited for an appeal) had elapsed, invoked the aid of the High Court under Section 15 of the Charter Act, but the Court declined to exercise that jurisdiction, leaving the petitioner to his remedy in a regular suit. *Kalee Kishore Sen* v. *J. P. Wise*, 17 S. W. R., C. R., 477.

Mere errors of law committed by a lower Appellate Court in cases in which the High Court has no appellate jurisdiction, do not give the latter Court power to interfere under Section 15 of the Charter Act, its interference being restricted to cases in which the lower Court exercises a jurisdiction which it has not, or refuses to exercise a jurisdiction which it has. *Kulee Hur Dass* v. *Roodressur Chuckerbutty*, 15 S. W. R., C. R., 90.

Where a Moonsiff refuses to attach property in execution which he is bound to attach, he may be compelled to do so by the High Court in the exercise of its powers of supervision. *Monohur Paul* v. *J. P. Wise*, 15 S. W. R., C. R., 246.

Where the finding of the first Court tended to show that the proceedings of the decree-holder were *bonâ fide*, and the lower Appellate Court found otherwise without giving any reasons whatever, the High Court held itself bound to interfere and restore the judgment of the first Court. *Maharajah Dhiraj Mahtab Chand* v. *Modoosoodun Bunnerjee*, 15 S. W. R., C. R., 162.

The Subordinate Judge of Nuddea having confirmed an execution sale of an estate in the towjee of that district, of which fifteen mouzahs were included within the 24-Pergunnah,—*Held* that the question as to how far a valid title to the fifteen mouzahs was created in favour of the purchaser, was one which must be raised between him and the judgment-debtor elsewhere, and otherwise than before the High Court in the exercise of its superintending powers. *Habeebool Hossein* v. *Land Mortgage Bank*, 14 S. W. R., C. R., 44.

A suit to recover Rs. 254 as arrears of rent, having been decreed by the Deputy Collector for Rs. 49, the defendant appealed to the Judge, but

plaintiff appealed to the Collector. The Judge dismissed the defendant's appeal, and the Collector gave plaintiff a decree for the full amount originally claimed. The High Court under Section 15 of the Charter Act set aside the Collector's decree as made without jurisdiction. *Rooknee Roy* v. *Amrith Lull*, 14 S. W. R., C. R., 254.

Rights of worship of a Hindu idol cannot be sold in execution of a decree for the personal debt of a Shebait.

Where an order was made by a Moonsiff under Section 246 of Act VIII of 1859, and a regular appeal was preferred, and then a special appeal to the High Court, the Court, while refusing to entertain the appeal on the ground that the Moonsiff's order was final, or to set aside the order under Section 15 of 24 and 25 Vict., c. 104, expressed an opinion that the order was contrary to law, and left it to the Moonsiff to act upon such opinion. *Kali Churn Gir Gossain* v. *Bungshi Mohun Das Baboo*, 6 B. L. R., 727, and 15 S. W. R., C. R., 339.

The High Court has, under Section 15 of 24 and 25 Vict., c. 104, general superintendence over the Court of the Recorder of Moulmein, established under Act XXI of 1863.

An order passed by the Recorder of Moulmein, under Section 16 or 17 of Act XXI of 1853, granting or withdrawing a licence to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court.

The Recorder of Moulmein, under Section 17 of Act XXI of 1863, has no power to withdraw a licence ganted by him to plead in the Court of Moulmein, "except for any sufficient reason." *In the matter of John Thomson*, 6 B. L. R., 186, and 14 S. W. R., C. R., 257.

6.—Criminal Jurisdiction.

When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in Clause 4, Section 300 of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error, or enhance the sentence. *Queen* v. *Toyab Sheikh*, 5 W. R., Cr., 2.

The construction of Section 29 of the Letters Patent, 1865, is that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the mofussil. "Competent to investigate it," does not include competency as regards local jurisdiction; but only competency with regard to the offender, the nature of the offence and the punishment. *Queen* v. *Nabadwip Goswami*, 1 B. L. R., O. Cr., 15.

The High Court, sitting as a Court of Revision, cannot interfere to set aside a verdict of acquittal by a Jury on the ground of misdirection by the Judge. *Queen* v. *Chandracant Chuckerbutty*, 1 B. L. R., A. Cr., 8; 10 W. R., Cr., 14.

The verdict of a Jury cannot be reversed by a Court of Revision, even if it be a verdict of "guilty." The only remedy for the prisoner in such a case is an appeal (which can only be on a question of law), or an application to the Executive Government. Nor can a verdict, pronounced by a Jury, of "not guilty," be reversed by the High Court on revision, and it is clear that no appeal lies from such a verdict. *Queen* v. *Gorachand Ghose*, 3 B. L. R., F. B., 1; S. C., 11 W. R., Cr., 29.

Sections 407 and 419 of the Code of Criminal Procedure do not apply to cases which the High Court, as a Court of Revision, thinks it right to take up. The High Court, as a Court of Revision, can interfere with a judgment of acquittal or conviction, and can enhance punishment. The High Court can act as a Court of Revision after it has acted as a Court of Appeal, in order to correct an error in law which could not be set right on appeal. The High Court, as a Court of Revision, cannot reverse the finding of a Jury. *Queen* v. *Gora Chand Gopee*, 5 W. R., Cr., 45.

The power of the High Court to set aside a conviction, or order a new trial for any error or defect in the summing up, will only be exercised when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. *Elahee Buksh, appellant*, 5 W. R., Cr., 80.

It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one Magisterial officer to another. *Queen* v. *Kisto Chunder Ghose*, 2 W. R., Cr., 58.

The Sessions Judge on appeal, without trying the merits of the case, reversed the Magistrate's conviction in a case of theft upon a point of law, reading the Penal Code by the light of his knowledge of the English law. The High Court reversed the Sessions Judge's reversal of the Magistrate's conviction, upon the ground that his decision was wrong in point of law, and directed him to re-apprehend the accused, and re-hear the appeal on the merits. The Sessions Judge thought that the High Court had no power to order the re-apprehension of the accused, and, proceeding to re-hear the appeal in the absence of the accused, acquitted him. *Held* that the re-trial in the absence of the accused was a nullity; that if the accused had been convicted instead of being acquitted, the case must have been re-tried; but that as the Sessions Judge had declared his opinion that the evidence did not make out a case of guilt, it would be merely vexatious to the accused to insist upon the Sessions Judge obeying the order of the Court, and re-trying the case in the presence of the accused. The High Court had full power to make the order, and the disobedience of the Sessions Judge and the course he thought fit to adopt were highly censurable. *Queen* v. *Madaree Chowkeedar*, 3 W. R., Cr., 4.

The High Court, as a Court of Revision, under Section 404, Criminal Procedure Code, has no jurisdiction over European British subjects in criminal cases. *Queen* v. *Thomas Brae*, 3 W. R., Cr., 64.

After a sentence has once been passed by a competent authority, the High Court has no more power to interfere with it than a private individual,

except upon appeal, or on a reference, or by way of revision, as provided by the Code of Criminal Procedure. *Queen* v. *Puban*, 7 W. R., Cr., 1.

The High Court, as a Court of Revision, has jurisdiction to set aside a finding of acquittal by a Session Court by virtue of Section 405 of the Code of Criminal Procedure. 4 Mad. Rep., Rul. LXX.

Where a Subordinate Magistrate of the first class, acting without jurisdiction, held a trial and acquitted the accused person under Section 255 of the Code of Criminal Procedure,—*Held* that the High Court alone could set aside the finding under Section 404, and that the Magistrate of the district had no power to do so under Section 435 of the Code as amended by Act VIII of 1869. 4 Mad. Rep., Rul. LXI.

Section 426 of the Code of Criminal Procedure allows no revision by the High Court in cases where, in the judgment of the Appellate Court, an accused person has not been prejudiced by an error or defect in the proceeding before the Magistrate (*e. g.*, as in this case, by the alteration of the charge and the omission of the Magistrate to record a separate defence). *Re A. Leemoody*, 17 S. W. R., Cr. R., 52.

The High Court has no power, under Clause 41 of the Amended Letters Patent of 1865, to grant leave to appeal to Her Majesty in Council from an order made or decision given in a criminal case referred by a Magistrate under Section 404 of the Code of Criminal Procedure. *Reg.* v. *Reay*, 7 Bom. Rep., Cr. Ca., 77.

7.—Division Benches.

In Section 1 of the Rules of 5th August, 1867, for the admission of appeals under Section 15 of the Letters Patent, the words "unless the Court in its discretion, on good cause shown, shall grant further time," refer to the Appellate Bench of the High Court, and not to the Division Bench. *Hurruch Singh* v. *Toolsee Ram Sahoo*, 12 W. R., 458.

Where the contention before a Division Bench has reference to a single point only, and the Judges differing, an appeal is laid under Section 15 of the Letters Patent, it is not open to the parties to raise before the Appellate Court points not raised before the Division Bench. *Sahajada Herzun Begum* v. *Rajah Hossein*, 12 W. R., 498.

When a criminal appeal is heard by two Judges, sitting as a Division Court, and they differ in opinion, the opinion of the senior Judge must prevail under Section 36 of the Letters Patent of the High Court of 1865, notwithstanding Section 420 of the Criminal Procedure Code. *The Queen* v. *Kasim Thakoor*, 2 B. L. R., F. B., 25.

An appeal under Section 15 of the Letters Patent from the judgment of a Division Bench of the High Court, must be preferred within thirty days from the date of the judgment, unless good cause be shown to the contrary. *In the matter of Hurruck Singh and another*, 11 W. R., 107.

The difference of opinion between Judges constituting a division bench of the High Court, which entitles parties to an appeal to the High Court under Clause 15 of the Letters Patent, must be a difference of opinion as to the final and complete decision of the appeal, and not a difference of opinion upon one or more of the points arising in the appeal. *Amrao Begum*, 13 S. W. R., C. R., 310.

A judgment of the senior Judge of a Division Bench of the High Court is final within the meaning of Section 36 of the new Letters Patent, even when the junior Judge entertains doubts and expresses no final opinion.

The junior Judge cannot refer a question for the decision of the Full Bench, without the concurrence of the senior Judge.

Per Norman, J.—Where a Court added a third party as a plaintiff, and, in the absence of the original plaintiff, improperly dismissed the suit, it was held that the suit was still pending, and undisposed of by the lower Court as regards the original plaintiff; and the lower Court was ordered under the High Court's power of superintendence vested in it by the 24 and 25 Vict., c. 204, s. 15, to take up and try the case accordingly. *Chunder Kant Buttacharjee and others* v. *Bindabun Chunder Mookerjee*, 7 W. R., 277.

Section 13 of Acts XXIV and XXV Vict., cap. 104, and Section 27 of the Letters Patent of the High Court, apply to the Court in its revisional as well as in its appellate jurisdiction. *Held* by Morgan, C. J., and Turner, J., (Ross and Spankie, JJ., dissenting), that when a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third Judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third Judge and the junior Judge is not valid. *Held* by Morgan, C. J., and Turner, J., (Ross and Spankie, JJ., dissenting), that an application to set aside such an order is not in the nature of a review of judgment, and is cognizable by the Court.

Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad. *Queen* v. *Nyu Singh*, 2 N. W. R., 117.

In cases heard by the High Court in its appellate jurisdiction, where the Judges are equally divided in opinion, a party desirous of appealing is bound to appeal under Clause 15 of the Letters Patent before he can appeal to the Privy Council. *The Court of Wards* v. *Rajah Leelamand Singh*, 14 S. W. R., C. R., 298.

K. sued R. for a sum of money due in promissory notes, and obtained a decree in the Judge's Court. R. appealed to the High Court and prayed that execution might be stayed till the appeal was disposed of. The Court, under the provisions of Section 338, Code of Civil Procedure, ordered that execution might be stayed, provided good and sufficient security were given. Accordingly A. appeared before the Judge and executed a security-bond binding himself, in the event of the appeal being dismissed, to liquidate the debt. The appeal was heard by a Division Bench, and, the Judges differing, the opinion of the senior Judge prevailed under 36 of the Letters Patent, and the appeal was decreed. From this judgment an appeal was preferred under Section 15 to a Full Bench. After the opinion of the Division Bench was pronounced, A. applied to the Judge for the return of his security-bond; but his application was refused pending the final decree of the High Court in the matter. He then moved the High Court for the cancellation or

return of the bond. *Held* that there was no necessity that this motion should have been presented to the Judges who heard the appeal, for it related the matter beside the judgment, and a Division Bench may receive motions from all districts, without reference to the division into groups. *Held* that the rule of practice, that applications referring to matters which have judicially arisen in a particular district, should be made before the Bench to which that district belongs, does not divest any Division Bench of the Court of the jurisdiction given to it by the Charter, nor can it be always properly adhered to. *Held*, further, that as the High Court had authority under Section 338, Act VIII of 1859, to make an order calling for security, it had authority at any time to modify or cancel such order, or to direct the restoration of the security when no longer required, and that in carrying out the Court's order to take security and enquire into its validity, the Judge was acting, not judicially but ministerially. *Held*, also, that as the decree of the Judge had been reversed by the Bench who tried the appeal, there was no decree of the Judge to execute, and the Judge's order refusing to return the security-bond was passed without jurisdiction, and was therefore null and void. On the reversal of the decree, the liability of the surety ceased, and the security-bond became a dead letter. *Moonshee Ameer Ali* v. *Kassim Ali Khan*, 13 S. W. R., C. R., 403.

Sections 15 and 36 of the Letters Patent of the High Court must be treated as qualifying Section 257 of Act VIII of 1859.

Under the Letters Patent of 1865, in lieu of the former practice under Act XXIII of 1861, Section 23, *viz.*, that when the Appeal Court consisted of only two Judges, and there was a difference of opinion between them upon a point of law, the case was re-argued upon that question before one or more of the other Judges; when the Judges of a Division Court are equally divided in opinion as to the decision to be given on any point, the opinion of the senior Judge is to prevail, subject, however, to a right of appeal from such judgment of the Division Court. The judgment passed on such appeal, and not the judgment of the Division Court, will be "final."

In appeal under Section 15 of the Letters Patent of 1865 no point can be argued except a point on which the two Judges of the Division Bench have differed in opinion. *Roy Nandipat Mahata* v. *Urquhart*, 4 B. L. R., A. C., 181; 13 S. W. R., 209.

An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of Section 15 of the Letters Patent. *Raku Bibi* v. *Khaja Mahomed Masu Khan*, 4 B. L. R., A. C., 10.

8.—PRACTICE OF HIGH COURT WITH REGARD TO MANDAMUS, RULE NISI, HABEAS CORPUS, &c.

Where a Magistrate has, in the exercise of his discretion, refused to proceed with a criminal charge pending a civil action in respect of the matter out of which the charge arose, a mandamus will not be granted to compel the hearing of the charge. *Ex-parte P. Veradarajule Nayadu*, 1 Mad. Rep., 66.

A mandamus will not issue to compel a Magistrate to proceed with a criminal charge in respect of any matter involved in or affecting the merits of a civil suit still pending. The proper course for a Magistrate to pursue in such a case is not to dismiss the summons, but to adjourn the hearing pending the decision of the Court in the civil action. *Queen* v. *T. G. Clarke*, 1 Ind. Jur., O. S., 137.

By Act VI of 1857, Section 2 (for the acquisition of land for public purposes), it is enacted, that "wherever it appears to the local government that any land is required to be taken by Government at the public expense for a public purpose, a declaration shall be made to that effect, under the signature of a Secretary to the Government, or of some officer duly authorized to certify the orders of Government," &c.

Therefore where the Justices of the Peace for the town of Calcutta were called upon by a writ of mandamus issued out of the High Court at Calcutta to "continue and maintain the existing Wellington Square tank as a public tank, and to cause the same to be supplied with water, or forthwith to substitute another such public tank," &c. and they returned that, by a notification published in the *Calcutta Gazette* on the 5th day of March instant, under the provisions of Act VI of 1857 of the Legislative Council of India, it was notified that, "whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-Works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, &c., was required," and proceeded to justify under this notification, &c.,—

Held that the return was bad. *Regina* v. *The Justices of the Peace for the Town of Calcutta*, 2 Ind. Jur., N. S., 214.

The prosecutor cannot, in India, both plead and demur to a return to a writ of mandamus, without first obtaining leave of the Court. *Regina on the prosecution of Toolseedas Nundy* v. *The East Indian Railway Company*, 1 Ind. Jur., N. S., 244.

Rule 176 of the Rules and Orders on the Plea side of the Supreme Court is still in force. *Kailas Chundra Bose* v. *Bhuban Chundra Bose*, 8 B. L. R., Ap., 18.

Case in which the Moonsiff held that the Municipality had expended more money than was necessary in cleaning the petitioner's tank, and the Judge on appeal set aside the Moonsiff's decision and gave the Municipality a decree on the ground that under the law the matter was purely within the description of the Municipality.

Held that even though the rates charged by the Municipality were higher than those which could be obtained by other persons, that was no ground for the interference of the High Court. *In the matter of Jogesh Chunder Dutt*, 16 S. W. R., C. R., 285.

Parties applying in the absence of the other side for the issue of rules *nisi* interfering with the rights of persons executing decrees, are bound fully and fairly to state all the circumstances within their

knowledge which it is necessary for the Court to consider in granting the rule. *In the matter of Brojo Coomar Mullick*, 16 S. W. R., C. R., 55.

The High Court can grant a rule to show cause only in cases in which the arguments advanced in favour of the party asking for the rule are such that, if not displaced by the opposite side, the rule would be made absolute. *Omrao Begum*, 13 S. W. R., C. R., 310.

A writ of mainprize could only be issued where the party applying for it was bailable, and had offered security, but bail had been refused: it could not be isssued to a prisoner confined under Regulation III of 1818, which authorizes his detention absolutely and unconditionally, and gives him no right to demand to be released on bail.

The writ is one which could be issued only on the Common Law Side of the Court of Chancery in England. The power of the Common Law Side of the Court of Chancery to issue such writ was not conferred on the Supreme Court, nor is there anything in the charter of the High Court to give that Court power to issue it. *In the matter of Ameer Khan*, 6 B. L. R., 456.

Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ,—*Held*, that, it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention to be legal need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for political reasons.

The substance of Regulation III of 1818 was expressly re-enacted by Act XXXIV of 1850 and Act III of 1858, and therefore as the result of these later Acts alone the detention would be legal. These Acts are not contrary to the powers conferred on the Indian Legislature by 3 and 4 Will. IV. c. 85, s. 43. *Ameer Khan, in the matter of*, 6 B. L. R., 459.

A Mahomedan subject of the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Regulation III of 1818. *Held*, that such arrest and detainer were not acts of State, but matters cognizable by a Municipality Court.

On an application to the High Court to issue a writ of *habeas corpus* to the superintendent (a European British subject) of the jail, *Held* that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court.

Regulation III of 1818 was applicable only to natives and those subject to the jurisdiction of the Provincial Courts. It was passed under 37 George III., Cap. 142, Section 28, not 13 George III., Cap. 63, Section 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta, was not *ultra vires*.

As the person against whom the writ was applied for had acted under the written order of the Governor-General in Council, the Court would not direct the writ to issue. *Ameer Khan, in the matter of*, 6 B. L. R., 392.

The return to a writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 George III., Cap. 100, Section 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country.

The return to a writ of *habeas corpus* can, however, be amended. *Queen* v. *Vaughan, in re Ganesh Sundari Debi*, 5 B. L. R., 418.

The return to a writ of *habeas corpus* is not necessarily conclusive, and does not preclude enquiry into the truth of the matters alleged therein, although 56 George III., Cap. 100, does not apply to this country.

By Mahomedan law the mother is entitled to the custody of a female child, although married, until she has attained puberty.

Where a husband applied that his wife, stated in the return to a writ of *habeas corpus* to be "an infant under the age of sixteen years, to wit, of the age of eleven years or thereabouts," might be delivered over into his custody; the Court, on the ground that she had not attained the age of puberty, and that her dower had not been paid, refused to order her to be taken from the custody of the mother, although the mother had taken her away secretly, in the absence of her father and husband, from Bandari, where they were all living together, to Calcutta. *Khattija Bibi*, 5 B. L. R., 557.

A writ of *certiorari* lies, as of course, to remove, before judgment, all cases commenced in the Calcutta Court of Small Causes, subject to the limitation imposed by Section 54 of Act IX of 1850, unless such cases fall within the usual exceptions recognized in English practice, so far as such exceptions may be applicable to the High Court. *Pillans* v. *Peninsular and Oriental Steam-ship Company*, 1 Ind. Jur., O. S., 68.

Where a writ of *certiorari* is granted to bring up a conviction of Justices, in order to quash it, and a rule *nisi* to quash the conviction moved for, the *certiorari* should be returned into Court before the motion for the rule *nisi* is made. *Regina* v. *The Justices of the Peace*, 1 Ind. Jur., N. S., 293.

9.—The Civil Courts and their Jurisdiction.

Quære,—Whether the Courts in India have any jurisdiction to determine a question involving a mere declaration of a right to perform religious ceremonies. *Namboory Seetapatty and others* v. *Kanoo Colanoo Pullia and others*, 7 W. R. P. C., 7.

The Civil Courts are competent to give a decree for immoveable property on the bare ground of illegal dispossession in a suit brought after six months from the date of such dispossession, in which suit the defendant has failed to prove his own title to the land.

In deciding the question, with special reference to Section 15, Act XIV of 1859, the object and effect of that section considered, and the bearing of Sections 318 and 319 of the Code of Criminal Procedure, with regard to cases of dispossession and the jurisdiction of the Civil Courts, illustrated. *Khajah Enaetoollah Chowdhry* v. *Kishun Soondur Surma and others*, 8 W. R., 386.

Where on an application made for the appoint-

ment of a manager to the estate of a deceased Rajah, a Zillah Judge, notwithstanding a contention raised before him as to the extent of the minor's interest in the property, passed an order strictly within the provisions of Section 12, Act XL of 1858, his successor was held to have acted without jurisdiction in having, upon a subsequent application, passed an order specifying the shares of the minor and the party who raised the contention. *The Collector of Tirhoot* v. *Rajcoomar Deo Nuddun Singh*, 10 W. R., 218.

A. obtained a decree in the Nuddea Court against B., who had obtained a decree against C. in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to A. in execution of his decree. A. then petitioned the Beerbhoom Court for execution against C. *Held* that the Nuddea Court had jurisdiction to attach and sell B.'s decree against C., and A. had a right to apply to the Beerbhoom Court for execution thereof. *Rambaksh Chetlangi* v. *Maharajah Banwari Gobind Bahadoor*, 2 B. L. R., A. C., 65; S. C., 10 W. R., 357.

In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road, which had been closed by the defendants,—*Held* by Markby, J., that the question of opening or closing a public road belongs to the Criminal Court, and not to the Civil Court. *Held* that the only question which can be tried in the suit is whether the defendants have trespassed on the land of the plaintiff by opening a road. The *onus* is upon the plaintiff to prove that the land belongs to him. *Hira Chand Banerjee* v. *Shama Churn Chatterjee*, 3 B. L. R., A. C., 351; S. C., 12 W. R., 275.

A lower Appellate Court has a right to grant a review of its own judgment for the purpose of correcting a clerical error, even after a special appeal from its decision has been heard and determined by the High Court.

A lower Appellate Court has no jurisdiction to review its own judgment so as to modify its substance,—as, for example, to alter an award of costs after a special appeal from its decision has been heard and determined by the High Court. *Woomanund Roy* v. *Maharajah Suttish Chunder Roy*, 9 W. R., 471.

Where a third party prays for the release of property attached by order of the High Court, pending an appeal to the Privy Council, a Principal Sudder Ameen has no authority to interfere. *Anundee Kooer* v. *Ranee Soomet Kooer*, 9 W. R., 269.

It is incidental to every Court of Justice to be able, in its discretion, to restore to its files any case which it has itself removed therefrom undetermined. *Deen Dyal Paramanick* v. *Ram Coomar Chowdhry*, 9 W. R., 283.

A suit against an Agent to the Governor-General, on the part of Government, is substantially a suit against Government, and ought, under Section 9, Act XI of 1865, to be brought in a Court having jurisdiction at the seat of Government. *Roopun Tewaree* v. *W. B. Buckle*, 10 W. R., 142.

A charge of extortion can be entertained in a Civil Court. A Judge has power to grant a review of judgment, notwithstanding that a period exceeding 90 days has elapsed. Points of law may be referred under Section 28, Act XXIII of 1861. *Ramguttee Dass* v. *Gholam Ahmed Khondkar*, 1 W. R., F. B., 85.

The plaintiff had borrowed money on security of a zur-i-peshgee lease of property which, after some years, he sued to redeem by payment of an alleged balance claiming credit for huckagiree of the hypothecated land owing to him for the intervening period.

Held that even if the remedy sought by plaintiff involved in its details different jurisdictions, yet, as it was in itself one, he was justified in bringing his suit in the Civil Court, where alone he could obtain substantial relief. *Sheo Golam Singh* v. *Ray Dinhur Dyal*, 12 W. R., 215.

On an application made to a Judge for the appointment of a manager to the estate of an insane person who had been and was in a lunatic asylum, situated in the district where the application was made, though his property was in a different district, the Judge was held to have jurisdiction under Section 2, Act XXXV of 1858. *J. Kallonas and another* v. *The Collector of Backergunge*, 11 W. R., 109.

Held that every Court has inherent authority to make enquiry into fraudulent abuses of its own processes. *Mussamut Bheekun* v. *Mussamut Elahee Khanum*, 11 W. R., 153.

A Judge has no jurisdiction to entertain a petition from, and order the release of, a judgment-debtor imprisoned in execution of a decree, while the execution proceedings are before the Subordinate Judge. *Modhoosudun Ghose* v. *Romanath Ghose*, 12 W. R., 65.

If any part of property, however small, lie within the jurisdiction of the Court, it may try the whole case after obtaining the requisite permission, such permission may be obtained after registration of the suit. *Gour Soonduree Dabee* v. *Sumboo Mojoomdar*, 12 W. R., 328.

A suit to recover the value of timber alleged to have been forcibly carried off by the defendants from a ghât in the district of Tirhoot, having been brought in the Court of the Subordinate Judge of the 24-Pergunnahs, that Court was held to have jurisdiction in the case, on its being shown that one of the defendants, at the commencement of the suit, personally worked for gain within the limits of the 24-Pergunnahs. *Motee Dossee and another* v. *Deeta Hurukram Singh*, 11 W. R., 64.

A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a Civil Court for its removal, instead of preferring a complaint to the Magistrate. *Jina Runchod* v. *Jodha Ghella*, 1 Bom. Rep., 1.

A Moonsiff has not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity.

Semble,—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the district in which the suit arose. *Abebram Jugeeram and another* v. *Woodhouse and another*, 1 Bom. Rep., 144.

The Civil Courts have jurisdiction to entertain suits brought to try questions of liability to the public revenue assessed upon land.

Where a suit is brought for alleged wrongful acts by an executive officer of Government, the circumstance that the acts complained of were done in

enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the Court to entertain the suit.

But acts done by Government through its executive officers, not contrary to any existing right, according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognizable by the Civil Courts. *Sri Uppu Lakhsmi Bhayamma Gum* v. *A. Purvis*, 2 Mad. Rep., 167.

In a suit for the recovery of land situated within the territories of the Rajah of Pudukotta,—*Held* that the Civil Court of Trichinopoly had no jurisdiction. *Rangdiyan and others* v. *Hari Krishna Aiyan*, 2 Mad. Rep., 437.

The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess a portion of a zemindary transferred in accordance with the provisions of Regulation XXV of 1802. *Ponnusamy Tevar* v. *Collector of Madura*, 3 Mad. Rep., A. J., 35.

Held that the Judge has jurisdiction to hear, in appeal, cases of partition under Act XIX of 1863, where the objection raised by the party opposing partition is severalty of holding by virtue of a former partition. *Cundum Singh* v. *Choonna and others*, 1 Agra Rep., R. A., 44.

In a suit for illegal distraint, on the ground that a portion of the holding in respect of which the distress had been levied was held under a grant for religious purposes,—*Held* that the appeal lay to the Judge. *Hurshunkur Pershad* v. *Doorga and others*, 1 Agra Rep., R. A., 59.

Where a balance was struck, and an agreement to repay the balance was drawn out at Cawnpore, —*Held* the Cawnpore Court has jurisdiction to entertain suit on that agreement, and its jurisdiction is not affected by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. *Haim Raj* v. *Ram Bux*, 1 Agra Rep., A. C., 115.

Held that, though both suits were properly cognizable by the Court at Cawnpore, yet the Sudder Court's order, which it was competent to pass under Section 6, Act VIII of 1859, gave jurisdiction to the Principal Sudder Ameen of another district, whose decision was not liable to be set aside for want of jurisdiction, in reference to the provisions of Section 5 of that enactment. *Ram Buksh* v. *Girdharee Lall*, 1 Agra Rep., A. C., 178.

Where the plaintiff alleges the defendant to be amenable to the jurisdiction of the Court, and the defendant denies its jurisdiction,—*Held* that the parties should be allowed to go into evidence to support their allegations, and the Court ought not to have rejected the plaint, without recording its reasons for the same, or taking evidence on the point, under Section 8, Act XI of 1841. *Anoop Chund and others* v. *Shumbhoo Mull*, 1 Agra Rep., 222.

Held that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad.

Held, further, that the objection of jurisdiction having been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. *Khooshal Chund* v. *T. G. A. Palmer and others*, 1 Agra Rep., A. C., 280.

Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract,—*Held* that the mere fact that an advance was made within the local jurisdiction of a Court would not give that Court jurisdiction in such suit. *Ajoodhia Pershad* v. *Gobind Ram and others*, 2 Agra Rep., A. C., 188.

Where a bill of exchange was drawn at Banda, and made payable and dishonoured at Benares, and the defendant also had his dwelling at Banda, —*Held* that the cause of action does not arise at Agra, merely on account of the bill of exchange having been sold at the latter place by a third party, purchaser from defendant. *Kishen Chund* v. *Kishen Lall*, 2 Agra Rep., A. C., 123.

A regular suit lies to the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance. *Anund Chunder Chatterjea* v. *Rokho Tarun Chatterjea*, 2 W. R., 287.

If a house and two parcels of ground are held and enjoyed together, forming, as it were, one compound or set of premises, the suit as to the whole is cognizable by the Civil Court. If one of the parcels of land lies at a distance, or is wholly separate and distinct from the other, the suit as to the former is not cognizable by the Civil Court. *Biprodoss Dey* v. *William Wollen*, 1 W. R., 223.

Suit for declaration of title and confirmation of possession on a mokurruree which the defendant (an auction purchaser at a sale in execution of a decree for arrears of rent) contended went with his purchase. *Held* that the Civil Court had jurisdiction in such a case, and that the omission of the Collector to register or reserve the plaintiff's property in his sale of the property of the defaulter, who was a separate party, did not affect the question. *Oomadhur Bhut* v. *Mahomed Luteef*, 1 W. R., 229.

A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. *Abboo Bibee* v. *The Collector of Backergunge*, 1 W. R., 255.

The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. *Kader Mahomed* v. *Mahomed Safer*, 1 W. R., 277.

An act done by a political officer interfering with the private rights of parties can be questioned in the Civil Courts. *Rajah Mukoond Nerain Deo* v. *Ranee Joy Coomaree Debia*, 1 W. R., 16.

The plaintiff, the purchaser of a putnee lease, sought to obtain a declaration of his mál right by setting aside an alleged rent-free tenure in certain lands held rent-free from the time of a former talookdar, alleging that he had called for the defendant's documents; and as the defendant refused to produce them, the plaintiff instituted this suit before the Collector under Regulation II of 1819. The defendant pleaded a lakhiraj title from before 1790. The suit was referred to the Civil Court under the Bengal Act VII of 1862, and the plaintiff obtained a decree. On appeal by the defendant,—*Held*, *per totam curiam*, that, prior to the passing of Regulation II of 1819, under their ordinary jurisdiction, the Civil Courts were competent to entertain regular

suits by zemindars for the declaration of their right to resume revenue illegally alienated subsequently to 1790, and for possession of the land held rent-free under grants or titles which had their origin subsequently to 1790.

Held by Trevor, J., Seton-Karr, J., Shumboonath Pundit, J., and Glover, J., that such suits were unaffected by the passing of Regulation II of 1819, Section 30, which related only to resumption of lakhiraj existing prior to 1790. *Dissentientibus* Norman, C. J., Phear, J., and Jackson, J., who held that, since the passing of Regulation II of 1819, regular suits for the resumption of all tenures held rent-free, in which the defendant alleged a valid rent-free grant, have been instituted, and down to the passing of the Bengal Act VII of 1862, might have been maintained or referred to the Collector under the 30th Section of that Regulation.

Held by a majority of the Court (*dissentientibus* Trevor, J., Seton-Karr, J., and Glover, J.,) that the jurisdiction of the Civil Court to try this cause was not affected by Section 28 of Act X of 1859. *Sonatan Ghose* v. *Abdool Furar*, 2 W. R., 91.

A suit was brought for property situated in two separate districts, and the Principal Sudder Ameen of one of the two districts was permitted by the Sudder Court to try the suit for the whole. Pending the suit, the plaintiff withdrew his claim as to the property situated in the district of the Principal Sudder Ameen who was trying the suit. *Held* that the Principal Sudder Ameen had still jurisdiction to proceed with the suit as to the property in the other district. *Syed Ameer Ali* v. *Mohendronath Bose; Behaus Coomaree* v. *Mohendronath Bose; Suhodora Bibee* v. *Mohendronath Bose*, 2 W. R., 271.

A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. *Abboo Bibee* v. *The Collector of Backergunge*, 1 W. R., 255.

The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. *Kader Mahomed* v. *Mahomed Safer*, 1 W. R., 277.

Plaintiff sued for rent in the Civil Court, and obtained a partial decree. On appeal by the plaintiff, —*Held* that, though the Civil Court had not jurisdiction, yet the defendant having acquiesced in the jurisdiction of that Court, the decree might stand. *Teekum Lall Doss* v. *Peter McArthur*, 1 W. R., 279.

A suit to recover money deposited with the defendants to be applied in payment of rents (the deposit having been unsuccessfully pleaded in a suit for rent) lies in the Civil Court, and not before the Collector. *Dabee Golam Singh* v. *Chunder Kant Mookerjee*, 3 W. R., 109.

A suit for profits of property alleged to have been appropriated by a wrong-doer is cognizable by the Civil Court, and not by the Collector. *Tekaet Roop Mongul Singh* v. *Anund Roy*, 3 W. R., 111.

A suit for ascertainment and demarcation of a shikmee talook is cognizable by the Civil Court, notwithstanding that it includes a claim for the assessment of rent thereon. *Jugut Tara Chowdhrain* v. *Rajah Protab Chunder Singh*, 3 W. R., 154.

A person is entitled to sue in the Civil Court to establish his right to land from which he has been ejected by his zemindar by virtue of a decree under Section 25, Act X of 1859, whether the plaintiff was or was not a party to the ejectment suit. *Jooteeram Kharah* v. *Ram Coomar Singh*, 3 W. R., 170.

A party suing under Section 28, Act X of 1859, cannot, if he fail in that suit, bring another and similar suit in the Civil Court. Both Courts have concurrent jurisdiction, but a suitor must elect one or the other. *Bhikaree Pandah* v. *Ajoodhya Pershad*, 3 W. R., 176.

A judicial investigation of allegations and facts sufficient to guide the Court should precede the admission or rejection of jurisdiction. *Nusrun Beebee* v. *R. Watson and Co.*, 3 W. R., 215.

A decree of a Revenue Court awarding arrears of rent for a certain year under a kubuleut against a ryot does not bar the jurisdiction of the Civil Courts in a suit brought by him for a declaration of his title as lakherajdar in the same land. *Tara Chand Mytee* v. *Nilambur Mundul*, 3 W. R., 227.

The decision of a Revenue Court incidentally trying, for the purposes of a suit under Act X of 1859, a question of title, is not final so as to bar a suit in the Civil Court to establish a title declared by the Revenue Court to be invalid. *Doss Monee Dossee* v. *Huronath Roy*, 4 W. R., 2.

A suit brought by a putneedar to obtain a share of certain moneys paid by the Government to the zemindar on the occasion of taking up certain lands in the putnee for public purposes, is only cognizable in the Civil Court. A putneedar is entitled to compensation although there was no agreement to that effect. *Joy Kishen Mookerjee* v. *Reazoonissa Bebee*, 4 W. R., 40.

A Civil Court acts illegally in deciding a case on the merits after an arbitration award. *Shitanauth Biswas* v. *Kishen Mohun Mookerjee*, 5 W. R., 130.

A Court, when it finds that it has not jurisdiction to entertain a suit, should not proceed to determine the case on the merits. *Rajkishoree Daseee* v. *The Collector of Fureedpore*, 5 W. R., 144.

Quære,—Whether a suit lies in the Civil Courts against the Chief Priest of the Lingayats by the Swami or Chief Priest of the Smartava sect of Brahmins claiming, by grant from the supreme power of the State, the privilege of *adavi palki*, of being carried, on ceremonial occasions, in a palanquin borne crossways, so that the poles traverse the line of march. *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti*, 6 W. R., P. C., 39; 6 W. R., Mis., 40.

A Zillah Judge must execute his own decrees, and has no power to direct the Principal Sudder Ameen to take up and dispose of an application for execution. *Rajeeb Ram Doss and others* v. *Mahomed Hossein*, 6 W. R., Mis., 51.

The Civil Courts have jurisdiction to entertain a suit, which, if successful, would have the effect of setting aside and rendering inoperative an order of a Magistrate declaring a road to be a public one, and directing the removal of bamboo posts across the road as an obstruction. *Ram Shodoy Ghose and others* v. *Jottadharee Haldar and others*, 7 W. R., 95.

Causes of action joined in one suit may be tried by a Court which has jurisdiction as to the entire value, although the value of one of the causes of action is below the value cognizable by it. Thus, a

Principal Sudder Ameen has jurisdiction to try a suit for lands with mesne profits, notwithstanding that the value of the land standing by itself was under the value cognizable by him. *Luchmeeper-saud Doobey* v. *Mussamut Koylassoo*, 7 W. R., 175.

A lower Court has no jurisdiction to review a judgment appealed from, nor has the lower Appellate Court jurisdiction to entertain an appeal from the judgment so passed on review. *Brojo Nath Koondoo Chowdhry and others* v. *Jumeeroonissa Bibee and others*, 7 W. R., 218.

A suit was instituted in a Court which, at the date of the filing of such suit, was in a non-regulation district, to recover possession of a piece of land situate in a village then within the jurisdiction of that Court; when the Regulations were introduced, the Regulation Court which succeeded the said Court was placed in a district different from that to which the said village was annexed.

Held that the village in which the suit arose having been transferred to a district different from that which included the Court which had succeeded the non-Regulation Court, this last-named Court had no jurisdiction to try and determine the suit.

Held, also, that an appeal to a Judge of one district from a decree of a subordinate Court in another district, when such an appeal was permissible, was not an appeal which could be referred by the District Judge for trial to a principal Sadr Amin under Regulation XVIII of 1831, Section 3.

Quære,—When a district, or particular portion of a district, is for the first time brought under the Regulations, can the Regulation Court, which is established in the territory where a Non-Regulation Court previously existed, continue the trial of suits instituted in the Non-Regulation Court, if no provision have been made in the Act by which the Regulations became operative in the said territory, for the continuance of the trial of such suits by the said Regulation Court? *Payáppa bin Shesháppá Nádui* v. *Dhoudo Náráyan Dámle*, 5 Bom. Rep., A. C., 26.

A suit for a declaration that an alleged Hindu marriage is invalid is a suit of a civil nature, and will lie in the ordinary Civil Courts. *Ajona Dasi* v. *Prohlad Chunder Ghose*, 6 B. L. R., 243, and 14 S. W. R., C. R., 403.

A Civil Court alone has jurisdiction to try a suit which is brought to recover possession of lands with mesne profits from one who is alleged to be in possession as a trespasser, notwithstanding the defence set up is that in respect of part of the land the defendant has a permanent ryoti-tenure. *Hari Nath Das* v. *Sheikh Asmut Ali*, 6 B. L. R., Ap., 118, and 15 S. W. R., C. R., 171.

A plaintiff is justified in bringing his suit in a Civil Court when that is the only Court which can grant him substantial relief, although as against one of the defendants a Revenue Court may grant him a partial remedy. *Nubo Kishen Koondoo* v. *Gouree Kant Bannerjee*, 13 S. W. R., C. R., 331.

After a decision by a Revenue Court under Section 77 Act X of 1859, a Civil Court may determine the legal title to the rent; and, when determining such title, the Civil Court may also determine whether any rent which may have been lost to a party by the decision of the Revenue Court may not be recouped to him. *Shaikh Kefaet Hossein* v. *Shaikh Shumshure Ali*, 13 S. W. R., C. R., 458.

Held that after the orders of Government of 1867, dividing the whole of the jurisdiction of the Principal Sudder Ameen of Rajshaye into two portions, the Small Cause Court Judge of Pubna alone had jurisdiction to perform in the district of Pubna the duties which, but for those orders, would have been performed by the Principal Sudder Ameen of Rajshaye. *Shamasoonduree Debia* v. *Binode Lall Pakrasha* 14 S. W. R., C. R., 396.

A suit, of which the subject-matter did not exceed in amount or value Rs. 1,000, instituted one day after Act XVI of 1868 received the assent of the Governor-General in Council, was held to be cognizable by the local Moonsiff, and not by the Sudder Moonsiff of the District. *Bungshu Budden Dey* v. *Tarinee Churn Dey*, 14 S. W. R., C. R., 375.

In a suit in a Moonsiff's Court on a right of pre-emption, in which plaintiff undervalued his claim, the defendant, without objecting to the jurisdiction, allowed the case to go to trial, and, after passing through the subordinate Courts, to come up to the High Court in special appeal. It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the petition of appeal) that the suit was not cognizable by the Moonsiff, and therefore that all that had been done had been done without jurisdiction. *Held* that the defendant was not at liberty to waive jurisdiction, and that the objection must be allowed to be taken even at this late stage. *Held* that the suit having been beyond the Moonsiff's jurisdiction, his judgment was not legal, and his decree, in the eye of the law, no decree at all and of no legal effect. *Naunhoo Singh* v. *Tofan Singh*, 14 S. W. R., C. R., 228.

A non-commissioned officer or soldier not serving in the army but employed in the civil department and residing beyond military cantonments, is amenable to the jurisdiction of the Civil Court, even in cases below thirty pounds. *Cohen* v. *McCarthy*, 14 S. W. R., C. R., 231.

Courts having jurisdiction over the subject-matter of a suit in which a right is asserted, have also jurisdiction over a supplemental suit in which the plaintiff seeks to follow out that right.

In a simple question of possession all that a Criminal Court can dispose of is the necessary right, not the proprietary title. *Kashee Nath Kooer* v. *Deb Kristo Ramanooj Dass*, 16 S. W. R., C. R., 240.

In determining the jurisdiction of the Court in a suit for damages, the amount claimed, and not that eventually found due, must be taken as the valuation. *Joy Doorga Dassee* v. *Manick Chand*, 16 S. W. R., C. R., 248.

There being a deficit in the assets, a putneedar brought a regular suit against his zemindar and obtained an abatement of jumma to the extent claimed. This decree was confirmed in appeal. The zemindar, however, instituted a suit for the whole rent without deduction, and obtained a decree while the civil suit of the putneedar was pending, and realized the sum decreed by execution against immoveable and other properties of the putneedar. The latter then sued the former to recover the excess rent, with interest, realized in these executions.

Held that this suit ought to have been brought in the Civil Court. *Rajah Nilmoney Singh Deo* v.

Sharoda Pershad Mookerjee, 16 S. W. R., C. R., 173.

A suit to recover the rents of land situated in district J., may be brought in district S., where the defendant is residing, although in such suit the plaintiff's title to the land in respect of which the rent is sought to be recovered may incidentally come in question. *Chintaman Narayan* v. *Madhabrad Venkatesh*, 6 Bom. Rep., A. C. J., 29.

Where the plaintiff sued to be declared entitled to the office of Mulki Patil in the village of Kotavery, as being the senior of his family, and alleged that the defendant, the actual incumbent of that office, had no right to share in the management of the watan, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, it was held that the Civil Courts had jurisdiction to entertain the claim of the plaintiff. *Abáji bin Sankroji* v. *Niloji bin Báloji*, distinguished; *Vithu bin Máhku* v. *Amritá bin Joti*, 7 Bom. Rep., A. C. J., 72.

Since Act XVIII of 1867 came into force, suits for possession of land are cognizable in the Civil, and not in the Revenue, Courts of the Jhansie Division. *Heera Lal* v. *Rudhoul*, 2 N. W. R., 85.

A special appeal lies from the decision of the Political Agent of the Southern Maratha country passed in regular appeal. *Nilowa* v. *Fakirappa*, 6 Bom. Rep., A. C. J., 75.

Where execution was sought of a decree which was passed in 1850, and which could not be executed by the revenue authorities in consequence of the transfer of its jurisdiction in such matters to the Civil Courts,—*Held* that the Civil Courts had jurisdiction to entertain the application. *Luchmee Kant Ghose* v. *Bamun Dass Mookerjee*, 17 S. W. R., C. R., 472.

Held that the Moonsiff of Dibrooghur had no jurisdiction in a suit to recover an elephant alleged to have been forcibly carried away by the defendant from Kerampani, where the defendant ordinarily resides, but that plaintiff may apply to the Political Agent for redress. *Shaikh Bhedoo Fondy* v. *Bicha Banka Singh*, 17 S. W. R., C. R., 141.

Where plaintiff held a decree of a Moonsiff's Court against certain persons who were cultivators, and issued an attachment against their property, and their zemindar subsequently obtained an order for the execution of a decree of a Revenue Court for rent against the same parties, and also attached the same property, which was eventually sold to satisfy both decrees, although the proceeds were handed over to the zemindar only,—*Held* that a suit by the plaintiff against the zemindar for the recovery of such proceeds was cognizable in the Civil Courts. *Gokool Dass* v. *Gungesher Singh*, 3 N. W. R., 164.

Whatever the purpose for which a man may go to another jurisdiction than that in which his family resides, if there is an *animus revertendi* the family dwelling-house must be considered to be his dwelling-place. *Kashee Nath Kooer* v. *Deb Kristo Rumanooj Doss*, 16 S. W. R., C. R., 240.

Every Court has a right to correct its formal records in such a way, if needed, as will make them represent truly the decision which was intended to be judicially expressed. *L. F. Lucas* v. *W. Stephen*, 9 W. R., 301.

When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court Order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for re-hearing. *Sukram* v. *Kala Kahar*, 3 B. L. R., A. C., 105.

The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. *Kadir Mahomed* v. *Mahomed Safir*, 1 W. R., 277.

Suit by the purchaser of a mokurruree tenure against the ryots, and the zemindar for illegal dispossession, and also for establishing permanent title to the property. *Held*, in special appeal, that the Civil Courts have jurisdiction in such cases. *Nobbo Doorga Dabee* v. *Kistareemee Dossee*, 1 W. R., 48.

Under Section 308 of the Criminal Procedure Code, an order was obtained by the defendant from the Magistrate of a district declaring a road to be a public road. The present suit was brought by the plaintiff to set aside that order, and to have the road closed. *Held* that the Civil Court had no jurisdiction to entertain the suit. *Held* by Markby, J., that whenever an objection is made to the want of jurisdiction for the first time in the High Court, on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. *E. G. Rooke* v. *Pyari Lall*, 3 B. L. R., Ap., 43; 11 W. R., 434.

Where the cause of suit, as stated by the plaintiff, appears to be within the cognizance of the Court of Small Causes, the mere denial by the defendant of the plaintiff's right or title is not sufficient to oust the jurisdiction of the Court. If it reasonably appears to the Judge that a *bonâ-fide* question of right, which is not within his jurisdiction to decide, is fairly raised in the suit, his jurisdiction ceases. *Ammallu* v. *Subburadiyar*, 2 Mad. Rep., 184.

The Civil Courts have jurisdiction in a suit by the purchaser of a mokurruree tenure against the ryots and the zemindar for illegal dispossession and for establishing permanent title to the property. *Nobbo Doorga Debee* v. *Kistareenee Dossee*, 1 W. R., 48.

The mere pendency of a suit in the Supreme Court does not operate as a bar to the prosecution of a suit in a Zillah Court intended to be simply in furtherance of and supplemental to the suit in the Supreme Court. *Nawab Sidhee Nazir Ali Khan* v. *Ojoodhyaram Khan*, 5 W. R., P. C., 83.

Occasional residence will not bring a defendant within the jurisdiction; he must be a fixed inhabitant of the district in which the suit is brought. *Talun Tewaree* v. *Gobindgeer Gossain*, 1 Ind. Jur., O. S., 85.

In a suit to set aside a sale by a Collector under Act X of 1859, on the allegations that, at the time of the sale, a warrant of execution previously obtained against the moveable property of the judgment-debtor still remained in force, and that the deposit on the purchase-money was not paid until fourteen days had elapsed, it was held that such allegations, if proved, would amount to illegalities, and that a suit to declare such a sale null and void would lie in the Civil Court. *Ali Buksh Shah* v. *Nubee Buksh*, 9 W. R., 600.

If at the hearing of a suit it proves to be undervalued, and if the Court would not have jurisdic-

tion to entertain it if properly valued, the suit ought to be dismissed. *Sheikh Muzhun Ali* v. *Mussamut Basoo*, 8 W. R., 47.

Held that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession. *Ex-parte Nagavokam Jakar Ganda*, 3 Bom. Rep., A. C., 108.

Where a decree is transmitted by one Court to another for the purpose of execution, the latter Court has no jurisdiction to alter the decree, or the amount mentioned in the order for execution. *Sheikh Ally Hossein* v. *Joogulkissore*, Marsh., 244.

The plaintiff sued to recover money which she had paid as rent to the zemindar, under a decree of the Revenue Court, after she had already paid her rent to his gomasta. *Held* that the suit was not cognizable by the Civil Court. *Srimati Saudamini Dassi* v. *Srimati Thakomani Debi*, 3 B. L. R., Ap., 114.

The Judge was held to have no power to interfere with the Moonsiff's order when all that the Judge had before him was the Moonsiff's order declining to reverse a former order of attachment by a former Moonsiff. *Choona Mahomed Sircar* v. *Shurno Luttu Debia*, 16 S. W. R., C. R., 311.

A Civil Court cannot set aside the proceeding of a Collector in execution of a decree of his own Court. *Roy Kishore Mullick* v. *Brintabum Chunder Poddar*, 15 S. W. R., C. R., 119.

10.—Transfer of Suits.

A District Judge is not competent to transfer a case of execution of a decree which has been passed by his own Court, to the file of the Subordinate Judge for disposal. Such a case is not one of the "civil proceedings" referred to in Section 19, Act XVI of 1868, read with Section 362, Civil Procedure Code, and interpreted by Sections 26 and 27, Act VI of 1871. *Chowdry Harmedrollah* v. *Mutuoonissa Bibee*, 15 S. W. R., C. R., 574.

A suit instituted in the Court of the Principal Sudder Ameen was transferred, under Section 6 of Act VIII of 1859, to the Court of the Moonsiff, who took further evidence, and decreed in favour of the plaintiff. The defendant appealed to the District Court, on the ground (amongst others) that part of the evidence had been taken by the Principal Sudder Ameen; and the District Judge reversed the Moonsiff's decree, not on this ground, but on the merits. The plaintiff then appealed to the High Court, objecting that the suit had been illegally decided by the Moonsiff, upon evidence recorded by the Principal Sudder Ameen; and that the *onus* of proving the *bona fides* of the transaction, which was the subject-matter of the suit, was thrown by the District Judge on the plaintiff, instead of on the defendant, who alleged the want of it.

Held (1) that the Moonsiff's having used the evidence recorded by the Principal Sudder Ameen was only an irregularity, which was waived by the plaintiff's not requiring the witnesses to be examined again, and proceeding with the suit, and producing other witnesses to be examined in support of his claim; and as this irregularity did not affect the merits of the case, the decree of the Moonsiff being in the plaintiff's favour, it was not a ground for reversing the decree on special appeal. (2) That the *onus* was not thrown by the Judge upon the plaintiff in its proper sense, and so as to be an error in law, as the Judge did not hold that the defendant was entitled to succeed without giving any evidence, unless the plaintiff disproved the allegation of the want of *bona fides*. *Naranbhai Vrigbhukandas* v. *Narosh Sankar Chundra Shankaretal*, 4 Bom. Rep., A. C. J., 98.

Quære,—Whether a case can be transferred from one Court to another, under Section 6, after the evidence has been taken in the former Court. *Ranee Asmedh Koonwar* v. *W. Tayler; Syud Khorshed Ali* v. *W. Tayler*, W. R., 1864, 15.

Held that a separate suit for refund of the money paid out of the Court, in satisfaction of a decree, is inadmissible under the provisions of Section 6, Act VIII of 1859, and Section 11, Act XXIII of 1861. The question should have been raised and decided in the Miscellaneous Department, when execution was sued out, which not having been done, the suit was barred by the aforesaid sections. *Tag and others* v. *Gungapershad*, 2 Agra Rep., 45.

Section 6 of Act VIII of 1859, authorizing "a District Court to withdraw any suit instituted in any Court subordinate to such District Court and to try such suit itself, or to refer it for trial," &c., does not justify an order by the District Court for the calling up of execution cases from the files of the Subordinate Court, and for the appointment of a manager. *Lutchmeeput Dokur* v. *Maharajah Jugutinder Bunwary Loll*, Marsh., 195.

The mere transfer of a suit for the convenience of the public, or for the acceleration of business, from one Subordinate Court to another, does not affect the authority of the Judge of the District Court to transfer it to his own file, or to another Court, or to retransfer it, if he see sufficient cause for so doing; nor would the circumstance that a case had been up on appeal to the High Court on a preliminary point, and been remanded for a trial on the merits, limit the authority of the District Court Judge to bring it upon his own file, or to transfer it to the file of a Court other than that in which it was instituted. The omission of the Judge to assign his reason for transferring the case does not vitiate his proceeding.

When a Judge transfers a case to his own file, he is at liberty to amend the issues first laid down, and to raise additional issues, and to go into the whole case, except upon any question upon which there has been a judicial finding. *Tarucknath Mookerjee* v. *Gouree Churn Mookerjee*, 3 W. R., 147.

Where a case was originally tried by a Zillah Judge, and on appeal to the High Court on its appellate side the Judges of that Court remanded it to the Court below for a fresh trial, intimating that it was a proper case to be transferred under Clause 13 of the Letters Patent (25 Vict.) constituting the High Court; and where it appeared that questions of English law were involved in the case; that the witnesses and parties were chiefly British subjects, and the plaintiff an officer of the High Court, and resident in Calcutta, the Court ordered the case to be transferred for trial

to the High Court, original jurisdiction. *Doucett* v. *Wise*, 1 Ind. Jur., N. S., 227.

The 13th Section of the Letters Patent (1865) of the High Court at Fort William gives the Court power to order a suit to be transferred for trial only where the transfer is agreed on by the parties, or for the purposes of justice; and in the absence of agreement it must be made out that there will be inconvenience amounting to this, that if the case be tried in the Court in which it was originally laid the trial will be unsatisfactory.

The mere fact that it would be less expensive to try the case in the High Court is not sufficient of itself for the Court to act upon and order the case to be transferred. *Rajah Ojooderam Khan* v. *S. M. Nobinmoney Dossee and others*, 1 Ind. Jur., N. S., 396.

Neither Section 8, Act XXV of 1837, nor the Code of Civil Procedure authorizes a District Judge to transfer execution cases from his own Court to the Court of the Subordinate Judge. *Kedarnath Mahata* v. *Bungshee Dhur Roy*, 17 S. W. R., C. R., 45.

A decree in which no actual proceedings were pending in the Collector's Court at the commencement of Act III of 1870, B. C. (*i.e.*, where an order for attachment had been issued, but the attachment came to an end) was held to have been properly transferred to the Civil Court under Section 3 of that Act. *Huro Pershad Roy Chowdry* v. *Fool Kishoree Dassee*, 16 S. W. R., C. R., 308.

Where by the operation of Act VIII (B.C.) of 1869 and Act III of 1870, a decree is transferred (*e.g.*, from the Court of a Deputy Collector to that of a Subordinate Judge), any application as to a matter prior to, or which may affect the decree, (*eg.*, an application for a review) must be made to the Court which passed the decree. *Sreemutty Jugodumba Dassee, in the matter of*, 15 S. W. R., C. R., 75.

When a District Moonsiff has jurisdiction to try a suit as a Small Cause Court Judge, he cannot transfer it to the District Moonsiff's Court on any ground of expediency. *Bodi Ramayya* v. *Perma Janakilamudi*, 5 Mad. Rep., 172.

Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by positive legislative enactment. *Ramsahaj Singh* v. *Koldeep Singh*, 15 S. W. R., C. R., 80.

A suit within the cognizance of the Small Cause Court cannot be lawfully transferred for trial to a Moonsiff's Court. *Joobraj Chowkeedar* v. *Whelan*, 13 S. W. R., C. R., 399.

Held that a Senior Assistant Judge is not competent to hear an appeal from an order made in the execution of a decree in a case in which he is not competent to hear an appeal from the decree itself. *Narbherám Kisandás et al.* v. *Navnidrám Kúshirúm*, 5 Bom. Rep., A. C., 46.

The power given by Section 6 of Act VIII of 1859 to a Zillah Judge for the withdrawal of suits from Subordinate Courts should only be exercised upon cause shown, and ordinarily not without opportunity given to the parties to the suit to be heard upon the question.

The terms of Section 6 are inapplicable to suits which the Subordinate Court has received by order of remand from a Court to which the District Court is itself subordinate.

A suit sent by the High Court to a Subordinate Court under a remand to the High Court by Her Majesty's order in Council, and in which, under the Council's remand order, the plaint has been amended, a new statement filed, and new issues framed, is substantially a new suit. *Mahomed Zahoor Ali Khan* v. *Thakooranee Rutta Kunwar*, 2 N. W. R., 481.

Where an agreement in writing was signed by the plaintiff and the defendants at Secunderabad, in the territories of the Nizam, for a partnership in a tannery business to be carried on at Bakuram, near Hyderabad, and by the terms of the agreement the tanned skins were to be sent to the plaintiff at Madras, for sale or shipment to England, and hundies in respect of the goods sent to Madras were to be drawn upon the plaintiff at Madras and paid by him, and accounts of the partnership transactions were to be sent to the plaintiff once in eight days,—*Held*, in a suit for an account of the partnership dealings, that the cause of action had arisen in part within the original civil jurisdiction of the High Court, and, the leave of the Court to bring the suit having been obtained under Section 12 of the Letters Patent of 1865, that the Court had jurisdiction to entertain the suit.

Held, also, that the jurisdiction of the Court was not affected by the circumstance that the defendants were non-resident foreigners. *Bavah Meah Saib* v. *Khajee Meah Saib*, 4 Mad. Rep., 218.

The power of a Civil Judge to transfer appeals to a Principal Sudder Ameen is confined by Clause 3, Section 8 of Act VII of 1843, to appeals from District Moonsiffs. *Olaga Sundaram Pillay* v. *Muttian Chitty*, 4 Mad. Rep., 227.

II.—Recorders' Courts in Burmah.

A Recorder, under Act XXI of 1863, being the holder of Bank of Bengal shares, has power to dispose of a suit to which the Bank is a party, in a case of necessity, as when the Commissioner also has shares in the Bank. *The Bank of Bengal* v. *Golam Azim*, 12 W. R., 185.

In a suit to make a judgment passed in the Court of Queen's Bench in London a judgment of the Recorder's Court in Rangoon, and to enforce the said judgment in due form of law within the jurisdiction of the Court last mentioned, it was *held*, with reference to Section 11, Act XXI of 1863, that the Recorder had no jurisdiction to entertain the suit, it not being a suit for land, and the defendant not dwelling, carrying on business, or personally working for gain within the local limits of the Court's jurisdiction, and the cause of action not having arisen within those limits. *Sieveking, Droop, and Co.* v. *C. E. Focke*, 9 W. R., 215.

Trespass to personalty in a foreign state (the title to such personalty depending upon the right to land in such foreign state) is cognizable by the Recorder's Court, so as to rebut a *primâ-facie* title to such personalty acquired within the Court's jurisdiction.

The Recorder's Court cannot take judicial cog-

nizance of the fact that the country in which the rights of the party attempting to rebut such *primâ-facie* title accrued is lawless and unsettled, and possesses no tribunal capable of pronouncing a decision on the rights of the parties which the Recorder's Court could consider as the decision of a Court of competent jurisdiction.

Although the foreign state might be civilized, and have Courts competent to try the title, the Recorder's Court would have a right in a suit against a party subject to his jurisdiction to try incidentally the question of title to the land for the purpose of determining the right to the personalty. *Saya Loo* v. *Nga Paw Loo and others*, 6 W. R., 4.

The Recorder's Court has the same powers in respect to the grant of probates to the estates of natives as the High Court before and after the passing of the Indian Succession Act,—*i.e.*, it cannot grant probates of the will of a Hindu in any case in which, according to the Hindu Law of Inheritance and Succession, the testator had no power to make a will; and, in dealing with the will after probate has been granted, the Court cannot give effect to it, so far as it is contrary to the Hindu Law of Inheritance.

Quære,—Whether the Recorder's Court has power to grant letters of administration, or such letters with a will annexed, to the estates and effects of a native of British India; but in all cases it must be guided in granting them by the Law of Inheritance or Succession of such native, and it cannot grant administration to the estate of a Hindu, Mahomedan, or Bhuddist which would interfere with such law. *Fukeeroodeen* v. *Adum Shah*, 11 W. R., 413.

The Court of the Recorder of Moulmein has no jurisdiction to execute a decree made by the late Court of the Town Assistant Commissioner. *Kyanpetter* v. *Nga Sha Law*, 11 S. W. R., C. R., 386.

There is nothing in the Recorder's Act (XXI of 1863) to justify the conclusion that the Small Cause Court at Rangoon is not properly constituted. *Ko Shoay Dhoon* v. *Shajahgan*, 14 S. W. R., C. R., 331.

The Recorder of Moulmein, in trying an administration suit, valued at Rupees 13,000, found as to Rupees 6,000 in value of the property claimed that it did not exist. The value of the amount decreed by him amounted to Rupees 7,000. *Held* that, under Act XXI of 1863, Sections 27 and 39, the appeal lay in the first instance to the High Court, and not to the Privy Council. *Hawabi* v. *Ibrahim Sali Bhuy Dapti*, 5 B. L. R., 305, and 13 S. W. R., C. R., 393.

Under Act XXI of 1863, the Recorder of Moulmein has no power to order execution to issue on a judgment of the late Court of the First-Class Assistant Commissioner of the district of Amherst. *Ryaw Peteo, in the matter of*, 6 B. L. R., Ap., 15.

Act XXI of 1863, after establishing Recorders' Courts in British Burmah, and fixing the limits of their jurisdiction, enacts by Section 10 that, "save as in this Act provided, no Court other than the Recorder's Court shall have or exercise any civil jurisdiction whatever within the limits for the time being fixed as aforesaid."

Act XI of 1865, after declaring that the words "local government" should denote "the person authorized to administer the Executive Government in such part" enacts, by Section 3, that the Local Government may, with the previous sanction of the Governor-General in Council, constitute Courts of Small Causes under that Act at any places within the territories under such government. By Section 3 the Judge of such Small Cause Court was to be appointed by the Local Government. Act XI of 1865 does not repeal Section 10 of Act XXI of 1863.

By notification dated 1st September, 1869, the Governor-General appointed a Judge of the Small Cause Court at Rangoon, extended the provisions of Act III of 1864 to British Burmah, and invested the Chief Commissioner of British Burmah with the powers conferred as a Local Government by that Act.

By notification of 2nd October, 1869, the Governor-General in Council sanctioned the establishment of a Court of Small Causes in Rangoon, under Section 3, Act XI of 1865, extended the jurisdiction of the said Court to an amount not exceeding Rupees 1,000, and notified that the territorial jurisdiction would be co-extensive with that of the existing Small Cause Court jurisdiction of the Recorder's Court at Rangoon.

Held that the Small Cause Court at Rangoon so established was properly constituted. There is nothing to show that the words "Local Government," as used in Act XI of 1865, were intended to include a chief commissioner. *Ko Shoay Doar* v. *Shujahgun*, 6 B. L. R., 196.

The High Court has no jurisdiction to entertain a reference from a Recorder relative to questions arising in execution of a decree in his Court. *Ashburner and Co.* v. *Currie and Co.*, 13 S. W. R., C. R., 27.

The mere fact of errors of procedure having been committed in a trial before a Recorder would not warrant the High Court in saying that in pronouncing against the validity of a will after investigation he had acted without jurisdiction, or in interfering with his decision. *In the matter of Mee Tsee*, 15 S. W. R., C. R., 351.

12.—Military Courts.

In a case where the question arose whether, notwithstanding Section 99 of the Mutiny Act, the defendants, residents of Sinchal and Jallapahar, who were ordinary persons amenable to that Act, were or were not within the jurisdiction of the Deputy Commissioner of Darjeeling as *ex-officio* Judge of the Small Cause Court within the hill territory of the district,—

Held that the defendants were not amenable to the jurisdiction of the Small Cause Court.

Held also that the word "place" in Section 99 of the Mutiny Act is not used in the limited sense supposed by the Judge of the Small Cause Court (who held that "a place must have limits," and referred to Webster's definition, "a fortified town or post, a fortress, a fort"), and that Sinchal and Jallapahar are places in India beyond the jurisdiction of the Small Cause Court in Calcutta, and that the actions were cognizable only by a Military Court of

Requests. *Hosseenee Khidmutgar* v. *Lieutenant Dickenson*, 9 W. R., 112.

A native camp-follower attached to a European regiment is amenable to the Mutiny Act. *Musseroodeen* v. *Khoda Buksh and another*, 10 W. R., 386.

The Military authorities have no right to appropriate to their own uses houses, the property of private individuals in cantonments, except subject to the conditions prescribed by the Military Regulations on the faith of which the houses were built or purchased. *Held* by the Appellate Court, that when a person was in the occupation of a house in cantonments he could not be ejected without due notice. *Carey* v. *Robinson*, 1 Ind. Jur., N. S., 88; Bourke's Rep., O. C., 399.

Where Government had permitted the Military authorities to use certain land for cantonment purposes, which land was subsequently resumed by the Government,—*Held* that the Military authorities had no power to make a grant of the land given for military purposes for a period longer than the land would remain in their possession, and that no term of limitation had expired to bar the ordinary right of Government as a landlord to demand rent. *Baboo Ramchund* v. *The Collector of Mirzapore*, 3 Agra Rep., A. C., 7.

A European soldier doing duty as an Army schoolmaster, not being liable to a Court of Requests, is not exempted from liability to a Cantonment Court of Small Causes. *Marwady Beejarajoo* v. *Haynes*, 6 Mad. Rep., 83.

The provisions of Act XII of 1842 apply to all the Courts established by Act XI of 1841, whether those Courts are held within or without British territory. It is incumbent on all persons claiming the privilege of suit given by these Acts, when residents within cantonments, to cause themselves to be registered. *Tej Ram* v. *Mooltan Mull*, 3 N. W. R., 70.

An appeal lies to the High Court of Judicature for the North-Western Provinces, from the decree of a Military Court of Requests held at Morar, Gwalior. Sections 2 and 17 of Act XI of 1841 must be read together as regards persons amenable to Military Courts of Requests beyond British territory. *Mooltan Mull* v. *Gunsam Dass*, 3 N. W. R., 75.

Act XI of 1841 does not confer jurisdiction on a Military Court of Requests to entertain a suit against the Cantonment Magistrate as representing the Government. *Joohraj* v. *The Cantonment Magistrate of Morar*, 1, 11, N. W. R., 174.

A European British subject was convicted by the Cantonment Magistrate under Section 48 of the Police Act (Act XXIV of 1859). *Held* that the Magistrate had no jurisdiction, 5 Mad. Rep., Rul. XXV.

An appeal lies under Act XL of 1841. The term "rules in force" in Section 17 of Act XL of 1841 is to be interpreted as equivalent to "rules for the time being in force." It is not competent for a Court of Requests to pronounce a decree (by default) in favour of defendant without considering the evidence before it. The Code of Civil Procedure, except so far as its provisions enact rules for appeals from Subordinate Courts, does not apply to proceedings under Act XI of 1841 (Military Court of Requests Act). These proceedings are regulated by the Act, and Sections 114 and 119 of the Civil Procedure Code do not apply. *Gunsam Dass* v. *Mooltan Mull*, 2 N. W. R., 192 and 229.

13.—COMMISSIONERS.

In 1855 the Privy Council decided against the right of the Bengal Government to resume and reassess the ghatwallee lands in the zemindary of Kurruckpore. In 1860 the Sudder Court, acting as Special Commissioners under Regulation III of 1828, at the instance of the zemindar directed the release of the resumed lands, but did not decide as to the right to the mesne profits which the Government had received from the ghatwals during the period of resumption, deeming this question beyond their competency as Special Commissioners. The zemindar having appealed to the Privy Council, complaining of the omission, and contending that the mesne profits should have been wholly adjudged to him,—*Held* that the Special Commissioners had jurisdiction to decide upon the true title to the whole money in dispute, and to direct the payment and disposition of the same with interest. *Rajah Leelanund Singh* v. *The Government of Bengal*, 1 W. R., P. C., 20.

Plaintiff not having appealed to the Revenue Commissioner against the sale of his estate for arrears of Government revenue, the Civil Court is not competent, under Section 33, Act XI of 1859, to entertain a suit for the annulment of the sale. *Mohun Lall Tagore* v. *The Collector of Zillah Tirhoot*, 1 W. R., 356.

The High Court refused to express any opinion on a petition complaining of the refusal of the Deputy Commissioner of Hazareebagh to enforce a bond specially registered under Act XVI of 1864, and intimated that the petitioner's proper course was to appeal to the Judicial Commissioner, and if dissatisfied with his order to come up in special appeal to the High Court. *Jugti Sahoo and another, petitioners*, 6 W. R., Mis., 121.

Where the Assistant Commissioner in execution in 1857 acted without jurisdiction in giving interest when the decree did not award it, and the claim for interest was disallowed by the Deputy Commissioner in execution in 1865, and the Deputy Commissioner's order was reversed in appeal by the Judicial Commissioner, on the ground that the Assistant Commissioner's order was a judicial one from which no appeal had been preferred,—*Held* by the High Court that it was too late now to interfere with an order passed so long ago as 1857, as the judgment-debtor, by neglecting to appeal, must be presumed to have acquiesced in that order. *Rajah Ram Keran Deo* v. *Mussamut Fuhima Bibee and others*, 7 W. R., 37.

An Assistant Commissioner in Chota Nagpore (exercising the powers of a Sudder Ameen) has no jurisdiction to try a suit valued at Rs. 2,800. The suit is cognizable by a Deputy Commissioner who has the powers of a Principal Sudder Ameen. *Dhodheya* v. *Munaran Tewary and others*, 7 W. R., 356.

Assam does not come within the definition of a province, but of a district, for the purposes of Act X

of 1865; and the jurisdiction, in granting probates and letters of administration under Section 235 of that Act, is vested, not in the Deputy Commissioner, but in the Judicial Commissioner.

The Court of the Judicial Commissioner, not of the Deputy Commissioner, is the principal Court of original civil jurisdiction in Assam, and the Judicial Commissioner is the officer to whom, under Act XI of 1858, the charge of minors and their property is committed. *Thakoor Kristo Surma Adhikaree* v. *Basoodeb Gossamee*, 12 W. R., 424.

Civil Courts have jurisdiction to enquire into the title of lands enfranchised by the Inam Commissioner, and the sunnud granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the Inam. *Cherukuri Vankanna* v. *Mantravathi Lakshmi Narajana Sastrutu*, 2 Mad. Rep., 327.

A suit will lie to set aside an order of the Commissioner of Chota Nagpore directing the plaintiff to pay Government revenue at a certain rate. *Kebul Ram* v. *The Government*, 5 W. R., 47.

Prisoner was convicted by one Court of criminal intimidation on a charge by A., the conviction being confirmed on appeal by the Judicial Commissioner; but was acquitted by another Court of assault and robbery alleged to have been committed on the same day, on a charge by B. The latter Court pointed out to the Judicial Commissioner that the facts proved in B.'s case raised a strong presumption that A.'s case was a false one, the result of a conspiracy against the prisoner; and the Judicial Commissioner proposed to set aside the conviction of the prisoner in A.'s case, not on the evidence in that case, but on extraneous evidence derived from B.'s case. *Held* that the High Court had no jurisdiction in the matter, but that the Judicial Commissioner could apply to the Government for a pardon on the ground stated by him. *Nussur Ali* v. *G. Hart*, 6 W. R., Cr., 42.

14.—Miscellaneous Courts.

The Court of the Rajah of Independent Tipperah is not a competent Court within the meaning of Section 2, Act VIII of 1859. *Mahomed Ahmed* v. *Alibur Gazee and others*, 10 W. R., 337.

The Court of a Deputy Collector is a Court of Justice within the meaning of Section 237, Act VIII of 1859. *John Cowie and others* v. *Barbara Owen John Elias*, 10 W. R., 43.

The Coroner of Calcutta has no power to commit any person to prison pending an inquest.

In cases where he has authority to commit, a commitment to the officers deputed to receive prisoners by the statute in force is valid, and it is not necessary that the commitment be directed to the Sheriff. *In re William Taylor*, 2 Ind. Jur., N. S., 101.

Act XLII of 1860, Section 6, does not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Statute 20 and 21 Vict., c. 66, s. 67. *Shanmuga* v. *Middleton*, 1 Mad. Rep., 443.

The remedy by suit in a foreign Court continues open for the period prescribed by the law of that Court, without reference to our own Law of Limitation of suits. A foreign judgment is conclusive as between the parties when it cannot be questioned upon the ground of fraud, or want of jurisdiction, or that it was unduly obtained.

Suits on foreign judgments may be maintained within "six years from the time the cause of action (the judgment) arose." *Boloram Gooy* v. *Kameenee Dossee*, 4 W. R., 108.

An appeal, under Section 84, Act XX of 1866, from the order of a Deputy Commissioner in Chota Nagpore, must be made to the Judicial Commissioner, who exercises the powers of a Zillah Judge in all the districts of that division. *Budhu Mahatoon, petitioner*, 8 W. R., 266.

By Regulation XIII of 1833, Section 2, the Courts of Dewanny Adawlut of Zillahs Ramghur and Jungle Mehals were abolished. By the 4th Section the administration of civil and criminal justice shall be vested in an officer appointed by the Governor-General in Council to be denominated Agent to the Governor-General. By the 5th Section authority is conferred on the Governor-General to determine in Council *inter alia* "to what extent the decision of the Agent in civil suits shall be final." In 1834, by an order of the Governor-General, it was ordered that no appeal should lie from the orders of the Agent to the Sudder Court. *Held* that an order of an Agent within the districts to which the Regulation applies, made previous to the passing of the Regulation, declaring A. to be the rightful heir of B., was not affected by the Regulation, and was not judicial in its nature; and that, therefore, in a subsequent suit relating to the inheritance to the same property, the heir of A. could not set up the order as conclusive. *Mussamut Binode Koomaree* v. *Purdham Gopal and others*, Marsh., 80; and see W. R. F. B., 26.

It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories, or a Court established by the Governor-General in a foreign state,—*Held*, the Judge of Rajshahye had no jurisdiction under Section 284, Act VIII of 1859, to execute a decree of that Court. *Jadab Chundra Toi Paramanik* v. *Dinanath Das*, 4 B. L. R., A. C., 134; 13 S. W. R., C. R., 154.

15.—Court of Wards.

The Court of Wards is not prevented by Act XL of 1858 from taking a minor and his estate under their protection, by reason of a certificate of administration granted by the Civil Court under that Act. *Mudhoosoodun Singh* v *The Collector of Midnapore*, 3 W. R., 83.

No civil action will lie against the Court of Wards in respect of anything done by it regarding the person and education of any minor entrusted to its superintendence. *The Collector of Beerbhoom* v. *Mundakinee Debia*, W. R., 1864, 332.

The High Court cannot restrain the Court of Wards, whether acting with or without jurisdiction, from interference in the bestowal in marriage of a minor. *Gujadhur Pershaud* v. *Narain Singh, petitioner*, 5 W. R., Mis., 41.

The Court of Wards has authority, under Section 10, Regulation X of 1793, to determine the proper remuneration to be given to the manager of an estate under their charge, and the Civil Courts have no power to question the arrangements made by the

Court of Wards. *Ranee Shurut Soondery Debia* v. *The Collector of Mymensingh*, 7 W. R., 221.

On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar), it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts. That Regulation must be construed strictly, the provisions requiring the Collector to report to the Board a female as disqualified; and the subsequent procedure thereon should be strictly carried out, as not mere matters of form, but necessary preliminaries, before the female can be considered disqualified. From the absence of the observance of those provisions in the case of R. A., and the conduct of the Government officials representing the Court of Wards, the custody of the Court of Wards of her estates was held to be of such a character as did not render her a disqualified female incapable of contracting debts. The case having been framed incorrectly, it was, under the circumstances, remanded for trial by the High Court under special directions. *Mahomed Zahoor* v. *Thakooranee Rutta Kooer*, 9 W. R., P. C., 9.

The Court of Wards has a perfect right to maintain a suit for the recovery of land belonging to a minor, which is in possession of a person not having a good title thereto. *Bolakee Sahoo* v. *The Court of Wards*, 14 S. W. R., C. R., 34.

Under the provisions of Sections 9 and 12 of Act XL of 1858 the minor's estate cannot be made over to the Court of Wards, but the Collector should be directed, under Section 12 of that Act, to take charge of the estate of the minor, and he thereupon becomes invested with authority to appoint a manager of the property, and a guardian of the person of the minor. *Sidhoo Lall*, 2 N.W. R., 398.

In the management of estates under the Court of Wards the Collector acts, not in his ordinary capacity as an officer of the executive Government, but as a ministerial officer of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court. *Chowdra Sheoraj Singh* v. *Collector of Moradabad*, 2 N. W. R., 379.

Held, with reference as well to Section 79, Act IV of 1870, B.C., as to the justice and equity of the case, that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor. *Mussamut Soomungul Kooer* v. *The Court of Wards*, 17 S. W. R., C. R., 560.

Act IV of 1870, B.C., sanction of Commissioner to proceedings. *In the matter of the petition of Korolbas Koer*, 8 B. L. R., Ap., 50.

16.—Small Cause Courts.

The High Court has no jurisdiction to compel a Court of Small Causes to re-hear a suit dismissed by the latter Court on the ground of *res-judicata*. *Bormoroop Gossain* v. *Anund Moye Debia and others*, 7 W. R., 316.

Persons improperly bringing suits in the High Court which fall within the jurisdiction of the Small Cause Court may be mulcted, not only in their own costs, but also in those of the defendant. *Sikurchund* v. *Sooring Mull*, 1 Hyde's Rep., 272.

In a suit of a Small Cause Court nature (to recover the value of produce) which had been decided upon the real issues between the parties, the High Court refused to exercise its extraordinary powers under Section 15 of the Charter, merely on the ground that the Civil Court had no jurisdiction to determine a part of the dispute, which was whether the land whose produce was claimed was or was not in the British territory. *Bhyrub Singh* v. *Jogree Patnee*, 11 W. R., 506.

A Moonsiff has jurisdiction to try a suit against Government which, but for Section 9, Act XI of 1865, would be cognizable by a Court of Small Causes. *Komaloodeen Sheikh and others* v. *The Collector of Midnapore*, 11 W. R., 233.

The judgments of the Judges of the late Supreme Court sitting under Act IX of 1850 (the Small Causes Courts Act) are judgments of a Court established by Royal Charter, and are therefore not affected by Act XIV of 1859, Section 20. *Coultroup and others* v. *Smith*, 1 Mad. Rep., O. C., 204.

Small Cause Courts in the Presidency Towns have no jurisdiction to entertain petitions and make decrees under the provisions of Sections 52 and 53, Act XX of 1866. *In the matter of Act XX of* 1866 *and in the matter of Nil Ramal Bannerjee* v. *Madhusudan Chowdry*, 6 B. L. R., 177.

In a suit upon a decree of the Small Cause Court brought by reason of there being no process of that Court whereby satisfaction of its decree could be obtained,—*Held* that the High Court had power to award to the plaintiff his costs of suit. Under the circumstances of the case costs were not given. *Muddun Mohun Bose* v. *Lawrence*, 1 B. L. R., O. C., 66.

It is no ground for removal of a cause by *certiorari* from the Court of Small Causes that a difficult point of law is likely to be involved in it. The proper course is to apply to the lower Court under Section 7 of Act XXVI of 1864. *Madhub Kissen Sett* v. *Gour Soonder Sett*, Cor. Rep., 90.

In a suit brought in the High Court, where the plaintiff shall recover less than Rs. 1,000, no costs can be awarded unless the Judge shall certify that the action was fit to be brought in the High Court by reason of the difficulty, novelty, or general importance of the case, or of some erroneous course of decisions in like cases in the Court of Small Causes. *Harran Chunder Gangooly* v. *Shib Chunder Mitter*, 2 Hyde's Rep., 237.

The words "Local Government" in Act XI of 1865 were not intended to include a Chief Commissioner. *Ko Shoay Doon* v. *Shoaygan*, 14 S. W. R., C. R., 331.

(a) *Their Jurisdiction.*

(b) *Suits not within their Jurisdiction.*

(c) *Their Procedure.*

A suit upon an instalment bond given for arrears of rent is cognizable in the Small Cause Court. Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree under Act X of 1859, but not so applied by the decree-holder. *Rajah Shutt Churn Ghosal* v. *Mahomed Ally; Tarinee Churn Roy* v. *Gopal Kishto Roy*, 2 W. R., S. C. C. Ref., 5.

A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that it is upon a bond the amount of which is beyond

its jurisdiction. *Suhee Monee Debia* v. *Hurrymohun Mookerjee and others*, 6 W. R., 6.

Suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single season. *Held* that such a suit was not one for rent, but for the breach of a contract in respect of which a Small Cause Court has jurisdiction. *Deb Nath Ghose* v. *Pachoo Mollah*, 6 W. R., 8.

Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation that the balance, after paying the jumma payable by the mortgagor, should be applied by the mortgagee in payment of the bond,—*Held* that the Small Cause Court had jurisdiction to try what amount was due on the bond, and also to try the question of payment by means of the rent assigned. *Mohima Chunder Mookerjee* v. *Ram Chun Roy*, 6 W. R., 16.

A claim for money below Rs. 500 paid as revenue by one partner in an estate on account of another, in order to save the whole estate from sale, arises under an implied contract between them, and therefore is cognizable by a Small Cause Court. No special appeal lies in such a case under Section 27, Act XXIII of 1861. *Ram Money Dossee* v. *Pearee Mohun Mozoomdar*, 6 W. R., 325.

Temporary imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, there being, moreover, nothing to show that the defendants had no intention of not returning to their former place of abode on the termination of their imprisonment. *Gopal Chunder Sircar* v. *Kurnodhar Moochee and others*, 7 W. R., 349.

A suit by a gomasta for excess expenses incurred by him over and above the amount of rents collected by him, is cognizable in the Small Cause Court, notwithstanding that the nature of the defence may render it necessary to investigate the accounts of the mehal. *Prosona Chundra Roy* v. *Sree Nath Sreemany and others*, 7 W. R., 422.

A case in which a zemindar sues a putneedar for dâk expenses, according to his putnee-jumma, is of a nature cognizable by a Court of Small Causes; and as such, by Section 27, Act XXIII of 1861, no special appeal will lie. *Maharajah Dheraj Mahtab Chunder Bahadoor* v. *Radha Binode Chowdhry*, 8 W. R., 517.

Held that a suit will lie in the Small Cause Court for damages sustained in consequence of decree-holder fraudulently omitting to certify to the Court the payments made by plaintiff. *Bhugoban Tantee* v. *Gobind Chunder Roy*, 9 W. R., 210.

A Court of Small Causes has jurisdiction in a suit for the recovery of damages under Rs. 500 sustained by the illegal removal of crops, and no special appeal lies. A lower Appellate Court should not decline jurisdiction in such a case, if, for the purpose of deciding upon plaintiff's claim, it is necessary to go into the question of the title of the zemindars, although the decree would be binding, *quoad* the subject-matter of the suit, *i. e.*, the value of the crops. *Ram Jeebun Koyee* v. *Shahazadee Begum*, 9 W. R., 336.

A suit to recover money paid as price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale, is maintainable in a Court of Small Causes, being substantially a suit for breach of contract for sale of land. *Charoo Khan* v. *Doorga Monee*, 9 W. R., 498.

A suit by a zemindar against his putneedar for the recovery of money expended on account of zemindaree dâk charges, which the putneedar is bound by his contract to bear, is cognizable by the Court of Small Causes. *H. S. Erskine* v. *Trilochun Chatterjee*, 9 W. R., 518.

Where, on the allegation that defendant had sublet land to him for the purpose of raising crops under a contract to share the produce between them, plaintiff sought to recover the value of his share of the crop which defendant had appropriated, the High Court were of opinion that the claim was not for a sum exacted in excess of rent within the meaning of Section 10, Act X of 1859, and that, if proved, it might be enforced by the Small Cause Court. *Goreeboolah Poramanic* v. *Fakeer Mahomed Kholoo*, 10 W. R., 203.

An action was brought in a Small Cause Court against a military officer residing at M., at which the only other military persons stationed were a staff officer and two sergeants. *Held* that the Court had jurisdiction to try the case, the suit not being one exclusively cognizable by a Court of Requests under Section 103 of the Mutiny Act of 1864. *Bastian* v. *Major J. G. S. Tireman*, 2 Mad. Rep., 389.

Where the plaintiff sued for a portion of grain in the nature of nett rent which had fallen due, that amount being within its jurisdiction, although the whole amount payable from first to last under the agreement would be in excess of its jurisdiction,—*Held* that the suit was cognizable by a Court of Small Causes. *Narasidavur* v. *Marana Kavundau*, 2 Mad. Rep., 440.

In an action for damages on account of defendant's refusal to take delivery of goods of the value of Rs. 3,699-6-8, sold to him by plaintiff, which goods were afterwards re-sold at a loss of Rs. 344-5-9,—*Held* that the Court of Small Causes had jurisdiction, notwithstanding that the original contract was for more than Rs. 1,000. *W. Kuppu Chetti* v. *Chidambara Mudali*, 8 Mad. Rep., O. J., 170.

A suit for debts against two defendants whose liability was joint, but one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of the jurisdiction, may be tried by a Small Cause Court within whose jurisdiction the other defendant is resident at the time of the commencement of the suit, provided an order is obtained from the High Court under Section 4 of Act XXIII of 1861. *Rungiam* v. *Chinnasami Pillai*, 3 Mad. Rep., A. J., 374.

A razeenama stipulating for the payment of a debt into Court by periodical instalments prolonged beyond one week may be received and enforced in a Small Cause Court. *Chinnamyyapa* v. *Peer Amed Sheikh*, 1 Mad. Rep., 459.

The Small Cause Courts in the presidency towns have, under Act IX of 1850, jurisdiction in suits for land under Rs. 500 in value. *Radhamoney Boystamey* v. *Anundomoye Dabee and her husband, Dhurm Doss Banerjee*, 2 Ind. Jur., N. S., 144.

In a suit by a mortgagee, the prayer of the plaint was for a decree for Rs. 300 with interest, and for foreclosure or sale in default of payment. *Held* that

it was an action within Section 9 of Act XXVI of 1864, and therefore the plaintiff was not entitled to costs. *Khettermohun Chatterjee* v. *Kissorimohun Bose*, 1 B. L. R., O. C., 27.

A Small Cause Court has jurisdiction to give a simple money-decree in a suit upon a bond in which landed property is hypothecated. *Doorhyar Roy* v. *Dulsingar Singh*, 12 W. R., 367.

A suit properly alleging a malicious prosecution and special pecuniary loss resulting therefrom is cognizable in a Small Cause Court. *Sitarraman and others* v. *Susa Pillai and others*, 2 Mad. Rep., 254.

Where a suit was brought for interest amounting to less than Rs. 500, due upon a bond for Rs. 1,000, not yet payable,—*Held* that a Court of Small Causes has jurisdiction to try the case, the plaintiff having had a separate and complete cause of action upon the bond entitling him to recover the annual interest as it accrued due. The fact that forgery of the bond is set up as a defence makes no difference. *Anantha Naraiyanappaiyan and others* v. *Ganapaty Aiayan and others*, 2 Mad. Rep., 469.

Plaintiff sued for recovery of a sum of money lent upon the pledge of personal property, and that the moveable property pledged may be declared liable. *Held* that a Small Cause Court has jurisdiction to entertain a suit to enforce a contract pledging moveable property. *Appaun Pillai* v. *Subraya Muppen and others*, 2 Mad. Rep., 474.

In an action for damages on account of defendant's refusal to take delivery of goods of the value of Rs. 3,699-6-8, sold to him by plaintiff, which goods were afterwards re-sold at a loss of Rs. 344-5-9,—*Held* that the Court of Small Causes had jurisdiction, notwithstanding that the original contract was for more than Rs. 1,000. *W. Kuppu Chetti* v. *C. Chidambaba Mudali*, 3 Mad. Rep., O. J., 170.

The plaintiffs advanced Rs. 15,000 against the defendant's grain, consigned to Hong-Kong, to be there sold on his account by the plaintiffs' agents. The plaintiffs subsequently gave credit to the defendant for Rs. 14,115-3-3, alleged to have been received by them as the proceeds of the sale, and sued him for the balance in the Bombay Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of Rs. 1,000. The defendant disputed the correctness of the account sales forwarded by the agents at Hong-Kong, and contended that the Court had no jurisdiction to try the case. The Judge, subject to the opinion of the High Court upon the facts as stated, struck the case out of the list for want of jurisdiction,—*Held* that, as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the defendant, the receipt by the plaintiffs of the amount, for which they gave credit in their particulars of demand, was in the nature of a part payment; and that the suit was, therefore, on a balance of account, and within the jurisdiction of the Court of Small Causes. *Ewart, Latham, and Co.* v. *Haji Mahommed Seddik*, 4 Bom. Rep., O. C. J., 133.

In a suit by A. asking that B. might be ordered to fill up an excavation, or to pay him Rs. 25 as damages for the same, it appeared that there was no ground for the first relief sought. *Held* that the suit was cognizable by the Court of Small Causes. *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee*, 1 B. L. R., A. C., 91; S. C., 10 W. R., 130.

A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent, and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognizable by the District Moonsiff on the Small Cause Court side. *Held*, that the Small Cause Court had jurisdiction to entertain the suit. *Arunachellam Chetty* v. *Gangatharum Aiyan*, 5 Mad. Rep., 287.

A suit to establish the plaintiff's right to the exclusive possession of personal property, of which the plaintiff and her husband had been dispossessed by actual seizure in execution of a decree against the plaintiff's husband, is cognizable by a Small Cause Court. *Janakiammal* v. *Vithenadien*, 5 Mad. Rep., 191.

A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in Sec. 6, Act XI of 1865, considered. *Govinda Muneya Tiruyan* v. *Bapu*, 5 Mad. Rep., 200.

Where the defendant entered into an agreement in writing with the plaintiff (the widow of defendant's brother) to deliver to her every year a specified quantity of paddy by way of maintenance,—*Held*, that the Small Cause Court had jurisdiction to entertain a suit for a breach of the agreement. *Y. Paupamma, widow of J. Venkata Reddy* v. *Y. Chinna Reddy and others*, 5 Mad. Rep., 432.

A suit to recover arrears of revenue which the plaintiff was compelled to pay by the Revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes. *Parasurama Chedumbraiyan* v. *Kristnaiyan and others*, 5 Mad. Rep., 462.

A Small Cause Court has concurrent jurisdiction to try suits for a sum not exceeding Rs. 10, cognizable by a village Moonsiff under Section 5, Regulation IV of 1816. *Parasoorama Pillay* v. *Rumaswamy*, 5 Mad. Rep., 45.

The plaintiffs sued the defendants in the Small Cause Court to recover the value of certain nets, the property of the plaintiffs, of which the defendants had taken wrongful possession, and damages for the loss sustained by the plaintiffs, in that they were unable to carry on their business as fishermen by reason of the detention of their nets by the defendants. *Held* that the Small Cause Court had jurisdiction to entertain the suit. *Maduthan* v. *Subbier*, 6 Mad. Rep., 34.

A suit to assess rent at an increased rate upon the defendants, and for a decree for rent at such rate in respect of land situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of Section 6, Act XI of 1865, and is maintainable in the ordinary Civil Courts, and not in the Small Cause Courts. *Joy Kishore Chowdrain* v. *Nubee Buksh*, 17 S. W. R., C. R., 178.

A Small Cause Court has jurisdiction in cases involving questions as to the validity or otherwise under the Hindu law of a deed of gift or a deed of sale. *Grish Chunder Roy* v. *Gobind Singh*, 17 S. W. R., C. R., 88.

A notice was issued on defendant requiring him to quit the land or pay rent, and defendant refused to do either. Plaintiff therefore rightly brought his suit for damages, and not for rent, and the Small Cause Court had jurisdiction to entertain it. But as the Court rejected the suit as being substantially one for rent, its order was set aside, and the suit ordered to be restored to the file of that Court. *Bhoobun Mohun Bose* v. *Chundernauth Bannerjee*, 17 S. W. R., C. R., 69.

A suit to recover money as damages, measuring on behalf of defendant money which defendant had agreed to pay out of the purchase-money in order to save from sale in execution of a decree an estate which plaintiff had purchased from him, is a suit cognizable by a Small Cause Court, from whose decision no special appeal lies. *Ramgutty Gangooly* v. *Kuralee Prusad Gangooley*, 17 S. W. R., C. R., 446.

Plaintiffs having obtained a sum from defendants on a bond, let certain land to them in ijarah for a term of years on condition that the latter after realizing rents from the ryots would give credit on account of interest on the said bond, pay rent due to plaintiffs' landlord, and pay the balance to plaintiffs. Having failed in the engagements, defendants were sued in the Small Cause Court. *Held* that the suit was a suit on a contract, and could not have been brought anywhere else than in the Small Cause Court. *Nobin Chunder Vodre* v. *Kedur Nanth Chuckerbutty*, 16 S. W. R., C. R., 228.

Section 9, Act XI of 1865, is no bar to a suit against Municipal Commissioners being brought in a Court of Small Causes. *Hurris Chunder Talaputter* v. *O'Brien*, 14 S. W. R., C. R., 248.

In a suit for damages for breaking down and removing bricks from a wall, where defendant's plea was *bonâ-fide* purchase for value from plaintiff's predecessor, and plaintiff replied that the sale was invalid, as one made by a Hindu widow without legal necessity,—*Held* that the suit was cognizable by a Court of Small Causes. *Shumbhoo Chunder Mullick* v. *Pran Kristo Mullick*, 13 S. W. R., C. R., 105.

Suit to recover a thatch of a value less than Rs. 500 must be brought in the Small Cause Court. A thatch, especially when severed from the house, is moveable property. *Rajkumar Mookerjee* v. *Prannath Mookerjee*, 7 B. L. R., Ap., 41, and 15 S. W. R., C. R., 499.

Suits for wages under Rs. 50 alleged to be due from an European British subject to a native can be tried in a Small Cause Court in the Mofussil. *Mirza Ramjan Beg* v. *J. Cook*, 6 B. L. R., Ap., 91, and 14 S. W. R., C. R., 428.

Suits for defamation of character, where there has not been any actual pecuniary loss, are not, under Clause 3, Section 6, Act XI of 1865, cognizable by the Small Cause Courts. *Bhairub Chandra Chuckerbutty* v. *Mahendra Chundra Chuckerbutty*, 4 B. L. R., Ap., 59; 13 S. W. R., C. R., 118.

Where actual pecuniary damages have resulted from personal injury, the suit for damages as a whole will lie in the Small Cause Court, even though it should include damages for loss of reputation. *Gunga Narain Moytro* v. *Gudadhur Chowdry*, 13 S. W. R., C. R., 434.

A suit for the price of trees cut down and removed is not the less a suit for damages, because the Court, in order to determine whether the plaintiff is entitled as damages to the value of his trees, has to go into evidence as to whether they belong to the plaintiff or not. Such a suit is cognizable by a Court of Small Causes, and no special appeal will lie. *Shib Deen Tewary* v. *Bukshee Ram Protab Singh*, W. R., 1864, Mis., 3.

Where a cultivator is a mere servant of the landlord, a suit for damages will lie against him in the Small Cause Court. If the cultivator is a tenant to whom the landlord has sub-let the land, a suit for non-fulfilment of his contract by the tenant will lie under Act X of 1859. *Sreenath Dutt* v. *Dwary Dhallie*, 2 W. R., S. C. C. Ref., 2.

The jurisdiction of a Small Cause Court in a suit on a kubuleut for damages, not exceeding Rs. 500, is not affected because damages exceeding that sum may be payable under the same kubuleut. *J. W. Smith* v. *Gopal Sheikh*, 3 W. R., S. C. C. Ref., 14.

If a co-sharer of personal property sells the property without the consent and authority of the other owner, that other owner may sue the purchaser for the price of his share. Small Cause Courts have jurisdiction to entertain such a suit. *Radhanath Shaha* v. *Kaminee Soondery Dossee*, 2 W. R., 37.

A suit to recover from the defendant Rs. 235, paid to him in excess of his share of the profits of certain lands, is cognizable in the Small Cause Court, and consequently no special appeal will lie in such a case under Section 27, Act XXIII of 1861. *Joynarain Manjee* v. *Muddoosoodun Gorait*, 2 W. R., 134.

No special appeal lies in suits for damages under Rs. 500, cognizable in the Small Cause Court. *Kenoo Mundul and Dookeah Sircar* v. *Mohwa Mahomed*, 2 W. R., 136.

No special appeal lies in a suit cognizable by a Small Cause Court. The jurisdiction of the Small Cause Court is not barred because it has to enquire into a question of title to land as incident to the question of the value of trees taken off the land. *Shumboo Chowdhry* v. *R. Combs*, 2 W. R., 179.

A suit upon a contract for the payment of a stipulated sum *per mensem* to the owner for the leave granted by him to the defendants to use a path across his land is cognizable by the Small Cause Court. *Wooma Persad Shaw* v. *Shumsher Sirdar Mehter*, 4 W. R., S. C. C. Ref., 10.

The Court which has jurisdiction in a proceeding to enforce payment, under the provisions of the Registration Act XVI of 1864, of a registered bond, is the Court in which a suit for the amount claimed is maintainable. *Keshub Lall Mitter* v. *Mosabdy Mundul*, 4 W. R., S. C. C. Ref., 11.

Suit for rent or hire of land which defendant used and caused to be used for passing and repassing to and from his steamer,—*Held* that, if there was no express hiring, the defendant ought to be sued for damages for trespassing upon the plaintiff's land; that, if he agreed to pay for the use of a way across the land, it would not be rent, and that in either case the Small Cause Court was competent to entertain the suit. *Brice* v. *Toogood*, 5 W. R., S. C. C. Ref., 18.

(*b*) *Suits not within their Jurisdiction.*

No suit will lie for money paid out of Court in execution of a decree, without satisfaction having

been entered on the decree. All such questions must be determined by the Court executing the decree. *Alumja Beebee* v. *Gaorao Churn Roy*, 2 W. R., S. C. C. Ref., 3.

A suit will not lie for damages sustained in consequence of the destruction of indigo plants, in execution of an award under Section 15, Act XIV of 1859; nor for damages in the shape of the value of *kolai* crop, recovered by the decree of a competent Court; nor for costs awarded by a competent Court in a possessory suit under the same action. *T. J. Kenny* v. *Kolum Mundle*, 5 W. R., S. C. C. Ref., 1.

A suit for maintenance is not cognizable by a Small Cause Court. *Nobin Kalee Dabea* v. *Bindoobashinee*, 5 W. R., S. C. C. Ref., 5.

An action for cattle, or the value of cattle, cannot lie in a Civil Court having jurisdiction within the local limits of a Small Cause Court jurisdiction. *Anonymous*, 2 W. R., S. C. C. Ref., 5.

Held that a suit for Rs. 100 would not lie in the Small Cause Court upon a deed by which the defendant conveyed to the plaintiff, in lieu of the amount (Rs. 100), due to her as a dower, a half share in all his property, moveable and immoveable, and under which deed, therefore, the plaintiff was entitled to a moiety of all such property, but could not sue for the sum originally stipulated for. *Neeloo Bebee* v. *Misser Biswas*, 6 W. R., 12.

A suit by one co-sharer of an estate who has paid Government revenue to save the estate from sale, against another sharer for his share of the Government revenue so paid, is not maintainable in a Court of Small Causes under Section 6, Act XI of 1865. *Modoosoodun Mozoomdar and others* v. *Bindoobashiny Dossee and others*, 6 W. R., 15.

A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it. *Bhugwan Chunder Bose and others* v. *Bindoobashinee Dossee*, 6 W. R., 286.

A suit (valued at Rs. 500) for specific performance of a contract is not cognizable by a Small Cause Court. Consequently no special appeal will lie in such a case. *Nilkant Surmah and others* v. *Bishen Bashee and others*, 6 W. R., 322.

A suit by a co-sharer for contribution in respect of arrears of revenue paid by him in excess of his quota to save the entire estate from sale is not cognizable by a Small Cause Court. *Brommoroop Goswamee* v. *Prannath Chowdry and others*, 7 W. R., 17.

A suit by a co-sharer for contribution in respect of Government revenue paid by him in excess of his quota is not cognizable by a Small Cause Court, as the extent of the share in respect of which contribution is sought cannot be determined without deciding a question of title. *Kali Nath Roy* v. *Nila Ram Poramanic*, 7 W. R., 32.

The Small Cause Court at Kishnaghur has no jurisdiction to execute a decree against Government. If the Court should attempt to execute such decree the plaintiff who applied for that execution would be liable to be sued for damages. *J. J. Doyle* v. *Dwarkanath Chatterjee and others*, 8 W. R., 89.

Held that a suit by a widow for arrears of maintenance fixed by a Moonsiff's decree, where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Moonsiff's Court for release from his liability, was not cognizable by the Small Cause Court. *Kaminee Dassee* v. *Bishonath Shahah*, 9 W. R., 214.

A suit for salvage, even when the saved property has been abandoned by those in charge of it, is not cognizable by a Court of Small Causes. *Kishore Singh and others* v. *Gunnish Mookerjee*, 9 W. R., 252.

A suit cannot be maintained in a Small Cause Court in the mofussil to recover the unsatisfied balance of a decree of such Court. *M. F. Sandes* v. *Jomir Sheikh*, 9 W. R., 399.

Where a judgment-creditor purchases huts sold in execution of his decree, and, not being allowed to remove them, sues to recover the huts or their value, his suit is not cognizable by a Small Cause Court. *Ruhiny Kant Ghose* v. *Mahabharut Nag and others*, 10 W. R., 258.

A Small Cause Court cannot entertain a suit for the possession of a tree, nor for the annual delivery of the produce, so long as the tree should be productive. But a suit for a definite quantity of the produce of the tree, or the value thereof, may be entertained by a Small Cause Court if the value be within the prescribed limit. *Shanti Lakshminarasamma* v. *Veka Venkatramadas*, 3 Mad. Rep., A. J., 237.

A suit brought to enforce a debt or demand not exceeding Rs. 500 which is secured upon, and must in law be primarily satisfied out of, immoveable property, is not a suit of a nature cognizable in Courts of Small Causes under Section 27 of Act XXIII of 1861, so as to exclude a right to special appeal. This is so though the plaint on the face of it seeks recovery in the alternative, either from the mortgagor personally, or from the mortgaged property. *Atmaram B. Kagji* v. *Sadashiv Mahajani*, 2 Bom. Rep., 1.

The Court of Small Causes, under Act IX of 1850 and Act XXVI of 1864, has no jurisdiction over suits of smaller value than Rs. 500, on the ground only of the cause of action having arisen within the limits of Calcutta. *Lazarus* v. *Victor*, 2 Hyde's Rep., 258.

A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a Court of Requests is established. *Aboo Sait and others* v. *Arnott and another*, 2 Mad. Rep., 439.

A suit for damages on account of a false and malicious charge brought against plaintiff in a Criminal Court, is not cognizable by a Court of Small Causes. *Pran Kisto Banerjee* v. *Nuddear Chand Chatterjee*, 10 W. R., 115.

A suit to set aside a decree of a Small Cause Court when no defect of jurisdiction is manifest on the face of the proceeding, and where there is no reason to suppose that the decree was obtained by fraud or collusion, cannot be maintained in a Court of Small Causes. *Bama Soonderee Dabee* v. *Kaminee Bewa and others*, 10 W. R., 352.

A Small Cause Court cannot take cognizance of a suit for damages under Rs. 500, when there is no

allegation in the plaint that any special damage of a pecuniary nature has resulted from the injury complained of. *Raj Chunder Chuckerbutty* v. *Punchanun Surmah Chowdhry*, 4 W. R., 7.

A. obtained an ikrar from B. by which B. pledged to A. certain buffaloes which B. purchased with money borrowed from A. The ikrar also stipulated that B. would not alienate his rights in the buffaloes till the sum borrowed was repaid. A. obtained a decree against B. for the amount of the loan and attached the buffaloes in execution. This attachment was set aside at the instance of C., who purchased the buffaloes from B. after the date of the ikrar given by B. to A. A. sues C. (making B. a party) in the Small Cause Court, praying for the sale of the buffaloes pledged to him by B., or, in default of that, for the sum due to him. *Held* that such a suit is not a suit within Section 6, Act XI of 1865, to recover personal property, or the value of personal property, and is not cognizable by the Small Cause Court. *Ram Gopaul Shah* v. *Ram Gopaul Shah and others*, 9 W. R., 136.

A suit against a woman living under the protection of her husband is not cognizable in a Small Cause Court, if at the time of the commencement of the suit, the husband does not dwell, nor personally or through a servant or agent carry on business, or work for gain, within the local limits of the jurisdiction of the Court. *Bowman* v. *Shawe*, 10 W. R., 240.

The plaintiff held an under-tenure within a jote jumma held by B. within D.'s zemindary, and under an assignment from B. paid to the zemindar D. a sum of money as rent due by B. to D. Ultimately D., ignoring such payment, recovered the rent from B. by a separate suit in which no plea of payment was raised, and the latter again recovered his due from plaintiff by a separate suit. *Held* that an action was not maintainable in the Small Cause Court against the zemindar defendant D. *Held* that, in the absence of any authority from B. to plaintiff to set-off his payment to D. against the rent due to B., the Collector had no jurisdiction to try whether B. owed the plaintiff a sum equal to the rent, and that the Judge of the Small Cause Court was competent to try whether the plaintiff did pay money for the use of B. at B.'s request, and, if so, to give plaintiff a decree for the same. *Deanut Mondle* v. *Bussunt Moyee Dossia*, 12 W. R., 190.

A suit brought by an owner to recover moveable property of which he has been dispossessed by an attachment order, may, when the value of the property is less than Rs. 500, be maintained in a Court of Small Causes, it being a suit for personal property. A suit "to have sold by auction certain property in respect of which the plaintiff obtained a decree for a right of lien," and also "to set aside the miscellaneous order passed by the Moonsiff," is not cognizable by a Court of Small Causes. *Radha Kishen* v. *Chotay Lall*, 3 N. W. R., 155.

A suit in which the plaintiff prays the Court to consider and declare his right as heir, and for consequential relief, is not within the cognizance of a Small Cause Court. *Kolu Ahur* v. *Musumut Sujna Ahimur*, 3 N. W. R., 105.

A Court of Small Causes has no jurisdiction to entertain a suit to recover the amount of a trade impost alleged to be leviable from the defendant in common with all other persons carrying on the trade of weaving within a particular district. Such a suit cannot be considered as a claim for rent. *Jaghiredar or Arnee* v. *Periyanna Mudali*, 5 Mad. Rep., 317.

The plaintiff sued to recover money paid in order to prevent his land from being sold at the instance of the defendant for nonpayment of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. *Held*, that the Small Cause Court had no jurisdiction, because the suit was cognizable before a Revenue Officer. *Shaunkara Subbien* v. *Vellayan Chetty*, 5 Mad. Rep., 179.

A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service Inam lands by reason of Section 3 of Regulation VI of 1831. *Toppya Pillay* v. *Peddoo Pillay and others*, 5 Mad. Rep. 383.

A Small Cause Court has no jurisdiction to try a suit for rent where the defendant *bonâ-fide* sets up by way of defence that the title to the land in respect of which the rent was claimed, passed from the plaintiff to others, since the creation of the tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord. *Venkatachalam* v. *Thimmu Naikem*, 5 Mad. Rep., 64.

A suit was brought in the Small Cause Court by a zemindar against a ryot for arrears of rent. The plaintiff alleged that he had tendered pottahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the pottahs. *Held* that the suit was not cognizable by a Court of Small Causes, there being no contract between the parties for the payment of rent. *Kumara Venkatachola Reddiar* v. *Narayana Reddy*, 4 Mad. Rep., 393.

In a former suit, A., as his late mother D.'s heir, sued B. for certain moveable property deposited with B., by D., claiming it as her stridhan, and obtained a decree. In the present suit D.'s grandson C. sues A. for the property, averring it to be ancestral and not stridhu, and alleging collusion between A. and C. *Held* that the present suit being in effect for a share or part of a share in an intestacy, was not cognizable in a Small Cause Court; but that the High Court should not interfere with the decision in the former suit as made without jurisdiction, considering the time that had elapsed, and that the parties to the suit had made no application. *Nobin Chunder Gossamee* v. *Dribo Moyu Debia*, 17 S. W. R., C. R., 520.

The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. *Grish Chunder Singh* v. *Auna Dossee*, 17 S. W. R., C. R., 46.

A suit brought by a decree-holder to decide whether moveable property taken in execution is, or is not, the property of his judgment-debtor, is not a suit cognizable by a Court of Small Causes. *Jethábái Bhái Chaund* v. *Bái Lakhu*, 6 Bom. Rep., A. C. J., 27.

A suit by an alleged sharer in a hakwartanee al-

lowance to recover from the defendant, who received the whole of such allowance from Government, the plaintiff's share in it, was held not to be a suit cognizable by a Court of Small Causes. *Venkàji Lakshman De Stipúnde* v. *Yamunúbái*, 7 Bom. Rep., A. C. J., 114.

Where moveable property has been pledged in a mortgage bond as security for a loan, and the amount due on the mortgage is tendered but declined, the mortgagor's suit for possession will lie in the Small Cause Court. But if there has been tender and the suit is for possession after ascertainment of defendant's lien on the property, the Small Cause Court has no jurisdiction in the matter. *Bhubotarinee Ghosany* v. *Juggernauth Tewarry*, 16 S. W. R., C. R., 58.

A suit cannot be maintained in a Small Cause Court in the mofussil to enforce the decree of a Civil Court. *Manchárám Kalliándas* v. *Bakshe Sáhele Mir Mainudin Khan*, 6 Bom. Rep., A. C. J., 231.

A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant was held to be a suit for contribution, and as such not cognizable by the Small Cause Court. *Pitambur Chuckerbutty* v. *Bhyrubnauth Paulit*, 15 S. W. R., C. R., 52.

A. lent money to B. on a mortgage-bond, in which it was stipulated, that if the amount lent was not re-paid on a date specified, the lender was to cause the mortgaged land to be sold and to pay himself out of the proceeds, accounting for any difference to the borrower, who was responsible for any portion of the debt, and covered by the proceeds,—*Held*, accordingly, that a suit to recover on the bond in question was not cognizable by the Small Cause Court, which could not give plaintiff such a decree as the above or the remedy to which alone he was entitled. *Lloyd's Bank* v. *Rinchiden*, 14 S. W. R., C. R., 214.

A suit to recover the balance of nikasee papers furnished by defendant in his capacity of tehsildar, there being an allegation in the plaint that the defendant verbally promised to pay part of the sum claimed under the circumstances mentioned therein, was held not to be cognizable by a Court of Small Causes. *Shristeedhur Bose* v. *Shama Churn Ghose*, 14 S. W. R., C. R., 53.

A suit on the part of an unsuccessful claimant to establish his right to personal property, and to recover the value of the same, is not cognizable by a Small Cause Court. *Moozdeen Gazee* v. *Dinobundhoo Gossamee*, 13 S. W. R., C. R., 99.

A suit, the object of which is not only the recovery of money due upon a bond, but also a declaration of the plaintiff's lien on the property mortgaged by the bond, is not cognizable by the Small Cause Court. *Ram Narayun Mookerjee* v. *Srimati Sarudu Debi*, 6 B. L. R., Ap., 39.

(*c*) *Their Procedure.*

The Judge of a Small Cause Court, before referring a case for the opinion of the High Court under Sections 7 and 8 of Act XXVI of 1864, ought to conclude the hearing of the case, and to give judgment thereon contingent upon the opinion of the High Court. *Dosúbhai Kàvasji* v. *Khubadji Hormasji*, 7 Bom. Rep., O. C. J., 180.

The Judge of a Small Cause Court in the mofussil cannot review his judgment, except as provided by Section 21 of Act XI of 1865. *Tadir Hossein Khendkur, in the matter of the petition of*, 6 B. L. R., 388, and 14 S. W. R., C. R., 442.

A Judge of a Small Cause Court in the mofussil can direct the jailer to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under Section 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. *Kilaram Maji* v. *Narayan Das*, 5 B. L. R., 215, 13 S. W. R., C. R., 278.

Where a case has been referred from the Small Cause Court for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the costs of the reference nor appeared in the High Court,—*Held*, the case was not properly before the Court, and an application for costs by the defendant, who did not appear, was therefore refused. *Rajkumar Paramanik* v. *Stewart*, 5 B. L. R., Ap., 23.

Where a case had been referred from the Small Cause Court for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the cost of the reference, nor appeared in the High Court,—*Held*, the defendants, who appeared, were entitled to judgment and to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith. *Dissent* v. *Justice of the Peace for the Town of Calcutta*, 5 B. L. R., Ap., 24.

Under Section 29, Act XI of 1865, a Small Cause Court should not make a reference on a simple point merely on the application of the parties, unless it entertains a doubt upon the question. *Hurris Chunder Talaputta* v. *O'Brien*, 14 S. W. R., C. R., 248.

Huts are not "moveable property" within the meaning of Act XI of 1865. *Raj Chundra Bose* v. *Dharma Chundra Bose*, 2 B. L. R., A. C., 77; 10 W. R., 416.

At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the revenue officers of this presidency so as to bar the cognizance of such suits by the Small Cause Court. *Gouri Anantha Parathesi* v. *Kaliappa Setti and another*, 3 Mad. Rep., A. J., 213.

Section 19, Act XI of 1865, provides merely for cases in which the decree-holder wishes to have immediate execution, and makes an application for it, either against the person or against the moveable property of the judgment-debtor.

Notwithstanding Sections 19 and 20, Act XI of 1865, the provisions of Section 286, Act VIII of 1859, apply to Small Cause Courts. A decree of a Small Cause Court may be sent to another Court for execution, if no property is found within the jurisdiction of the Court passing the decree; and if the Court to which the decree is sent be in another zillah, the decree must be sent to the principal Court of original jurisdiction in such district. *Anonymous*, 9 W. R., 175.

Notice of intention to apply for a new trial under Section 21, Act XI of 1865, is an essential step towards such application, and without such preliminary step an application cannot be entertained. *Petumber Shadhookhan and another* v. *Doyamoyee Dossee*, 12 W. R., 17.

Plaintiff held an under-tenure within a jote jumma

held by B. within D.'s zemindary, and, under an assignment from B., paid to the zemindar D. a sum of money as rent due by B. to D. Ultimately D., ignoring such payment, recovered the rent from B. by a separate suit in which no plea of payment was raised, and the latter again recovered his due from plaintiff by a separate suit in the Deputy Collector's Courts. *Held* that an action was not maintainable in the Small Cause Court against the zemindar defendant D. *Deanut Mundul* v. *Bussunt Moyee Dassia*, 12 W. R., 190.

A. withdraws a suit pending against B., in the Moonsiff's Court, on B.'s promising him Rs. 50, and sues to recover that sum from B., who denies that there was a valid consideration for the promise, inasmuch as the suit before the Moonsiff was already barred by limitation,—*Held* that plaintiff is entitled to recover in a Small Cause Court, which cannot enquire into the question of limitation in the previous suit. *Sreenath Banerjee* v. *Doorga Doss Nundy*, 9 W. R., 216.

In an application to a Small Cause Court, under Section 53, Act XX of 1866, to enforce the agreement recorded by the registering officer, under Section 52 on the bond,—*Held* that the applicant would be entitled to a decree only on production of the original obligation and of the record signed, but not on a copy of the same. *Sreeram Roy Chowdhry* v. *Kolemoddee Mollah*, 9 W. R., 477.

A quantity of rice having been recovered from the wreck of a boat, a portion was left on the river bank by the owner for the remuneration of the salvors, including some left as "huk zemindary," which the owners of a neighbouring jote carried away. In a suit brought by the former against the jotedar for the value of the portion last mentioned, the Court of first instance went into the question of the custom entitling to property so saved,—*Held* that this question was only incidentally raised for the purposes of the suit, which was simply one for the value of moveable or personal property and cognizable by a Court of Small Causes, and the value being less than Rs. 500, special appeal was taken away. *Thomas Grant and others* v. *Mudhoo Sudon Singh and others*, 10 W. R., 79.

When the judgment of a Small Cause Court is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, his proper course is to apply for a new trial. The facts not being disputed, the Judge may grant a new trial as to what amount of damages were sustained; and in determining that question, he may alter his opinion as to the principle on which damages ought to be assessed, and upon the new trial assess them on the proper principle.

Where a Judge considered it inequitable to reject plaintiff's books when they made for him, *viz.*, as to amounts lent to defendant, and to accept them when they were against his interest, *viz.*, in the amount of repayments credited to defendant, and therefore disregarded both descriptions of entries equally, but gave a decree in plaintiff's favour for such entries as were proved, without deducting the items credited to defendant,—*Held* that entries in an account book, whether on the credit or debit side of the account, are not conclusive evidence either of amounts paid or of sums actually due which the Judge is bound to believe. The Judge was bound to look at the whole of the entries in the plaintiff's book to give credit to such of them as he believed to be true, and to discredit those, if any, which he believed to be false.

A question of law arising on an application for a new trial is a question which may be referred to the High Court for its opinion as a question within the meaning of Section 1, Act X of 1867, arising at any point in the proceedings previous to the hearing of a suit. The hearing in a new trial is a hearing within Act XI of 1865, Section 22. An application for a new trial is a point in the proceedings previous to the hearing. *Isan Chandra Singh* v. *Haran Sirdar*, 3 B. L. R., A. C., 135; S. C., 11 W. R., 525.

In a suit for recovery of a sum of money less than Rs. 500, as money paid in excess of rent due,—*Held* that the suit being cognizable by the Court of Small Causes under Section 6, Act XI of 1865, no special appeal lay to the High Court. *Sib Shayee Sukul* v. *Birchunder Jubaraj*, 2 B. L. R., A. C., 172; 11 W. R., 30.

In an action against a number of defendants, one of whom resides out of the jurisdiction of the Small Cause Court in which the action is brought, an application to the High Court, after reception of plaint, is necessary under Section 4, Act XXIII of 1861. *Subassuthi Mudali* v. *Mathusami Mudali*, 2 Ind. Jur., O. S., 10.

Plaintiff sued for Rs. 31-2-3½, money paid for the use of defendant, his undivided brother. The defence was that plaintiff held family property, defendant's share of which exceeded in value the debt sued for, as also the amount for which a suit would lie before a Moonsiff under Act IV of 1863.

Held that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the Moonsiff under Act IV of 1863.

Held also that the share of the defendant being both in nature and amount beyond the District Moonsiff's Small Cause jurisdiction, it was not available as a defence, even if it formed a fit object of set-off. *Kattapemmal Pillai* v. *Panchanadam Pillai*, 3 Mad. Rep., A. J., 339.

An order from the High Court is necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of its jurisdiction. Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case. Section 21 of Act XLII of 1860 is to have the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. *Subhapati Mudali* v. *Muthesvami Mudali and others*, 1 Mad. Rep., 103.

Where a suit appears from the plaint to be one of the nature cognizable in a Court of Small Causes, but a question of title has been gone into and decided by the District Court in appeal, a special appeal will lie. *Dikshit* v. *Dikshit*, 2 Bom. Rep., 4.

Small Cause Courts have jurisdiction to try questions of title which incidentally arise in suits cognizable by them. *Roghooram Biswas* v. *Ram Chunder Doob*, W. R., F. B., 127.

A suit is not maintainable at K. against a defendant who is employed as a domestic servant at M.,

and who is not shown to have any immediate or early intention of returning to K., where his family are continuing to reside; the word "dwell" in Section 8, Act XI of 1865, it being held, must be used in the strict sense of actual residence. *Porgash Paray* v. *Hachim Khansamah*, 7 W. R., 417.

A Judge of a Small Cause Court in the mofussil found a judgment-debtor guilty of resisting an officer of the Court in attachi g property, in satisfaction of the decree, and fined him. *Held* that the Judge acted without jurisdiction. He ought to have sued the judgment-debtor before the Magistrate. *In the matter of Moni Chundra Dass and others*, 2 B. L. R., A. C., 188.

The Judge of the Court of Small Causes is only empowered, by Section 21 of Act XXIII of 1861, to inflict fine or imprisonment in cases where offences, under Section 175 of the Indian Penal Code, occur in the presence or view of the Court. The power of the Judge does not extend to cases in which the witness fails to attend, or the failure to comply with an order of the Court is merely inferred from other circumstances. *Pavaday Chetti, ex-parte*, 2 Mad. Rep., 319.

Petitioner specially registered a bond, brought it into a Small Cause Court, and, without serving the obligors with any summons, got an *ex-parte* decree against them, and shortly after took out execution. The judgment-debtor appeared within 30 days of the decree, and applied for stay of execution on the ground that the bond was a forgery. Execution was stayed on security given, a rehearing was granted in the presence of both parties, the original decree was reversed, and a fresh decree given. *Held*, that in this state of the facts, the Small Cause Court had jurisdiction to grant a review and fresh decree, and that the procedure laid down in Section 21 of Act XI of 1865 was followed as far as it was applicable. *In the matter of Mohun Sahoo*, 11 W. R., 245.

Plaintiff sued in Small Cause Court for Rs. 1,000 as brokerage, but at the hearing it appeared that the claim was for Rs. 1,020; and the record was amended under Section 27 of Act IX of 1850. On a case referred, the opinion of the High Court was that the Small Cause Court had no jurisdiction to hear a case, unless there be an abandonment of any excess above Rs. 1,000, originally part of the amount in dispute between the parties.

Held that an abandonment of excess not stated in the summons is a splitting of the claim.

That the Small Cause Court has not power to amend the record under Section 27, Act IX of 1850, unless the abandonment be stated in the summons. *Gorachand Chunder Bose* v. *Charro Chunder Ghose*, Bourke's Rep., O. C., 3; S. C., 1 Cor. Rep., 93.

A suit cognizable in a Court of Small Causes and for a sum not exceeding Rs. 50 may be heard by a District Moonsiff, though the defendant resides within the local jurisdiction of another District Moonsiff's Court. The Moonsiff hearing such a suit is bound to exercise the powers of a Small Cause Court and to proceed in conformity with Act XLII of 1860. Madras Act IV of 1863 does not take away the former jurisdiction given to the District Moonsiff in respect of causes of action arising within the limits of his jurisdiction. *Mágam Timmayaya* v. *Tangathér Kandappá*, 2 Mad. Rep., 82.

Where the cause of suit as stated by the plaintiff appeared to be within the cognizance of a Court of Small Causes, the mere denial by the defendant of the plaintiff's right of title is not sufficient to oust the jurisdiction of the Court. If it reasonably appears to the Judge that a *bonâ-fide* question of right which is not within his jurisdiction to decide is fairly raised in the suit, his jurisdiction ceases. *Ammallu Ammal* v. *Subha Vadiyar*, 2 Mad. Rep., 184.

A suit for the materials, bamboos, post, verandah, &c., appertaining to four thatched huts, wherein plaintiff sought a decree to break up and remove them, or to obtain their value to the extent of 29 rupees 4 annas, was held to come under Section 6, Act XI of 1865, and to be a case in which, by Section 27, Act XXIII of 1861, no special appeal would lie. *Kasheechunder Dutt* v. *Jadoonath Chuckerbutty*, 10 W. R., 29.

A decree-holder cannot sue, in a Court of Small Causes, to establish his judgment-debtor's right to property seized in execution, but subsequently released to a claimant under Section 246, Act VIII of 1859. *Ramdhun Biswas* v. *Kefal Biswas and others*, 10 W. R., 141.

An order passed in execution of a decree of a Small Cause Court with respect to the liability of property to attachment and sale is not final, but may be questioned in a regular suit in the same manner as a like order might be questioned when passed in execution of a decree of an ordinary Civil Court. A suit in which the plaintiff sues for a declaration of his right to bring certain property to sale as the property of his judgment-debtor, cannot be entertained by a Small Cause Court. *Rameshur Kulwar* v. *Beharu Seth*, 3 N. W. R., 208.

The plaintiffs consigned goods to the defendant, and drew a bill for Rs. 2,711-9-6 against them on the defendant in favour of the Chartered Mercantile Bank. The bill was accepted by the defendant, and, when presented for payment, was dishonoured. The bill was paid for honour by the attorney of the plaintiffs. The goods arrived, and (the defendant having refused to pay the bill) were sold by the plaintiffs, after notice to the defendant, at his risk, and realized Rs. 1,655-15-4. The plaintiffs refused to hold a survey on the goods unless the defendant paid the amount of the acceptance. The plaintiffs sued the defendant in the Small Cause Court for the amount of his acceptance, giving him credit for the proceeds of the goods, and abandoning the excess. *Held* that the plaintiffs were not entitled to do so, as the claim on the bill was not brought within the jurisdiction of that Court by payment or admitted set-off. *Thomas Shortt et al.* v. *Abdul Ruhemim*, 6 Bom. Rep., O. C. J., 53.

A Court of Small Causes may try incidental questions of title which are indispensable to the decision of the claim before it, *e.g.*, a right to land on which depends a party's right to cut trees. *Radha Churn Gangooley* v. *Gudadhur Bahadoor*, 15 S. W. R., C. R., 166.

In a suit upon one cause of action cognizable by a Court of Small Causes, against two defendants, one of whom resided in the local jurisdiction of such Court, and the other within that of a neighbouring Moonsiff, *Held* that under Section 12, Act XI of 1865, the Small Cause Court had juris-

diction to try the suit, and that the Moonsiff was debarred from entertaining it, but, before proceeding to try it, the Small Cause Court should apply to the High Court for authority to do so. *Khoda Buksh Mistree* v. *Banee Mundle*, 14 S. W. R., C. R., 156.

In a suit brought in a Small Cause Court to recover money, being a debt secured by a hissab entered on a leaf of a khattah book, where the defendant objected to the admission of the leaf as evidence because it did not bear a proper stamp,—*Held* that, under Sections 15 and 17, Act X of 1862, it was competent to the Judge to find on the facts before him, whether the absence of the stamp was owing to an intention to evade payment of the stamp-duty, and that no question arose for reference to the High Court. *Roy Chunder Shaha* v. *Gobind Chunder Koolal*, 13 S. W. R., C. R., 102.

Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment-debtor his own share and plaintiff's share on her behalf. The latter brought the present suit to recover the same from defendant, whose plea was that the amount had been paid to the plaintiff.

Held that, if defendant acted as agent of the plaintiff, there was a contract implied between them that the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court.

Held that as the Subordinate Judge before whom the case came in appeal was also Small Cause Court Judge, he might have dealt with the case without referring the above point for the decision of the High Court. *Shumbhonath Mozoomdar* v. *Kasheeshuree Dabee*, 13 S. W. R., C. R., 100.

Held that Section 42 of Act IX of 1850 does not necessitate the personal attendance of the plaintiff in Court in the first instance; but that the plaintiff may appear by such other person as may, by the rules of the Court, appear for a party in a case. When, however, the personal attendance of the plaintiff appears to the Judge to be necessary for the proper investigation of the cause, he may require it, unless the case comes within the privilege given by Section 46 of the Act. *Neuhai* v. *Kaim Masaji and another*, 4 Bom. Rep., O. C. J., 119.

A Small Cause Court is not bound to allow a plaintiff to withdraw a suit, on the ground that he has received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against two defendants which had been set aside by the Court on various grounds, and a new trial ordered. In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the first defendant's costs. *Rama Chundra Shastry* v. *Papu Aiyan*, 3 Mad. Rep., A. J., 27.

A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Moonsiff, who decreed for the plaintiff. On appeal to the Principal Sudder Ameen, it was objected that the Moonsiff had no jurisdiction, as the suit was one cognizable by the Small Cause Court. *Held* (the Court having decided that the Small Cause Court had jurisdiction) that the District Moonsiff's Court had no jurisdiction; that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court does not warrant the institution of the suit in the District Moonsiff's Court; and that the Principal Sudder Ameen rightly concluded that the suit ought to be dismissed. *Panappa Mudali* v. *Srinivasha Mudali*, 3 Mad. Rep., A. J., 86.

Where a case was determined by a former Judge of a Small Cause Court, contingent upon the opinion of the High Court upon the question submitted by that Judge, and the parties had an opportunity of appearing and being heard in the High Court before the Judges expressed their opinion,—*Held* that when that opinion was expressed the case was at an end; and that it was irregular for the present Judge of the Small Cause Court to interfere in the matter. *Umanund Roy* v. *Lord H. U. Browne*, 7 W. R., 352.

In a suit for arrears of rent a Small Cause Court may decide whether the renting has taken place, and pass judgment for the amount claimed, without adjudicating upon the plaintiff's title. *Subbiramanya Ayyan* v. *Velayada Devar*, 1 Mad. Rep., 212.

Before granting the copy of the judgment and the certificate required for enforcing any portion of a judgment by execution against the debtor's immoveable property, a Small Cause Court should be satisfied that such moveable property of the debtor as is within its jurisdiction has been sold in execution. *Chinnasvami Howaladar* v. *Anonymous*, 1 Mad. Rep., 191.

A Small Cause Court Judge, if it is his intention to proceed under Section 173 of the Code of Criminal Procedure, should complete the investigation, and either commit or hold to bail the accused persons to take their trial before the Court of Sessions. *Resolution on a letter, &c.*, 1 W. R., Cr., 5.

A clerk of a Small Cause Court is not authorized to sign the copy of the judgment and certificate alluded to in Section 20, Act XI of 1865. Moveable property beyond the local limits of Small Cause Courts is not liable to be taken in execution. *Anonymous*, 3 W. R., S. C. C. Ref., 7.

Section 4, Act XXIII of 1861, as being part of Act VIII of 1859, is applicable to Small Cause Courts. *Anonymous*, 3 W. R., S. C. C. Ref., 25.

In calculating the period within which notice is to be given, the date of the decision should be excluded. Judges of Small Cause Courts should propound for the opinion of the High Court such questions only as arise in a suit, not speculative questions. *Petumbur Sadhoo Khan* v. *Tya Moyee Dassee*, 12 W. R., 17.

In a suit for money due on a bond in which the payment is secured by mortgage of immoveable property, the Judge of a Small Cause Court is competent to try whether any debt is due upon the bond or not; but he cannot declare whether or not the particular land mentioned in the bond is charged for the payment of the debt, nor can he attach the land in execution of the decree. *Ram Shewuk Sahoo* v. *Futto Roy*, 12 W. R., 184.

According to Section 22, Act XI of 1865, a Small Cause Court is required, in referring a case for the decision of the High Court, to draw up a statement

of the case, and to refer it with the Court's own opinion. *Denonath Addy* v. *Pay Serjeant W. Weller*, 7 W. R., 165.

Per Peacock, C. J., and Norman, J.—It is competent for a Judge of the Court of Small Causes, of his own motion, to notice the point of limitation, and to decide a case upon that issue, such issue not having been raised by the defendant. *Per* Markby, J.—It is not competent for such Judge to raise this point, and decide the case thereon, after the case of both parties is closed. Lapse of time does not oust the jurisdiction of the Court. *Payne* v. *Constable*, 1 B. L. R., O. C., 49.

A third application for a new trial in a Court of Small Causes is not admissible under Section 21, Act XI of 1865. *Dhunnoo Chowdhry* v. *Bukshun*, 12 W. R., 266.

Although a defendant may be temporarily absent from his dwelling-house, yet if he retains the same he will be held to dwell there within the meaning of the Small Cause Court Act XI of 1865. To dwell in a place is to have one's permanent abode there. *Madho Dass* v. *Sitan Ram*, 3 N. W. R., 121.

A hut is not moveable property within the meaning of Section 19 of Act XI of 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it. *Naltu Miah* v. *Nand Rani*, 8 B. L. R., 508; 17 S. W. R., C. R., 309.

Held that it is not necessary for a defendant in a Small Cause Court to deposit the amount of the decree in Court, when applying for a review of judgment for the purpose of obtaining an order to pay by instalments. *Mulchund Jethásha* v. *Kiká Vardboán*, 5 Bom. Rep., A. C., 70.

If an application for a review of judgment made by a defendant in a Small Cause Court be in the nature of an application for a new trial, the amount of the decree, though made payable by instalments, must be deposited in Court, under Section 21 of Act XI of 1865. *Navoroji Pestanji* v. *Mansukh Jayachamd*, 5 Bom. Rep., A. C., 70.

Held that the rules and orders in the Military Code are not binding on a Small Cause Court. *Raichund Mangal* v. *Abdulla Amuruddi Kotval*, 5 Bom. Rep., A. C., 99.

Held that crops which have not been severed from the ground are not moveable property within the meaning of the term as used in Section 19 of Act XI of 1865. *Muhammed Sileman Valad Muhammed Ishakbhái* v. *Satu Valad Harji*, 5 Bom. Rep., A. C., 90.

Judges of Courts of Small Causes are bound to give copies of their judgments to parties requiring them. *Ibráhim Fatte Ali* v. *Chundrá Chán Valad Bápuji*, 7 Bom. Rep., A. C. J., 130.

An application presented to a Small Cause Court on the 25th May to set aside an *ex-parte* decree obtained on the 14th March, when no process had been executed for enforcing the decree, was held to fall within the first of the two provisions in Section 21, Act XI of 1865. *Shojenee Dassia* v. *Dhuronee Dhur Ghose*, 16 S. W. R., C. R., 226.

In a suit under a count for goods bargained and sold, and under a count for goods sold and delivered, in which the defendant took a highly technical objection to the form of the plaintiff's cause of action, it was held that it was the duty of the Judge of the Small Cause Court at Calcutta, under Section 27, Act IX of 1850, to rectify the mistake in the plaintiff's claim, whether the plaintiff made such a request or not; the Legislature never having intended to introduce the niceties of special pleading into the practice of the Court of Small Causes. *Mackenzie, Lyall and Co.* v. *Dover*, 14 S. W. R., C. R., 487.

A suit for damages not exceeding Rs. 500 on account partly for injury to reputation and partly for loss in business and professional position, comes within the provisions of Section 6, Act XI of 1865, and is not open to special appeal. *Brojo Soondur Bhadooree* v. *Eshan Chunder Roy*, 15 S. W. R., C. R., 179.

An application having been made to a Small Cause Court Judge to set aside an *ex-parte* decree, the Judge found from the record that the defendant had been personally served with a summons. He accordingly requested the pleader to tell his client to be present 3 days after to be examined. As neither applicant nor his pleader was present on that date, the Judge rejected the application without issuing notice on the opposite party. A second application was then made under Section 21, Act XI of 1865. *Held* that the communication to the pleader was an informal proceeding, and as applicant had not been summoned in due form his application should not have been rejected in his absence, and the Judge was bound to hear the second application. *Gopal Chunder Roy* v. *Armun Shaikh*, 15 S. W. R., C. R., 402.

It may be competent to the Judge of a Small Cause Court on hearing one of the defendants to set aside an *ex-parte* decree as to all, if justice requires it, *e.g.*, if the objection is one which is common to the case of all; but he is not bound because the decree is set aside as to one defendant to interfere with the decision against others who do not object. *Dookha Khan* v. *Rajessuree Ranee*, 15 S. W. R., C. R., 371.

A suit to recover money which plaintiff paid for defendant is in the matter of a suit for damages, as described in Section 6 of the Small Cause Court Act. *Gopal Surnokar* v. *Goyaram Sircar*, 13 S. W. R., C. R., 273.

Where the same person holds the office of Judge in two Small Cause Courts, and sits for the first half of the month in one Court and for the remaining half in the other, the next sitting of either Court after the close of its half-monthly term would be on the first day on which the Judge sat again in that Court. *Madhub Chunder Biswas* v. *Okhoy Chunder Biswas; Gopee Mohun Bannerjee* v. *Sreekunt Bose*, 13 S. W. R., C. R., 103.

Where a Court is closed on the last of the seven days allowed for notice of application for a new trial, notice may be given on the first day thereafter. *Grija Bhoosun Halder* v. *Okhoy Nikaree*, 13 S. W. R., C. R., 105.

A Small Cause Court decree having been given on the 6th November, the 12th, 13th, 14th, and 15th being days on which the Court was closed, notice of application for a new trial was filed on the 16th.

A defendant desiring a new trial of a case decreed against him in a Small Cause Court must deposit in Court the amount of the decree passed against

him, and costs, at the time of giving notice of his intention to apply for the new trial. A subsequent deposit, though made within seven days from the date of decision, will not entitle the party to ask for a new trial.

Semble,—"The next sitting of the Court" mentioned in Section 21, Act XI of 1865, refers to the next sitting after the decision complained of, and the words "within the period of seven days from the date of the decision" apply to cases in which the sittings of the Small Cause Courts are not held consecutively, by reason of the same Judge being the Judge of more than one Court. *Kailas Chandra Sannel* v. *Dowlat Sheikh*, 5 B. L. R., Ap., 57; 14 S. W. R., C. R., 42.

Growing crops are "immoveable property," and execution of a decree of a Small Cause Court cannot be had against them under Section 19 of Act XI of 1865. *Gopal Chandra Biswas* v. *Ramjan Sirdar*, 5 B. L. R., 194; 13 S. W. R., C. R., 275.

A. obtained a decree in the Small Cause Court against B. In execution of the decree, goods belonging to B., but in the possession of a pledgee, were seized by a bailiff of the Small Cause Court. The pledgee brought an interpleader suit, under Section 88 of Act IX of 1850, to recover the goods. *Held*, the pledgee was entitled to have the goods released to him and to have the costs of his suit paid by the execution-creditor. *Bhinji Govindji* v. *Monohar Dass*, 5 B. L. R., Ap., 31; 14 S. W. R., C. R., 303.

A question of fact cannot be reserved for the opinion of the High Court, under Section 7, Act XXVI of 1864, when there is a difference of opinion between two Judges of the Small Cause Court at Calcutta. Where the Judges differ on a question of law it ought to be expressly stated. In a case of a difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted. *Jardine Skinner* v. *Money*, 14 S. W. R., C. R., 312.

The provisions of the Code of Civil Procedure in respect of insolvency, viz., Section 273, Act VIII of 1859, and Section 8, Act XXIII of 1861, are applicable to decrees of Courts of Small Causes in the mofussil. *Bhoobunmohun Bose, in the matter of*, 15 S. W. R., C. R., 571.

Where a part of the military pay of a serjeant employed under the executive engineer was erroneously remitted by his superior to a Small Cause Court, which had directed execution against the serjeant's pay, it was held that the sum remitted should be refunded to the executive engineer. *Cohen* v. *McCarthy*, 14 S. W. R., C. R., 441.

A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the 2nd proviso of Section 6 of Act XI of 1865. Until the judgment-creditor has exhausted that mode of proceeding he is not entitled to proceed against the debtor's immoveable property under Section 20 of the Act. *Ahabalasoo Chetty* v. *Venkata Kaunammah*, 5 Mad. Rep., 275.

A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. *Jyahvien* v. *Chithambarien*, 5 Mad. Rep., 312.

All sales by Small Cause Court Judges should be conducted strictly in accordance with Section 251, Act VIII of 1859; though where property of small value is being sold in execution of a decree for a considerable amount and is purchased by the decree-holder, a Small Cause Court might, on his application and as an exceptional case, order that his receipts should be accepted as cash, but provision must in that case be made for realizing all fees of Court. *Indro Narain Deb* v. *Gobind Chunder Dhur*, 15 S. W. R., C. R., 368.

A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction. In such execution the course to be pursued is that prescribed by Sections 285 and 286, Code of Civil Procedure. *Kodoo Mundle* v. *Shushu Shikur Sircar*, 16 S. W. R., L. R., 227.

17.—Revenue Courts.

(*a*) *Suits Cognizable thereby.*

(*b*) *Suits not Cognizable thereby.*

(*c*) *Practice and Procedure.*

(*d*) *Miscellaneous.* (*e*) *Revenue Appeals.*

Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts. *Nanku Roy* v. *Mahabir Prosad*, 3 B. L. R., Ap., 35; 11 W. R., 405.

A suit in the Civil Court will not lie to set aside the decision passed by the Revenue authorities in the exercise of the power vested in them by Section 8, Act XIX of 1863. However irregular the proceedings be, and not in conformity to the provisions of that section, the proper course for the party aggrieved is by appeal in the manner prescribed by the Act. *Bukhta* v. *Mussamut Gunga*, 4 Agra Rep., 161.

A regular suit cannot be maintained to enforce a decree in a summary suit for rent which the Revenue Court has found to be satisfied, and therefore refused to execute (Steer, J., *dissentiente*). *Anund Moyee Dossee* v. *Puttit Paubunee Dossee*, W. R., F. B., 118.

If a sale of A.'s tenure is made fraudulently under a decree of the Revenue Court for arrears of rent against B., the Civil Courts have jurisdiction to set aside the sale and to restore A. to his rights. *Ramsoondur Poramanick* v. *Prosunno Coomar Bose*, 5 W. R., Act X R., 22.

The decision of a Revenue Court that a party is liable for rent to another as his tenant does not bar that party suing in a Civil Court to obtain a declaration of title on his general civil rights, either as proprietor by purchase or as mokurrureedar. *Juddoonath Sein* v. *Ram Coomar Chatterjee*, 9 W. R., 359.

The purchaser of a tenure at an auction sale in execution of a Civil Court's decree offered to pay in certain arrears of rent, on account of which the tenure was at that time attached and about to be

sold under a decree in a suit under Act X of 1859. The Assistant Collector refused to receive payment, and the tenure was again sold under the law, Act VIII of 1865, B. C.

Held that the purchaser's remedy was by appeal to the Collector, Commissioner, and Board of Revenue. *Henry Buckland* v. *Ashoo Chundhrain*, 9 W. R., 366.

A., suing B. for arrears of rent, on the allegation that B. held an outbundee jote from him on certain lands of plaintiff's jote jumma, obtained a decree for rent for one year, the period for which he sued. B. then brought an action in the Civil Court for a declaration of his right to the jote jumma in question, alleging that he held the land direct from the zemindar, and was not A.'s ryot; A. pleading that the Civil Court had no jurisdiction after the Revenue Court had declared B. to be his ryot.

Held that the Revenue Court's decree was not conclusive as to the question of title, *i. e.*, as to whose right it was to have the particular jote jumma as his property. *Dhonye Mundul* v. *Arif Mundul*, 9 W. R., 306.

Where a tenure has been sold in execution of a decree by a Revenue Court, a third person, not a party to the suit in that Court, alleging that the tenure was not transferable, and seeking to have his right to possession vindicated against the pretended transferee, is entitled to complain in the Civil Court, and to ask protection against the probable injurious consequences to himself of the Collector's decree. *Joykishen Mookerjee* v. *Hureehur Mookerjee*, 9 W. R., 286.

In executing a decree for arrears of rent, a Revenue Court has no power to seize and sell any other property than that of the judgment-debtor, even though such property had previously belonged to the judgment-debtor, *e.g.*, a tenure which once had belonged to him but was sold in execution of a Civil Court decree. *Pran Bundhoo Sircar* v. *Sorbosoondoree Dabea*, 10 W. R., 434.

In a suit for rent the Revenue Court has no jurisdiction to enquire into the conflicting rights of plaintiff and intervenors. *Nawab Jan* v. *Munoo Lall and others*, 10 W. R., 433.

A Civil Court has no jurisdiction to entertain a suit to set aside a sale by order of a Collector, under Act X of 1859, in execution of a decree for arrears of rent due on the tenure of which the sale was made. *Haranund Dutt* v. *Ram Dhun Sein*, W. R., 1864, Act X R., 122.

A Collector acts without jurisdiction in ordering the sale of an estate in execution of a decree for rent against other landed property before proceeding against the tenure upon which the arrear accrued. A suit lies in the Civil Court to set aside the Collector's order as illegal. *Jokee Lall* v. *Nursing Narain Singh*, 4 W. R., Act X R., 5.

The cause of action stated, and the remedy sought by the plaintiff, and not the answer made by the defendant, must determine whether a suit is cognizable by the Revenue or the Civil Court. *R. Watson and Co.* v. *Hedger*, W. R., 1864, Act X R., 25.

A. obtained a decree against B. for arrears of rent in respect of a saleable tenure. In execution of the decree, the Deputy Collector of Basseerhaut requested the Collector of the 24-Pergunnahs to attach and sell any moveable property belonging to B. He accordingly caused "certain houses and buildings and some moveable properties" belonging to B. to be attached. On an application by B. to the High Court to set aside the attachment,—*Held* that the Collector had no jurisdiction to attach the property. The decree could not be executed by the attachment of any immoveable property except the tenure, before it was shown that satisfaction of the decree could not be obtained by execution against the person or moveable property of the debtor. *Desaratulla* v. *Nawab Nazim Nazir Ali Khan*, 1 B. L. R., A. C., 216; 10 W. R., 341.

Suit to set aside a sale made by the Collector of Burdwan of a putnee talook appertaining to a permanently-settled estate within the civil jurisdiction of the Judge of Beerbhoom, the land, however, being situate within the Burdwan Collectorate. *Held* (1) that when a Collector in exercise of his lawful functions has assumed the jurisdiction to sell a putnee, it lies on the plaintiff who impugns that official act to show that it is done without jurisdiction; (2) that the jurisdiction of a particular Judge over a certain place does not necessarily imply the jurisdiction of a Collector, or more exactly the situation of that place within the Collectorate bearing the same name with the Zillah Judge. *Kalee Koomar Mookerjee* v. *The Maharajah of Burdwan*, 5 W. R., 39.

A suit for arrears of rent which had been instituted in the Moonsiff's Court before Act VIII (B.C.) of 1869 came into operation, was decided by that Court after the jurisdiction of the Revenue Courts had ceased to exist. *Held* that the Moonsiff had no jurisdiction in the case. *Krillyanessuree Dossee* v. *Narain Kyburto*, 15 S. W. R., C. R., 241.

Before bringing suit to recover money which defendant had received in execution of decree, and which he was no longer entitled to retain, plaintiff is not bound to make application to him for the money. There is no express provision of law with regard to the Collectors' Courts as there is in Section 11, Act XXIII of 1861, with regard to the Civil Courts. *Kristo Chunder Goopto* v. *Ramsoondur Sein*, 17 S. W. R., C. R., 14.

Held that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for the Holkar's government in British territory. *Reg.* v. *Vithal Lakshuman*, 5 Bom. Rep., Cr., 13.

Where a suit in which a decree has been passed by a Deputy Collector is transferred to a Moonsiff's Court under Act III (B. C.), 1870, an application for re-hearing under Section 58, Act X of 1859, can only be heard by the Moonsiff. *Wooma Churn Moojoomdar* v. *Chunder Kant Roy Chowdry*, 16 S. W. R., C. R., 255.

In a suit to recover possession on the ground of illegal ejectment, a Collector has no jurisdiction to enquire into any matter having reference to the rights of the parties. *Sheeb Chunder Mahneeah* v. *Brojonauth Aditya*, 14 S. W. R., C. R., 301.

A Revenue Court is not able to administer equities between co-defendants, or between a plaintiff and a defendant who ought to have been joined as a co-plaintiff. *Kaleenath Bonerjee* v. *Mahomed Hossein*, 13 S. W. R., C. R., 469.

Section 24, Regulation XLVIII of 1793, and Section 9, Regulation IV of 1793, direct the Zillah and City Courts to transmit their decrees to the

Collector, but do not authorize these Courts to make any orders on the Collector as to how he shall enter the result of such decrees in his books. *Nimdhari Sing* v. *Kauchun Sing*, 4 B. L. R., Ap., 44; 13 S. W. R., C. R., 162.

Prior to the passing of Regulation II of 1819, the Civil Courts were competent to entertain regular suits by zemindars for the declaration of their right to resume revenue illegally alienated subsequently to 1790, and for possession of the land held rent-free under grants or titles which had their origin subsequently to 1790. Such suits were unaffected by the passing of Regulation II of 1819, Section 30, which related only to resumption of lakheraj existing prior to 1790. *Sonaton Ghose* v. *Moulvie Abdool*, 2 W. R., 91.

Under Section 30, Regulation II of 1819, a Deputy Collector, although authorized to put the case in such a state of preparation as to facilitate the hearing and decision by the Collector, has no authority to pronounce a decision himself. *Radhamadhub Ghose* v. *Khirudnauth Roy*, 1 Ind. Jur., O. S., 84.

A suit will lie in the Civil Court for the recovery of land fraudulently sold in execution of a decree for rent, under Act X of 1859, against a party not in possession without suing specifically to set aside the sale. *Noor Buksh* v. *Mean Jan*, 6 W. R., Act X R., 60.

A Deputy Collector has not original jurisdiction to entertain a suit under Regulation II of 1819, Section 30. *Kally Doss Banerjee* v. *Mutty Lall Chuckerbutty*, Marsh., 483.

A Deputy Collector has no jurisdiction to try a suit under Section 30, Regulation II of 1819, but should return the plaint, and refer the party to the Collector who has jurisdiction. *Goureekant Banerjee* v. *Lall Mahomed Mollah*, W. R., F. B., 70.

(*a*) *Suits Cognizable thereby.*

Every Court having jurisdiction over the subject-matter of a suit incidentally has jurisdiction (unless expressly barred by law) to try all pleas in bar urged in such suit. Consequently the Revenue Courts, under Act X of 1859, can try the genuineness and effect of a pottah pleaded in bar in a suit for a kubuleut at an advanced rent. *F. C. Sandes* v. *Surroop Chunder Biswas*, 2 W. R., Act X R., 11.

Plaintiff took from defendant a lease of a certain quantity of land at a stipulated rate. Finding, however, that the land fell short of the quantity specified in the lease, and that defendant notwithstanding realised the full rent from him, he obtained a decree for abatement under Act X of 1859. The present suit was brought in the Small Cause Court for the excess rent levied from plaintiff between the date of taking possession and of the Act X decree. *Held* that the Small Cause Court had no jurisdiction in the case. If the suit did lie at all, it would be a suit for an illegal exaction of rent, and such a suit must be brought in the Revenue Court, and not elsewhere. *Sorbo Chunder Doss* v. *Woomanund Roy*, 11 W. R., 412.

In a suit for rent, where the original landlord had, in consideration of a loan from his tenant, made to him an assignment of the rents to some extent, plaintiff alleged that that arrangement had been put an end to, and the assignment had dropped by reason of the defendants having recovered the money in another way,—*Held* that the Deputy Collector had full jurisdiction to enquire into the allegation, because plaintiff's cause of action was the original cause of action of the landlord, and the only effect of subsequent events was to deprive defendants of an answer to the claim. *Ishan Chunder Sein* v. *Kenaram Ghose and others*, 12 W. R., 381.

In a suit for a kubuleut, the defendant having, by giving a kubuleut for a portion of the land in suit, acknowledged himself to be plaintiff's ryot as to that portion,—*Held* that the *onus* was on the defendant to prove his special plea of his not being the plaintiff's ryot as to the rest of the land. The Collector has jurisdiction, under Act X of 1859, in such a case. The Court will receive and adjudicate a point of jurisdiction, though not taken below, because as acts done without jurisdiction are acts of no legal effect at all, they must be set aside. *Gooroo Persad Roy* v. *Juggobundo Mizoomdar*, W. R., F. B., 1862, 15.

The fact that a sum of money was deposited by the lessee with the lessor as security for the payment of the rent, does not remove a suit for rent from the jurisdiction of the Revenue Courts. *Jowahur Lall* v. *Sultan Aly*, 12 W. R., 214.

A suit by a lumberdar for his share of the profits against another lumberdar is cognizable by the Revenue Court under Act XIV of 1863. *Mahomed Ghous* v. *Mussamut Kureemoon Nissa*, 1 Agra Rep., R. A., 52.

A suit for enhancement of a julkur tenure is cognizable in a Revenue Court. *Paran Santra* v. *Sheikh Tajooddeen*, 5 W. R., Act X R., 20.

A suit for rents which were due when a durputnee lease was granted, and for which the durputneedar in his kubuleut covenanted to be liable to the zemindar in addition to the yearly rents accruing, is cognizable by the Revenue Courts. *Ashootosh Chuckerbutty* v. *Banee Madhub Mookerjee*, 5 W. R., Act X R., 34.

In a suit for arrears of rent at an enhanced rate on a kubuleut in which defendant had agreed to pay a fixed rent for plaintiff's share of the estate, with a further stipulation that he was to measure and enhance the rents of the ryots, and pay over to the zemindar half the enhanced rent,—*Held* that the suit was cognizable by a Revenue Court.

Held that damages on account of the wanton destruction of trees, though stipulated for in a kubuleut, cannot be claimed as rent; but that a stipulation to supply a number of mangoes yearly is one to pay a part of the rent in kind, and the value of the mangoes is realizable as rent in a Revenue Court. *Nubo Tarinee Dossee and others* v. *J. J. Gray*, 11 W. R., 7.

The Collector has jurisdiction in a case where the zemindar opposes the entry of the purchaser of a transferable ryot's tenure. *Degumburee Dabea* v. *Shamasoonduree Debea*, W. R., 1864, Act X R., 81.

When A. conveys to B. an interest in land under a description as to title which turns out to be erroneous, a suit by B. against A. for diminution of rent on the ground of the erroneous description ought to be brought in the Revenue Court. *Rajah Neelmonee Singh Deo* v. *Gordon, Stewart, and Co.*, 1 Ind. Jur., N. S., 356.

A certain sum was paid to Government as

nuzzerana during the existence of the *maafee* grant through a lumberdar, after the *maafee* was resumed, and a Government jumma assessed upon it, the *nuzzerana* continued to be paid until the interest of the holder of the resumed *maafee* was confiscated for rebellion and sold at auction. After the confiscation, Government allowed the amount to the lumberdar, by deducting it from the amount of Government revenue paid by him. *Held* that by such arrangement the Government did in effect convey to him (lumberdar) as trustee on behalf of Government such an interest in the estate as would enable him to sue and enforce such claim.

Held further that, under the circumstances, the payment of *nuzzerana* being a present in acknowledgment of proprietary title in the nature of a rent charge, the suit was cognizable by the Revenue Court under Clause 4, Section 1, Act XIV of 1863. *Syud Zahoor Hossein* v. *Assud Ali*, 3 Agra Rep., 178.

Defendants who were co-sharers with plaintiffs in a certain estate, held and cultivated as their nijjote lands belonging to plaintiff's share, and resisted his endeavours to obtain rent from them. Plaintiff accordingly sued to establish his proprietary right, and obtained a decree declaring that defendants were liable to payment. He then brought the present suit to obtain wasilat on account of those lands,—*Held* that, as a landlord, plaintiff could not recover wasilat, which is a compensation for wrong done, but only rent, which is the value of lawful possession, and that the Civil Court had no jurisdiction in the suit. *Gooroo Pershad Roy and others* v. *Bissumbhor Panjah*, 11 W. R., 504.

A. took a farming lease from B., by which he agreed to pay B. a certain yearly rent, and stipulated further to pay to B. half of any enhanced rent which he might succeed in realizing from the ryots,—*Held* that a suit by B. to recover arrears of this moiety of enhanced rent would lie in the Revenue Court. *Srimoti Bhabatarini Dassi* v. *J. Grey*, 2 B. L. R., A. C., 152.

A suit lies in the Revenue Court under Clause 2 of Section 1 of Act XIV of 1863, although plaintiff collects her own rents, and pays in separately her quota of the Government Revenue. *Masumat Salamut Bibee* v. *Bhugwan Doss*, 2 N. W. R., 33.

A suit by a shikmee cultivator, or under-tenant, to recover possession of land from which he has been illegally ejected by the defendants, themselves only tenants, and not zemindars, is cognizable by the Revenue Court. *Jey Singh* v. *Moorlee*, 2 N. W. R., 98.

A suit by a lessor for arrears of rent is triable by a Revenue Court under Act X of 1859, if the principal matter demised under the lease is land, and if indigo factories on such land are merely the adjuncts or appurtenances. *Sharoda Pershad Mookerjee* v. *Sreenauth Mookerjee*, 15 S. W. R., C. R., 520.

Suits for rent between "goandahs" and those cultivating under them are cognizable by the Revenue Courts only. *Likhun Pathuk* v. *Roop Lal and another*, 3 N. W. R., 48.

A suit by a proprietor of land for an etmami kubuleut from his tenants at the prevailing rates is cognizable by no other Court than the Revenue Court. *Nussurut Ally Chowdhry and others* v. *Mahomed Kanoo Sirdir and others*, 11 W. R., 541.

In an action for rent before the Collector, the tenant set up that by a tamasook entered into between himself and his landlord after his leases, it was stipulated that in consideration of an advance of money by him to the landlord a part only of the rent should be paid, and the residue applied in satisfaction of the debt; and he claimed to be entitled to the benefit of that stipulation. *Held* that the Collector had jurisdiction to enquire into the validity of the alleged tamasook, and to allow the deduction, if satisfied that it was genuine. *Mussamut Edun* v. *Mussamut Buchun*, Marsh., 409.

(*b*) *Suits not Cognizable thereby.*

Held that a suit to make up the deficiency of seer land of one puttee with another puttee of a joint undivided estate was not cognizable by the Civil Court, the remedy of the plaintiff being by a revenue suit for partition and separation of his share. *Shah Golam Ghous* v. *Shah Fureed Alum*, 1 Agra Rep., A. C., 246.

Where a mortgagor obtaining possession of the mortgaged property by redemption sued the mortgagee for the profits of certain years as due to him by the latter,—*Held* that the question being not between co-sharers, but between mortgagor and mortgagee, was not cognizable by the Revenue Court under Act XIV of 1863. *Praim Sookh* v. *Abbas Aly*, 2 Agra Rep., Revenue Court Appeals, 4.

Held that a suit for maintenance of money rent, and to prevent the zemindar from substituting a rent in kind for the money rent previously paid, is not a suit cognizable by the Revenue Courts under Act X of 1859 or Act XIV of 1863. *Bainee and others* v. *Mahomed Ally Khan*, 3 Agra Rep., 307.

A suit by a cultivator for the recovery of his holding, on the ground that he has been dispossessed by a person other than the zemindar, is cognizable by the Civil Court, and not by the Revenue Court. *Mussamut Amirta* v. *Nundo Kishore and others*, 3 Agra Rep., 333.

An application for partition of orchards not liable for a quota of the village assessment is not one cognizable by the Revenue Court under Act XIX of 1863. *Oodey Ram and others* v. *Sirajool Hossan and others*, 2 Agra Rep., A. C., 241.

Held that the suit by a lessee against a sub-lessee to obtain rent of a garden which is attached to a house, and is ancillary to the enjoyment of the house, is not cognizable by the Revenue Court, but by the Civil Court. *Rajah Shyam Singh* v. *Mussamut Maharanee Punchum Majee*, 2 Agra Rep., A. C., 243.

Where the suit was not for ejectment under Act X, but the zemindar claimed to have the land restored to its original condition by the removal of trees illegally planted by the cultivator,—*Held* that such suit was cognizable by the Civil Court, and not by the Revenue Court.

The question whether tenants have a right to keep up or renew existing baghs by planting new trees without the consent of zemindar, must be determined with reference to the custom of the country. *Jhona Singh* v. *Neaz Begum*, 3 Agra Rep., 183.

Where the land in respect of which a kubuleut is

demanded is occupied by a building used as an ordinary dwelling-house, manufactory, or shop,—*Held* that a suit for delivery of a kubuleut in respect of such land is not cognizable in the Revenue Court under Act X of 1859.

If the land formed part of an agricultural holding and was auxiliary to its enjoyment it would form a portion of the holding, and the landlord would be entitled to demand a kubuleut in respect of the entire holding, not excluding the land on which the building is erected.

The principle of this decision will apply equally to suits brought to obtain payment of perjout as rent. *Chotuck Pandoo* v. *Mirza Inyat Ali*, 4 Agra Rep., 49.

A. leased to B. for 25 years, commencing from October, 1855, certain *aurings* or pieces of ground situated in the zillah of Beerbhoom, in the province of Bengal, at a certain rent payable monthly, B. entering into a covenant to pay the rent. The property leased was a loha mehal, or iron mine, and the lessee used it as such, and erected melting furnaces. B. resided in Calcutta.

Held that a suit by A. against B. on the covenant in the lease to recover arrears of rent was properly brought in the Civil and not in the Revenue Court; that "land," as understood in reference to Act X of 1859, has a limited signification, and refers to such as is used for the purposes of vegetable or animal reproduction. *Held* that a question involving a claim to cultivating right of occupancy is not one which could be properly decided in a suit for partition under Act XIX of 1863, under which only questions of conflicting proprietary title can be determined.

When an estate in which the proprietors have seer land is partitioned, such partition among the co-sharers is no way affected by any cultivating rights which may be possessed by cultivators not co-sharers in the estate, but it is also a well-understood effect and consequence of partition that co-sharers retain no right of occupancy in respect of any seer land which may have passed under the partition into the share of other co-sharers, as a seer-hold proprietor has no cultivating right distinct from and independent of his proprietary character. When, therefore, by partition he loses his proprietary title to any particular land, any cultivating right which he had in virtue of his proprietary character necessarily ceases. *Aman Singh* v. *Joygopal Singh*, 4 Agra Rep., 164.

The Revenue Court has no jurisdiction in a suit for recovery of possession brought by a shikmee cultivator against a zemindar in respect of a portion of his seer. *Hur Pershad* v. *Mata Buksh and others*, 4 Agra Rep., 225.

Where an agent was employed as the manager of a trading business, and as a general manager, and in that capacity received rents collected by sub-agents employed by the zemindar,—*Held* that a suit for rendition of accounts against such agent was not cognizable by the Revenue Court, but by the Civil Court. *Batas Koonwar* v. *Jankee Pershad*, 4 Agra Rep., 292.

Act X of 1859 gives Revenue Courts no jurisdiction in suits to recover cesses over and above the rent. *Orjoon Sahoo* v. *Annund Singh and another*, 10 W. R., 257.

A suit for ground-rent of the land on which a golah stands is not cognizable in the Revenue Courts. *Delawar Ali* v. *Dabee Pershad*, 11 W. R., 203.

In a suit for arrears of rent on a lease granted to one of two defendants in the name of the other, where the former admitted benamee execution of the agreement, but the latter denied that any relation of landlord and tenant existed between himself and the landlord,—*Held* that the question whether the latter defendant was the party beneficially interested in the lease was not one which was intended by the Legislature to be tried by the Revenue Court. *Kishen Bhuten Misrain* v. *B. L. Hickey*, 11 W. R., 406.

Plaintiff and defendants were co-sharers in the same village. By a subsequent butwarra defendant's dwelling-house was included in plaintiff's share, and the Collector, under Section 9, Regulation XIX of 1814, directed that it, together with 7 beegahs of adjacent land, should be retained by defendant on his paying plaintiff a half-yearly rent of Rs. 3 a beegah. Plaintiff then sued to enhance the rent.

Held that the Revenue Court had no jurisdiction to try a suit like this. *Khairoodeen Ahmed and others* v. *Abdool Bakee*, 11 W. R., 410.

In a suit in the Civil Court to recover possession of lands which the plaintiff alleged he had leased to the defendant as manager of an indigo factory, and also of other lands over which he had given a zur-i-peshgi lease,—*Held* that the suit was rightly brought in the Civil Court, and that the Revenue Court had no jurisdiction. *Held* also that, as the defendant had made no objection to the manner in which the plaintiff had calculated damages in the Courts below, the question could not be gone into on special appeal. *Charles McDonald* v. *Rajaram Koy*, 3 B. L. R., Ap., 28; S. C., 11 W. R., 371.

At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the revenue officers of this presidency, so as to bar the cognizance of suits by the Small Cause Court.

Madras Act VIII of 1865, equally with the prior enactments, abstains from authorizing the cognizance by the revenue authorities of suits for arrears of rent.

The cognizance of such a suit by a Head Assistant Collector is a proceeding *coram non justice*. *Gauri Anontha Parathese* v. *Kálilappa Setti*, 3 Mad. Rep., A. J., 213.

A suit by the mutwallee of a mosque to obtain a kubuleut from a khandier, or subordinate servant attached to the mosque, will not lie under Act X of 1859. *Hiddut Ali* v. *Kobeemalla Meeajee Mutwallee*, 6 W. R., Act X R., 9.

A suit by a ryot, who has been dispossessed of his holding, against his lessors and two other ryots claiming under a lease granted to them by the lessors, should be brought in the Civil Courts. *Mugnee Roy and others* v. *Lall Khoonee Lall*, 6 W. R., Act X R., 19.

Where a naib, without authority from his principal, had collected rents from ryots, and the principal's suits to recover his rents from the ryots were dismissed with costs in consequence of the admission of the naib that he had received the money sued for, it was held that a suit against the naib and

another acting in collusion with him, to recover the moneys collected, and damages, was cognizable by the Civil Court. *Kadumbinee Dossee* v. *Bhugobutty Churn Ghose and another*, 10 W. R., 7.

Revenue Courts have no jurisdiction in a suit to recover arrears of rent at an enhanced rate from a tenant to whom land had been leased for the express purpose of building a school and a church. *Ranee Surnomoyee* v. *Rev. C. Blumhardt*, 9 W. R., 552.

A suit by a landlord to recover possession of land from a ryot who had ceased to pay rents, but whom the landlord had omitted to sue when he first ceased payment, and set up an adverse title, must be brought in the Civil Court. *Shib Pershad Chuckerbutty* v. *Mudun Mohun Chuckerbutty*, W. R., 1864, Act X R., 80.

The Revenue Courts have no jurisdiction to decide a boundary question between two estates. A landlord must first obtain a declaration in the Civil Court that the land in dispute is within the limits of his estate, after which he may proceed to assess revenue upon it in the usual course under Act X of 1859. *Bebee Amina* v. *Sheikh Ramzan Ali*, W. R., 1864, Act X R., 116.

A lease empowered the landlord, on default of payment of any of the kists by the tenants, to appoint a kuruk sezawul, the tenants being responsible for any loss accruing. A default having occurred, and a kuruk sezawul having been appointed, the landlord sued to recover the loss sustained by him. *Held* that such a suit lies in the Civil and not in the Revenue Court. *Anund Moyee Debia* v. *Khirodhur Haldar*, 2 W. R., Act X R., 46.

The Civil Court has jurisdiction in a suit which involves the right to collect rents as a sharer or representative, or as deriving from a sharer, and the decision of which depends on a proof of a certain alleged partition. *Hurrochunder Roy* v. *Obhoychunder Sircar*, 2 W. R., Act X R., 72.

No suit for refund of rent lies under Act X of 1859. *Nadhubchunder Bidyarutton* v. *Tara Soondaree Gooptee*, 2 W. R., Act X R., 92.

When the dispossession of one ryot by another is not the direct act of the zemindar, the case is cognizable by the Civil Court. *Teeluck Chand Oswal* v. *Gourchunder Shaha*, 2 W. R., Act X R., 100.

A suit by Government to recover what the defendants have by a writing agreed to pay in respect of Government jumma between the date of resumption and settlement, is not a suit for arrears of rent cognizable by the Collector under Act X of 1859. *Government* v. *Hushuntoonissa Bibee*, 2 W. R., Act X R., 106.

Suit against co-sharers and dur-ijaradar for rent and damages in respect of a mehal of which a sub-lease was granted by the defendant co-sharers. As plaintiff did not get possession of his share until after the expiry of the sub-lease, and then only by the aid of the Civil Court, and as his title during the subsistence of the lease was merely nominal, and as he exercised no rights of a landlord during this period, and could not have sustained against the dur-ijaradar an action for rent under Act X of 1859,—*Held* that his suit was properly brought in the Civil Court. *Radhajeebun Mustafee* v. *Denonath Banerjee*, W. R., 1864, Act X R., 49.

When the dispute between the parties was whether the plaintiffs who, by themselves and their ancestors, had long held the land in dispute, could be lawfully dispossessed by the defendant, who claimed it under a pottah recently granted by the zemindar, —*Held* that the matter was one for adjudication by the Civil Court in an ordinary suit, and not a question between landlord and tenant. *Afa Jhan* v. *Kishen Moonjoree Dossee*, W. R., 1864, Act X R., 17.

A suit for excess rents collected under a lease under which the lessee was, in consideration of a certain sum of money, to pay the Government revenue, and reimburse himself from the remainder of the assets, and which provided for an annual measurement and assessment, was held cognizable in the Civil and not the Revenue Court. *Syed Shorafut Ali* v. *Sheikh Ramzan*, W. R., 1864, Act X R., 53.

A suit by the purchaser of a permanent transferable tenure for a declaration of his title as tenant to possession is cognizable in the Civil Court, and not by the Collector. *Nobin Kishen Mookerjee* v. *Shib Pershad Pattuck*, 8 W. R., 96.

A. lent money to B. on bonds, payment of which was secured by assignment of the rents of B.'s estate. A., instead of liquidating the bonds from the collections of the estate assigned, brought a suit on the bonds, and obtained a decree. B. now sues for a refund of the collections made, and not appropriated to the payment of the bonds. *Held* that such a suit was not one for rent, and must be tried in the Civil Court. *Sheikh Ali Mahomed* v. *Kenaram Ghose*, 8 W. R., 128.

In a suit for rent paid in kind, in which defendant did not deny plaintiff's right as landlord, but in which intervenors appeared and objected that the Civil Court had no jurisdiction, and pleaded, also, that defendant was their tenant and paid rents to them,—*Held* (by Loch, J.) that neither defendant's appropriation of the rent, nor the fact of his disputing plaintiff's share, nor the act of the intervenors in raising a question of right, altered the nature of the suit, or took it out of the cognizance of a Revenue Court,—*Held* (by Phear, J.) that whatever might have been the case before the intervention, as soon as the intervenor was made a defendant, and issues of right and title were raised by the Court between him and the plaintiff, there was matter which the Court had jurisdiction to decide. *Gholam Mahomed Akbar* v. *Radha Kishen Mohunt*, 9 W. R., 287.

A. died, leaving four sons, B., C., D., and E., by a wife deceased, and a widow K., and three other sons, F., G., and H., by her. K. brought a suit against B., C., D., and E., and against her three sons F., G., and H., to establish her title to a certain talook which she alleged had been conveyed to her by A. under a deed of gift. B., C., D., and E., set up a prior deed of partition, whereby the property of the deceased, including this talook, was divided between all his sons in the proportion of ten annas to B., C., D., and E., and six annas to F., G., and H. The High Court, on appeal, held that the deed of partition was genuine, and rendered the subsequent deed of gift inoperative. Afterwards B., C., D., and E., instituted a suit in the Collector's Court for arrears of rent in respect of another talook also included in the deed of partition against the ryots, and F., G., and H. The ryots admitted that

they held at the rent claimed, but stated that they had not paid their rent on account of a dispute between the brothers as to the shares in which they were entitled to the same. F., G., and H., raised the defence that this suit could not be maintained in the Collector's Court; a suit in the Civil Court should be brought for the determination of their shares, and the decision in the prior suit was no evidence against them. *Held* that the question was really one of title between the brothers, and such suit could not be maintained in the Revenue Courts. *Grish Chandra Roy Chowdhry and others* v. *Raj Chandra Roy Chowdhry and others*, 2 B. L. R., A. C., 1.

A suit by plaintiff complaining of having been ejected by the defendants, who were not the zemindars of the land in dispute, or the persons entitled to collect rent from the plaintiff, cannot be entertained by the Revenue Court. The mere allegation of the defendants that they were the zemindars, unless admitted to be true by the plaintiff, will not give the Court jurisdiction. *Kishun Mohun Singh* v. *Toolsee Singh*, 2 N. W. R., 102.

A Deputy Collector, invested by a Collector with all the powers of a Covenanted Assistant, or with the special power to determine claims under Regulation XII of 1816, is competent to refer cases under that Regulation for disposal to a District Moonsiff. The authority must be delegated under Section 3, Act VIII of 1857. 4 Mad. Rep., Rul. 1.

A suit brought to recover arrears of a cess is not a suit of the nature cognizable by Small Cause Courts. A suit for arrears of a cess, which is not in the nature of rent, cannot be brought in the Revenue Court under Act X of 1859. *Kasim Ali* v. *Shuder*, 3 N. W. R., 21.

A suit for rent due not solely for land, but also for building, is not cognizable by the Revenue Courts. *Maharaja Dheeraj Mahtab Chaund Bahadoor* v. *Mukoond Bullub Bose*, 14 S. W. R., C. R., 246.

A suit against a gomashtah and others, claiming under pottahs from the zemindar, in which the party entitled to receive rent had not been sued, was held not to be cognizable by the Revenue Courts. *Punchanun Roy* v. *Troyluckomohinee Dassee*, 14 S. W. R., C. R., 466.

Held that a suit by a cultivator to establish his right to cut and make use of the trees situate on the borders of his holding was not a suit of the nature triable by the Revenue Court, and was therefore a suit properly cognizable by the Civil Court, which Court should have determined the question of right and title with reference to ancient usage.

The wajiboober binds co-parceners who have verified and attested it, and is so far evidence of custom between co-parceners, but is not a conclusive evidence of custom between co-parceners and their tenants who were no parties to it. *Puchood* v. *Mahomed Jala Asaudoolah*, 2 Agra Rep., A. C., 217.

The suit of a zemindar against a naib or a gomastah for papers, accounts, and moneys collected, is not cognizable in the Civil Court, but by the Collector. *Kalee Nath Ghosal* v. *Chundee Churn Sircar and others*, 10 W. R., 51.

Under the provisions of Regulation V of 1799, Section 5, and Regulation V of 1827, Section 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged. *Held*, the Collector was in no sense the tenant of the superior landlord, and consequently no suit would lie against him under Act X of 1859 for rent alleged to be due in respect of the sub-tenure. *Collector of Bograh* v. *Dwarkanauth Biswas*, 4 B. L. R., Ap., 80; 13 S. W. R., C. R., 194.

(c) *Practice and Procedure.*

Where an appeal was preferred to a Collector from the decision of the Deputy Collector, whether the Collector had or had not jurisdiction, the Civil Judge cannot entertain an appeal from the decision of the Collector. *Ram Pershad* v. *Lall Sah*, 4 Agra Rep., 250.

A suit to obtain a kubulcut for rent at an enhanced rate having been dismissed by the Deputy Collector was appealed to the Judge, who declared the defendant liable to enhancement at a specified rate. In special appeal it was urged that, as the subject-matter of the suit was rent of land within a town covered by buildings, the provisions of Act X had no application whatsoever. *Held* that the decision of the lower Court was passed without jurisdiction, and could have no legal effect, and that any affirmance or modification of it by the High Court would be inoperative and infructuous. *C. Church* v. *Ram Tonoo Shaha and others*, 11 W. R., 547.

When, on a re-hearing, a Deputy Collector set aside his former judgment as passed without jurisdiction, it was held that his proceedings under that judgment were of themselves null and void, and that it did not require any order in words to set aside the sale which they involved. *Onungo Moonjuree Dassea* v. *Punchanun Bose*, 12 W. R., 72.

Collectorate authorities under Act X have not the same powers as judicial authorities under Act VIII of 1859 to fix the first hearing either as final or for the fixing of issues. If the parties do not secure the attendance of their witnesses at the first hearing, and there are, on the examination of parties, issues upon which evidence is necessary, the Court is bound to fix a day for the hearing of such evidence. *Rajah Enayet Hossein* v. *Bibee Khoobunnissa*, 9 W. R., 246.

If in a suit brought in the Revenue Court on an allegation of the existence of the relation of landlord and tenant that relation is denied by the defendant, the Court (instead of declining jurisdiction by reason of that denial) should judicially determine the fact, and take jurisdiction or not according to the result. *Huree Persad Malee* v. *Koonjo Benary Shaha*, W. R., F. B., 29.

Where the Deputy Collector decrees in favour of the plaintiff in a suit in which he has no jurisdiction, but which ought to have been brought before the Collector, the Judge ought on appeal to reverse the decision, and remit the case to the Deputy Collector, with directions that he should return the plaint. *Gouree Kant Banerjee* v. *Loll Mahomed Moullah*, Marsh., 265.

A suit to recover rents of lands situated in various subdivisions of a district must be brought in subdivisions in which the greater part of the land is situated.

A Collector's decree which is right on the merits

cannot be set aside in appeal merely because of an irregularity in the exercise of the jurisdiction which he had in the case. *Chunder Kant Chuckerbutty* v. *Mrs. Elias*, 5 W. R., Act X R., 29.

A suit will not lie in the Civil Court against an order of a Collector refusing to hold a sale of a tenure for arrears of rent. *Roy Hureekishen and others* v. *Nursingh Narain and others*, 6 W. R., Act X R., 63.

In a suit for kubuleut the Collector ought to confine himself to the matter of the kubuleut and to the previous receipt of rent. His going beyond his jurisdiction, and trying the question as to whom the land belongs, will not oust the Civil Courts from their jurisdiction. *Ram Nohun Dey and another* v. *Ram Surun Dey and others*, 6 W. R., Act X R., 93.

The Collector, when he has to enquire into contracts between the parties, and to determine whether a breach of any such contract has been committed, cannot, upon supposed considerations of equity, set aside that which the parties have deliberately agreed upon between themselves, and substitute further terms of his own. *Ram Coomar Bhuttacharjee* v. *Ram Coomar Sein, agent of Rughoo Nath Pershaud Tewarree*, 7 W. R., 132.

A Collector has no jurisdiction to allow a suit to be instituted in the Sudder Station instead of in the Subdivision Court.

Where the Collector wrongly exercised such jurisdiction in a case below Rs. 100,—*Held* that the Judge could be moved to set aside the Collector's order, on the ground that the Deputy Collector, and not the Collector, had the proper jurisdiction to try the case; and that, even if the Judge had not such power, the power was vested in the High Court, under its Charter, to order the proper legal proceedings. *C. G. Phillip* v. *Bundhoo Sircar*, 7 W. R., 170.

A Deputy Collector is competent to depute an officer of his Court to take evidence on commission if the place where the witness is examined is within his jurisdiction. *Ram Chand Mookerjee and others* v. *Kaminee Dabea*, 10 W. R., 236.

A Collector is incompetent to send a case to the Assistant Collector merely to record the evidence therein, and when this is done, all subsequent proceedings will be annulled. *Musumut Zaib-oornissa* v. *Adjoodhya Pershad*, 2 N. W. R., 198.

Held, that independently of Act X, there may be cases in which a Collector has power to admit a party to come in and be heard when a proceeding has taken place in his absence; and that every presumption should be made in such cases in favour of his having jurisdiction, especially where the party would have been without a remedy if the review had not been admitted. *Radha Pershad Singh* v. *Sansar Roy*, 14 S. W. R., C. R., 27.

A suit was dismissed by a Deputy Collector, who died before recording a legal judgment, whereupon it was made over by the Lower Appellate Court for trial to the deceased officer's successor, who decided the case in favour of the plaintiff upon the evidence as it stood on the record without any objection by either party. *Held* that it was not the duty of the second Deputy Collector to remand the witnesses or to take additional evidence, unless requested to do so by the parties. *Gour Chunder Sen* v. *Manick Ram*, 13 S. W. R., C. R., 77.

A suit for arrears of rent, where the plaint contained also a prayer for ejectment, having been dismissed by the first Court, an appeal was preferred to the Collector, who heard the case without any objection as to jurisdiction, and decreed it solely upon the question of the extent and character of the land and the arrears of rent thereupon. *Held* that the Collector exercised a jurisdiction which he had, no question of ejectment having been decided by the first Court, and no appeal having been made to him upon that point. *Dursun Bheyut* v. *Mahomed Ali*, 13 S. W. R., C. R., 438.

When a Collector discharged the defendant's witnesses, without taking their depositions, after keeping them in attendance for nearly a month, and afterwards verbally ordered the defendants to procure their attendance within three days, and on their failure to appear, decided the case in their absence, his proceedings were set aside as irregular. *Sheikh Kamyab* v. *Mussamut Omda Begum; Abdool Wahab* v. *Mussamut Omda Begum*, W. R., 1864, Act X R., 88.

The defective procedure in the trial of this case by the Deputy Collector pointed out (1) as to the non-verification of the plaint; (2) as to the examination and cross-examination of the parties or their agents; and (3) as to the settlement of issues. *Sreenath Dutt Chowdhry and others* v. *Gokool Chunder Sein and others*, 6 W. R., Act X R., 6.

Held that reference to the Collector in a suit pending before the Deputy Collector was irregular, and his opinion and order on such reference had no weight at all, and could not amount to a decision which, not having been appealed against, would operate as a bar to the adjudication on the point referred. *Sahib Singh* v. *Put Ram and others*, 1 Agra Rep., R. A., 17.

Where a suit is brought in a Revenue Court, upon an allegation by the plaintiff of the existence of the relation of landlord and tenant between himself and the defendant, the Revenue Court cannot decline jurisdiction, on the ground that such relation is denied by the defendant, or that intricate or difficult points are involved in the investigation. The Collector is bound to ascertain, on judicial investigation, if the relation of landlord and tenant is proved to exist or not, and to take jurisdiction or not according to the result. *Hurree Persaud Mitter* v. *Koonjobehary Shome and others*, Marsh., 99.

The issue whether or not there has been a binding enhancement of rent, and whether or not the tenant has paid at the enhanced rate, involves no question of title or of right to enhance or vary the rent, and the appeal in such a suit properly lies to the Collector. *Bahadur Singh* v. *Hura*, 3 N. W. R., 73.

Where the Revenue Court (being the Court of first instance) has without jurisdiction decided a question of title, such erroneous procedure does not oust the jurisdiction of the Collector to entertain the appeal.

The word "determined" means "legally decided by a Court of competent jurisdiction." *Syud Gholib Ali* v. *Khilloo and another*, 3 N. W. R., 51.

Where a suit for enhancement is dismissed on the ground that no notice was served, any decision as regards the mâl or lakheraj character of the land is mere *obiter*. *Mothoornauth Sircar* v. *Nilmonee Deo*, 13 S. W. R., C. R., 297.

An execution-sale by a Collector can be set aside

by a Civil Court, if shown to have been fraudulently brought about, the *onus probandi* being on the plaintiff who alleges fraud. *Deen Dyal Singh* v. *Danu Roy* 13 S. W. R., C. R., 185.

In cases in which the determination of title is incidental to the decision of suits properly brought in the Revenue Court, that Court is bound to enquire into the title. Where a person ostensibly in possession as proprietor institutes a suit for rent, and the alleged tenant pleads that he is in possession as a proprietor, the Revenue Court is bound to raise and decide the issue respecting title. *Ramgut Singh* v. *Ram Sarun Singh*, 3 N. W. R., 141.

The Collector's order striking off an application because he thought it was only made "to keep the case going," without his saying that it was not *bonâ-fide*, was set aside, and he was directed to hear the application. *Kristo Bundo Chuckerbutty* v. *Sudurudda*, 17 S. W. R., C. R., 67.

In a case between the purchaser of a putnee talook at an auction-sale under Act VIII of 1865 and a party claiming as durizaradar, the point to be decided is whether the latter was *bonâ-fide* in possession by collecting rents. If he was, the question of the voidance or voidability of the tenure is not one which can be disposed of in the Collector's Court. *Gunga Ram Santra* v. *Ramcomol Chatterjee*, 13 S. W. R., C. R., 69.

In a suit under Section 33, Act X of 1859, where a defendant denies that he is the agent of the plaintiff, the Collector is bound to try whether the relation of employer and agent existed between the parties. If the relation did exist, he has jurisdiction. *Oodoy Narain Sircar* v. *Kristo Chunder Roy*, 13 S. W. R., C. R., 433.

J. K. D. instituted a suit before a Deputy Collector, under Act X of 1859, against L. N. R. for money due from the defendant as his gomesta. The parties, before judgment, filed a petition of compromise, according to which it was agreed that the amount admitted by L. N. R. to be due (Rs. 325) should be paid by instalments, and it was stipulated that, on failure to pay any instalment, "the whole debt will be realized at once, and I (L. N. R.) shall be charged interest at half per cent. per month. . . . and it is prayed that the case be disposed of according to the above terms." The Deputy Collector decreed, "Let the case be disposed of in accordance with the terms of the compromise." J. K. D. assigned his interest under that decree to R. M. D. L. N. R. failed to pay an instalment. R. M. D. then applied to the Deputy Collector to execute the decree for the whole amount with interest, but his application was refused. Thereupon R. M. D. brought an action in the Civil Court against L. N. R. for the amount due, with interest. *Held*, the suit would not lie in the Civil Court to recover the amount due under the Act X decree. The parties to the compromise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, plaintiff should have appealed to the Commissioner. *Ram Mohun Das* v. *Lakhi Narayan Roy*, 4 B. L. R., Ap. C., 207; 13 S. W. R., C. R., 151.

When the law expressly denies jurisdiction to entertain suits brought after the prescribed period, such denial must be acted upon, wherever and at whatever stage the Court discovers the want of jurisdiction. But where the words merely give a privilege to the defendant, it is for him to avail himself thereof at the earliest opportunity by pleading the limitation, and it is neither competent to him afterwards, nor to the Appellate Court of its own motion, in such a case to raise an objection that has been at first pretermitted. *Kisto Chunder Chatterjee* v. *Ram Lochun Roy*, 4 W. R., Act X R., 47.

A Collector's Court is not a Court of summary jurisdiction, and cannot refuse to try any material issue duly raised before it. *A. B. Mackintosh* v. *Athur Monee Doss*, 3 W. R., Act X R., 138.

Reference to the High Court regarding the amenability of European soldiers and their native wives to Small Cause Courts in actions for debt. *Denis Keefe* v. *Liset Christie*, 5 W. R., S. C. C. Ref., 21.

(*d*) *Miscellaneous.*

A zemindar cannot get rid of the jurisdiction of the Revenue Courts by merely refusing to take rent from a tenant, or by declining to acknowledge that tenant's rights. *Thakoor Doss Mozoomdar* v. *Radha Soondery Dossee*, 2 W. R., Act X R., 3.

A Collector has no jurisdiction to hold a sale of the immoveable property of the judgment-debtor in a suit under Act X of 1859, while a warrant against his moveable property is in force. *Nubee Buksh* v. *Dedur Buksh and others*, 11 W. R., 326.

A Zillah Judge has no jurisdiction to entertain an appeal from the judgment of a Deputy Collector in a suit to recover rent involving no question of title to or interest in land as between parties with conflicting claims. *Gireebala Dabea* v. *Dinonath Mookerjee*, 10 W. R., 431.

A suit for a perpetual pottah cannot be tried under Act X of 1859. *Kylas Chunder Dey* v. *Kylas Chunder Sein*, W. R., 1864, Act X R., 94.

A suit to recover possession as against a ryot will not lie under Act X of 1859. The only suits for recovery of possession that are cognizable by the Collector under that Act are suits by a tenant who has been illegally ejected by the person entitled to receive the rent of the land or tenure. *Raj Coomar Singh* v. *Rajbunsee Kooer*, W. R., 1864, Act X R., 108.

In a suit for abatement of rent in respect of a portion of a putnee tenure taken by Government for railway purposes from the time when the land was so taken down to the period when the plaintiff relinquished the lease,—*Held* that, as the land was taken, the rent paid, and the putnee resigned before Act X of 1859, that Act did not apply to the case. *Protab Narain Singh* v. *Nityram Singh*, W. R., 1864, Act X R., 121.

A ryot and zemindar were sued by a party who held a pottah under the zemindar. The ryot, defendant, alone appealed. *Held* that, though it was competent to the zemindar to object to the jurisdiction of the Civil Court, it was not competent to the ryot to do so.

Quære,—Whether the zemindar having retired from the contest, and the case involving a question

of title between two ryots, it is not a matter to be tried by the Civil Court. *Bhuggobutty Churn Mookerjee* v. *Huromohun Mookerjee*, 2 W. R., Act X R., 55.

A zemindar having failed in a suit brought in the Revenue Court, under Section 28, Act X of 1859, to resume lands as forming part of his permanently settled estate, cannot sue in the Civil Court to try the same question over again, though he may sue in the Civil Court under Regulation II of 1819 to try the validity of the defendant's title to hold the lands rent free. *Rajah Roy* v. *Bebee Ohmutbutool*, 2 W. R., Act X R., 102.

The dismissal of a suit for rent in the Revenue Court for want of jurisdiction (the plaintiff not having proved that he was *de facto* landlord in possession) does not bar a suit in the Civil Court for declaration of right to the same rent. *Dhurony Mojoomdar* v. *Bissambhur Mookerjee*, 2 W. R., Act X R., 103.

An agent may be sued under Act X of 1859 for rents received by him, whether or not he has committed, with respect to such rents, an offence under the Penal Code. *R. Skinner & Co.* v. *Rujub Ali Khan*, 2 W. R., Act X R., 105.

The Civil Court has jurisdiction in a suit for ejectment in which the plaintiff expressly denies the existence of the relation of landlord and tenant, and treats the defendants as trespassers. *Banee Madhub Banerjee* v. *Joy Kishen Mookeejee*, 4 W. R., Act X R., 17.

No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. *Doorga Pershad Pal Chowdry* v. *Jogesh Porkash Gongopadhya*, 4 W. R., Act X R., 38.

Where shikmee talookdars have estates on the Collector's towjee separate from the zemindar's estate, and the payment of their revenue through the zemindar is only a matter of convenience amongst themselves, they are not subordinate to the zemindar, and the zemindar can only sue them in the Civil Courts for their share of the revenue. But when the shikmee talookdars are subordinate to the zemindar, who stands to them in the position of landlord, he can take the same measures against them to enforce payment of rents as against any other under-tenants. *Chunder Kant Chuckerbutty* v. *Joy Gopal Chuckerbutty*, 4 W. R., Act X R., 41.

When joint proprietors of an estate agreed that if before partition any one of them should cultivate the land, he should pay rent at a certain rate,—*Held* that a suit would not lie under Act X of 1859 against such shareholder by another shareholder for his share of such rent, whether there was a dispute or not as to the amount of the respective shares. *Syed Hyder Ali* v. *Omrit Chowdhry*, W. R., 1864, Act X R., 42.

A Collector has power, under Act X of 1859, to sell, in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable under-tenure, only such moveable property as is capable of being manually seized; and he can issue process against immoveable property only when recourse could not be had to the person or to the moveable property capable of being manually seized. *Chandrakant Bhuttacharjee* v. *Jaduputtee Chatterjee*, 1 B. L. R., A. C., 177; 10 W. R., 224.

A Civil Court can only determine the right to partition an estate paying revenue to Government. The partition itself must be made by the Collector under Regulation XIX of 1814. *Mohsun Ali and others* v. *Nazum Ali*, 6 W. R., 15.

A co-sharer sues for a kubuleut after determination of rent. It was proved that a custom exists by which one co-sharer has his own tenants. But as there was no proof that the defendants ever paid rent to the plaintiff, it was held that a tenancy had not been established, and that the case was therefore not cognizable under Act X of 1859. *Joynath Nag* v. *Gobind Persad Doss*, 1 W. R., 42.

Quære,—Whether the Civil Court can interfere with a Collector's order, under Section 11, Act XI of 1859, opening a separate account with the recorded sharer of a joint estate. *Shuroofunissa Bebee* v. *Hushmut Ali*, 9 W. R., 533.

An adjudication for the purposes of settlement and assessment is not an authoritative decision of a question of civil jurisdiction or of proprietary right. *G. N. Pogose and another* v. *The Collector of Sylhet and others*, 12 W. R., 150.

The adjudication by revenue authorities of the boundaries of two districts is not an effectual settlement of the question of jurisdiction, which must be tried by the Civil Court itself, under Section 14 of the Code of Civil Procedure. *Radha Pershad Singh* v. *Ram Jewun Singh and others*, 11 W. R., 389.

A Collector is bound to register and sub-assess a portion of a zemindary transferred in accordance with the provisions of Regulation XXV of 1802, such transfer not being opposed to Hindu or Mahomedan law, or the existing law. The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess the portion of the zemindary so alienated. *Ponnusamy Tevar* v. *Collector of Madura*, 3 Mad. Rep., A. C., 35.

Some of the defendants had taken a lease in the benamee name of C. P. B., and were in actual possession of, and had paid rent for, the lands demised. The other defendants were sureties for C. P. B. A suit was brought in the Court of the Deputy Collector against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it. *Held*, *per* Peacock, C. J., whose opinion prevailed (Mitter, J., dissenting), that the Deputy Collector had no jurisdiction to enquire into matters extraneous to the lease, and that plaintiff's suit ought to have been dismissed,—*Held* (*per* Mitter, J.) that the suit was properly brought against the actual tenants, and not against the benameedar, and that the Collector had jurisdiction,—*Held* by both Judges that the suit should be dismissed as against the sureties, who could not, as such, be sued under Act X of 1859. *Roy Priyanath Chowdhry* v. *Bepinbeharri Chuckerbutty*, 2 B. L. R., A. C., 237; S. C., 11 W. R., 120.

Where the real object is to obtain a division of the lands of an estate paying revenue to Government, the suit is not maintainable in a Civil Court.

Doorga Kirpa Roy v. *Mohesh Chunder Roy*, 15 S. W. R., C. R., 242.

(*e*) *Revenue Appeals.*

An application to a Collector under Section 25, Act X of 1859, is not a suit; consequently, the appeal from an order made by the Collector on such an application lies to the Commissioner, and not to the Judge. *C. J. Phillip* v. *Shibnath Moitro*, W. R., F. B., 118.

Where, on an application for partition, the Collector did not declare the right of the parties, but declined to act until the applicant had established her right by a decree of the Civil Court,—*Held* that the Judge had no jurisdiction to hear an appeal from such an order. *Mussamut Birja* v. *Bholanath*, 2 Agra Rep., 182.

Where an application to the Collector for partition was made on the basis of the Civil Court's decree, and the Collector did not adjudicate the question of title, an appeal would not lie to the Judge. *Bustee Ram and others* v. *Mookh Ram and others*, 2 Agra Rep., A. C., 251.

Quære,—Whether the appeal from an order of a Collector under Section 26, Act X of 1859, lies to the Judge or to the Commissioner. *Deendyal Augusti* v. *R. Watson and others*, W. R., 1864, Act X R., 35.

In a suit for rent below Rs. 100, where the question was simply what, under the agreement subsisting between the parties, was the amount of rent due,—*Held* that under Section 153, Act X of 1859, the appeal lay to the Collector, and not to the Judge. *Bacharam Sahoo* v. *Dinobundhoo Paul*, W. R., 1864, Act X R., 104; and *Kally Doss Sircar* v. *Rajnarain Pattack*, W. R., 1864, Act X R., 130.

In a suit for rent, where the defendant pleaded a mokurruree right,—*Held* that the case involved a substantial right, and that the appeal lay to the Judge. *Lalla Gooroo Sahoy Singh* v. *Bromo Deonarain*, W. R., 1864, Act X R., 105.

Where a third party intervenes in a suit under Rs. 100, and the Deputy Collector substantially determines, not simply the question of possession, but the right of the zemindar to distrain for the rent due from the actual cultivator, the appeal lies to the Judge. In such case, the Court, instead of simply declaring the zemindar's right to distrain upon the person in actual possession, ought to enquire who was the actual cultivator or ryot in possession of the land, and then who was in actual receipt of the rents from that ryot, and to determine the suit according to the result of that enquiry under Section 140, Act X of 1859. *Raj Chunder Surmah Chuckerbutty* v. *Gourmohun Deb*, 6 W. R., Act X R., 12.

Held by Phear, J., whether the appeal from a Deputy Collector's decision should lie to the Collector or to the Judge, depends on the decision determining a question of law or a question of fact; but if the former, it must be such a question as is properly incidental to the suit, and not any which the Deputy Collector may by caprice or error introduce into his judgment. *Bhyrub Chunder Chunder* v. *Sheikh Khuleel and others*, 8 W. R., 493.

No appeal lies to the High Court from an order of a Collector refusing to sell an under-tenure in execution of a decree. *Rajah Burodakant Roy* v. *Banee Madhub Ghose*, 5 W. R., Act X R., 35.

No appeal lies to the High Court for the maintenance of an order of sale made by an Assistant Collector, which order was set aside by a Deputy Collector, to whom the appeal was referred. *Huro Pershad Chowdhry* v. *Mothoor Mohun Mundul*, 5 W. R., Act X R., 35.

An appeal does not lie from an order of a Deputy Collector setting aside a sale in execution of a decree under Act X of 1859. *Nobo Doorga Dossia* v. *Goluck Chunder Sein*, 5 W. R., Act X R., 89.

An appeal does not lie to the High Court from the order of a Collector refusing to distribute amongst the shareholders the amount of their shares of the surplus proceeds of a joint undivided estate attached and administered under Regulation V of 1812. *Jugo Moyee Chowdhrain* v. *The Government*, 3 W. R., Mis., 17.

No appeal lies from the order of a Deputy Collector passed in execution of a decree under Act X of 1859. *Huro Chunder Burmun* v. *Rajkishen Roy*, 2 W. R., Act X R., 10.

There is no appeal to the Zillah Judge from an order passed by a Deputy Collector in execution of a decree for rent. *Rajah Jadoo Bhoosun Deb Roy* v *Chunder Coomar Roy*, 2 W. R., Act X R., 75.

No appeal lies from the determination of a Deputy Collector admitting the re-hearing of a case decided. *Ex-parte Kunuckmonee Debia* v *Gunga Ram Doss*, 3 W. R., Act X R., 135.

No appeal lies to a Collector from an order passed by a Deputy Collector in execution of a decree. *Adurmonee Dossee* v. *Kamineesoonduree Debia*, 3 W. R., Act X R., 145.

No appeal lies from a Collector's order dismissing a suit for default on the non-appearance of the plaintiff after being summoned. *Sheikh Golam Bukshee* v. *Pultun Singh*, 3 W. R., Act X R., 162.

The judgment of a first Court passed on the default of a party summoned to attend as a witness in a judgment open to regular appeal; but the Judge on appeal is not justified in setting his face generally against the summons of parties as witnesses. *Chunder Mohun Mojoomdar* v. *Teetooram Bose*, 4 W. R., Act X R., 18.

No appeal lies from the order of a Collector passed after decree and relating to the execution thereof. *Sirdar Golab Singh* v. *Ram Buddun Singh*, 4 W. R., Act X R., 28.

The failure of a Deputy Collector to try the proper issue in a suit for rent below Rs. 100 gives no right of appeal to the Judge. *Moheshchunder Sircar* v. *Augumunissa Bibee*, 4 W. R., Act X R., 29.

No appeal lies from an order passed by an Assistant Collector setting aside a sale in execution of a decree under Act X of 1859. *Dwarkanath Moonshee* v. *Shreeshteedhur Shikdar*, 4 W. R., Act X R., 48.

No appeal lies to the Judge from a decision of a Deputy Collector under Sections 153 and 77 of Act X of 1859, in a suit for rent under Rs. 100, when a third party intervenes, and the Deputy Collector decides on the receipt and enjoyment of the rent as between the plaintiff and the intervenor. *Chundra*

Kulla Dossia v. *Dookheet Ram Chung*, 5 W. R., Act X R., 18.

A Collector's judgment in appeal is final under Section 159, Act X of 1859, whether the judgment be passed on the merits, or the appeal be disposed of on a preliminary objection. *Huro Mohun Mookerjee* v. *Kedarnath Doss*, 5 W. R., Act X R., 25.

When the authority of a pottah is questioned, the appeal lies to the Judge, and not to the Commissioner. *Joykishen Mookerjee* v. *Ramdhun Roy*, 2 W. R., Act X R., 16.

A Deputy Collector acts without jurisdiction in receiving an appeal from an order passed in execution. *Rajah Protab Chunder Singh* v. *Kanaye Lall Doss*, 3 W. R., Act X R., 7.

An appeal from the order of a Deputy Collector dismissing for default a suit for more than Rs. 100, lies, not to the Collector, but to the Judge. *Ram Chunder Roy* v. *Modhoosoodun Mookerjee*, 3 W. R., Act X R., 165.

The misapprehension by the Deputy Collector of the value and character of the documentary evidence before him is not one of the contingencies on the happening of which the Collector's decision in a suit for rent below Rs. 100 ceases to be final and becomes open to revision. In such a case, the appeal lies to the Collector, and not to the Judge. *Futteek Chunder Gooho* v. *Mungul*, 4 W R., Act X R., 40.

In a suit for rent below Rs. 100 involving no question of the right to enhance or otherwise vary the jumma of the tenant, the appeal lies, not to the Judge, but to the Collector, under Section 155, Act X of 1859. *Issur Dutt Chobey* v. *Beckwith*, 5 W. R., Act X R., 67.

When a Deputy Collector determines an interest in land, the appeal lies to the Judge, and not to the Collector. When in such a case the Judge reverses the Collector's decision as passed without jurisdiction, the Judge should proceed to decide on its merits the appeal as from the decision of the Deputy Collector. *Juggeshur Bhuttacharjee* v. *Juggobundoo Nundee*, 3 W. R., Act X R., 14.

In a suit for rent below Rs. 100, where a third party intervenes under Section 77, Act X of 1859, if the Deputy Collector decides on the title of the parties, and not on their receipt of rent, the appeal lies to the Judge, and the Judge is competent to determine the whole case, including the question of the receipt of rent, notwithstanding that the law bars an appeal to the Judge on that point. *Bibee Jumeerun* v. *Bhichuk Thakoor*, 3 W. R., Act X R., 27.

18.—ADVOCATES.

The Officiating Advocate-General having claimed pre-audience, the claim was questioned by a senior member of the Bar, but was allowed. *Held* that, down to the transfer of the Government of India to Her Majesty, the Advocate-General of the East India Company was not entitled as such to pre-audience in the Courts without a patent of precedence.

That the Attorney-General and Solicitor-General in England enjoy precedence as representing the Sovereign, and not by patent.

That the Advocate-General and Officiating Advocate-General for the time being are entitled to similar pre-audience as the Attorney-General in England. Bourke's Rep., O. C., 224.

A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. *Chundi Churun Chutterjee* v. *Chundra Kumar Ghose*, 5 B. L. R., Ap., 70.

An advocate of the High Court is entitled to appear and plead on the Appellate side, but not to file an appeal in the Registrar's Office. *Ram Taruck Burick* v. *Sidessoree Dassee*, 13 S. W. R., C. R., 60.

Appeal from orders of the High Court suspending appellant from practising as an Advocate of the Court, upon a report by a District Judge imputing improper conduct to appellant in the matter of an application made by him on behalf of a client for letters of administration to the estate of her deceased son.

Admitting that the District Judge was competent to report and complain to the High Court of the supposed *mala praxis* of a practitioner over whom he had no direct power, and that the High Court was justified in taking action on that report and complaint by calling upon appellant to explain his conduct,—and allowing that the omission of the High Court to place the conduct of the further proceedings against appellant in the hands of a third person was, for the reason stated by the Judges (namely, that they had not the means of doing so), not a fatal objection to the subsequent proceedings,—the Privy Council disapproved of the course taken by the Court in acting upon letters which came to their knowledge in the course of the first enquiry and framing new charges against appellant, and thus assuming the functions of accuser and Judge.

Upon the merits, the Privy Council were of opinion that, although appellant had been guilty of an irregularity in advising his client to make indorsements upon promissory notes as administratrix before she had obtained letters of administration, yet as he had been acquitted by the High Court of having acted with *malus animus*, which was a necessary ingredient in every fraudulent act, his conduct, though censurable, did not bear the character which the heavy sentence passed upon him would stamp upon it; at the same time, their Lordships expressed their unwillingness to weaken the hands of the Courts of India in repressing professional misconduct, and maintaining a high standard of honour amongst those who were admitted to practise before them. *In re Thomas Newton, a Barrister*, 17 S. W. R., C. R., 35.

A barrister enrolled as an advocate of the High Court is incapacitated from making a contract of hiring as an advocate, and cannot maintain a suit for the recovery of his fees. *Smith* v. *Guneshu Lall*, 3 N. W. R., 83.

Taking it that the rule of English law, that the relation of counsel or advocate and client creates mutual incapacity to make a binding contract of hiring and service either express or implied, governs the relation of advocate and client generally in this country, there must be the relation of advocate and client to give rise to the incapacity, and the incapacity is strictly confined to contracts relating to service as an advocate in litigation and matters ancillary to such service. The degree of

barrister is but one of the qualifications for admission and enrolment as an advocate of the High Court.

Where the defendant, a barrister who was not admitted an advocate of the High Court, or specially authorized to plead in the Superior Court, accepted a vakalatnamah from the plaintiff to defend him upon a charge pending in the Session Court, and the defendant failed to appear on the day to which the trial of the plaintiff was adjourned, and the plaintiff sued the defendant to recover the amount of the fee paid,—*Held* that the suit was maintainable. *Kistna Rowe* v. *Muttukistna*, 4 Mad. Rep., 244.

19.—Officers of Court.

(*a*) *Attorneys.*

(*b*) *Vakeels.* (*c*) *Pleaders.*
(*d*) *Mookhtears.* (*e*) *Receivers.*
(*f*) *Sheriff.*
(*g*) *Miscellaneous Officers.*

Where an attorney had been merely guilty of negligence in allowing his clerk to act in his absence and file a false affidavit, and adopted it without enquiring into its character, he was suspended from practising in the High Court in its original jurisdiction for one year, but he was at liberty to practise as vakeel on the appellate side. It had not been proved that the clerk was acting as an attorney without a license, or had a share in the profits. Had this been so, the attorney would have been struck off the rolls. *In the matter of Poornoo Chandra Mookerjee, an Attorney*, Bourke's Rep., O. C., 377.

If a client places himself in the hands of an attorney, he places himself in his hands in regard to all matters having connection with the suit, and the attorney must be held liable for any negligence, even though his client do not take prompt action in the matter. *Madaroo Dowlah Nawab Ally Nuckee Khan* v. *William Anley*, 1 Hyde's Rep., 134.

Where an attorney knowingly prepares a conveyance containing untrue recitals of the transaction between the parties thereto, and attests the deed and a receipt for consideration-money which, to his knowledge, was never paid, or intended to be paid, the production of such a document to the Court is sufficient ground for calling upon the attorney for an explanation of his conduct. But if such explanation be given, supported by evidence to the effect that there was no fraudulent intent, and if no fraudulent use of the deed has, in fact, been made or attempted, nor any injury caused thereby, it is not sufficient ground for striking the attorney off the rolls of the Court.

Semble,—The High Court in Calcutta is not authorized in striking an attorney off the rolls when such a step would not be sanctioned by the practice of the Courts in England. *In the matter of A. Stewart, an Attorney and Proctor of the High Court*, 1 B. L. R., P. C., 55; S. C., 10 W. R., P. C., 43.

An attorney may, subject to the sanction of the Court, have any number of articled clerks at one and the same time. Articles, the covenants of which have been released, cannot be assigned. *Re articles of clerkship of Calanoor Soobramaneyam*, 2 Ind. Jur., O. S., 15.

There is no law in force in India to prevent an executor of an attorney from maintaining a suit for business done by the attorney, without having previously delivered a bill of costs to the defendant, and left it with him for a reasonable time before bringing the action; and the fact that the defendant had notice that the bill was to be referred to taxation is immaterial.

Statute 3, James I, c. 7, has not been extended to this country. *C. J. Wilkinson* v. *Abbas Sircar*, 3 B. L. R., O. C., 96.

Where a mate and crew applied to an attorney to obtain for them their wages in a suit against their ship, having first obtained an order for wages from the Magistrate, which order for some reason could not be enforced, the attorney thereupon stated that their case was a good one, and he required no money; but afterwards, finding that the master was suing the ship, and that the proceeds of her sale would not be sufficient to pay the wages of all, the attorney let the proceedings on behalf of the mate and crew drop, and refused afterwards to go on without funds,—*Held* that this was negligence and want of skill in the attorney sufficient to justify the summary interference of the Court, and to warrant it in making an order for the attorney to proceed with the suit, and to deprive him of costs already incurred. *In the matter of an Attorney or Proctor*, 1 Ind. Jur., N. S., 305.

It is the duty of a solicitor, who has once undertaken a cause, to carry it to a conclusion. *In re a Solicitor*, 4 B. L. R., P. C., 29.

Any work which an attorney does jointly for several parties together, he can only make one charge for, and where he appears for any number of parties before the taxing officer at the taxation of the costs of a suit, he must be taken to represent them jointly.

The taxing officer should not issue separate summonses to different parties who appear by one attorney. *Kenny, H.* v. *Administrator-General of Bengal*, 7 B. L. R., Ap., 50.

(*b*) *Vakeels.*

A Zillah Judge has no authority to oblige a pleader to leave a Court in which he has been practising and to proceed to another. *Petition of Mahomed Manaff*, 10 W. R., 332.

A fresh vakalatnamah is not necessary in an application for a new trial before a Small Cause Court, when the pleader presenting the application is one who was employed in the original suit. *Sutto Churn Ghosaul* v. *Surrop Chunder Dass*, 12 W. R., 465.

Although a vakeel is entitled to whatever charge his client agrees to, yet if he acts under an engagement constituting him his client's mookhtear and legal adviser, he is bound by the same rules as an attorney, and is therefore entitled only to such reasonable remuneration as the law allows. *Ranee Usmut Koowar* v. *W. Tayler*, 2 W. R., 307.

A vakalatnamah given by a plaintiff, and couched in general terms, suffices *primâ-facie* to authorize the vakeel to apply on behalf of the plaintiff for leave to withdraw from the suit; and in the absence of anything to show that the vakeel acted contrary

to his instructions, or otherwise was guilty of misconduct in making the application, the client is bound by the act of his vakeel. *Ram Coomar Roy* v. *The Collector of Beerbhoom*, 5 W. R., 80.

A consent by a vakeel of the party to a decree being made, binding property other than what the parties to the suit may have an interest in, is a consent to what is beyond the scope of the suit, and could be neither binding on the party, nor acted upon by the Court. *Avul Khádar and others* v. *Audhuset*, 2 Mad. Rep., 423.

The rule under Regulation XIV of 1816, Section 30, that each of two vakeels appointed by a party to a suit shall be entitled to a moiety of the fees payable, applies only to cases where they are appointed by the same vakalatnamah. *Kisara Rukkamma Ram and another* v. *Cripata Viyyana Dekshatuta*, 1 Mad. Rep., 369.

A District Judge has no power to remove a vakeel against his will from a Court to which he has once been allotted, except for a criminal offence, misbehaviour, or neglect of duty. *Wamnajee Conara's case*, 1 Bom. Rep., 136.

The principle that, while the relation of client and attorney subsists in full vigour, the latter shall derive no benefit to himself from the contracts or bounty, or other negotiations of the former, applies with equal force to the relation of vakeel and client. *Fuzeelun Bibee* v. *Omda Bibee and Ahab Jona Ali*, 10 W. R., 469.

In a suit brought by a vakeel against his client for the amount of his fees, and instituted after the passing of Act I of 1846, but before the Pleaders and Mookhtears' Act XX of 1865 came into operation,—*Held* that, where the services in respect of which the fees were claimed consisted of the conduct of a suit which was dismissed for a deficient plaint, under Section 29 of Act VIII of 1859, the vakeel is not entitled to the full amount of costs under Act I of 1846, Section 7, or the scale fixed by Regulation XXVII of 1814, Section 25; but in the absence of an express agreement he is only entitled to a reasonable sum as remuneration for his work and labour as a pleader.

Note.—So much of Regulation XXVII of 1814, as was before January 1st, 1866, unrepealed, and the whole of Act I of 1864, are repealed by Act XX of 1865, which came into operation on January 1st, 1866. *Mussumat Ameerunissa and others* v. *C. Chapman*, 1 Ind. Jur., N. S., 334; 6 W. R., 108.

A vakeel of the High Court in Calcutta is entitled to practise as a pleader in the Calcutta Court of Small Causes. A *mandamus* lies from the former Court to the latter. *In re Toolsee Dass Seal*, 2 Ind. Jur., N. S., 133; 7 W. R., 228.

Ordinarily a vakeel who is employed to conduct the case on behalf of his client has no implied authority to compromise it. In the absence of any express provision in the vakalatnamah, he can make no compromise which will be binding upon his client, except with his consent. *Prem Sookh* v. *Pirthe Ram and another*, 2 Agra Rep., A. C., 222.

The Court should not enforce an agreement to reward a pleader for his professional services by a share of the amount recovered in the suit in which he is retained. Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnamah, or in a separate document, the document containing the agreement must bear a stamp of adequate value. *Nuthoo Lall* v. *Budree Pershad*, 4 Agra Rep., 286.

A vakeel has no authority under an ordinary vakalatnamah to give up a portion of the claim already decreed, and any such abandonment will not be binding on his client. When a case is remanded with the specific declaration that the plaintiff shall obtain "possession of the disputed property," the lower Court has no jurisdiction to debar the plaintiff from any portion thereof by reason of a relinquishment made by the vakeel. *Sheikh Abdul Saban Chowdhry* v. *Shibkristo Daw*, 3 B. L. R., Ap., 15.

The rule under Regulation XIV of 1816, Section 30, that each of two vakeels appointed by a party to a suit shall be entitled to a moiety of the fee payable, applies only to cases where they are appointed by the same vakalatnamah. *Kissurra Rakumma Ran and another* v. *Kripati Viyanna Dikshatulu*, 1 Mad. Rep., 369.

Where a party appealing to the High Court is himself a vakeel of the Court, he is not at liberty to certify his own grounds of appeal. *Thakoor Doss Mookerjee* v. *Ameer Mandel*, 14 S. W. R., C. R., 168.

A vakeel may be a "duly authorized agent," within the meaning of Section 3 of the Code of Civil Procedure. *Kishoree Mohun Bose* v. *Gour Monee Dassee*, 15 S. W. R., C. R., 198.

The vakeel retained by the plaintiff in a suit in which a decree has been given for the plaintiff, is competent to plead for his client in answer to a claim advanced (under the first portion of Section 246 of the Civil Procedure Code) to property attached in execution of such decree, without the production of a fresh vakalatnamah. *Gopal Jayachand* v. *Hargobind Khoshal*, 5 Bom. Rep., A. C., 83.

A vakeel by his ordinary employment as vakeel enjoys no authority authorizing him to transfer a decree. *Nahur* v. *Jaffer Hossein*, 2 N. W. R., 195.

Suit by a vakeel for fees. The defendants retained the plaintiff as their pleader in original suit, No. 2 of 1863, on the file of the Civil Court of Cuddapah, and executed a vakulutnamah to him in July, 1863, but no special agreement regarding fees was made. The plaintiff conducted that suit for the defendants as their vakeel until decree, which was made in September, 1864. The present suit was instituted in December, 1866. *Held*, reversing the decree of the lower Appellate Court, that as there was no special agreement, the plaintiff's right of suit did not arise until he had completely discharged his duty in the conduct of the suit, which he had done in 1864. Consequently, the present suit, having been brought within three years from that date, was not barred. *Buckaputnam Thathachurlu* v. *Kujarniya*, 6 Mad. Rep., 265.

When a suit is remitted by order of an Appellate Court for re-hearing or finding on an issue, the proceedings are in the trial of the suit, and consequently under Section 22 of Regulation XIV of 1816, a vakeel cannot change sides and hold a vakalatnamah for the party opposed to the one for whom he appeared at the first hearing. 4 Mad. Rep., Rul. XLIII.

The defendant was junior vakeel for the complainant (the defendant in a case before the Magistrate), and was instructed by his senior to apply for an adjournment, but the defendant obtained a bond

from the complainant and conducted his defence. The defendant was convicted of extortion. *Held*, that the conviction was bad. 5 Mad. Rep., Rul. XIV.

Section 24, Act 11 of 1855, does not warrant a vakeel's exclusion from the witness-box, though it may excuse his answering certain questions relating to communication between him and his client. *Doolar Jha* v. *Runjeet Roy*, 15 S. W. R., C. R., 340.

The prisoner, a vakeel, presented a vakalatnamah in the District Moonsiff's Court signed by the defendant in a civil suit authorizing the prisoner to appear for the defendant. The vakalatnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under Section 193 of the Penal Code. *Held*, that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. *Keilasum Putter*, 5 Mad. Rep., 373.

Where, under the practice existing in the Courts, a vakeel receiving a fee for prosecuting or defending a suit is bound to carry the suit to an end, and to make all necessary applications in the execution department without further fee, no second fee is allowable to a vakeel for applications presented in the execution department, unless it can be shown that the services of the vakeel originally employed were not available. *Takee Aly Khan* v. *Gool Mahamed Khan*, 1, 3 N. W. R., 69.

Petitioner, a decree-holder, attached the defendant's property in execution. Subsequently to the attachment, petitioner's vakeel presented a razinama petition to the Court on behalf of his client, praying that the attachment might be removed and execution stayed. An order was made granting the petition and allowing the decree amount to be paid by instalments. Some months afterwards, the petitioner, charging that the vakeel had presented the former petition fraudulently and without authority, applied to have his decree executed. The Civil Judge refused to alter the former order, or to notice petitioner's allegations against his vakeel. On appeal, the High Court directed the Judge to investigate these allegations. The Civil Judge found that the vakeel was authorized to present the petition, and that his conduct was not fraudulent. *Held*, that such a petition as that presented by the vakeel, even if within the scope of his duty, should not be permitted to alter the terms of a final decree.

The greatest caution should be exercised by the Courts before acting upon statements out of the ordinary scope of the vakeel's authority in the particular matter for which he was employed. *B. Venkatarámannu* v. *Chavela Atchiyamma*, 6 Mad. Rep., 127.

(c) *Pleaders.*

Held, that it is not within the ordinary scope of a pleader's duties to relinquish any portion of his client's case without express authority from the client, who is not bound by such relinquishment, unless it was authorized by himself. *Gour Pershad Doss* v. *Sookdeb Ram Deb*, 12 W. R., 279.

The dismissal of a pleader who had been charged with bribery and honourably acquitted was held to be illegal and contrary to the provisions of Act XVIII of 1852, and of all principles of justice and equity. *Greesh Chunder Doss, appellant*, W. R., 1864, Mis., 23.

A pleader is bound to move for an order immediately after the period for the return has expired. If he does not do so, the case is liable to be taken up in his absence. *Hosseinee Begum* v. *Dunuree Mahtoon*, 2 W. R., Mis., 51.

The senior pleader who is present has the entire control of a case in the High Court, and it is not open to the junior pleader to take any ground of appeal which his senior has not thought fit to argue, except only when the senior has obtained the permission of the Court that the course should be taken. *Sreeneebush Roy* v. *Umbica Churn Roy*, 12 W. R., 375.

A pleader holding a certificate under Section 12 of Act XX of 1865 is not thereby entitled to be admitted to practise in the Court of Small Causes at Calcutta. *In re Shashi Bhusan Bhadury*, 1 B. L. R., A. C., 45; 10 W. R., 82.

A Zillah Judge has no authority to initiate proceedings against a pleader of the lower grade under Section 16, Act XX of 1865, which requires that the enquiry should be made by the Court in which the pleader committed the act of misconduct. *Komolakant Deghal, petitioner*, 11 W. R., 127.

Any charge of misconduct against a pleader or mookhtear holding a certificate under Act XX of 1865, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court, as provided by Section 16. *Sudderoodeen Mahomed, mookhtear, appellant*, 7 W. R., 316.

Not merely authorized mookhtears, but other persons generally, are at liberty to appoint pleaders by vakalatnamahs. *Shaikh Nubee Buksh, mookhtear, petitioner*, 7 W. R., 481.

When a pleader appears in a regular appeal before the High Court, he is competent under that vakalatnamah, unless it is revoked, to appear for the client in the subsequent stages of that case, and in the appeal, if preferred to the Privy Council. *Shah Mukhun Lall and others* v. *Sreekishen Singh and others*, 8 W. R., 92.

A Judge may refuse to hear a pleader further on the ground of misconduct; but, instead of adding to his order refusing to hear the pleader, an order dismissing the case with costs, he ought to dispose of the case on the merits. *Lall Chand Doss and others* v. *Shakeer Mahomed and others*, 6 W. R., 67.

A Zillah Judge has no power after the 1st January, 1866, to make an order under Act XVIII of 1852 dismissing a pleader. He should proceed under Section 10, Act XX of 1865, and refer the matter, with his report, to the High Court. Even under Act XVIII of 1852, under which the Judge erroneously acted in this case, a pleader was liable to dismissal only on proof of conviction of a criminal offence by a competent Court, or on proof of a declaration or finding by a competent Court (in a suit or proceeding to which the pleader was a party) that he was guilty of a breach of trust, or for fraudulent or dishonest conduct in the discharge of his professional duty, and this also after notice and adjudication as prescribed by Section 4. *Sheikh Ahmeenooddeen, petitioner*, 6 W. R., Mis., 5.

When conduct is charged against any pleader of

a Subordinate Court, which, if proved, would amount to an offence, that conduct should be enquired into, not simply as improper conduct, but as an offence to be made the ground, if established, of his dismissal under Section 14, Act XX of 1865. *Gunesh Chunder Gangooley*, 13 S. W. R., C. R., 456.

In a case tried under the provisions of Section 16, Act XX of 1865, where the Subordinate Court is of opinion that the pleader should be acquitted, it is not necessary that there should be any report to the Judge. *Ram Kinkur Sein, in the matter of*, 13 S. W. R., C. R., 66.

Where a vakeel upon a mistaken view of the law goes beyond and contravenes his instructions, his erroneous consent cannot bind his client. *Ram Kant Chowdry* v. *Brindalun Chunder Dass*, 16 S. W. R., C. R., 246.

The rule of law is that a judgment deliberately recording the admission of a pleader must be taken as correct, unless it is contradicted by an affidavit or the Judge's own admission that the record he made was wrong. *Hur Dyal Singh* v. *Heera Lall*, 16 S. W. R., C. R., 107.

A pleader may appear in criminal cases, not only on behalf of an accused person, but also on behalf of a private prosecutor. *Chunder Coomer Chatterjee* v. *Chunder Coomer Ghose*, 14 S. W. R., Cr. R., 23.

Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zillah Judge, who recommended, after observing the requirements of Section 16, Act XX of 1865, that such punishment should be awarded. The Zillah Judge should have called the pleader to order, and required him to apologize. *R. Cruise*, 14 S. W. R., Cr. R., 53.

The acceptance of a vakalatnamah by a pleader of the High Court should in all cases be unconditional. *Gopeenauth Mudduck, in the matter of*, 14 S. W. R., C. R., 7.

The rules relating to pleader's fees passed by the Court on 13th June, 1866, do not provide for the case of defendants who have separate interests, and who consent to a decree; the amount of costs to be allowed in such a case being in the discretion of the Court. *Ramputty Kooer* v. *Kaleechurn Singh*, 14 S. W. R., C. R., 94.

A Zillah Judge has no power, under Act XX of 1865, to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency. His proper course is to make a representation to the High Court. *Kishoree Lall Sircar*, 14 S. W. R., C. R., 217.

It is improper for a pleader to endeavour to influence a Court by reference to a course which another Court might think fit to adopt, or to the view which the Appellate Court might take of its proceedings. *Juggernauth Sahoo* v. *Syud Mahomed Hossein*, 15 S. W. R., C. R., 173.

Semble,—Where a pleader who has signed the memorandum of appeal refuses to argue the case on the ground of being unable and unprepared, he is liable to be either dealt with by the Court for neglect of duty, or sued by the client for neglect of his interests. *Buldeo Misser* v. *Syud Ahmed Hossein*, 15 S. W. R., C. R., 143.

The fee to be allowed to a pleader upon a petition to the Court to establish the right to have a document registered under Act XX of 1866, Section 84, is one-fourth of the fee allowable in a regular suit, as is provided by Act 1 of 1846, Section 7. *The Collector of Thánd* v. *Ganá Rúmji Pátil*, 7 Bom. Rep., A. C. J., 132.

It is not expedient that pleaders should by purchase become the persons entitled to execute decrees in suits in which they have been engaged. *Goshain Joy Roopgeer* v. *Chingun Lal*, 2 N. W. R., 46.

Pleaders, unless specially empowered so to do, have no authority to compromise cases conducted by them. *Musumat Sirdar Begum* v. *Musumut Izzut-ool-Nissa* 2 N. W. R., 149.

Suit by a pleader against his client to enforce a contract which provided for the payment to the former of a large remuneration for his services, including a portion of the property in suit. *Held* that such a contract stands on a different footing from one between private persons, and that the Court before enforcing it should require the plaintiff clearly to show its fairness, and that no undue advantage has been taken of the client.

It is necessary in such a case to look to the whole of the circumstances and the substance of the transaction, and not merely to the language of the agreement.

A contract made in good faith by a person with a litigant to supply him with funds to carry on the suit on the security of the property in dispute will be enforced.

Such a contract is distinguishable from an officious intermeddling in the suits of other persons, or acts tending to prevent unnecessary litigation.

Quære,—Whether contracts involving maintenance and champerty, as those offences are defined by English law, will be enforced. *Nuthoo Lall* v. *Buddree Pershad*, 1 N. W. R., Par. 1, p. 1.

A pleader is not guilty of grossly improper conduct, but substantially and sufficiently complies with the 2nd of the Rules of 23rd May, 1871, if he examines copies of the record, and not the original record, before he draws the grounds of appeal and certifies them. *Noor Ahmed*, 17 S. W. R., C. R., 338.

The omission of a pleader to examine the record of the case before making an application to stay execution proceedings upon the ground of a compromise, was held not to amount to grossly improper conduct. But his not verifying the statement of the parties who came to him and made their statements (one of them being a mookhtear) was considered at the most to amount to carelessness, but not grossly improper conduct; whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of Act XX of 1865, certainly not such grossly improper conduct as calls for the punishment of suspension for six months. *Sreenath Roy*, 17 S. W. R., C. R., 405.

(*d*) *Mookhtears.*

A person choosing to act as a mookhtear or legal agent must submit to the rules by which the dealings of such parties with their clients are regulated.

The interposition of a third party does not necessarily affect the fiduciary relation between the legal

adviser and his client. *W. Tayler* v. *Ranee Asmerah Koonwar*, 4 W. R., 86.

The plaintiff's mookhtear being unable to answer certain questions necessary for the statement of the proper issues, the plaintiff was called upon either to appear personally, and reply to the Court's queries, or to send some one who could reply. Having done neither,—*Held* that the lower Court was competent to dismiss the suit under Section 127, Act VIII of 1859. *Maharajah Nilmonee Singh Deo Bahadoor* v. *Ram Huree Misser*, 2 W. R., 161.

A client may dismiss a mookhtear for misconduct, without being obliged to go through the form of suing for the cancelment of the engagement, although the contract or agreement between them was for a fixed period. *Issur Chunder Mookerjee* v. *Puddo Lochun Goopto*, 5 W. R., Mis., 18.

The High Court will not interfere with Zillah Judges in the selection and admission of mookhtears, under the 39th Section of the New Pleaders' Rules. *Petition of Mahomed Hossein*, 5 W. R., Mis., 49.

A Magistrate has no power to give a mookhtear "general dismissal" unless he is convicted of an offence involving moral turpitude or infamy. *Queen* v. *Sham Chand Chowdhry*, 1 W. R., Cr., 34.

The mere bringing a plaint to a vakeel for his signature by a mookhtear not duly qualified, is not an acting as a mookhtear which renders the party liable to a fine under Section 13, Act XX of 1865.

The Judge of a Court of Small Causes has no jurisdiction in such a matter, unless the plaint was one to be presented to that Court. *Muddun Mohun Biswas, mookhtear*, 6 W. R., 29.

There is no limitation of time for the grant of a certificate by a Judge, under Rule 39 of the Rules for the Admission of Mookhtears. *H. C. Joakim, petitioner*, 6 W. R., 120.

The 39th of the Rules for Mookhtears, lately issued by the Court, only requires that every person who has been practising as a mookhtear in the Criminal Courts should be at liberty to satisfy the Judge that he is a person of good moral character and qualified by his knowledge of law and procedure, before he can be entitled to admission under that rule. But it was not the intention of the Court that parties should be subjected to regular examinations, or that the duty imposed upon the Judge should be delegated to the Magistrate. *Goluck Chunder Kur, appellant*, 6 W. R., Mis., 29.

Appeal from an order refusing to restore an appeal struck off for default, on the ground that the sickness of the mookhtear was no sufficient reason. *Held* that, as in Chota Nagpore there are not both vakeels and mookhtears, but the mookhtears only practise, if the appellant had notice of his mookhtear's sickness in time to instruct another, and neglected to do so, the order of the lower Appellate Court was right, but not otherwise. *Maharajah Nilmonee Singh Deo* v. *Darimba Debia*, 4 W. R., 11.

There is nothing in the provisions of Act XX of 1865 which restrains any person from coming into the presence of the Judge and supplying information to the vakeels. The word "appearance" does not mean actual presence before the Judge in Court,—*e.g.*, of a mookhtear standing behind the pleader. *Gugraj Singh and others*, 10 W. R., 355.

Evidence which does not support a conviction on a criminal charge, cannot justify a removal from a profession (the present case being that of a mookhtear). *Nil Kant Biswas, mookhtear*, 9 W. R., 29.

Conviction by a Magistrate for practising as a mookhtear in the Revenue Court without a certificate.—Jurisdiction. *Ramdyal Singh, in the matter of*, 5 B. L. R., Ap., 89.

The High Court has power, under Section 15, Act XX of 1865, to suspend or dismiss a mookhtear from his office, when it sees "reasonable cause," although he might not have committed any act of "professional misconduct" under Section 16. *Gholab Khan, mookhtear*, 7 B. L. R., 179, and 16 S. W R., Cr. R., 15.

Where a general mookhtear empowered to act on behalf of co-sharers does formal acts to enforce the rights of his principals (the zemindars), it is not necessary to trace back his authority in each case to the explicit sanction of every single member of the family. Mookhtears must be considered to have a certain discretion, and, unless the contrary is shown, to do such acts as come within the ordinary scope of their duty with authority. *Hurry Kisto Roy* v. *Motee Lall Nundee*, 14 S. W. R., C. R., 36.

Case of a mookhtear who was reinstated by the High Court to his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the mookhtear was guilty of any moral turpitude or that he was unfit to act in the Criminal Courts as a mookhtear. *Koylashnauth Chowdry, in the matter of*, 16 S. W. R., Cr. R., 41.

Where a Magistrate suspended a mookhtear for three months for making a wilful false statement, it was held that the Magistrate had no power to suspend the mookhtear under Act XX of 1865, and his suspension was set aside. *Re Banchanidhi Mahunty*, 17 S. W. R., Cr. R., 6.

A mere mookhtear is not the recognized agent of the judgment-debtor on whom notice can be rightly served within the meaning of the Criminal Procedure Code. *Kristo Chunder Goopto* v. *Fuzul Ali Khan*, 17 S. W. R., C. R., 389.

(e) *Receivers.*

The suit was brought by the plaintiff, as Receiver of the Tanjore Estate, to recover from the first defendant, a farmer, a sum of money alleged to be rent due to the Tanjore Estate under a written agreement executed in August, 1866, by the first defendant to the second defendant who then claimed to be owner of the estate. The Judge of the Court of Small Causes considered that the subject-matter of the plaint did not constitute a cause of action to the plaintiff, and dismissed the plaint subject to the opinion of the High Court. *Held*, that the suit was maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the muchalku, which was good evidence of what was the fair amount of rent. The second defendant having been held to possess no title to the property, could not afterwards maintain an action for the non-payment of the rent of a portion of such property, due according to the terms of the muchalku.

Held, also, that the right of suit did not extend to recover anything as interest on the rent due. *Morris* v. *Muthusami Pillay*, 6 Mad. Rep., 363.

The power given to the Civil Court, by Section 92,

Act VIII, 1859, of issuing injunctions and appointing a Receiver *pendente lite*, should be exercised only in cases where property which it is essential should be kept in its existing condition, is in danger of being destroyed, damaged, or put beyond the power of the Court. *Mun Mohinee Dassee* v. *Ichamoye Dassee*, 13 S. W. R., C. R., 60.

The Receiver in a suit is nothing more than the hand of the Court for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court, in order to preserve the subject-matter of the suit *pendente lite;* and the possession of the Receiver is simply the possession of the Court. He has no personal rights in the property, nor can he take any steps with regard to it, without the sanction of the Court. If it is necessary for him to take action of any sort, he should be put in motion by the Court on the application of the parties to the suit; and whatever he rightly does with regard to the property, he does simply as the agent of the owners of the property.

Where the Receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract, was admitted with the receiver as co-plaintiff, he having obtained leave to sue. *Wilkinson* v. *Gangadhar Sirkur*, 6 B. L. R., 486.

Semble,—A Principal Sudder Ameen cannot, like the Court of Chancery, appoint a Receiver in a case where the defendant has kept the plaintiff for a considerable time out of assets to which he is jointly entitled with the defendant. *Joynarain Geeree* v. *Shibpershad Geeree*, 6 W. R., Mis., 1.

It is not a matter of course, but when the circumstances are such that a special case is made out, the Court will appoint a Receiver, pending litigation to set aside probate. *Sreemutty Joykallee Dabee* v. *Shib Nath Chatterjee*, Bourke's Rep., T. J., 5.

Where a Judge, under Section 26, Regulation V of 1812, has appointed a Receiver to manage a joint undivided estate,—that is, "to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate,"—he has jurisdiction over the revenue with regard to the disposal of the surplus profits, and can order the Collector who holds the estate as such Receiver, under Regulation V of 1827, to pay the profits of the estate to the several shareholders, according to their respective shares. *In the matter of the Petition of the Collector of Rungpore*, 2 Ind. Jur., N. S., 178; 7 W. R., 273.

An appeal will not lie against an order refusing to appoint a Receiver under Act VIII of 1859, Section 92. *Ex-parte Imbichi Patama*, 1 Mad. Rep., 129.

In a suit by K. against B. and others, the Supreme Court ordered that the estate of R. (deceased) should be applied to the payment of his debts, legacies, &c., and appointed a Receiver of the rents and profits of his real property. It also ordered the defendants and persons claiming through them to give up to the Receiver such of the real property as might be in their possession. Subsequently, in the same suit, the High Court declared that K. was entitled to a moiety of the estate of R. after payment of costs and legacies, and directed the estate to be sold and the proceeds brought into Court. Afterwards the Receiver brought a suit in his own name against R. and one S., alleging that, though the property had been decreed to K. and himself jointly, yet K. had, by collusion, obtained sole possession of it, and that, in execution of a money decree against her, it had been sold to S.

Held that, as Receiver of the High Court, plaintiff had no title as of right against S. to the immediate possession of the property, and no right to sue in another Court in his own person to receive possession thereof. *Ram Lochun Sircar* v. *C. S. Hogg*, 10 W. R., 430.

The rule in the original side of the Court, taken from the practice of the English Court of Chancery, is not to compel a party to a suit to give up to the Receiver possession of property unless an order of Court to that effect has previously been made upon him; the proper course being by proceedings in Court to fix an occupation rent, and to order the party in possession to pay the same. *Ram Lochun Sircar* v. *C. S. Hogg*, 10 W. R., 430.

(*f*) *Sheriff.*

Where property is attached by the Sheriff after judgment, and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. *Bombay Joint Stock Corporation* v. *The Sheriff of Bombay*, 6 Bom. Rep. O. C. J., 22.

If a Sheriff, upon the representation of a debtor's ill health, takes upon himself of his own authority to relax the debtor's imprisonment, by letting him reside out of jail, it is an escape for which the Sheriff is liable to an action for damages.

If the judgment-creditor voluntarily discharges the debtor out of custody, even for a week only, he cannot, by any agreement which he might have made with the debtor, afterwards retake him, although the debtor may have agreed that, if he does not pay the money within a week, he shall be retaken.

A debtor removed from prison under a rule of Court, whether with or without the consent of his creditor, and kept in charge of a Sheriff's officer in a private house, is still in the custody of the Sheriff. The Sheriff may, without a rule of Court, refuse to allow the debtor to reside out of prison, though the creditor may have consented to it. When the Sheriff and all parties consent to the debtor being kept in custody in a private house, the Sheriff is liable to an action for escape on proof of want of proper care and surveillance; but it would be a matter of fact for a Jury to consider whether the creditor, being in some measure instrumental to the escape, ought to recover against the Sheriff. *Stafford Bettesworth Harries* v. *The East India Co.*, 4 W. R., P. C., 99.

Where a prisoner is arrested under a warrant of the High Court at Calcutta directed to the Sheriff, authorizing his arrest for the purpose of being brought before the Court, and committed to prison, and the commitment is ordered, but no warrant of commitment is drawn up, and the Sheriff delivers the prisoner to the jailer, with no other document than his own order to his bailiff to arrest the prisoner, and the latter, in consequence, is discharged from

custody by a Judge on application on a writ of *habeas corpus*,—*Held* that the Sheriff is not liable for an escape. *Hadjee Mahomed Conjee* v. *H. Dundas*, 1 Ind. Jur., N. S., 228.

Section 174 of the Indian Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court. *Reg.* v. *Sirdir Pathoo*, 1 Bom. Rep., 38.

Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of Section 186 of the Penal Code. *Reg.* v. *Poshubin Dhambaji Patil*, 2 Bom. Rep., 134.

In a suit brought in the Bombay Court of Small Causes to recover Sheriff's poundage on the amount endorsed on a warrant of arrest in execution of a decree obtained by the defendants, and under which the plaintiff, at the request of the defendants, arrested H., who applied to the High Court under Section 273 of Act VIII of 1859, and was ordered to be discharged from custody, the Judge found for the defendants with costs, subject to the opinion of the High Court.

Held (1) that the words "debt levied by execution" used in the table of fees for the Recorder's Court, and continued in the subsequent tables, being ambiguous, the rule applies that "if an instrument be an ancient one and its meaning doubtful, the acts of its author may be given in evidence, in aid of its construction;" (2) that as the Sheriff is the Officer of the Court, and his fees are received under its authority, it was unnecessary to refer the case back to the Small Cause Court in order that evidence of usage might be taken; (3) that having regard as well to the usage and practice of the Supreme Court as to the liability of the Sheriff at the time the old tables of fees were settled, the words used must be construed as entitling the Sheriff to poundage upon his executing a warrant for the arrest of a defendant in execution of a decree; and (4) that if the Sheriff's right accrues upon his executing the warrant, the subsequent discharge by the Court of the defendant from custody ought not to divest him of it. *Uinayak Vasudev* v. *Ritchie, Steuart, and Co.*, 4 Bom. Rep., O. C. J., 139.

Where a person had been taken in execution under a *ca. sa.* directed to the Sheriff under the old procedure, it was held to be sufficient to empower the jailer to detain him. The words "ordinary civil jurisdiction" are only used to distinguish the civil from the criminal jurisdiction. *In re Anwar Biswas*, 1 Ind Jur., N. S., 106.

(*g*) *Miscellaneous Officers.*

Where a Moonsiff appointed a person as sheristadar in his Court, and it did not appear that the person so appointed was in any respect disqualified for the appointment, or that his appointment was open to any sort of objection whatever, or that the Moonsiff had neglected any of the preliminary enquiries or formalities prescribed for such cases,—*Held* that it was not competent to the Zillah Judge, merely on the ground that in his opinion the claims of some other persons were superior to those of the person appointed, to remove him from the office, and to direct the appointment of a different and specified person. *Petition of Bhoyrub Chundra Deb*, 7 W. R., 131.

A Zillah Judge may refuse to confirm the appointment, by a Subordinate Court, of a disqualified person as a ministerial officer, or may rescind such an appointment if not made conformably to the rules prescribed by the High Court, and require the Subordinate Court to make a fresh appointment after observance of the rules. But he has no authority, after allowing an appointment to stand for nine months, to displace the person so appointed, and to appoint another in his stead. 7 W. R., 224.

A Zillah Judge is not competent to remove a mohurrir from one Moonsiffee without any fault of his, and to subject him to loss by requiring him to go to a distant Moonsiffee. *Hurgobind Biswas*, 7 W. R., 246.

The opinions of pundits must not be taken on their authority to be a correct exposition of the law, when such opinions are discordant from works of current and established authority. *The Collector of Masulipatam* v. *Cavaly Vencala Narainapah*, 2 W. R., 61.

When a plaintiff fails to appear before a Commissioner appointed under Section 180 of Act VIII of 1856, and the defendant appears, the plaintiff is liable, under Section 114, to have his suit dismissed with costs.

An appeal does not lie from such judgment by default. The proper course is to apply for an order to set aside the judgment; and if that application be refused by the Judge, to appeal against his order of refusal. *Esanchunder Chuckerbutty* v. *Soorjo Lall Gossain*, W. R., F. B., 1.

All officers of a Moonsiff's Court are appointed by him, subject to the approval of the Judge, who should hear what any person aggrieved has to say, and determine whether the Moonsiff has rightly exercised his authority. *In the matter of Gooroodass Bhuttacharjee*, 11 W. R., 158.

A Judge is not warranted in interfering with the appointment of peons made in a Moonsiff's Court under Act V (B. C.) of 1863, and approved by the Moonsiff. *In the matter of Someroodeen and another*, 11 W. R., 159.

Under Section 9, Act XVI of 1868, the nomination and appointment of the ministerial officers of a Moonsiff's Court rests with the Moonsiff, subject to the approval of the District Judge. If the District Judge does not approve, he can refuse his sanction, but the law does not permit him to appoint any other person. *In the matter of Rajcoomar Goopto*, 11 W. R., 354.

Certain Commissioners, who had acted under a commission of partition, refused to give up the return they had made until they were paid their fees. On application to the Court, they were ordered to send in the return. *Held* that Commissioners, under a commission of partition, have no lien on their return thereunder for their fees. *Sree Mutty Rajmoheeney Dabee and others* v. *Muddoosoodun Dey and others*. Bourke's Rep., O. C., 24.

Commissioners appointed by the Court are officers of the Court, and act by a majority; therefore where two of the Commissioners were agreed,—*Held* that they had power to make a valid return, notwithstanding the dissent of the third. *Rajen-*

dra Matilal v. *Ramnarayan Matilal*, 3 B. L. R., Ap., 3.

In the matter of the appointment of a Serishtadar in a Moonsiff's Court, it was held to be no irregularity or impropriety on the part of a Judge to call the attention of the Moonsiff to a circular order of the High Court communicating the wishes of Government that preference should be given to certain discharged officers. *Aunund Chunder Chuckerbutty, in the matter of*, 14 S. W. R., C. R., 376.

Act XVI of 1868 contemplates that the selection and appointment of persons to fill ministerial offices in the establishments of Subordinate Judges should be left to those Judges, the power of the Zillah Judge extending merely to the approval or disapproval of the person appointed. The latter's refusal of sanction must be based on grounds personal to the appointee; and he must not interfere and control the selection of persons so as to influence the inferior Judge towards the appointment of a particular candidate. *Oolfut Hosseein*, 13 S. W. R., C. R., 197.

It is not within the province of the Clerk of the Court to issue judicial orders on any subject. He is merely a ministerial officer of the Court, and any act which he is competent to perform must be of that character only, and therefore not one to be judicially dealt with, or rescinded by the Court. *Goshai Ing Roopgur* v. *Chingun Lall*, 2 N. W. R., 46.

The High Court has no authority to interfere in the case of a person who is not confirmed in an acting appointment of Civil Court Ameen for which the Judge considers some other candidate to be more fit. *In the matter of Doorga Dass Doss*, 17 S. W. R., C. R., 226.

All litigants are entitled to the protection of the Court from extortionate claims made upon them by those whose professional aid they seek. Brokers and meddlers in litigation, who avail themselves of the weakness and ignorance of suitors to obtain from them, under a pretence of services to be rendered, engagements for the payment of money, will find that protection will be afforded by the Court against them also. *Roop Narain Misr* v. *Kushi Ram Singh Teinbiram*, 2 N. W. R., 67.

Upon the application of the Collector, who was a party to a suit, an enquiry was held by the Subordinate Judge into the conduct of a Civil Court Ameen, who had made a local investigation in the suit. The Ameen was acquitted, and the Collector ordered to pay his costs, including vakeel's fees. *Held*, that, as in the case of miscellaneous proceedings, the Civil Court was competent to award such costs against the Collector. *Collector of Tirhoot, in the matter of*, 14 S. W. R.. C. R., 390.

A Moonsiff has power, if necessary, under Section 166, Act VIII of 1859, to examine any of the parties to a suit and to compel their attendance; or in the event of their failure to comply with the order, to deal with the suit under Section 170. He also has power, if necessary, to examine any other person as a witness. *Ram Gutty and others* v. *Mumtaj Bibee and others*, 10 W. R., 280.

The Village Moonsiff is bound to report the commission of all offences committed in his village to such person and in such manner as may be most likely to be effectual for the apprehension of the offenders. *Anonymous*, 3 Mad. Rep., A. J., 31.

A Moonsiff has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction. *Anonymous*, 3 Mad. Rep., A. J., 24.

Plaintiff sued for Rs. 31-2-3, money paid for the use of defendant, his undivided brother. The defence was that plaintiff held family property, defendant's share of which exceeded in value the debt sued for, as also the amount for which a suit would lie before a Moonsiff under Act IV of 1863. *Held* that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the Moonsiff under Act IV of 1863. *Held* also that the share of the defendant being both in nature and amount beyond the District Moonsiff's Small Cause Court jurisdiction, it was not available as a defence, even if it formed a fit object of set-off. *Katapirumal* v. *Punchanadum Pillai*, 3 Mad. Rep., A. J., 339.

A party whose appointment by a Subordinate Judge or Moonsiff is disallowed by a Zillah Judge, on the ground that he is not qualified for the appointment, has no right of appeal to the High Court against the Judge's order. *Sosheekissen Mookerjee, in the matter of*, 14 S. W. R., C. R., 328.

A Moonsiff ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Moonsiff, and he is entitled to exemption. 6 Mad. Rep., Rul. XLII.

The valuation of the matters of litigation for the purpose of determining the jurisdiction of Moonsiffs is to be made in the mode prescribed by Section 11, Regulation VI of 1816, and Regulation III of 1833, and not in that prescribed in the Stamp Acts. *Thiagarája Mudali* v. *Ramanuja Churry; Chinnasámi Chetty* v. *Nangappasary and others; Jungla Venkatarúyadu* v. *Jungla Kamammah and another*, 6 Mad. Rep., 151.

The Civil Court has no jurisdiction under Section 29 of Regulation IV of 1816 to make an order for the execution of a decree in a suit tried before a Village Moonsiff. The section only applies where a Village Moonsiff has been guilty of corruption or partiality in the decision of a cause tried by him. *Narayunasamy Naikur* v. *Velu Pillay*, 4 Mad. Rep., 188.

A District Moonsiff is a Small Cause Court Judge under Madras Act IV of 1863 within Act XI of 1865. *Wumadi Rajah Harujai Kumara Venkutu Perumal Raj Bahadur* v. *Kunniappuh*, 4 Mad. Rep., 149.

The investiture of a Moonsiff with the powers of a Small Cause Court under Section 29, Act VI of 1871, does not deprive parties to pending suits of any right of appeal which they might have had; the general rule being that the law as it existed when the action commenced must decide the rights of the parties, unless the legislative authority expresses a clear intention to vary these rights. *Ghotac Mundle* v. *Kajroo*, 16 S. W. R., C. R., 227.

20.—Court Fees.

When a plaintiff in order to make proof under Section 281, Act VIII of 1859, that the defendant, for the purpose of procuring his discharge, without satisfying the decree, has wilfully concealed property, &c., chooses to examine the defendant, he must pay

the Court fees for the oath and the cost of reducing the deposition of the witness to writing. It is otherwise under Section 8, Act XXIII of 1861, in which case the fee is separately demandable, if at all, from the applicant. *Edmond, J. M.* v. *Niersis, M.*, 16 S. W. R., C. R., 84.

When letters of administration are granted in respect of property which is subject to a mortgage, the value of the property for the purposes of estimating the *ad valorem* duty payable under Court Fees Act, 1870, is the value of that with which the Administrator is to deal, *viz.*, the value of the entire property less the amount of the incumbrance. *In the goods of Lieutenant-General Peter Innes, deceased*, 16 S. W. R., C. R., 253.

No stamp duty is payable under the Court Fees Act, 1870, on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted. *Bibee Ameerun, in the goods of*, 15 S. W. R., C. R., 496.

Section 16 of the Court Fees Act refers to where a party losing substantially a portion of his claim is precluded from re-asserting it before the Appellate Court without paying the proper stamp fee. *Bissonauth Chatterjee Madhubmoney Dabee*, 15 S. W. R., C. R., 511.

Stamp duty upon an appeal filed after the Court Fees Act came into operation can only be levied according to the provisions of that Act, even though the original suit was valued on the principles laid down in Act XXVI of 1867. *Mussamut Bhugobutty Kooer* v. *Mussumut Kustooree Kooer*, 15 S. W. R., C. R., 272.

Under the Court Act, 1870, trust property descending on the death of the trustees is liable to the *ad valorem* stamp duty preseribed by Schedule 1, Clause 11, to that Act.

The term "property" in Clauses 11 and 12 of Schedule 1 of the Court Fees Act, includes not only property to which the deceased was beneficially entitled during his life-time, but also all property which stood in his name as trustee, or of which he was possessed benami for others. *In the goods of George distinguished; in the goods of H. B. Beresford, and in the goods of T. H. Maddock*, 7 B. B. L. R., 57, and 15 S. W. R., C. R. 456.

An application for review of judgment, such as is alluded to in Articles 4 and 5, Schedule 1 of the Court Fees Act (VII of 1870), does not include an application for a new trial in a Small Cause Court in the mofussil. *Gopeenath Roy* v. *Ram Joy*, 14 S. W. R., C. R., 249.

A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will, and in which he claims damages to the extent of Rs. 35,000, in default of his obtaining the accounts, should be filed on the stamp required for a suit for the recovery of Rs. 35,000, and not on a stamp of Rs. 10, which, under Clause 3, Section 17, Schedule 11 of the Court Fees Act, 1870, is the stamp laid down for a declaratory suit in which no consequential relief is sought and which cannot be valued. *Ram Doolall Singh* v. *Gopal Kristo Singh*, 16 S. W. R., C. R., 156.

A petition for a new trial in a Small Cause Court is, under the Court Fees Act (VII of 1870) properly stamped with a one-anna stamp. *Chotá Lál Jamnádás* v. *Bulákidás Jethú*, 7 Bom., Rep., A. C. J., 109.

Applications to the Court, not required by the Civil Procedure Code to be in writing, do not fall within the 6th Section of the Court Fees Act. The term "application" in Schedule 11 of the Court Fees Act, when read with Section 6, must be construed to mean an application in writing. *Tetley* v. *The Administrator-General of Bengal*, 2 N. W. R., 418.

A petition of regular appeal bearing 19 bi-color stamps of the value of Rs. 465, was held to be sufficiently stamped under the rule as it at present stands. *Huro Monee* v. *Kristo Indro Shaha*, 17 S. W. R., C. R., 220.

An appeal lies, under Act VI of 1871, to the Judge from an order of the Subordinate Judge passed under Act IX of 1861. The Judge has power, under Act XVI of 1868, Section 19, to transfer to the Subordinate Judge a case under Act IX of 1861, an application under the latter Act not being a suit. *Sonamonee Dassee* v. *Joy Doorga Dassee*, 17 S. W. R., C. R., 551.

The exemption of the Government of India, dated the 19th September, 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written. 6 Mad. Rep., Rul. XII.

Court Fees Act (VII of 1870), Act VIII of 1859, Sections 280 and 281, Act XXIII of 1861, Section 8. *J. M. Edmond* v. *M. Niersis*, 8, B. L. R., Ap., 42.

Court Fees Act (VII of 1870), Schedule 1, Clause 11, property on which there is a mortgage or encumbrance. *In the goods of Peter Innes*, 8 B. L. R., Ap., 43.

A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869. 6 Mad. Rep., XXXVI.

The effect of the provision in the note to Article 12, Schedule 1, of the Court Fees Act (No. VII of 1870), on the operation of a certificate duly granted, which has become liable to cancellation under that provision, but has not been cancelled, considered. *Govindappah* v. *Kindappah Sástrulu*, 6 Mad. Rep., 131.

Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees which require a stamp under Article VII, Schedule 1, of Act VII of 1870. 6 Mad. Rep., Rul. XXIV.

Intention to evade payment of stamp duty is not an essential ingredient in the offence described by Section 29 of Act XVIII of 1869. *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the Section. 6 Mad. Rep., Rul. V.

Where a plaint, insufficiently stamped, was duly presented to a Court before the expiration of the time allowed by the Limitation Act, and was retained by the Court, the plaintiff being ordered within a limited time to supply the requisite additional stamped paper, which was done,—*Held* to be in time, although the formal order for registration of the plaint was not made until the period of

limitation applicable to the case had expired. *Hidazist Ali* v. *Musumut Maeraj Begum*, 3 N. W. R., 202.

In cases in which the value of property in respect of which a certificate of heirship is sought exceeds Rs. 1,000 the stamp duty should be calculated on the whole amount, and not on the excess over Rs. 1,000, under Act VII of 1870, Schedule 1, Article 12, but the exceeding Rs. 1,000 is the condition of liability. 5 Mad. Rep., Rul. XIV.

With the exception of the depositions of the witnesses and the documentary evidence and copies of the final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentence are required by Section 416 of the Code of Criminal Procedure to file with their petitions of appeal, when the party who is desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same, copies of any part of the record of a criminal trial can only be furnished to applicants on stamp paper. 4 Mad. Rep., Rul. VIII.

Court Fees Act (VII of 1870), Schedule 11, Clause 1 (a). *Brujanath Dhar* v. *Bhubo Mohun Dhar*, 6 B. L. R., Ap., 137.

Court Fees Act (VII of 1870), Schedule 1, Clause 11. *In the goods of W. G. Chalmers*, 6 B. L. R., Ap., 137. *In the goods of W. P. Missen*, 6 B. L. R., Ap., 139. *In the goods of George*, 6 B. L. R., Ap., 138.

VI.

CONTRACTS, TORTS, AND DAMAGES.

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1.—CONTRACTS.

R. G. G. and Co. entered into a contract to sell certain goods to A. S., N. S., both Calcutta firms. The contract, which was in a printed English form, was taken on the 18th December, 1868, by one M., on behalf of the firm of R. G. G. and Co., to obtain the signature of the vendees' firm. It was signed on their behalf by A. S. Neither M. nor A. S. understood English, and no explanation was given of the terms of the contract to A. S. at the time he signed it, but there had been negotiations between M. and A. S. as to these goods prior to the time when A. S.'s signature was obtained. It did not appear that the goods had been identified in any way by the purchasers, who had merely seen a sample. After his signature A. S. wrote in Nagri, "Goods, fresh grenadines, five cases, at two annas and three pie per yard." A. S., N. S., afterwards, on the 9th February, 1869, paid Rs. 1,000 as earnest-money, which was accepted by R. G. G. and Co., who then allowed further time for taking delivery of the goods, which, however, A. S., N. S., finding some of the goods were stained, declined to do. R. G. G. and Co. thereupon brought an action for breach of contract in not taking delivery, and a cross-suit was brought by A. S., N. S., to recover the Rs. 1,000 paid as earnest-money.

Held, that the words "fresh goods" after the signature of A. S. constituted part of the contract into which the parties entered, and by which they were bound. Where a case has been heard by a single Judge of the Small Cause Court, and a new trial has been applied for, and the case has been re-heard by two Judges, the Court is bound, under Section 7, Act XXVI of 1864, to refer the case for the opinion of the High Court if requested to do so by either party to the suit, though the Judges do not entertain any doubt or differ in opinion. *Madhab Chandra Rudar* v. *Amrit Sing; Amrit Sing* v. *Madhub Chandra Rudar*, 5 B. L. R., 111.

The plaintiffs in London and the defendant in Calcutta had dealings, which consisted in the defendant shipping jute cuttings and rejections to the plaintiffs in certain quantities, and within certain limits as to price, the defendant drawing bills on the plaintiffs in respect of such goods, which the plaintiffs accepted. The plaintiffs alleged that there was an agreement between them and the defendant; that in case of shipments in excess of the limits given by the plaintiffs, they should at their option receive the goods on their own account, or treat them as consignments on account of the defendant, but the defendant denied there was any such arrangement. The defendant made several shipments in excess of the plaintiffs' limits, and the plaintiffs

treated them as consignments on the defendant's account, selling them on defendant's account and forwarding him account sales, and drawing bills on the defendant for any balance due to them in the transactions, which bills the defendant refused to pay. The plaintiffs forwarded accounts current to the defendant, in which appeared an item of £188 5s. 6d. as the balance of account current down to December, 1866. It appeared to have been due, however, in respect of an account for 1863. The defendant sent a letter, dated 22nd December, 1865, to the plaintiffs, which contained the following postscript: "P.S. Enclosed a remittance of £40 to old account." In an action brought by the plaintiffs for the balance due to them from the defendant in respect of the shipments which had been treated by the plaintiffs as consignments in the defendant's account, the plaintiffs included the sum of £188 5s. 6d. The suit was brought in November, 1868. The defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors.

Held, that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs.

In exercising their option of treating shipments in excess of their limits as on their own account, or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment separately, and were not compelled to decide on an average of the shipments taken all together.

Held also (on appeal, reversing the decision of Norman, J.) the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt, which would give a new period of limitation. *Shearman* v. *Fleming*, 5 B.,L. R., 619.

Plaintiff took a putnee from defendants, and as a part of the consideration of the lease agreed to be responsible for certain decrees outstanding at the time against the defendants. Thereupon was executed a second contract between the parties, by which that particular responsibility of paying the decrees was compromised and got rid of by plaintiff paying down a certain sum of money. Subsequently the defendants successfully contested payment of one of the decrees, after which plaintiff sued to recover the money of which payment had been thus withheld. *Held*, that as the second contract had absolved plaintiff from all responsibility as regards the decrees, he was not entitled to recover the money claimed in the suit. *Sreenauth Chowdry* v. *Grey*, 13 S. W. R., C. R., 114.

Where a contract for the sale and delivery of two thousand baras of stone contained a provision that in case of breach by the purchaser damages (liquidated) were to be paid by him at the rate of one rupee per baras, and the purchaser paid Rs. 1,000 earnest-money, but made default in accepting the stone, *Held* that, though in default of acceptance, the earnest-money, Rs. 1,000 was forfeited, the vendor could not retain the earnest-money and sue for the whole amount of the liquidated damages (Rs. 2,000), but that his proper course was to sue the purchaser for the difference only, and such difference amounting to Rs. 1,000, that the suit was properly brought in the Small Cause Court. *Mehervanji Mancharji* v. *Punja Velji*, 5 Bom. Rep., O. C. P., 147.

Where a mortgagor allows the amount of his loan to remain in the hands of the mortgagee, taking a receipt for it,—*Held* that the transaction should be regarded as a deposit of money with a banker or agent, repayable on demand without interest. A suit to recover the balance of such moneys is in the nature of a suit to recover the amount of deposit. *Nawab Jaffree Begum and another* v. *Mahomed Zahoor Ahsun Khan*, 2 N. W. R., 409.

It is not law that every right may be renounced. The general rule is power of renunciation, but there are two marked classes of exceptions: There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law; nor of things inherent in man as man. A man may renounce a concrete right, but not one resulting from a natural condition. *Semble*,—A karnavan cannot part, by contract, so as to be unable to resume them, with the privileges and duties which attach to his position as a karnavan. *N. A. Cheruhomen alias Govinden Nair* v. *N. Ismala*, 6 Mad. Rep., 145.

Plaintiff sued to recover Rs. 21,650-5-1, balance of principal and interest due. He alleged in his plaint that, between the 16th February and 23rd July, 1867, he paid at the request of defendant's father, the late G. F. Fischer, Rs. 25,000 on account of Shivagunga zemindari, that the defendant having assumed the management of the zemindari under an assignment from his father, gave plaintiff a receipt for the said sum of Rs. 25,000 under date the 7th August, 1867; that in October and December, 1867, defendant paid the sum of Rs. 5,000 and Rs. 3,000 respectively, in part liquidation of the debt, but since 20th December, 1867, refused any further payment. Defendant answered that this debt due by the late G. F. Fischer had been validly released by the terms of an assignment dated 29th July, 1871; that the receipt given by defendant was a mere acknowledgment of the payment of Rs. 25,000 by the plaintiff to the late G. F. Fischer, and imposed no obligation on defendant to pay the said amount; that there was no consideration for defendant's promise to pay Rs. 25,000; that when defendant executed the receipt he was not aware of the effect of the release, and that the part payments were made under a mistaken idea of liability. At the hearing it was not disputed that a release was executed, and that this claim was embodied and intended to be embodied in that written release, but it was attempted to set up a contemporaneous oral agreement, leaving this claim as a subsisting demand. The Civil Judge dismissed the suit, holding that this oral evidence could not be adduced to contradict the written release. *Held*, on regular appeal, that the Civil Judge was right. The principle is, Is the matter of the contemporaneous oral agreement so outside the scope of the written one that they can logically subsist together, so that the oral shall neither conduct nor modify the written? In the present case, to set up an oral agreement that the sum released should in fact be paid, is to deal with an object already embodied in the written agreement in a manner antagonistic to its provisions. It is not only to vary what the words do mean, but

what they were intended to mean. The subsequent receipt for the money did not create a debt, for the release had already extinguished it. *J. Fischer* v. *R. Fischer*, 6 Mad. Rep., 393.

In agreements between natives of this country the law does not distinguish between those which are under seal and by parol. *Krishna* v. *Raiyappa Shaulhija*, 4 Mad. Rep., 98.

Where a writing signed by the defendant was in these terms : "S. (defendant) holds Rs. 475, which sum is the property of L. (the plaintiff),"—*Held* that the document could not be considered a written contract or engagement. *Laksharanaiyan* v. *Sivasamy Roy*, 4 Mad. Rep., 216.

A contract to pay money upon the consideration that the plaintiff would give evidence in a civil suit on behalf of the defendant cannot be enforced. Such a contract is either for true evidence, and then there is no consideration, or for favourable evidence either true or false, and then the consideration is vicious.

Semble,—If the consideration had been the plaintiff's promise not to evade process, that would still be no consideration for the defendant's undertaking. *Shashunnah Chetti* v. *Ramasamy Chetti*, 4 Mad. Rep., 7.

2.—Construction of Contracts.

A deed of gift should be interpreted by itself according to the whole of its context, to the expressions it contains, and to the intention of the party making it. Any other direct evidence to explain the surmised or alleged intention of the donor is inadmissible. *Mahinee Kishenmonee Dabee* v. *Koer Anund Nath Roy*, W. R., F. B., 112.

In construing powers of attorney, the special purpose for which the power is given is first to be regarded, and the most general words following the declaration of that special purpose will be construed to be merely all such powers as are needed for its effectuation. *Sausone Ezekiel Judah* v. *Adde Raja Queen Bibi*, 2 Mad. Rep., 177.

An agreement entered into by two brothers who never were constituted by Hindu law members of an undivided family, provided for the mode in which self-acquired property, to a moiety of which they were each entitled, should be managed during their lives, for the right of survivorship and for its descent upon the death of the survivor.

One clause of the agreement, literally translated, was in these words : To the married wives of both of us, if there is no male offspring, in the event of there being sons not born in wedlock, must divide into equal shares for "their own benefit." Upon the construction of this clause,—*Held* that the estate was to be equally divided amongst the wives and the sons born in concubinage. *Sri Gajoputi Horikristun* v. *Sri Gajoputi Neelmonee Patta*, 2 Mad. Rep., 369.

A rule of construction is that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose. *Chinaiyan* v. *Mahomed Fokeerooddeen*, 2 Mad. Rep., 322.

N. and D., having taken a lease of certain lands, jointly gave a kubuleut, agreeing that if within the term of the lease they die, or if in any other way the concern passed into the hands of others, then their heirs, or those who would succeed to their rights, would pay the rent. After the kubuleut was given N. made over his interest in the lease to D.—*Held* that, in passing from N. and D. to D. alone, the lease had passed into the hands of "others" within the meaning of the kubuleut, and that D. occupied the position of the persons contemplated by the terms "those who will succeed to our rights." *Bhobanee Chundra Mitter and others* v. *George MacNair and others*, 10 W. R., 464.

The defendant requested the plaintiff to send coals to Sahebgunge and Rajmehal, and the plaintiff put the coals upon the railway at Raneegunge, where their depôt is. In the absence of all proof as to the amount of coals delivered at Sahebgunge and Rajmehal, and of all notice of despatch and delivery to the consignee, the fact of delivery at Raneegunge was held insufficient to throw on him the liability for the coals sued for. *E. Hanlon* v. *The Bengal Coal Company*, 3 W. R., 163.

One contract does not displace another, unless something complete and effectual is done by the parties to the new arrangement. The *onus* is on the party alleging inequality of sample. *The Ishera Yarn Mills Co. Limited* v. *Syeb Hadjee Abdool Kurreem*, Bourke's Rep., O. C., 276.

If a party enters into a contract to provide and ship molasses at the risk and expense of the seller, he must be taken to guarantee that the casks are proper casks, and properly coppered for any voyage from Calcutta for which such goods may be reasonably ordered by the plaintiffs to be shipped. *Palmer* v. *Cohen*, 1 Hyde's Rep., 123.

Where there is a special agreement between two parties, and that agreement has been performed, and one of them has had all the benefit to which he is entitled thereunder, the other may sue him either upon the special agreement or upon what has been called the implied contract which arises out of the receipt of the benefit. *Oomabutty* v. *Purreshnauth Pandey*, 12 W. R., 521.

A contract for "tallow" is fulfilled by the delivery of the fat of sheep, goats, and other animals, besides oxen. *Mahomed Ibrahim* v. *R. D. Lauder*, Cor. Rep., 42.

A contract in writing to "take all your rope and Manilla rope at the following prices," construed to mean all the vendor's rope in a certain godown on a particular day. *Tarracknauth Paulit* v. *Sherbourne*, Cor. Rep., 62.

A mortgage-deed contained a condition, that if the principal were not repaid by a certain day the mortgage should only be redeemed by payment of one murá of rice for each rupee of the mortgage-money. The mortgagee was in possession under a prior iládarawára mortgage, and rice rose in the market. *Held* that the condition was unreasonable, and such as should not be enforced in equity. *Mailaraya* v. *Subbaraya Bhut and others*, 1 Mad. Rep., A. C., 81.

Where a wajib-ool-urz contained a condition restricting the landlord's right to enhance,—*Held* that having signed it he must be held to be bound by it, until he establishes his right by a civil suit to have the condition in the wajib-ool-urz set aside. *Kyalee Ram* v. *Mahomed Ali Khan*, 1 Agra Rep., R. A., 62.

No person can be bound by a condition in the

wajib-ool-urz relating to pre-emption to which he has not consented either personally or by some person authorized on his behalf. Such consent or such authority may be expressed in words or writing, or inferred from the acts or conduct of the parties. *Girdharee Lall and others* v. *Oomrao Singh and others*, 3 Agra Rep., 249.

An agreement to put a party in possession of certain lands, if default be made in the payment of money lent, does not preclude that party from suing for the money lent, if he elect to do so. *Annasami* v. *Naranayen*, 2 Ind. Jur., O. S., 12.

When it is provided by conditions of sale of land that the vendor shall not be bound to show any title prior to an instrument of a certain date, the purchaser may insist upon a defect of title appearing *aliunde* and before that date, and if it be proved to exist may rescind the contract and recover back earnest-money, interest, and expenses. *Muncherjee Pestonjee* v. *Narayen Luxamoujee*, 1 Bom. Rep., 77.

Held that the word "adjacent" cannot so narrowly be construed as to confine the enquiry to places bordering on the land, or even lying very near or close to it. *Taija Mull* v. *Oomrao and others*, 1 Agra Rep., R. A., 64.

Where a contract is partly printed and partly written, and there is a conflict between the printed and written part, the written part must be taken to control the printed part. *Carlisle* v. *Nuthmull Nowluckee*, 2 Hyde's Rep., 242.

When a third person voluntarily consents to incur liability on account of another, and binds himself in a penalty for the due performance of his engagement, the nice technicalities of English law are not applicable, but the real intention of the parties must be looked to. In this case, there having been a *bonâ-fide* endeavour on the part of the respondent fairly to perform his engagement, and there having been a disposition on the part of the appellant to throw obstacles in the way of the performance, in order to obtain payment of the penalty consequent on non-performance, the appeal was dismissed. *Ram Gopal Mookerjee* v. *Masseyk and Kenny*, 2 W. R., P. C., 43.

The appellant became security for the payment by the respondent of the Government dues in respect of a mootah then about to be sold for those dues, and by the first kararnamah entered into by the parties it was stipulated that, on default of the respondent to pay any part of the instalments, the appellant was to obtain a transfer of the property, and to retain it, after returning to the respondent the money which may have been paid by him. By a second kararnamah entered into on the same day, the plan of a conditional sale provided by the first kararnamah was reduced to a mortgage, with a covenant between the parties that whenever the appellant should take possession of the mootah for the purpose of enabling him to discharge the amount for which he became security, he should restore the mootah to the respondent as soon as he was reimbursed all that he had advanced out of the rents and profits of the mootah. *Held* that there was no such inconsistency between the two instruments as to make the second invalid. *Sri Rajah Kakerlapoody Jagganadha Ray Bahadoor* v. *Sri Rajah Vutsavoy Jaganadha Jagaputty Ray Bahadoor*, 5 W. R., P. C., 117.

A contract of sale and purchase of indigo, the produce of a certain concern, contained the following clause: "The quality of the indigo to be equal to that usually made at the above concern, and to be delivered in good merchantable order, free from dampness, carefully packed, the contents of each chest to be of one quality, and got up with the usual care of the mark, and if not so delivered such allowance to be made to the purchasers as shall be awarded by Mr. J. P. T." *Held*, the words "if not delivered" referred to all the several preceding stipulations, including the quality. And therefore inferiority of quality below that usually made at the concern was no ground for rejection of the indigo tendered, but only the subject for an allowance to be awarded by Mr. J. P. T. *D. H. Macfarlane and others* v. *E. C. Robert and others*, 2 Ind. Jur., N. S., 258.

By a contract for the cultivation of indigo, the defendants agreed, in consideration of certain payments, to prepare the land, sow the seeds that should be supplied, and reap the crops. And it was stipulated that in case the defendant should neglect to cultivate the lands the Amlah of the factory might cultivate them, and deduct the expense from the money payable to the defendant, and that if the lands were not prepared for the seed at the time of the full moon in the month of Magh "in consequence of the loss of indigo and its profits, the defendant should pay compensation at the rate of twelve sicca rupees per beegah." *Held*, first, that it was not obligatory upon the plaintiff to enter upon the lands and cultivate upon default by the defendant. Secondly, that the stipulation for the payment by the defendant of twelve sicca rupees per beegah, in the event of the land not being prepared for seed by the time mentioned, was a reservation in the nature of liquidated damages; and that the plaintiff was not entitled to recover more than that sum in respect of the breach of that stipulation, although loss to a greater extent may have been sustained. *Macrae* v. *Jommeth Misser*, Marsh., 386.

Where there was a written agreement between the first defendant's father and the Collector, in which the first defendant's father undertook to pay a certain rent "for ever," but these general words were qualified by the words that he is to pay the rent "as long as the village remains in his possession," and the document did not contain any express agreement or undertaking on the part of the Collector,—*Held* that the enjoyment of the land by the first defendant's father at a certain rent as long as he retained possession of it was ample consideration and motive for his agreement to pay the rent, and that it was not necessary, in order to prevent the consideration and motive for his agreement from being wholly defeated, to imply on the part of the Collector on agreement that he should hold the land for ever at that rent and no more. *Subupalayi Ammal* v. *Appakutti Aiyangar*, 3 Mad. Rep., A. C., 106.

A kubuleut having been executed in favour of a zemindar who died, leaving two daughters, one of them sued the tenants to recover a moiety of the rents due for a series of years under the kubuleut; but her claim was dismissed by the lower Appellate Court, on the ground that she had not made out a

title to sue alone,—*Held* that plaintiff was not entitled to treat a contract which, when originally made, was single and indivisible, as if it had become by the death of her mother (the zemindar) separable into two contracts, one with herself and one with her sister. *Juggodumba Dossee* v. *Haran Chunder Dutt and others*, 10 W. R., 108.

In one character the defendants claimed the whole 16 annas of certain churs as former proprietors; in another, as arrears of a small share of another hostile estate. In the former character they entered into an agreement with the plaintiff that if he, at his own expense and trouble, obtained a settlement of the churs for them they would assign a 4-annas share of them to him. After some time the revenue authorities finally decided against the defendants' claim in the former character, but made a settlement with them in the latter capacity. Plaintiff now sues for his share under the agreement,—*Held* that, as the basis of that agreement was the establishment of the first right, and as that right had failed the plaintiff was not entitled to take from the defendants anything of that which they held in virtue of their second right. *Brindabun Doss and others* v. *Jugodessurree Chowdhrain and others*, 6 W. R., 165.

Plaintiff and defendants entered into an agreement for the sale by the defendants, who were thereby stated to be the absolute owners of a certain ship, to the plaintiff of the said ship. The defendants agreed with the plaintiff that they would immediately upon payment of the purchase money execute to the plaintiff and another a proper bill of sale of the ship. The defendants were unable to get a properly registered bill of sale of the ship made out, owing to infirmity of their own title, but were willing, so far as they could, to convey. The plaintiff had made part payment in respect of the price of the ship,—*Held* that the consideration had failed, and that the plaintiff was entitled to a refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship. *Jassim Binsaff* v. *Esau Ahmed and others*, 2 Ind. Jur., N. S., 13.

Where, during the pendency of a suit, the plaintiff, in consideration of Rs. 2,000, executed contemporaneously a farigh-kutti, or relinquishment of the claim made by him in the suit, and an ikrarnamah, or engagement to deliver in a razeenamah, or deed acknowledging himself to be satisfied,—*Held* that the farigh-kutti and razeenamah amounted to a decided agreement for the settlement of the action; and that, although the plaintiff sued as a pauper, yet, as it was questionable whether he should have been allowed to sue as a pauper, and as he had failed to perform his duty according to his engagement in entering up a razeenamah, he was liable to pay the consideration money of agreement made at settlement.

Held, on the construction of "ikrarnamah" and settlement "roobkaree," that it was binding on the plaintiffs only for the currency of settlement. In general, engagements made at the time of settlement ought to be considered *primâ facie* as intended to subsist only for the time of settlement. *Dyal Singh and others* v. *Jowahir Singh and others*, 2 Agra Rep., A. C., 108.

A compromise entered into in a former suit, no fraud being alleged, is not annulled by non-performance by one of the parties. The other parties may sue for its enforcement, but they cannot revert to their original right. *Ram Sahai Singh* v. *Dhunookdharee Singh*, 1 W. R., 266.

A compromise must be treated as a new and positive contract. A breach of its stipulations may be ground of a suit for its enforcement, but not for a revival of the original right. *Bishnu Coomar Roy* v. *Maharaj Joy Hurish Chunder Deb Roy*, 2 W. R., 209.

"Received from C. M. —— bales of ——— which the Commercial Transport Association in consideration of Rs. —— when paid to their agent at Howrah hereby contract and agree to deliver safely at Howrah," &c., &c., is a mere delivery order, and not a document of title, at all events as between European parties. The claimant under it must prove consideration. And a consideration passed at the time it came into the claimant's hands, as between himself and his immediate indorsee, will not support a claim on such a document. *Assaram Burteah* v. *The Commercial Transport Association*, 2 Ind. Jur., N. S., 113.

The defendant promised that in the event of his obtaining possession of certain land he would be responsible for all balances ascertained to be outstanding, after comparison of the collection accounts for 1259 (1852). *Held* that the comparison of the accounts was a condition precedent to the defendant's liability, and therefore that the plaintiff was not entitled to recover such arrears, notwithstanding the defendant was let into possession and it was proved that there were such arrears, unless it was also shown that the accounts had been compared, or an opportunity of comparing them had been afforded to the defendant. *Luckhy Dass Mustoofee* v. *Jogeshur Mookerjee*, Marsh., 562.

A., on behalf of her infant son B., contracted with C. that he should be allowed for the maintenance of her daughter whom he was about to marry, land situate at X., that should yield annually Rs. 900. B., after coming of age, contracted at Y. to pay C. the annual allowance, and ratified the contract which had been made by his mother.

Held, first, that although the contract with B. was entered into at Y., yet, as by that contract he ratified the contract entered into by his mother, and which related to lands at X., the Court of X. had jurisdiction in a suit for recovery of certain of the yearly payments. Secondly, that a suit for annual payments which had accrued within twelve years of the commencement of the suit was maintainable, notwithstanding more than twelve years had elapsed since the contracts were entered into. Thirdly, that the Court might decline to allow interest on the arrears found to be due prior to the commencement of the suit, there being no stipulation in the contract for interest, and might award interest on the amount decreed from the commencement of the suit to the date of the decree and interest upon the aggregate amount and upon the costs, from the date of the decree until payment. *Kishenkinkore Ghose* v. *Rajah Burroda Cant Roy*, Marsh., 533.

Where, on the face of the contract, it did not appear that either party was called upon to act first, it was held that the plaintiff was not entitled to recover, unless he proved performance of, or an effort to perform, his part. In the absence of any

indication on the part of the plaintiff that he was ready to deliver, the defendant is not liable for non-acceptance. The readiness and willingness on the part of the plaintiff must be substantial, something on which the defendant may act, not a readiness and willingness concealed in the plaintiff's mind. *The Commercial Bank and others* v. *Modoosoodun Chowdhry*, 1 Ind. Jur., N. S., 17.

Held that, in a contract to sow indigo, not sowing would be *primâ-facie* evidence of dishonesty; and that, in order to claim the benefit of Clause 4 of Section 5 of Regulation XI of 1823, it was necessary to show that the negligence to sow had been accidental. *Loll Mohamed Biswas* v. *R. Watson and Co.*, 1 Ind. Jur., N. S., 3.

Plaintiffs sued for certain lands under an agreement executed to their elder brother, Sundaruppa, by defendants in the following terms: "You have this day received a loan of Rs. 1,345-4-4 from D. Venkappa and from me, Brahmanna, for the purpose of remitting to the Court, in satisfaction of the warrant amount, in the matter of the suit No. 26 of 1835 on the file of the Provincial Court between your father, the late Umapati, appellant and Merala Agasti, respondent. You have, owing to the encumbrances consequent on a few more suits against you, caused all the property which you own in Vegayammapetta to be attached for the said (warrant) amount, and caused six putties of land, houses, back-yards, and certain moveable property out of the same, to be knocked down in auction in our names, and some other personal property in the names of others; and have therefore proposed to us to execute a kararnama (to you) engaging (ourselves) to carry and pay the above-mentioned Rs. (1,345-4-4) into the Court; to obtain receipts for the amount and certificates in our names for the real property; to allow the tiled house, back-yard having fruit trees and moveable property, to be held by you as hitherto; Venkappa and myself, Brahmanna to enjoy the produce of the six putties of land for 20 years from Saruari to Sittadhri, on account of the said loan and interest thereon; and to restore the land, together with the certificates (to be) issued by the Court in our names. We have accordingly agreed to your proposal," &c.

Held that the real nature of the transaction was that Sundaruppa borrowed money from defendants to enable him to buy in his own land. That defendants purchased only for and on behalf of Sundaruppa, taking from him an assignment of part of the property for 20 years, in order to repay themselves the money lent. That there was, therefore, abundant consideration for the defendants' promise to give up possession at the end of 20 years. *V. Sankaruppa* v. *D. Kamayya*, 3 Mad. Rep., A. C., 231.

Where lands claimed under a certificate of sale as being in one village are found to be in another, it is open to the plaintiff to show that there has been a misdescription, and that, although the name of the former was used, the intention was to convey the lands he claimed situate in the latter. *Rangopaul Banick* v. *Shibpersaud Sircar*, 12 W. R., 483.

If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it. *Jodoonath Bose* v. *Shumsoonnissa Begum*, 8 W. R., P. C., 3.

"Istemraree" means perpetual, from *marra*, proceeding, going on, being rendered perpetual. *Rajah Leelanund Singh* v. *Takoor Monorunjun Singh*, 5 W. R., 101.

The words "angoja santan" occurring in a deed of gift would limit the gift to the male issue of the donee. *Bugola Moyee* v. *Bhowanee Churn Paul*, 5 W. R., 119.

An ikrarnamah, to which I. K. and T. K. were parties, contained the following stipulation: "After death of me, I. K., my deceased son's widow, D. K., will be the heiress; and after the death of me, T. K., my estate shall devolve on Mussamuts R. K. and D. K. in equal moieties; should both R. K. and D. K. die, then their share shall be enjoyed and appropriated by the surviving ladies, but none of them shall ever be able to make gift or alienation to anybody. After the demise of us five ladies, Mussamut N., daughter of my deceased son, P. B., and N. K., daughter of I. K., shall be heiresses and proprietors in equal shares."

Held that, according to the true construction of the ikrarnamah, N. K. was not entitled to succeed as heiress until after the death of all the ladies, and therefore that her son could not, after her death, claim through her while R. K. was alive. *Joyprokash Bhuggut* v. *Bugwan Dass and others*, Marsh., 589.

The plaintiff, a Hindu widow, on 26th March, 1866, sold to the defendant certain lands for Rs. 800. The price was paid to the plaintiff, who on the same day lent it to the defendant under an agreement that she should receive Rs. 6 monthly by way of interest, and that the principal sum should be repayable on demand. Interest was paid up to April, 1869, but afterwards discontinued. The plaintiff thereupon demanded payment of the principal sum of Rs. 800, but payment was refused by the defendant. On July 4th, 1870, the plaintiff sued for the recovery of the principal sum lent, with interest from the date when it was withheld up to the date of suit. *Held* that the obligations to pay Rs. 6 a month by way of interest, and to repay the principal on demand, must be construed to be alternative obligations. In this view of the contract a demand was necessary to complete the cause of action, and the cause of action arose at the date of the demand; the suit, therefore, was not barred by Act XIV of 1859, Section 1, Clause 9.

Per Norman, J.—By Hindu law a demand would be necessary. *Brammamayi Dasi* v. *Abhai Charan Chowdhry*, 7 B. L. R., 489.

In the absence of any agreement as to delivery, goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement for sale, or, if not then in existence, at the place at which they are to be produced.

Distinction between an ordinary contract for sale of goods and a contract to pay an existing debt in specific articles pointed out. *Dúdúbhái Narsi* v. *Sulleman Dassee*, 5 Bom. Rep., A. C., 127.

Extrinsic evidence may be received to identify the thing referred to in a written agreement.

Where there is a written agreement to deliver a quantity of grain (gulla) at a particular time, parol evidence is admissible under certain limitations to show what kind of grain the contracting parties

had in their contemplation at the time the contract was made. *Vallá bin Hatáji* v. *Sidoji bin Kindáji*, 5 Bom. Rep., A. C., 87.

The contract to be implied from the employment by the trustees of an insolvent, of an attorney to carry on a suit already commenced by the insolvent as plaintiff, and in which such attorney was retained for him, is a contract to pay all subsequent costs, but not the costs incurred prior to such employment. *Shámráv Pandurang* v. *Trustees of Bhugvándás Purshotomdás*, 5 Bom. Rep., O. C., 163.

Where a registered bond provided for payment of interest between the date upon which the bond fell due and the date upon which enforcement was applied for, the bond was construed strictly against the debtor. *Ram Dass Gossamee* v. *Prosonomoye Dossee*, 16 S. W. R., C. R., 297.

Where, from the whole tenor of a deed of gift, it appeared that the real intention of the donor was to pass all her property, qualifying words used in the deed were held not to control its operation. *Kalee Doss Roy* v. *Khiroda Soonduree Debia*, 16 S. W. R., C. R., 300.

If a particular construction of a part of a document renders a contract evidenced by it inoperative, and another construction renders it operative and is reconcilable with other portions of the document, the first should give way to the second. *Maharajah Dheraj Mahtab Chand Bahadoor* v. *Hurdeo Narain Sahoo*, 16 S. W. R., C. R., 119.

No time being fixed for payment or delivery by a contract for the purchase and sale of certain goods, the construction of law is, that the seller will deliver on payment of the price, and that the buyer will pay the price on receiving the goods, and either party is competent to call upon the other within a reasonable time to fulfil his part of the agreement, if ready to fulfil his own. *Juggernath* v. *Been*, 2 N. W. R., 60.

The plaintiffs contracted to supply the defendants with from 275,000 to 300,000 of ganny bags described as No. 6 quality, size 40 by 28 inches, "the defendants to have the option of taking bags of a larger or shorter length at proportionate prices, duly giving a fortnight's notice to the plaintiffs, delivery to be taken in August, 1870." The defendants, after taking delivery of 11,600 of the bags, found that the bags tendered were mixed in size, some being longer and some being shorter than the contract size, and refused to take delivery of the remainder. In an action for breach of contract in not accepting the bags, the Court below found on the evidence that out of 2,000 bags which were examined, 100 were short by from a quarter to half an inch, but that the bags which were really short were very few out of a large quantity which came up to contract size, and held, therefore, that there had been a substantial performance of the contract on the part of the plaintiffs. On appeal, the Court found that the parties did not contemplate any large margin of difference in the size of the bags, and that the proportion of those which differed was large enough to justify the defendants in refusing to take delivery, and held that the tender of such bags by the plaintiffs was not a substantial performance of the contract. *A. B. Miller, Official Assignee*, v. *The Gouripore Company, Limited*, 8 B. L. R., 285.

In March, 1871, T. and Co., brokers in Calcutta, sold to S. and Co., on account of C. (an up-country seed merchant), 200 tons of poppy-seed, and allowed C. to draw upon them to the extent of the value of fifty tons before despatch, on the terms of a previous contract, by which they had allowed C. to draw against cotton to arrive in Calcutta before the drafts matured, C. authorizing them to receive payment on his account on goods sold and delivered through them. Towards the end of March, C. entered into an agreement with E., a merchant in Calcutta, under which E. accepted bills to a large amount for C., upon C.'s promise to cover the bills before maturity. In June, C. ordered the defendant Railway Company to consign all goods despatched from Fyzabad to E.'s address, and empowered E. to take delivery of, and give receipts for, all such goods. In the same month, C. despatched from Patna, in bags supplied by S. and Co., fifty-five tons of poppy-seed to Calcutta, and sent the railway receipt to E., who was therein named as the consignee. One of the terms printed on the receipt stated that goods would only be delivered to the consignee named in the receipt, or to his order. In advising E. of the despatch of poppy-seed, C. informed him that it had been sold to S. and Co., and that delivery was to be made through T. and Co., and E. had also seen letters which passed between C. and his agents, in which the following passages occurred: "Our Calcutta firm will deliver the poppy to T. and Co.," and "Do your best, and hurry off despatches of fifty tons of poppy; the rest of the poppy and linseed can go to E." E. endorsed the Railway's receipt to S. and Co., who paid the freight, and sircars of E. and S. and Co. together went to the railway station and demanded delivery, which the Railway Company at first promised to give, but afterwards, under an order from C. to "deliver fifty tons to T. and Co., and to no other party, the rest of the seed to be delivered according to documents," they, at T. and Co.'s request, delivered the whole fifty-five tons to them. In an action by E. against the Railway Company for non-delivery of the seed to him,—

Held (*per* Markby, J.) E. was mere agent of the vendor for the delivery of the goods; T. and Co. had superior title to the goods, of which E. had notice.

Held (*per* Couch, C. J., and Macpherson, J., on appeal) the Railway Company was bound to deliver to E. The property in the goods and the right of possession was in him; he had an authority coupled with an interest which C. could not revoke; he had no notice of the title of T. and Co., which was an equitable right only. *Eagleton* v. *The East India Railway Company*, 8 B. L. R. 581; 17 S. W. R., C. R., 532.

The defendants contracted to purchase from the plaintiffs "2,000 maunds of fresh, clean, and good up-country indigo seed, guaranteed growth of season 1870-71, at Rs. 11 per maund, to be delivered to the defendants' agent at Hajipur in all February next." In part performance of this contract, the plaintiffs delivered, and the defendants' agents at Hajipur accepted, 865 maunds of seed, no objection as to quality being taken. But when the remainder of the seed was tendered in February, the defendants refused to accept, on the ground that it was not according to contract. At the same time, and upon the same grounds, they refused to pay the contract price for the seed already accepted, and tendered

instead the market price at the time of delivery. In an action to recover the contract price of the 865 maunds delivered, and damages for loss on re-sale of the remainder of the seed, the Judge of the Court below found on the facts that the seed was not "seed of the growth of 1870-71," as far as it was reasonably possible to procure it, and that, though there was evidence to show that seed of the previous season, if of good quality and in good preservation, was occasionally mixed with the new seed, and that seed so mixed had been accepted as a performance of contracts for 1870-71, yet there was no evidence that, under such contracts as the present, the seller was by custom at liberty to mix seeds of two crops, so as to bring the sample up to an average quality; and further, that a custom so directly at variance with the express terms of the contract could not, if proved, be allowed to prevail. *Held* also, that the defendants had waived any objection to the 865 maunds, which must therefore be taken as a good delivery *pro tanto* under the contract, and must be paid for accordingly.

Held on appeal (affirming the decision of the Court below) that the plaintiffs had not delivered seed according to the contract; but (reversing the decision of the Court below) that the contract was a contract for the delivery of the entire quantity of 2,000 maunds, and that the plaintiffs could only recover for the 865 maunds as on a new contract arising at the time when the seed was accepted, such contract being to pay for the seed according to its value, and not according to the rate stipulated for the 2,000 maunds. *Macfarlane* v. *Carr*, 8 B. L. R., 459; 17 S. W. R., C. R., 244,

Where parties distinctly stipulate that, in the event of a failure to repay the amount advanced with interest at a certain rate on a certain day, the lender was to be entitled to interest at a different rate, such stipulation cannot be regarded as a penalty, but the Court is bound to give effect to the contract entered into between the parties. *Brojo Kishore Roy* v. *Madhub Pershad Misser*, 17 S. W. R., C. R., 373.

Plaintiff sued, as managing trustee of a choultry, to set aside certain mortgages of the lands with which it was endowed, made by the second, third, and fourth defendants to the sixth and seventh defendants, and for an injunction to compel payment of kist, which had been allowed to fall into arrears, contrary to the provisions of the muchalku sued upon. The defendants pleaded that the mortgages made were not in violation of the provisions of the muchalku. The Court of first instance dismissed the suit. On appeal, the Civil Judge considered the provisions — "Moreover, we are only entitled to cultivate the said four villages and to maintain the said choultry with the income therefrom as above stated; and we have no right to alienate the said lands by sale," &c. —fatal to the right to mortgage advanced by the defendants one to five. Accordingly he reversed the decree appealed from. *Held*, by Scotland, C. J., that the reasonable construction to be put upon that portion of the rázináma relating to alienation was that the villages were not to be alienated so as to deprive the choultry of the receipt of the portion of the produce fixed by the rázináma for its support. That the security of the cultivation of the land and the application of the fixed portion of the produce to the maintenance of the choultry was all that the parties intended to effect. That there was nothing in the record to show that the payment of that fixed portion had been rendered less certain by the transfer of the villages to the mortgagees. That, consequently, the beneficial interest of the plaintiff, as trustee under the rázináma, was not impaired, and the mortgagees were not made in violation of the provisions of the muchalku. *Per* Holloway, J., —That the right set up was based upon a purely capricious exercise of the plaintiff's will, in the effectuation of which he had no conceivable interest; that contractual words seeking to create a right of this sort are ineffective to create it, and that, consequently, the alienations by mortgage were wrongly declared void. *Kristna Madali* v. *Shannurga Mudaliar*, 6 Mad. Rep., 248.

3.—Evidence of Contract.

Held that the amount of remuneration for the professional attendance of a medical officer on the family of a public servant, in the absence of an express agreement, should be determined with reference to the circumstances in each case, and that the principle adopted by the Judge in estimating the amount, that reference must be had not only to present means but to prospects, without considering other matters, was not correct,—*Held*, under the circumstances of the case, that one-fifth of the monthly income of the defendant was the fair amount to which the plaintiff was entitled for his professional attendance for the year. *J. W. Rawlins* v. *Dr. C. O. Daniel*, 1 Agra Rep., 56.

A broker's bought note is not of itself evidence of a contract. It is signed by one only of the parties, the defendants. To complete the evidence of the contract, there should also be a sold note signed by the plaintiff, showing that the buyers had duly accepted his supposed obligation. *W. Mackinnon and others* v. *Shibchundra Seal and another*, Bourke's Rep., O. C., 354.

Verbal evidence is not admissible to vary or alter the terms of a written contract in cases in which there is no fraud or mistake, and in which the parties intend to express in writing what their words import, as, for instance, to show that a deed of absolute sale was intended to operate as a mortgage (*dissentientibus* Norman and Shumbonath Pundit, JJ.) *Kasheenath Chatterjee* v. *Chundy Churn Banerjee*, 5 W. R., 68.

Oral evidence is not admissible to show that the parties did not intend that an absolute sale in writing should operate, not as an absolute sale, but merely as a conditional sale, in order to defeat a right of pre-emption (*dissentientibus* Norman and Shumboonath Pundit, JJ.) *Moolook Chand Surma* v. *Kooloo Chunder Surma*, 5 W. R., 76.

Where there is an acknowledgment in writing of a debt due, parol evidence is admissible in order to show to what debt the acknowledgment related. *Woomesh Chunder Mookerjee* v. *Eliza Sageman*, 12 W. R., A. O., 2.

In a suit in a Small Cause Court to enforce a written agreement, the defendant has a right to set up and adduce parol evidence to prove such a state of facts as would show that the instrument did not correctly set forth the terms of the arrangement between the parties, and thereby justify the Court in

its character of a Court of Equity in amending the agreement in a suit for that express purpose. *R. W. Thomas Frewin*, 12 W. R., 532.

In a suit by a purdah lady to set aside a bill of sale, execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intended by her to operate only as a mortgage and to vary the rate of interest therein stipulated for. *Monohur Dass* v. *Bhagabati Dasi*, 1 B. L. R., O. C., 28.

Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing. *Madhab Chand Roy* v. *Gangadhar Samant*, 3 B. L. R., A. C., 83; S. C., 11 W. R., 450.

The bought note in a contract for the purchase and sale of silk "chussam" was as follows:—"Bought by your order, and for your account, the following silk chussam, of Messrs Jardine, Skinner, and Co., as much as they may supply of November and March bund," &c.

The sold note was in similar terms, but stated that as much "as you can supply" was sold.

Held that the bought and sold notes did not constitute a contract binding Messrs. Jardine, Skinner, and Co. to supply chussam of either the November or March bund at a loss. *Tamvaco and others* v. *Skinner and others*, 2 Ind. Jur., N. S., 221.

Where the plaintiff, a native artist, agreed to supply, and the defendants agreed to purchase, pictures as ordered from time to time, subject to the approval of each picture by the defendants, the prices to be fixed on delivery and acceptance,—

Held that a distinct contract became complete in respect of the pictures as they were from time to time delivered and approved of, at the price then fixed, and that the case came within Clause 9 of Section 1 of the Limitation Act, and not within Clause 8 or Clause 2 of the same section. *Veras Vami Nayak* v. *Sayambari Shaheba*, 2 Mad. Rep., 6.

The plaintiff, in answer to an application to him by the defendant for an estimate of the cost of some surveying tents, replied:—"We send you, as requested, the prices of tents, flags, and poles, &c.," enclosing a memorandum of prices in which there was no allusion to "flies" for the tents. It appeared that no mention had been made about the "flies" in a conversation which subsequently took place between the parties during the progress of the manufacture of the tents. *Held* that the plaintiff was not entitled to recover an extra price on account of "flies." *Lander* v. *Eastern Bengal Railway Co.*, 1 Ind. Jur., N. S., 320.

The recital of the terms of an old mortgage-deed of 1844 in the wajib-ool-urz prepared in 1862 held not to amount to a new contract, nor to estop the mortgagor's claim for redemption under the old usury law. *Rao Kuram Singh* v. *Mussamut Mehtab Koonwer and others*, 3 Agra Rep., 150.

4.—Validity of Contract.

A contract between several persons to make separate tenders to Government, and that whoever should obtain contract from Government should share the profits with the others, although fraudulent towards the Government, will be enforced against any of such persons at the suit of any one of them who may have made the tender in pursuance of the contract. *Isser Chundra Ghose* v. *Bhoobun Mohun Banerjee and others*, Bourke's Rep., O. C., 313.

A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy, and will not be enforced. The consideration to support the promise in such a contract is a vicious consideration. *Canden Chette* v. *Coorgee Seit*, 2 Mad. Rep., 187.

Marriage is a valuable and not merely a good consideration. *Chinlalapati Chinna Simhadriraj* v. *Zamindar of Vizianagram*, 2 Mad. Rep., 128.

In a written agreement the defendant, in consideration of a sum of money received by him, promised to obtain a more favourable assessment upon certain villages in respect of waste and cultivated lands, and in case of failure to repay the amount received. In a suit to recover the amount paid to the defendant,—*Held* that the contract was not vitiated by reason of illegality.

Aliter if it appeared upon the face of the plaint, or if it were established by evidence independently of written agreement, that the arrangement was that the defendant should use corrupt or illegal means, or improperly exercise any personal influence which he possessed or professed to possess over a public servant. *Picharkutty Mudaly* v. *Narayanappa Aiyam*, 2 Mad. Rep., 243.

Plaintiffs sued for certain lands under an agreement executed to their elder brother S. by defendants. The Principal Sudder Ameen considered that the agreement was invalid, on the ground that it appeared to have been executed with a view to defraud creditors of S. *Held* on appeal that the real nature of the transaction was that S. borrowed money from defendants to enable him to buy in his own land. That defendants purchased only for and on behalf of S., taking from him an assignment of part of the property for twenty years, in order to repay themselves the money lent. That there was, therefore, abundant consideration for the defendants' promise to give up possession at the end of twenty years.

Held, also, following the English law, that where there is a real transaction between the parties for valuable consideration, whether it be by way of sale or mortgage, the transaction is valid even as against a creditor, though the object may have been to defeat an expected execution. *V. Sankarappa* v. *D. Kamayya*, 3 Mad. Rep., A. C., 231.

Certain putneedars applied for a butwarra under the provisions of Regulation XIX of 1814. At the time of the butwarra, it was stipulated between the putneedars of 6 and 7 annas shares that, in the event of a particular village falling by division wholly to either of them, they would reunite and hold the 13 annas share joint as before.

Held that the absence of mention of any money consideration in the agreement was no bar to its being enforced, as the parties thereto had waived all objection on the score of the particular village named, or any other, falling wholly or in part to their respective shares. *Nak Chund Singh and others* v. *Hunooman Dutt Singh and others*, 10 W. R., 69.

In a suit to recover certain land alleged to have

been granted under a pottah, the Judge finding that no consideration had been given by the plaintiff, pronounced the contract a *nudum pactum* on which no action would lie,—*Held* that, as defendant had admitted the grant of the pottah, and contended that the whole of the lands had been made over to plaintiff's possession, no question of consideration could arise. *Roop Narain Singh* v. *Chatooree Singh*, 12 W. R., 283.

In a suit for (so-called) damages, on the ground that defendants, after executing an agreement by which they stipulated to sell fish every day in plaintiff's bazar, and to pay a fee per diem, and bound themselves to pay "damages" to a specified extent, in the event of their leaving his bazar and resorting to any other bazar, had left his for another bazar, where they were vending fish,—

Held that the suit could be maintained, being an action upon a contract, in which there was nothing illegal; but that the sum stipulated to be paid was merely a penalty. *Madhub Chunder Roy* v. *Luchee Jellanee and others*, 9 W. R., 212.

A contract compounding an assault is not illegal, and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of this decision. *Mothooranath Dey* v. *Gopal Roy*, 5 W. R., S. C. C. Ref., 16.

When the refusal to perform a contract can be proved by evidence, which shows that a party has utterly renounced the contract, or has put it out of his own power to perform it, the injured party may at his option sue at once, or wait till the time when the act was to be done. But the *onus probandi* in such a case is on the plaintiff. *J. W. Smith* v. *Gopal Sheikh*, 3 W. R., S. C. C. Ref., 14.

The plaintiff entered into a contract with the defendant to deliver sulphur, to be imported by the ship *Michael Angelo*. No sulphur arrived by the *Michael Angelo* consigned to the plaintiff, and he procured it elsewhere, but the defendant refused to accept it. In an action for non-acceptance,—*Held* that the defendant was not bound to accept sulphur not imported by the *Michael Angelo*. *Bihari Lal* v. *Madhusudun Kundu*, 2 B. L. R., O. C., 154.

In cases of contract in India, it has never been held that a contract made under seal of itself imported that there was a sufficient consideration for the agreement. *Rajah Saheb Pershad Sen* v. *Baboo Budhoo Singh*, 12 W. R., P. C., 6.

The law of British India, as administered in the mofussil, recognizes no distinction between specialties and other documents. *Tirumala Ram Sahib* v. *Pingala Sankara Ram*, 2 Mad. Rep., 312.

A Court will require strict evidence that a contract, *per se* legal, is intended to operate illegally. It is not necessary in order to support a contract that the plaintiff should have possession of the Government paper when the contract is entered into; it is sufficient if he is in a position and is ready and willing to deliver it at due date. A letter, stating "the bearer will hand over to you 75,000 Rs. 5½ loan notes" is sufficient to establish the *bonâ-fide* nature of a transaction for purchase of Company's paper. *Mohindro Nath Mitter* v. *Koylas Nath Banerjee*, Cor. Rep., 1; 2 Hyde's Rep., 121.

Where a party to a contract seeks release from its obligations, on the ground that, for some reason or another he is entitled to repudiate it, he must assert this right as soon after becoming aware of it as he reasonably can. Long inaction unaccounted for must be held in equity to be a ratification of the contract. *Ishan Chunder Mojoomdar* v. *Sreekant Nath and others*, 9 W. R., 110.

He who would disaffirm a contract entered into by mistake, must do so within a reasonable time, and will not be allowed to do so unless both parties can be replaced in their original position. *Mahomed Mohdin* v. *Uttaali Umali and others*, 1 Mad. Rep., A. C., 390.

Where a judgment-debtor agreed to pay an additional sum, and obtained postponement of the sale of his property,—*Held* that the stipulation was not one which the Courts could decline to enforce. *Sookh Ram and others* v. *Nirput Singh and others*, 3 Agra Rep., 67.

An application to have a contract altered in regard to the amount of rent to be paid under it in future, cannot be generally entertained by a Civil Court, which can only reform a contract so as to make its terms accord with the original intentions of the parties. Where a party was induced to agree by fraudulent misrepresentation, this may entitle him to avoid a contract altogether; but if he abides by it, he cannot have its terms altered by the Civil Court. *Nilmoney Singh Deo Bahadoor* v. *Issur Chunder Ghosal*, 9 W. R., 92.

The terms of a contract made, while Section 10, Regulation XX of 1817, was in force, between a zemindar and his putnee lessees, having imposed on the latter the charge of the maintenance of the zemindary dâk, this liability is not affected by the subsequent repeal of the Regulation by Act VIII of 1862 (B. C.). *Saroda Soondery Debia* v. *Woomachurn Sircar*, 3 W. R., S. C. C. Ref., 17.

Where the master of a ship has contracted with the master of a tug steamer, he will be held bound by his contract, even although the pilot should object to the small power of the tug to perform the service be clearly established. *Mackinnon, Mackenzie, and Co.*, v. *Edgar Hyde*, 1 Ind. Jur., N. S., 114.

A., a zemindar, entered into negotiations with Government for settlement of certain lands. Pending the settlement, A. sublet to B. and granted him an amulnama for one year, and covenanted therein that whatever term of settlement he might obtain from Government, he would grant to B. a pottah for the corresponding term. The negotiations with A. were broken off, and Government settled with C., on condition that he should abide by the above amulnama. *Held* that C. was bound by the covenant to renew; the amulnama did not require to be registered. *Radihka Prasad Chunder* v. *Ramsunder Kur*, 1 B. L. R., A. C., 7.

Joseph Mutchett executed in favour of Pestanji an instrument (authorizing Pestanji to recover, by suit or otherwise, from Messrs. Windle and Nowell a sum of Rs. 22,500 or thereabouts) which contained this clause:—"From whatever sum Pestanji may recover from Messrs. Windle and Nowell, he is to pay himself the sum of Rs. 8,640, which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me."

Held, that the above instrument was made upon a good consideration; that it was irrevocable; and that, operating as a power of attorney, and not as

an assignment, it was properly stamped, under Act X of 1862, with a stamp of Rs. 4.

Mutchett, ignoring the above instrument, sued Nowell for the Rs. 22,500 mentioned in it. Pestanji thereupon applied to be made a party to the suit, under Section 73 of the Code. His application was granted, and he joined as a co-plaintiff.

Held that Pestanji was properly made a party; but, as the validity of the instrument was disputed by Mutchett, that Pestanji should rather have been joined as a defendant than as a plaintiff. *Pestanji Munchurji Wádiá* v. *Joseph Mutchett and Thomas Nowell*, 7 Bom. Rep., A. C., 10.

Where a mehtá, without the knowledge of his master, agreed with his master's brokers to receive a percentage (called sucri) on the brokerage earned by such brokers in respect of transactions carried out through them by the mehtá's master, and no express consideration was alleged or proved by the mehtá, the Court refused to imply, as a consideration, an agreement by the mehtá to induce his master to carry on business through such brokers, and was of opinion that such an agreement would be inconsistent with the relation of master and servant. But where the same brokers agreed with the mehtá not to charge him brokerage on such private transactions as he should carry on through them, and the mehtá carried on private transactions through the brokers, it was held that the brokers were bound by that agreement, and could not maintain a claim for such brokerage. *Vina Yakráu Ganputráv et al.* v. *Runsordás Pránjivandás*, 7 Bom. Rep., O. C. J., 90.

Where a ryot, in consideration of an advance of money, has stipulated to grow indigo for a certain number of years, the contract is not void as being without consideration, because, during the period it had to run, the debt due from the ryot is extinguished by the delivery of indigo leaves. The contract is one entire contract upon one entire consideration, and a contract which was at its commencement based upon a valid consideration cannot become void for want of consideration by any change whatever in the situation of the parties. *W. Ledlie* v. *Gopal Mundle*, 17 S. W. R., C. R., 91.

Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, plaintiff voluntarily paid money to defendant, knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution, the contract was held to be void as against morality and public policy, and plaintiff was not entitled to sue for the money so paid. *Jetoo Mahuto* v. *Manuram Mahuto*, 17 S. W. R., C. R., 84.

The plaintiffs contracted with the defendant for the purchase from him of a certain quantity of hog's lard. The terms of the contract were contained in a letter which was drafted by the plaintiffs and sent to the defendant for signature. The defendant returned the letter unsigned, with two additional clauses. The plaintiffs not being able to agree to one of these clauses, had an interview with the defendant, when the defendant took the document away with him, and subsequently on 17th May returned it signed, but with the additional clauses still remaining. The plaintiffs had another interview with the defendant on 5th June, during which the additional clause objected to by the plaintiffs was struck out, one of the plaintiffs writing the word "cancelled" against that clause, and the defendant putting his initials against the word "cancelled." The plaintiffs then added to the contract the words "approved," together with "R. and C.," being initials of their firm. Other alterations had been made in the document, and, it containing many erasures, the plaintiffs on the same day sent a fair copy to the defendant for signature, but the defendant wrote repudiating the alleged contract, and refusing to sign the document. *Held* (confirming the decision of the Court below), there was no binding contract between the parties. The signature of the defendant put to the document on 17th May was not a sufficient signature by the party to be charged, so as to satisfy the Statute of Frauds. *J. A. Charriol and others* v. *C. S. M. Shircore*, 8 B. L. R., 305.

The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the 2nd) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry, and he obtained the arrest and extradition from the British territory of the second defendant, as also of his brother, the first defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The fifth, sixth, seventh, and eighth defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the first defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings in the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by civil redress, and suspended further proceedings in accordance with the law in force in the settlement. *Held*, that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interests of society in regard to the administration of public justice.

The English Common Law rule, that contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the municipal law of a foreign country. The rule of international law, that the law of the place of a contract governs its validity, is subject to the qualification that every state may refuse to enforce a contract when it is for the fraudulent evasion of its law, or is injurious to its public institutions or interests. *Subráyu Pillai* v. *Subráyu Mudali*, 4 Mad. Rep., 14.

5.—Breach of Contract.

By a contract entered into between the plaintiffs and defendant, the plaintiffs agreed to sell certain goods *ex* a specific ship to the defendant, the goods to be taken delivery of within forty-five days, and ten days to be allowed for inspection, and claiming allowance for any damaged goods, the defendant to take the risk of damage from the date of the contract. The period for taking delivery and for inspection dated from the 13th May. The plaintiffs

did not receive the whole of the goods until 16th of June, and therefore were not ready to perform their contract by submitting them for inspection within the specified time; the defendant did not call upon them to do so. In a suit for breach of the contract by the defendant in not accepting the goods,—*Held* that the plaintiffs not being in a position to complete the contract, no cause of action had arisen.

Held on appeal that the goods ought to have been ready for inspection within the ten days stipulated, and the plaintiffs not having shown that they were ready and willing so to perform the contract, had no right of action, notwithstanding that the defendant never, in fact, called on them to deliver the goods for inspection.

The words "*ex* a certain ship" must be taken to mean that the goods are really landed, and not in course of being landed, and therefore, independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract, the defendant was not bound to take goods on board ship, in respect of which, if the contract were binding upon him, he would have been found to take the risk of any damage or loss to the goods on board ship, or in the course of landing. *Robertson Gladstone* v. *Kastury Mull*, 3 B. L. R., O. C., 103.

If a person contracts to deliver goods at a specified place, he must be there in person or by agent, and be ready to deliver them; if to deliver them by a certain time, he must tender them so as to allow sufficient time for examination and receipt. But when a thing is to be performed at a certain place, on or before a certain day, to another party to a contract, the tender must be to the other party at that place, and that other party must be present at some particular part of the day before sunset, so that the act may be completed by daylight. Where a thing is to be done anywhere, a tender at a convenient time before midnight is sufficient.

In case of violation of a contract by one party, the other party may ordinarily rescind it totally or partially, provided he himself is guilty of no default or violation, and exercises the right within a reasonable time. If, after default of the other party, he does an act recognizing the contract, he cannot afterwards rescind it. *Kartick Nath Pandey* v. *Government*, 11 W. R., 58.

Where a contract for sowing indigo was entered into, and advances made in part performance of an agreement of compromise between the parties to a suit for enhancement of rent, *Held* that the non-completion of the agreement of compromise did not exonerate the defendant from performing his part of the contract for sowing indigo. *Morris, Fitzgerald and Sandys, Falkner, Chute and Sandeys* v. *Setul Mundul*, 10 W. R., 420.

It is not imperative on the Courts, in cases of breach of contract for the supply of indigo plant, according to the provisions of Regulation VI of 1863, to award three times the amount of the advance. Where the breach is not fraudulent, the penalty should be adjudged with reference to the extent of the injury sustained, but not exceed three times the sum advanced. Where the breach is fraudulent, the extent of the injury sustained is, without any restriction whatever, the standard for regulating the amount awardable. *Dhuleep Singh* v. *Seith Roshum Lall*, 1 Agra Rep., A. C., 69.

A ryot took advances from an indigo factory, on condition that he was not to repay any portion of the same until the expiration of the agreement, and even then he was not to be bound to repay the money in cash, but had the option, either to pay the same in cash or continue to cultivate the land with indigo, and deliver the plants grown thereon until the whole of the advances were satisfied. *Held* that an action would not lie for a refund of the balance in consequence of the plaintiff closing the factory before the expiration of the contract. *R. Watson and Co.* v. *Huree Nath Sircar*, 7 W. R., 388.

Effect of holidays on delivery under contracts. *Mohindronauth Mitter* v. *Koylasnauth Bannerjee*, Cor. Rep., 1.

This was a suit for foreclosure of a mortgage for Rs. 50,000, during a certain contract, which the plaintiffs contended had determined by the bankruptcy of their Calcutta agents. The defence was that the contract was not so determined; and that even if it were, the defendant had a right of lien or set-off, which would cover the amount of the advances. This set-off consisted of the amount of loss in the sale of silk, which the defendants, after said bankruptcy, had shipped direct to London, and sold there on non-acceptance by the plaintiffs; and of a claim of Rs. 18,024, amount of a bill of said agents which the defendant had accepted from them as payment for silk, but which bill was dishonoured after said bankruptcy. Clause 6 of the agreement was as follows: "The silk to be paid for on delivery. Delivery to be taken within ten days of the arrival of any parcel in Calcutta; failing the payment within that time, Carr, Tagore, and Co. may sell it at the market price; and should this be under the contract rate, you agree to pay the difference." The lower Court held that, under this clause and Clause 10 of the agreement, which was as follows: "As you have no authority to make advances previous to the receipt of the silk, and as Carr, Tagore, and Co. stipulate for the advance in part of the sum which they are out of pocket, to carry on the filatures, the advances proposed, being Rs. 50,000, at such times and in such portions as they may require after the delivery of the first parcel of silk under this contract, so that such advances shall not at any time be in excess of Rs. 50,000, beyond the silk delivered, for which interest at the rate of 6 per cent. will be allowed, and it is agreed that the question of advance shall be an open question; and that in the event of advances being authorized, the contract shall at once be in force,"—the defendants could not resort to the advances for their set-off, and that the plaintiffs were not liable for the Rs. 18,024, and that the contract was not determined. Plaintiff also alleged a series of frauds on the part of their agents, with whom defendants were in collusion, but these charges were abandoned at the hearing. The bill was dismissed with costs, and that decision was affirmed on appeal.

Held that acceptance by the agent binds the principal where there is no fraud; that voluntary acceptance of an agent's bill as payment discharges the principal; that a contract is not determined by death or bankruptcy of an agent, unless there has

been an express stipulation to that effect; that an impossibility of fulfilling the terms of a contract must be clearly established in order to avoid a liability for breach thereof; that when a place of delivery is specified in a contract, delivery must be made there; that the plaintiff having failed to prove alleged fraud in a deed, although entitled to relief under a distinct head of equity, will not be allowed to make a new case, and cannot, in the same suit, obtain a decree on foot of said deed; that amendment of a bill will not be allowed, if it appear that an account, being the relief attainable, would have been given if demanded, and that the plaintiff has not offered to perform his part of a contract and allow compensation for breaches thereof to the defendant, and to pay any balance that should be found against him; that the mode of ascertaining damages for breach of contract prescribed in the contract must be adopted, and the remedy by action at once accrues. *Pole* v. *Gordon*, 2 Hyde's Rep., 289; 1 Cor. Rep., 83; and Bourke's Rep., O. C., 1.

Where a contract was entered into for the carriage of coolies, the ship-owner was held guilty of breach of contract in appointing a master who was prohibited by an order of Government from commanding a ship carrying emigrants. *Charles Eales* v. *Ruttonjee Eduljee*, 1 Ind. Jur., N. S., 131.

Where a contract was made by the defendant that a number of coolies should be brought by him to an estate, and remain at work on the estate for a specified time, and there had been a breach of the contract,—*Held* that the case was within Section 2 of Act XIII of 1859. 3 Mad. Rep., A. C., 25.

A contract providing for a deduction being made in the rents of an ijara in the Court of diminution, affords no ground for a decree owing solely to the ijaradar's negligence to collect the rents. *Bissoroop Dutt* v. *Binderam Sein*, 3 W. R., Act X R., 10.

Where a vendor contracts to deliver goods within a reasonable time, payment to be made on delivery, if before the lapse of that time he merely expresses an intention not to perform the contract, the purchaser cannot at once bring his action unless he exercise his option to treat the contract as rescinded. *Musuk Das* v. *Rangayya Chetti*, 1 Mad. Rep., 162.

A party failing to perform his contract may be sued, at pleasure of the other party, either for specific performance or for damages. *Munnee Dutt Sing* v. *William Campbell*, 12 W. R., 149.

Defendant borrowed a sum of money below Rs. 500 from plaintiff, with a view to redeem a mortgage, on condition that after redemption he would sell the property to plaintiff. He did not, however, redeem the property. *Held* that the plaintiff's suit to recover his dues was one for damages as upon a breach of contract in which, under Section 27, Act XXIII of 1861, no special appeal would lie. *Khulleel Mahomed* v. *Furzum Ally*, 12 W. R., 269.

Coolies in Assam who have received advances in contemplation of work to be done may be proceeded against under Act XIII of 1859. *Queen* v. *Gaub Gorah, Cacharee, and others*, 8 W. R., Cr., 6.

Act XIII of 1859 relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him. *Taradoss Bhuttacharjee* v. *Bhaloo Sheikh*, 8 W. R., Cr., 69.

Where the parties to a contract stipulate for the payment of a specified sum for any breach of it, and the damages resulting from any such breach are uncertain and incapable of accurate valuation, the sum agreed to be paid will be treated as liquidated damages, and not as penalty.

A plaintiff who sues for damages, and is entitled to them, cannot likewise be entitled to specific performance, or to an injunction against the further breach of the agreement.

In a suit for breach of contract it is open to the defendant to plead in that suit (without being obliged to bring a fresh suit) that the plaintiff, being the first to break the agreement, cannot now sue for damages for something subsequently done by the defendant in contravention of it. *Mussamut Ashrufoonissa Begum* v. *Stewart and others*, 7 W. R., 303.

Certain factories, already sown with indigo, were given in lease by the Court of Wards; and the lessees agreed to take over all contracts, and pay all expenses which had been incurred for that season's cultivation, depositing the amount of outlay incurred. The lease having been set aside by superior authority, the lessees agreed to give up the factories and all the indigo manufactured by them while in possession, on condition of being repaid the amount deposited by them. *Held* that, if the lessees failed to deliver up all the manufactured indigo, the remedy against them was by suit for damages for breach of the contract to deliver it up. *Ranee Bama Soondury Debia* v. *Messrs. Jardine, Skinner, and Co.*, 9 W. R., 367.

In a suit for damages for breach of contract to cultivate indigo,—*Held* (1) that if the ryots sowed at any time in the sowing season within three years of the institution of the suit, they could not be deemed to have committed a breach of contract, and that therefore the cause of action on such breach of contract could not commence before the close of the sowing season.

(2) That only one set of damages for one breach of contract alone could be recovered, and not a separate set of damages for each breach of failure to do each of all the various acts specified.

(3) That such stipulated damages should be for one year only, *i.e.*, that the first breach involves a liability to pay once, and once only, the stipulated damages, and that the contract ceases and determines therewith (Shumboonath Pundit, J., dissenting). *Mole Shahoo and others* v. *A. J. Forbes*, 6 W. R., 278.

An agreement for personal service in conveying indigo from the field of the vats is not a contract the breach of which is punishable by Section 490 of the Penal Code. *Re Nowa Tewaree and Mullen Jha*, 6 W. R., Cr., 80.

The plaintiffs entered into a contract in writing by which the defendant was to deliver 2,450 bundles of gingelly seed on being put in possession of the necessary funds. In a suit for damages by reason of non-delivery,—*Held* that the plaintiffs, before they could recover, must show that they paid or tendered the amount stipulated, and that the vendor's rights under the contract cannot be controlled by the course of dealing between the parties.

Chand and Co. v. *Atmakury Adinarayan Chetti*, 2 Mad. Rep., 193.

Defendants for a consideration granted to plaintiffs a lease of certain churs, which were an accretion to a zemindary, and had been in possession of Government, but were at the time under temporary settlement with the defendants. Subsequently defendants sold their zemindary to a third party, reserving to themselves the chur. Ultimately it was ordered by the Commissioner of Revenue that the churs should be settled, not with defendants but with the purchasers (the third party), as appertaining to the zemindary. Defendants having thus become unable to give plaintiffs possession, were sued for a refund of the premium or consideration-money.

Held that it was the duty of the defendants to take steps to call in question the decision of the Commissioner, and that their manager's admission of their liability to repay the premium with interest put an end to any claim for damages for the original breach of contract, and constituted a fresh cause of action from which limitation ran. *Brojo Nauth Paul Chowdhry* v. *Bimola Soonduru Dossia*, 15 S. W. R., C. R., 298.

D. contracted to sell to P. a piece of land for Rs. 4,500, of which he received Rs. 700 as earnest-money. A contract was drawn up, by which D. agreed to execute and register a bill of sale, and deposit a part (Rs. 1,800) of the price, and P. was to execute a bond for Rs. 2,000, to bear interest conditioned for the payment of that sum by a fixed date, the transaction to be completed within a specified period. D. was ready and willing to perform his part of the contract by the time named, but finding that P. would not complete the purchase, but demanded back the earnest-money, he sold the property to a third party for Rs. 3,800. P. then sued to recover the earnest-money and damages.

Held that P. was bound to show that the circumstances were such as to give him an equitable right to have back the earnest-money, and that had it not been deposited D. could have justly sued for damages to the extent of the loss incurred by the second sale, and therefore P. was not entitled to recover the Rs. 700. *Rajcoomar Roy Chowdhry* v. *Rajah Debendronarain Roy*, 15 S. W. R., C. R., 41.

The sum agreed to be paid by a ryot as damages for breach of contract in respect to the sowing of certain lands with indigo must be regarded as liquidated damages, and not as a penalty. *Talim Mundle* v. *R. Watson & Co.*, 17 S. W. R., C. R., 94.

Plaintiff delivered a certain quantity of jute to the Indian General Steam Navigation Company at Serajgunge, for delivery at the Eastern Bengal Railway Company's station at Sealdah, and it was arranged by the bill of lading (the contract in the case) that the freight from Serajgunge to Sealdah should be payable to the Eastern Bengal Railway Company at Sealdah, and it was so paid upon the delivery of the goods. A portion of the jute was not delivered, and this suit having been brought against the Eastern Bengal Railway Company for the value thereof, the Small Cause Court Judge was disposed to dismiss the suit without further enquiry, on the ground of want of privity between plaintiff and defendant. *Held* that it was premature for the Judge to say that the suit could not lie against defendant without proceeding with the further investigation of the case, and that although plaintiff might have a remedy against the Indian General Steam Navigation Company, it by no means followed that he had none against the defendant company also. *Gujendro Mohun Shaha* v. *Eastern Bengal Railway Co.*, 17 S. W. R., C. R., 240.

Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiffs cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract the defendants admitted that a sum of Rs. 6,328-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against the plaintiffs' claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of Rs. 5,000,—*Held* that, notwithstanding the admission of the defendants, the plaintiffs could only recover Rs. 5,000 in the suit. *Kistnasamy Pillay* v. *The Municipal Commissioners for the Town of Madras*, 4 Mad. Rep., 120.

6.—Breach of Warranty.

A buyer may at once sue on a warranty of title if he can show that the seller has not a good title in accordance with his undertaking, and that he has sustained loss in consequence.

Semble,—It does not follow as a matter of course that on proof of breach of warranty the buyer is entitled to receive back the whole of the consideration-money; or that on its being ascertained that the seller had no title the conditional sale is nullified. *Syud Saef Ally* v. *Syud Mahomed Jowaa Ally*, 7 W. R., 196.

The plaintiff applied to the defendant to sell him an ice-making machine capable of turning out 100 seers of pure ice per hour. The defendant supplied a machine which he represented as capable of turning out the required amount of ice.

It was in evidence that the machine was to be set up at Allahabad; that the defendants had undertaken not to sell another machine of the same sort to any one at Allahabad, so that practically the plaintiff would have had a monopoly, or nearly so, as an ice purveyor at that station.

The ice machine turned out eventually a quantity much less than 100 seers a day. *Held* that the plaintiff was entitled as damages to the amount paid for the machine, the expenses of ascertaining whether it would turn out 100 seers a day, and reasonable interest on the whole; the defendants to be at liberty to take back the machine. *Lamouroux* v. *Eville*, 1 Ind. Jur., N. S., 274.

7.—Negotiable Instruments.

(*a*) *Hoondees.*

The omission by the holder to give notice of dishonour discharges the drawer of a hoondee from liability. *Jeetun Lall* v. *Sheo Churn*, 2 W. R., 214.

A hoondee payable to the depositor is only payable to the drawer or his indorsee. When the drawer and his brother are members of an undivided

Hindu family, it may be presumed that the latter is entitled to act for the former. *Vehit Doss* v. *Banarussee Roy*, W. R., 1864, 262.

The drawing of a hoondee on one's own factory, and the delivery of it to another, may be evidence of indebtedness to the amount of the hoondee, but it is not an item for which the drawer of a hoondee is entitled to credit. *Shib Ram Mundul* v. *Makhun Lall Biswas and others*, 7 Mad. Rep., A. C., 179.

A payer for honour, though entitled to the same remedies upon the bill as the party for whom payment was made, is not entitled to bring a suit in his own name and in his own behalf for the value of the goods for which the bill was drawn. *Carmichael* v. *Brojonauth Mullick and another*, 1 Hyde's Rep., 274.

Where the analogy between native hoondees and English bills of exchange is complete, the English law is to be applied. *Sumboonauth Ghose* v. *Juddonath Chatterjee*, 2 Hyde's Rep., 259.

Held by the majority of the Court (*dissentiente* Steer, J.) that when a hoondee returns dishonoured to the hands of the endorser, he may sue the drawer upon it; and if it appears that he is the lawful holder, may recover. *Byjnath Sahoo* v. *Bacharam*, 5 W. R., 86.

Although the English law of prompt notice by return of post does not apply to cases of native hoondees drawn by natives upon natives and endorsed by natives, yet reasonable notice of dishonour is essential. *Radha Gobind Shaha* v. *Chunder Nath Doss Shaha and others*, 6 W. R., 301.

Where a hoondee had been endorsed to purchasers who subsequently returned it to the endorsers, it was held by the Appellate Court (Steer, J., *dissentiente*) that the Judge ought not to have decided against the endorser's claim, because he had not proved that the note had been endorsed back to him. The Court would assume from his possession that he had a right to it, unless the contrary were shown. *Byjnath Shahgo and others* v. *Bacharam and others*, 1 Ind. Jur., N. S., 76.

To an action by the endorsee against the acceptor of a hoondee, the defence was a certain verbal contract between acceptor and payee, of which the plaintiff had notice; and that by the custom of shroffs the defendant was exonerated by such notice. Decree for the plaintiff.

Held that it is the custom of shroffs to make enquiries of the acceptors of hoondees before discounting them.

That a mere notice by the acceptor not to discount does not affect his liability to a person who takes a hoondee *bonâ fide* and for valuable consideration after such notice. *Khosal Chund* v. *Luchmee Chund and others*, Bourke's Rep., O. C., 151.

A party who receives a hoondee for a particular purpose must apply the same accordingly, and neither he nor any third party knowing the facts can by afterwards receiving the amount detain the same from the principal.

Quære,—Whether a hoondee made payable "to order" is, according to Hindu law and the custom of native merchants, negotiable without a written endorsement by the payee. *Rajroopram* v. *Buddoo*, 1 Ind. Jur., O. S., 93; 1 Hyde's Rep., 155.

Held that a purchaser of a hoondee on its being dishonoured is at liberty to sue his endorser alone, and it is not absolutely necessary to implead the acceptor and drawer in the same suit; and if he does so he does not lose his right of suing against them so long as his action is within the limitation.

A purchaser is bound to present a hoondee for payment within reasonable time, and to give reasonable notice of dishonour, that is, within the time within which it is ordinarily given according to the custom of the merchants and bankers of the district, not the immediate notice required by English law in cases of bills of exchange. *Gopal Doss* v. *Seeta Ram*, 3 Agra Rep., 268.

Quære,—Whether notice of dishonour of a bill of exchange is necessary as between Hindus.

Semble,—It is a point to be determined by evidence of custom. *Sumboonauth Ghose* v. *Juddoonauth Chatterjee*, Cor. Rep., 88.

Where, on account of a loan of Rs. 800, the lender gave the borrower two hoondees for Rs. 1,500, and took away Rs. 693-7 as discount for Rs. 700, and the borrower being unable to discover the drawer of the hoondees sued the lender, not on the hoondees, but on two alleged loans of Rs. 800 and Rs. 693-7 respectively,—*Held* that the only right of action left to the borrower was on the hoondees themselves. *Ram Lal Sircar* v. *Gopal Doss*, 7 W. R., 154.

The plaintiffs, being holders of a hundi, sent the same to their koti in Calcutta without endorsement. The hundi was lost or stolen on the way, and came into the defendants' hands as endorsees, the endorsement of the plaintiff having been forged. The defendants without notice of the forgery paid full consideration for the hundi. *Held*, on appeal, reversing the decision of the Court below, that the plaintiffs were not entitled to recover the hundi from the defendants.

Per Peacock, C. J.—It appeared from the evidence that the hundi in this case would pass, at any rate prior to acceptance, by delivery. *Goursimull* v. *Dhansuk Dass*, 7 B. L. R., 289.

A hundi which had been purchased by the plaintiff at Delhi for value was, he alleged, endorsed by him to the firm of R. B. D., of Calcutta, "for realization," and sent to that firm by post. Between Delhi and Calcutta the hundi was lost or stolen, and never reached the firm of R. B. D. It eventually came into the hands of the defendant, bearing no endorsement to R. B. D., but endorsed to U. D. H., and by U. D. H. The defendant alleged that he took it in the ordinary course of business, and for valuable consideration, from the gomastah of the firm of U. D. H., after the acceptors to whom it had been sent for that purpose had acknowledged their acceptance in favour of the firm of U. D. H., of Calcutta, by whom it purported to be endorsed to the defendants' firm. When presented to the acceptors for payment it was dishonoured, the acceptors stating that they had received notice not to pay the note, as it had been stolen. On the same day the defendant gave notice of dishonour to the firm of U. D. H., and demanded payment, but that firm stated that their endorsement to the hundi was forged, and refused to pay. It was proved that before taking the hundi the defendant had sent to the acceptor's koti to ascertain if their acceptance was genuine.

In a suit for the recovery of the hundi, or its value,—*Held* by the Court below that the endorsement of U. D. H. was genuine, and that the

plaintiff was not entitled to recover the hundi. The defendant having taken the hundi in the ordinary course of business, and after sufficient enquiry, was entitled to retain it: this was so notwithstanding the endorsement "for realization" on the hundi. The hundi was one which passed by delivery without endorsement, and therefore if the endorsement of U. D. H. was forged, the defendant still had a right to the hundi.

On appeal, the Court held that the endorsement to the firm of U. D. H. was not genuine, and this being so, the fact that the defendant took the hundi in the course of business, for valuable consideration, and without notice, did not give him a good title to retain it as against the plaintiff. The hundi was specially endorsed and specially accepted, and there was nothing to show that by Hindu law such a hundi would pass as one payable to the holder without endorsement. *Thakur Das* v. *Futteh Mull*, 7 B. L. R., 275; and 16 S. W. R., A. O., 3.

The plaintiff obtained a hundi from a banker, B., at Baluchar, for a certain amount drawn upon the firm of the latter at Calcutta. Afterwards on her representing to B. that she had lost the hundi, B. granted the plaintiff a duplicate, in the body of which it was stated that if the original had been accepted before presentation of the duplicate the latter was to become null and void. The duplicate was presented to the agent of B. at Calcutta, and payment was refused on the ground that the original had been presented and accepted and paid in due time. *Held*, that the plaintiff had no cause of action against B. for non-payment of the duplicate hundi, nor for money had and received on account of the original consideration having failed. Custom cannot affect the express terms of a written contract. *Indur Chunder Dugar* v. *Lachmi Bibi*, 7 B. L. R., 682; and 15 S. W. R., C. R., 501.

The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat, and coming down himself by rail: he received his goods and remained in Calcutta until he sold them. He had no place of business, nor any gomastah or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one arhut, sometimes at another. His stay in Calcutta varied from two to four months. Service of summons in the present suit was made on the defendant during one of his visits to Calcutta. *Held*, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within Clause 12 of the Letters Patent.

The defendant, in the course of dealings with S. A. of Patna, used to draw hundis at Patna on himself at Calcutta, and sell them to S. A. at Patna; S. A. sometimes only paying part of the consideration for the hundi. On 13th September, 1867, the defendant drew a hundi for Rs. 2,500, payable forty-one days after date, in the usual way, and it was stipulated between him and S. A. that the value should be paid by S. A. in three days. On 15th September the plaintiff in Calcutta discounted the hundi in the ordinary course of business, paying for it Rs. 2,468, or thereabouts. It then purported to be accepted by the defendant in favour of S. A. Before the hundi fell due S. A. failed, and the plaintiff took the hundi to the defendant in Calcutta, and informing him of S. A.'s failure, asked him to pay the hundi. The defendant admitted he had drawn the hundi, denied he had accepted it, and refused to pay, saying (he alleged) that he had received no consideration for it. Before the failure of S. A., who had not paid the consideration as stipulated, the defendant pressed him for payment of the consideration for the hundi, and S. A. wrote and delivered to the defendant the following letter, dated September 16th, 1867, from himself to his firm in Calcutta: "Further, I sent you a chitti (hundi) for Rs. 2,500, drawn by Bhugwan Dass (the defendant) upon Bhugwan Dass upon (us), Calcutta; value deposited by me on September 13th, 1867, payable forty-one days after date in Company's rupees. I have taken a hundi of this description, which you will pay on its due date. The money has not been paid, for which I give this puja in writing, which you will know." After S. A.'s failure, and after the defendant's refusal to pay on the due date, the plaintiff made the arrangement with S. A. which is embodied in the following letter from S. A. to the plaintiff, dated November 3rd, 1867: "Further, I discounted with you at Calcutta hundis for Rs. 5,000, which one Pitam Das coming to Calcutta were paid off in the following manner: a hundi for Rs. 2,500 drawn by Bhugwan Das on Bhugwan Das, value deposited by me on the 15th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's Rs.; and a hundi for Rs. 2,590 by Gapi Shaw, Debi Shaw, Radha Shaw, Ram Sahayi Roy, value deposited by me on 14th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's Rs. I discounted hundis of this description, and out of them I paid Rs. 2,200 in cash through Syad Mahomed Hossein Khan Sahib. The balance, Rs. 2,800, is due, the condition for payment of which is as follows (here follows the manner in which payment was to be made): I made an agreement of this sort, and I will pay the whole of the amount, inclusive of interest at 8-annas, and will take the two hundis from Bhai Ram Kissen Futteh Chaund, with whom they are kept. Should I not pay the money according to this condition, then you have the authority." For the defendant it was contended that the effect of the letter of 16th September was to make the defendant a surety only for S. A.; that the plaintiff had notice of this at the time of entering into the agreement giving time to S. A.; which therefore operated as a release to the defendant. In a suit by the plaintiff to recover the amount of the hundi from the defendant, the Court found that it was not proved that the hundi had been accepted by the defendant, but held that, whether the effect of the agreement contained in the letter of September 16th was to make the defendant a surety only or not, the defendant was liable.

Per Norman, J.—Notice of the defendant's position in regard to the hundi was not communicated to the plaintiff.

Per Macpherson, J.—The agreement contained in the letter of 16th September did not alter the position of the parties so as to make S. A. the principal debtor, and the defendant his surety. *Hurjiban Das* v. *Bhagwan Das*, 7 B. L. R., 535.

A promise to pay endorsed upon a hoondee after it had been dishonoured, though not amounting to

a waiver of notice, was held to be good and sufficient evidence that the endorser had received notice that the bill had been dishonoured. *Syud Ali* v. *Gopal Dass*, 13 S. W. R., C. R., 420.

In order to charge the endorser of a dishonoured hundi, the holder must give reasonable notice of such dishonour to the endorser he seeks to charge. The demand of a petti cannot be deemed to be equivalent to a notice of dishonour. *Megrog Jagannathu* v. *Gokaldas Mathurdas*, 7 Bom. Rep., O. C. J., 137.

An endorsee for purposes of collection of certain hoondees, under circumstances detailed, ordered to cancel such endorsement, and to re-deliver the hoondees to the endorser. Such an endorsee, not having received the amount of the hoondees, not liable to be sued for the value thereof. *Gyanee Ram* v. *Palee Ram*, 2 N. W. R., 73.

In a suit to recover the balance due on a hoondee brought by the drawers against the drawees upon the insolvency of the acceptor, there was evidence not only that the drawers were merely the ordinary gomastahs of the acceptor, but also that they had no interest whatever in the bill when drawn, that it was the local custom for gomastahs in similar situations to draw bills on their principals without being thereby rendered liable for the defections of their principals, that the money when procured on the hoondee was applied solely to the purposes of the acceptor, that the drawers considered the acceptor as their only debtor by receiving part payment of the hoondee from him and giving him time to pay the remainder, and that the notice of dishonour was not sent to the drawers till ten months afterwards,—*Held* that the drawers were not liable. *Huru Mohun Bysaek* v. *Krishto Mohun Bysaek*, 17 S. W. R., C. R., 442.

Where there is a running account between the parties, a portion of which relates to amount due upon dishonoured hoondees, plaintiff is not bound to sue upon the hoondees, but may base his claim upon the running account. *Ram Chand* v. *Punna Lal*, 3 N. W. R., 323.

A suit for recovery of the amount of a dishonoured hoondee drawn at Shekoabad and payable at Furruckabad cannot be brought in the Court of the Moonsiff of Shahjehanpore, the abode of the endorsee of the dishonoured hoondee, but where none of the drawers or endorsers resided. *Raghoobur Dyal and another* v. *Dwarka Dass*, 3 N. W. R., 343.

The plaintiff brought a suit against three defendants under the following circumstances: The third defendant was the tenant of a village under the second defendant, the first defendant being the agent and manager of the second defendant. The third defendant owed the second defendant a sum of money on account of rent, and drew a hundi on the plaintiff for Rs. 1,000 to be paid to the first defendant or order, and containing these words, "For which amount I shall deliver over to you grain in that village and its hamlets, and for which the Dewan (first defendant) will issue an order to the above effect." The hundi was upon a 1-anna stamp. Plaintiff on receipt of this hundi drew upon the back of it another hundi upon his mother-in-law, in the following terms: "On demand please pay to Mahomed Radhamatulla Shaib, Dewan of Venkatagiri (first defendant), or to his orders, the within-mentioned amount for grain to be supplied me by Mr. Ward (third defendant) on the order of the said Mahomed Radhamatulla Shaib, the Dewan of Venkatagiri." This was signed by the drawee (plaintiff), and beneath his signature was that of the first defendant. The amount mentioned in the hundi was paid to the first defendant; the second hundi was unstamped. The plaintiff's case was, that the first defendant entered upon a binding engagement with him to deliver, or permit the delivery, of grain of the value of Rs. 1,000, and that he failed to fulfil his engagement. The Civil Judge decreed for the plaintiff. On appeal, *held* by the High Court, reversing the decision of the Civil Court, that the second hundi was not admissible in evidence, not being stamped, and that there was no evidence of such an agreement as that relied on by the plaintiff. *Mahomed Rahamatulla Sahibgaru and another* v. *Mr. J. T. Ward*, 5 Mad. Rep., 391.

(*b*) *Bills of Exchange.*

Even when English law regarding bills of exchange does not apply, the holder of the bill is bound to give the maker notice of dishonour in reasonable time. If the maker, for want of notice, has sustained injury or risk of injury, he is no longer liable. *T. W. Pigou* v. *Golab Ram*, 1 W. R., 75.

Held that an endorser of a bill is in the nature of a new drawer, and is liable to the holder in default of acceptance or payment by the drawer; and that an endorser cannot be absolved from liability because the drawer was exonerated or not impleaded. *Jumna Dass* v. *Mehur Singh*, 1 Agra Rep., A. C., 182.

The mere noting on the bill, even if it disclose the name of the notary in full, is not evidence of the presentment or of the dishonouring of the bill. *The Bombay City Bank, Limited*, v. *Moonjee Horidoss*, Bourke's Rep., O. C., 274.

In an action brought in the district of Patna against the endorser and acceptors of bills of exchange, after a part payment by the acceptors, no objection having being taken as to the misjoinder of defendants, and the Judge having omitted to find whether the endorser had received notice of dishonour or not,—*Held* that the case be remanded to ascertain, first, whether notice had been given within reasonable time, and if not, whether thereby the endorser had been injured or exposed to material risk of injury; and, secondly, whether (English law not being applicable to the case) by the usage of merchants at Patna, a part payment by the acceptors and receipt by the plaintiff discharged the endorser from liability. *Gopal Dass* v. *Sheikh Syed Ali*, 3 B. L. R., A. C., 198.

The drawer of a bill of exchange cannot plead agency, unless it is shown on the face of the bill that he drew it as an agent. *T. M. Pigou* v. *Ram Kishen*, 2 W. R., 301.

The drawer of a bill cannot plead that the holder discharged the acceptor, and that no notice of dishonour was given to him when the goods, on the faith of which the bill was accepted, were attached and sold, with the drawer's consent, in payment of his debt to a third party. *T. M. Pigou* v. *Ram Kishen*, 2 W. R., 301.

When bills or notes are assigned in satisfaction of a debt, and accepted by the ryots, the creditor on failure of the ryots to pay is bound to give the debtor notice of such non-payment within a reasonable time. *Huro Lall Roy* v. *Maharajah Sumboonath Singh Bahadoor*, 5 W. R., 230.

The defendant endorsed to the plaintiff a bill of exchange drawn by N. S. & Co. and accepted by C. N. & Co. The bill, at the time it was endorsed to the plaintiff by the defendant, bore the previous endorsement of N. S. & Co. to the defendant. The bill fell due on December 3rd, 1870, which was a Saturday, and on that day the plaintiff sent his jemadar to C. N. & Co., the acceptors, to present the bill for payment. The bill was taken by A., one of the members of the firm of C. N. & Co., who gave a cheque for the amount, and took a receipt from the plaintiff's jemadar, striking out the signature of C. N. & Co. as acceptors, but without the plaintiff's consent. The plaintiff's jemadar took the cheque immediately to the bank, and the bank was closed. Thereupon he returned to C. N. & Co., and informed them that the bank was closed, and demanded cash. The plaintiff alleged that it was then stated that the cheque would be honoured on Monday. The plaintiff's jemadar then went and informed the gomastah of the plaintiff of what had been done. The plaintiff's gomastah sent him to the defendant's firm to give him notice of what had taken place. It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honoured, and the plaintiff's jemadar was advised to wait until Monday, the defendant stating that he also had a cheque for Rs. 7,000 from C. N. & Co. This was denied by the defendant. On Monday, 5th December, the cheque was presented to the bank for payment, and was dishonoured. The plaintiff's gomastah went to the defendant's koti, and gave notice of the dishonour of the bill and cheque, and asked him to pay the amount of the bill. The defendant asked for the bill, and the plaintiff's gomasta went to C. N. & Co., and brought back the bill, with the name of C. N. & Co., which had been struck out, replaced. The defendant seeing the bill was over-due, refused to pay the amount. The cheque was thereupon returned to C. N. & Co., and the bill retained by the plaintiff, who, on 6th December, caused written notice of dishonour to be given to the defendant. *Held* that the cheque must be taken to have been merely a conditional payment; and when it was dishonoured the liability on the original bill revived. *Held* also that reasonable notice of dishonour was given, whether the bill be taken to have been dishonoured on the Saturday or on the Monday.

Semble,—Notice of dishonour, as between endorsee and endorser on bill transactions among Hindus, is not necessary, unless by want of it the endorser would be prejudiced. *Sanurimull* v. *Bhairo Das Ichury*, 7 B. L. R., 431.

Though a receipt on the back of a bill of exchange or promissory note *primâ-facie* imports that the bill or note has been paid, yet the receipt is capable of being explained; and if it appears that the bill or note has not been paid, and that another bill or note was substituted for it, the Court will not be justified in concluding that the party who gave up the note in that way meant that the debt secured by the note was to be considered to have been paid. *A Stewart* v. *The Delhi and London Bank, Limited*, 17 S. W. R., C. R., 201.

Ordinarily notice of the dishonour of a bill of exchange drawn in India and payable in England should be posted by the first mail which leaves England after the dishonour of the bill. *The Uncovenanted Service Bank, Limited*, v. *Frederick Duffin*, 3 N. W. R., 99.

(*c*) *Promissory Notes.*

A promissory note attested by a witness does not require to be stamped as a bond under Act X of 1862, Schedule A., Clause 10. The words in that clause, "not being a bond, instrument, or writing bearing the attestation of one or more witnesses," refer only to the preceding words, "other order or obligation for the payment of money." Also the words "bearing the attestation of one or more witnesses," apply only to the words "instrument or writing," and not to the word "bond." *Gladstone and others* v. *Sadoo Churn Dutt*, 2 Ind. Jur., N. S., 203.

In an action on a promissory note, in which the defence was want of consideration, it appeared that the note was given by the defendants to the plaintiff in respect of a transaction in which it was arranged that the plaintiff was to find sureties in a certain appeal case in which the defendant was acting as mookhtear or agent; the sureties were to be approved by the Collector, and were to be paid Rs. 10,000. The plaintiff found the sureties; they were duly approved by the Collector, but the plaintiff paid them a much less sum than Rs. 10,000.

Held that there was good consideration for the note. *Gunga Narain Doss* v. *Sib Chunder Sen*, 1 Ind. Jur., N. S., 409.

In a written promise to pay "when I am able," those words are not to be treated as mere surplusage, but as a binding part of the contract. The promisee's cause of action does not accrue until the promisee is in circumstances to pay. *R. Watson and Co.* v. *C. G. Blechynden*, 1 W. R., 368.

A promissory note containing an agreement by the maker that, in case of any dispute or difference arising concerning the payment of the note or the subject-matter thereof, the same shall and may be sued in the Supreme Court, and "to the jurisdiction of which I hereby waive and agree to waive all pleas," properly stamped as a promissory note, does not require an additional stamp as an agreement under Act XXXVI of 1860, Schedule A, and Section 14. *Rakhaldass Singhee* v. *Roy Churn Dutt*, 1 Ind. Jur., O. S., 124.

In an action on a promissory note, when the note was made payable to A., who resided in Calcutta, and was executed and delivered to him in Calcutta, —*Held* that the whole cause of action arose in Calcutta. B. executed and delivered to A. a promissory note, which was specially registered under Section 52 of Act XX of 1866. On the due date of the note, A. renewed the note in consideration of B.'s securing the debt by assigning to him by way of mortgage, his (B.'s) interest in certain landed property,—*Held* that A. could proceed in a summary way upon the note, notwithstanding the

mortgage. *Ram Gopaul Law* v. *Richard Blaquiere*, 1 B. L. R., O. C., 35.

In an action for the balance due on a promissory note payable on demand, the Court refused to allow interest, there being no proof of a demand in writing. *Bank of Hindustan, China, and Japan, Limited*, v. *C. B. Wilson*, 1 B. L. R., O. C., 41.

Where the wording of a promissory note bearing a one-anna stamp appears to be ambiguous as to whether it is payable on demand, the Court will take the evidence of the parties as to the intention, and will then decide whether it is properly stamped. Under such circumstances the Court will take evidence of usage. *The Bank of Hindustan, China, and Japan* v. *F. W. Sedgwick and J. Bulkeley*, 1 Ind. Jur., N. S., 107.

A. S. purchased certain jewels at a sale by auction subject to a condition that if not paid for in three days, the goods should be sold at the risk of the purchaser. A. S., being unable to pay within the time stipulated, gave a promissory note for the price upon an agreement that the vendor should retain the jewels for him, but should not exercise the power of sale within three days.

Held that the vendor could sue on the note, though he retained the jewels in his possession under the lien so created. *Allen Hayes and others* v. *Anundo Chunder Mundle*, Bourke's Rep., O. C., 156.

The making of a promissory note is altogether the act of the maker, and delivery according to the promise is required to make it complete. *Winter* v. *Round*, 1 Mad. Rep., 202.

An instrument to the following effect :—"On the 14th December, 1861, we, A. and C., bind ourselves to pay, with interest to you, B. and C., Rs. 566-10, being the balance of dealings held with your firm, and the amount received this day from you in cash on account of stamp,"—*Held* to be neither a bond nor a hoondee, but to be in the nature of a promissory note, and to come within the description in Clause 4, Schedule A of Act XXXVI of 1860. *Hutuman Sahib* v. *Gossain Sahib*, 1 Mad. Rep., 152.

A promissory note is sufficiently stamped if the stamp covers the principal sum named in the note, without reference to the interest. *Gomez* v. *Young and others*, 2 B. L. R., O. C., 165; 12 W. R., O. C., 1.

Where a promissory note executed by a native bore a native date only, and was made payable in a certain number of months from such date, it was held that these months should be calculated according to the native, not the British Calendar. *Ganpatráv bin Rúmji* v. *Mannu bin Mohunji*, 5 Bom. Rep., A. C., 150.

A. B., by an instrument in writing, dated 6th August, promised to pay C. D., "on demand" Rs. 4,310-13-3. In the margin of the instrument was written "due 30th August," and annexed to A. B.'s signature was the following memo. :—"The sum of Rs. 4,310-12-6 only, forty-five days from the 5th of August." *Held* that the instrument was properly stamped as a promissory note payable on demand, and ought to have been admitted in evidence.

Per Peacock, C. J.—A promissory note payable on demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be entitled to discount. *Chundrakant Mookerjee* v. *Kartikcharan Chaile*, 5 B. L. R., 103; 14 S. W. R., A. O., 38.

Where a promissory note payable by instalments stipulated that in default of payment of any one instalment interest should run at one anna per R. *per mensem*, this rate of interest was relieved from on payment of interest being made at nine per cent. per annum from the time when each instalment became payable until the time of payment. *Motoji bin Rutnaji* v. *Sheikh Husen*, 6 Bom. Rep., A. C. J., 8.

Where a promissory note payable by instalments stipulated for interest at two per cent. *per mensem*, and in default of punctual payment that interest be charged at one anna per R. *per mensem* from the date of the note, it was held that this increased rate of interest was a penalty which might be relieved from on payment of the lower rate. *Rasuji bin Davluji* v. *Sayana bin Sagdu et al.*, 6 Bom. Rep., A. C. J., 7.

Under Section 28 of Act XVIII of 1869, a Court has no power to admit in evidence an unstamped promissory note (payable on demand or otherwise) upon the payment of the stamp duty, and the penalty laid down in Section 20 of that Act. *Dosá bhai Kávasji* v. *Kherbúdji Hormasji*, 7 Bom. Rep., O. C. J., 180.

The period of payment stipulated in a promissory note bearing both English and Native dates should, when the parties are Hindus, be reckoned according to the Native calendar. *Babaji bin Lakshman Máruti bin Rughoji*, 7 Bom. Rep., A. C. J., 77.

A promissory note payable on demand, given for interest due on a mortgage-deed, without interest on such interest, cannot be enforced by suit, there being no consideration for the making of such a note. *Rustamji Adchir Davar* v. *Ratangi Rustamji Wadia*, 7 Bom. Rep., O. J., 9.

In the case of a promissory note payable on demand, the parties to which are Hindus, limitation begins to run from the date of demand. *Poorno Chunder Dutt* v. *Gopaul Chundre Dass*, 17 S. W. R., C. R., 87.

An instrument in the form of a promissory note for grain should be stamped, under Art. 1 of Schedule A of Act X of 1862, with a stamp of the value of one rupee. *Lachirám Jayasanji* v. *Rámji bin Shivaji*, 6 Bom. Rep., A. C. J., 107.

Section 5 of Regulation XX of 1817 (concerning the registration of bonds, promissory notes, &c.) is not applicable to hoondees or other similar negotiable mercantile securities. *Boistub Churn Doss* v. *Prem Chand Mitter*, 4 W. R., 98.

(*d*) *Rulings under Act V of* 1866.

Act V of 1866—sum under Rs. 500. *W. P. Duff* v. *G. F. Fisher*, 8 B. L. R., Ap., 10.

Under the Summary Procedure in Bills of Exchange Act (V of 1866) the plaintiff is entitled to claim by his summons and obtain by his decree whatever sum, principal, and interest is, on the legal construction of the instrument, demandable. *Desouza* v. *Rangaian*, 6 Mad. Rep., 257.

The Court will give leave to a defendant to appear

and defend in suits under Act V of 1866, where he shows a defence apparently real; but where there is a doubt as to the *bona-fides* of the defence, payment of money into Court will be ordered, or security directed to be given. The Court has, in giving leave to defend, a discretion to order security for costs, not only where it doubts the *bona fides* of the defence, but also if it considers the matter of defence raised is unnecessary, though allowable. If the plaintiff has not been heard at first against the defendant's application, the Court will always allow him to come in afterwards and show that the leave ought not to have been granted, or, if granted at all, in more stringent terms. *Voulintzgy* v. *Narayan Singh*, 6 B. L. R., Ap., 64.

In a suit under Act V of 1866, the summons should be returned in the usual way; and after the expiration of the required time, an order of the Court for a decree should be obtained. *Schiller* v. *Marker*, 1 Ind. Jur., N. S., 283.

A plaint was presented under Act V of 1866 by the endorsees of a promissory note endorsed as follows :—"Received for the Chartered Mercantile Bank.– J. M. Reid, Agent." The note had not been paid when presented, and the endorsement was struck out. Admission of the plaint was refused unless evidence was given that the note had been paid, and to explain why the endorsement was struck out. As under Act V of 1866 evidence could not be received, the plaint was not admitted. *The Chartered Mercantile Bank* v. *Seconde*, 3 B. L. R., O. C., 146.

Where, in a suit under Act V of 1866, the defendant is at such a distance as would make it impossible for him to put in an appearance within the seven days allowed by the Act, the Court will stay execution for a time long enough to allow him to appear.

Suits cannot be brought under this Act against persons resident out of the jurisdiction. *Chundrakant Roy* v. *N. P. Pogose*, 3 B. L. R., O. C., 83.

An irregular service of summons on two out of three defendants to an action brought on a joint promissory note, does not give the third defendant, who has been properly served, ground for objecting to a decree which has been passed against him under Act V of 1866. *Ewing and Co.* v. *Gosai Doss Ghose*, 3 B. L. R., Ap., 7.

Although Act V of 1866, Section 3, only gives the defendant seven days to get leave to come in and defend an action on a bill, note, &c., the Court must be satisfied before granting a decree that the defendant has had a full opportunity to obtain leave to defend. *Grob* v. *Palmer*, 1 Ind. Jur., N. S., 395.

A notarial protest of any bill of exchange noted at any time after the passing of Act V of 1866 is *primâ-facie* evidence that the bill has been dishonoured under Section 13 of that Act, although the sections relating to summary procedure on bills of exchange did not come into operation till May 1st, 1866. A hoondee, which contains a direction on sufficient consideration to the drawee, and accepted by him, is within the terms of the Act, and such a document is assignable without any regular form of endorsement, if sufficient cause appears in the handwriting of an endorsee to indicate an intention to assign it. *The East India Bank* v. *Khojah Vullie Goolwany*, 1 Ind. Jur., N. S., 247.

(*e*) *Cheques and Currency Notes.*

An order directing a servant to pay at an uncertain time a certain sum of money to the payee on account of advance, is not a cheque, and the payee cannot transfer the same to a third party so as to give such third party a right of action against the drawer of such order. Nor is such a document evidence of a debt, enabling the person to whom the same is transferred to contend that by the sale to him he acquired the interest in a debt due by the writer of the order to the payee. Small Court Reference. *Bulloo* v. *Breton*, 2 N. W. R., 335.

A person who receives a forged currency note in payment is not (in order to entitle himself to be paid a second time), upon discovering the forgery, bound to give immediate notice of it to the person from whom he receives the forged note, the rule relating to forged acceptances on bills of exchange not applying. *Semble*,—That if the delay in communicating the fact of the forgery of the note were so great as to damnify the payer of it in his remedy against, or in his power of tracing, the person from whom he received his note, such delay would be a good defence in an action brought upon the original consideration. *Thomas Mathews et al.* v. *Girdharilal Fatechaund*, 7 Bom. Rep., O. J., 1.

8.—BONDS.

Plaintiff sued on a simple money bond for the recovery of a sum of money lent by him to R. A., a female, whose estates were under the management of a Court of Wards, and he made co-defendants in the suit certain other parties whom he charged with endeavouring to have the estates of R. A. transferred to them. He also tendered in evidence another bond, by which R. A., the principal defendant, purported to secure a further advance, and to pledge her zemindaree estates to the plaintiff till the debt was paid off.

Held that the plaintiff had no ground of suit against the other defendants, except R. A., the principal female defendant, as his cause of action against R. A. was based on the first bond, which did not create any charge upon the lands with which they are said to have meddled.

Held, further, that, as against R. A. herself, plaintiff could only get a personal decree for payment of the amount due on the bond on which plaintiff sued, and that he could not, in the present suit, rely on the second bond. A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings. *Mahomed Zahoor Ali Khan* v. *Thakooranee Rutta Kooer*, 9 W. R., P. C., 9.

In a suit on a bond which recites receipt of money, and which defendant admits having executed, a *primâ-facie* case arises which defendant must rebut by giving evidence that the money is not due. *Rughoonath Doss* v. *Luchmee Narain Singh*, 10 W. R., 407.

Where money is lent on a bond under which property is hypothecated to the obligee, and the latter obtains a money decree against the obligor, not making the property liable for the claim, he is not entitled, except by regular suit against the party in possession, to follow the property, if it has meantime been mortgaged and sold in execution of

a decree obtained by the mortgagee. *Achumbit Thakoor and others* v. *Choonee Lall Chowdhry*, 10 W. R., 27.

Though a bond may be genuine and duly executed, the receipt of consideration must nevertheless be proved. *Baboo Ghansam Singh* v. *Chuckhowree Singh*, W. R., 1864, 197.

When the holder of a bond from the former proprietor of an indigo factory has made no demand on it for twelve years, nor apprised the assignees of its existence as a debt due by the factory, he cannot come down on the present proprietors, but must look to the obligor of the bond personally for satisfaction. *Mussamut Hubeeboonissa* v. *J. Cox*, W. R., 1864, 266.

The plaintiff, a creditor of the late Rajah Chatpal Sing, accepted, from the Collector in charge of the estate, a composition payment in adjustment of his claims. *Held* that he could not sue the Ranees, nor the infant son of the Rajah, on a contract or bond for payment of the balance. *Mahant Jayram Gir* v. *Ranee Shiuraj Koer*, 2 B. L. R., P. C., 98; 11 W. R., P. C., 41.

When the full sum specified in a bond was admitted to be due, the fact of the plaintiff having, on condition of the payment of half the amount by a certain day, agreed to remit his claim to the other half, cannot affect his right to recover the entire amount due on the defendant failing to fulfil the condition. *Vengappayain* v. *Rajapayan*, 1 Mad. Rep., A. C., 208.

A., B., and C. were uterine brothers, Mahomedans, to whom jointly a sum of money was due on a bond. A., the elder brother, sued the debtor for recovery of the debt, and, after successfully resisting the claim of B.'s widow to be made a party to the suit, obtained a decree for the principal and interest to the date of decree, together with subsequent interest and costs. A. realized the decree for the principal and interest to the date of decree only. B.'s widow, on behalf of herself and two minor sons, sued A. for the share of the decretal moneys which belonged to her husband's estate. She refused to join her daughters as parties. *Held* that she was entitled to recover a third share of the amount realized under A.'s decree, *minus* the share of her two daughters. *Nurunissa* v. *Beebee Roushan Jan*, 2 B. L. R., Ap., 1.

An unregistered bond containing the condition that the lender will get possession of certain land in default of payment by the borrower within a specified time, is admissible in evidence in case the lender sues, not to enforce any charge or lien against the land, but seeks for personal relief in the shape of a decree against the defendant for the payment of the bond debt. *Eshree Rai and others* v. *Bindoot Rai and others*, 4 Agra Rep., 60.

Where two parties are jointly and severally liable on a bond, the principal may be sued for the amount due with interest, although a decree has been obtained for the same sum against the other party liable, and the creditor is not bound to bring his action to suit the convenience of the debtor, and may, in such a case, defer bringing his suit to the last moment the law allows. *Mahomed Koreemooddeen* v. *Indoor Chunder Jowhuree*, 12 W. R., 192.

The obligor's consent is not necessary to the assignment of a common money-bond. *Krista Chetti* v. *Balarama Chetti and others*, 1 Mad. Rep., A. C., 139.

A bond in modification of a lease supersedes the kubuleut, and is an answer (and not merely a set-off) so far as it goes to a claim for rent. *Mussamut Edun* v. *Mussamut Bechun*, W. R., 1864, Act X R., 119.

Where, in a suit on a bond which recites that consideration passed, the defendant admits the execution of the bond, but avers that he received no consideration or only part of the consideration, the *onus* lies on the defendant to show that the recitals in the bond are not correct. *Bama Churn Chuckerbutty* v. *Romanath Roy*, 12 W. R., F. B., 25.

Whether a bond becomes due before or after the obligor's debt, his sons are liable only to the extent of the assets which they receive of his estate, and which remain unadministered in their hands. *Mooktokeshee Debia* v. *Wooma Churn Bhuttacharjee*, 12 W. R., 233.

Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show by evidence that only a portion of the principal sum had been received by him. *Zemindar Sremutee Gaurevallalea Ramachundra Vellia* v. *Vereppa Chetti*, 2 Mad. Rep., 174.

A bond stipulated for payment of principal and interest at one per cent. *per mensem* within six months from the date of the bond, and in default that the rate of interest should be raised to six and a quarter per cent. *per mensem*. *Held* that the higher rate of interest was not in the nature of a penalty, and that the plaintiff had a right to enforce payment thereof. *Arulu Mustri* v. *Wakutchi Chinnayn*, 2 Mad. Rep., 215.

A bond or other writing stamped after the death of the grantor is valid against his heirs. The personal representatives or other persons claiming as heirs and kindred of a deceased grantor, stand, with regard to Sections 13 and 14 of Regulation XVIII of 1827, in the same position as the deceased grantor would, and are not third parties within the meaning of Section 14.

The previous decisions of the late Sudder Court to the contrary overruled. *Rughia* v. *Dhurmar Jhuttoo*, 1 Bom. Rep., 52.

In a suit to recover money (principal and interest) alleged to have been due on a bond, defendant pleaded that subsequent to the execution of the bond plaintiff had taken from the obligor an ijara and a durijara and executed ijara-kubuleuts agreeing to accept payment of the bond by setting off the rents due under the kubuleuts. It was found that the kubuleuts stipulated that during their term the rent should, year after year, and instalment by instalment, be credited in payment of the bond debt, and that at the end of the term of the ijara, accounts should be settled and the balance paid, neither party being at liberty to put an end to the lease.

Held, that till the termination of the lease plaintiff could not sue on the bond, his right of suit having been suspended during the continuance of the ijara

and durijara, the stipulations in which qualified the stipulation in the bond for absolute payment at the end of a specified period. *Dya Chaund Oswal* v. *Mookteda Dabee*, 13 S. W. R., C. R., 24.

Plaintiff sued in a Small Cause Court, on an instalment bond for Rs. 81. The bond had been executed for nuzzur or salami contemporaneously with the execution of a potta and kubuleut, by which the defendants agreed to pay the plaintiff Rs. 335 a-year for two years, as rent for certain land. The potta and kubuleut had not been registered. A previous suit brought by the plaintiff under Act X of 1859, had been therefore dismissed, and no oral evidence was admitted to prove the terms of the potta and kubuleut. The defendants now claimed a set-off against the amount claimed under the bond, on the footing of a contract contained in the potta and kubuleut. The Judge refused to receive them in evidence, or to receive oral evidence of their contents, and gave a decree in favour of the plaintiff, subject to the opinion of the High Court on four questions submitted by him.

Held, the suit on the bond was properly cognizable by the Small Cause Court as a simple debt due under the bond. It was clearly not for an abwab or illegal cess; whether it was nuzzur or salami was immaterial. The defendant having benefited in the Act X suit by the fact that no oral evidence had been admitted to prove the contents of the potta and kubuleut, it would have been contrary to rule and inequitable to admit such evidence now in support of his claim of set-off. *Dinanath Mookerjee* v. *Debnath Mullick*, 5 B. L. R., Ap., 1; 13 S. W. R., C. R., 307.

A. executed an instalment-bond for Rs. 1,000, in favour of B., in which he stipulated that from the year 1271 (1864) to 1275 (1868), both inclusive, Rs. 200 should be paid in the month of Jaishta (May 13 to June 12) in each year, and that "in the event of any instalment being then due, all the remaining instalments should be deemed lapsed, and the principal should be paid with interest at the rate of 10 per cent. *per mensem*, from the date of the instalment-bond." The first instalment, which fell due on the last day of Jaishta, 1271 (12th June, 1864), was paid only on the 13th Falgun of the same year (13th February, 1866), other instalments were paid in Jaishta 1272, 1273 (1865, 1866). B. accepted payment of these instalments as part of payment of the principal sum due to him, and never made any demand for interest under the terms of the bond. The further instalments due in Jaistha 1274 and 1275 (May 13 to June 12, 1867 and 1868), were never paid. On 13th Kurtic, 1275 (30th October, 1868), B. sold the bond and all his interest thereunder to C. for Rs. 800. On 2nd Jaishta, 1276 (14th May, 1868), C. brought a suit against A. for the whole amount of the bond with interest thereon at 10 per cent. *per mensem*, from the date thereof till the date of suit, namely, Rs. 6,099, less the amount of Rs. 600, which had been realized by B. in the three instalments for 1271, 1272, and 1273 (1864, 1865, and 1866). The Judge awarded him only the amounts of the unpaid instalments for 1274 and 1275 (1867 and 1868), namely, Rs. 400, with interest from the date of the instalments till date of suit at one per cent. *per mensem*, in all, Rs. 488 odd, proportionate costs and interest on all at one per cent. *per mensem* till date of realization. On appeal to the High Court by C., *held* that the clause in the bond relied on was a mere penalty clause. The original obligee of the bond having waived the exaction of any penalty, C. was not entitled to more than the Judge had awarded him. *Boley Dobey* v. *Sideswar Rao Baboo Roy Kur*, 4 B. L. R., Ap., 92.

A. executed a bond in favour of B., but failed to cause the registration of the same. Before the amount secured by the bond became due, B. sued A. for recovery thereof, on the ground that, as A. had agreed to get the bond registered, but failed to do so, B. was entitled to recover the amount advanced by him. *Held* that B. had no cause of action. *Guru Prasad Roy* v. *Rai Baboo Dhunput*, 5 B. L. R., Ap., 46; 14 S. W. R., C. R., 20.

Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with duty, Article V Schedule I. *Anonymous*, 13 S. W. R., C. R., 353.

Suit upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments. The bond contained a proviso that on default being made in the payment of any one instalment the whole amount shall become due. Default was made in the payment of several instalments, but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments.

The defendants pleaded the law of limitation. The suit was brought more than three years after the first default in payment of an instalment had been made, but within three years from the time when, taking into account the payments that have been made, the first instalment claimed became due.

Held that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making the whole debt due, and fixing the period from which the time of limitation run; and that, the first of the instalments claimed having become due within three years, the suit was not barred. *Ram Krishna Mahá Deb* v. *Bayáji bin Santáji et al.*, 5 Bom. Rep., A. C., 35.

Where a bond, by which money lent was agreed to be repaid within one year, bore a native date only, it was held that the year was to be calculated according to the native calendar of which the bond bore the date. *Lulji Vaijnath* v. *Ruvji Abaji*, 6 Bom. Rep., A. C. J., 136.

Where a bond or other instrument creating an interest in land also contains a distinct promise to pay the money due under it, such bond or instrument is evidence in a suit brought to recover the money only. *Sangáppá bin Ningáppá* v. *Basáppá bin Paráppá*, 7 Bom. Rep., A. C., 1.

Where a bond is given in renewal of former bonds, such bond constitutes a new security, to take effect from its date. *Hamed Bun* v. *Bindrabun*, 2 N. W. R., 37.

Where, after default in payment of an instalment upon a bond, conditioned, that upon such a default the whole amount of the bond should become due, plaintiff accepted payment of such instalment, as also of several subsequent ones,—*Held*, that by so doing the parties reverted to the old arrangement for payment by instalments, or made a new one to the same effect, and that the penalty occasioned by

the first default could not be enforced. *Gyan Chund* v. *Jawahur and others*, 2 N. W. R., 83.

A bond, although under seal, does not in India of itself import that there has been a sufficient consideration for it. *Mahomed Zahoor Ali Khan* v. *Thakooranee Rutta Kunwoor*, 2 N. W. R., 481.

The obligee of a bond for Rs. 7,000 gave the obligor an assignment of Rs. 5,319 on account of rent due to the latter by the former, and the question in special appeal being whether the item of Rs. 350 paid on account of Government revenue had been twice credited as alleged by the obligor (appellant), the Court held that it had only once been credited. The respondent on cross-appeal claimed interest on the Rs. 350 for six years and eight months at twelve per cent. per annum, on the strength of a stipulation in the bond that, from a certain date, interest should accrue on the principal; but the Court disallowed the claim on the ground that payment of interest on the item paid as Government revenue was neither expressly stipulated nor contemplated by the parties, and because it was open to the respondent to take measures to realize the sum so paid instead of letting it lie over and double itself by interest. *Maharanee Shibessurree Debia* v. *W. Ladly*, 17 S. W. R., C. R., 71.

Where payment was made upon a bond, the amount paid being less than the interest due, *held*, the payment ought to go to reduce the amount of interest due, and the creditors in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. *Luchmeswar Sing Bahadur* v. *Syad Lutf Ali Khan*, 8 B. L. R., 110.

A stipulation in a bond to the effect that the obligor will make no transfer of certain property hypothecated by such bond until the debt thereby secured has been paid up, cannot be used by a third person, not a party to the bond, to defeat a subsequent charge upon the same property granted in favour of another creditor of the obligor. *Koondun Lal* v. *Wazur Ali*, 3 N. W. R., 295.

A bond contained a clause that the obligors would not dispose of any of the property moveable or immoveable in their possession until the debt was paid. *Held* that such a clause did not give the obligee of the bond a lien on such property, though he might sue for damages in respect of breach of contract. *Rambuksh* v. *Lookh Deo and others*, 1, 5 N. W. R., 111.

When a bond contains an agreement that no payment not endorsed on it should be recognized, a Court of Justice will receive evidence of payments not endorsed on the bond, notwithstanding such agreement. *Nugur Mull* v. *Azeemoollah*, 18 N. W. R., 146.

When a sum of money is payable under a bond by instalments with a condition that, in default of paying one instalment, the whole amount shall then become due, and default is made, but the obligee subsequently accepts payments of one or more sums as an instalment or instalments due under the bond, such acceptance amounts to a waiver of the condition of forfeiture, and puts an end to the cause of action which had accrued, so that the bond is set up again as a bond payable by instalments, and no cause of action under the condition arises until some fresh default is made in the payment of a subsequent instalment. *Sri Rajah Passamma Ruy Garu* v. *Toleti Venkaiya*, 5 Mad. Rep., 198.

9.—BAILMENT.

The general principles of the law of bailment are applicable in the Mofussil, and they are substantially the same as those which prevail under English law. *Doomun Peadah* v. *Shook Chand Paul*, 17 S. W. R., C. R., 90.

Goods conveyed by the Government bullock-train are not entrusted to the Post-office for conveyance within the meaning of Act XIV of 1866.

In respect of the Government bullock-train, Government must be regarded as an ordinary bailee for hire, and not as a common carrier.

As such bailee, apart from any special condition limiting its liability, it is bound to take ordinary care of goods entrusted to it for conveyance, and if goods are stolen through the negligence of its servants, it is liable to make good the loss to the consignor. But it may, as may any other bailee for hire, limit its liability by conditions, provided those conditions are not repugnant to public policy or positive law.

A condition that it will not be responsible for loss occasioned by the negligence of its servants is certainly not repugnant to positive law, nor a condition repugnant to public policy. *Deputy Postmaster of Bareilly on behalf of Government* v. *Earle*, 3 N. W. R., 195.

The plaintiff, on leaving Calcutta in 1850, deposited a sum of money with A., B., and C., on which they were to pay him Rs. 9 monthly, and return the principal on his demanding it. Rs. 9 were paid to him monthly until within twelve months of this suit. A. and B. had died since the date of the deposit. This suit was brought against C. and the representatives of A. and B., to recover the amount deposited, and a decree was passed against C. on his own admission. But the representatives of A. and B. set up that the suit was barred. *Held*, that it was not a deposit under Section 1, Clause 15 of Act XIV of 1859. But *held*, also, in accordance with the English cases (from which, however, the learned Judge dissented) that the cause of action arose from the date of the agreement to repay the money on demand, and not from the date of the demand, and therefore the suit was barred. *Parbuti Charan Mookerjee* v. *Ramnarayan Martilal*, 5 B. L. R., 396.

The custodian of a deed of sale is liable if he cannot give satisfactory explanation of his neglect to keep the deed entrusted to him. *Bibee Hafizee* v. *Azhur Hossein*, 13 S. W. R., C. R., 328.

The plaintiff, the manager of the Oriental Bank, placed in the hands of D., a broker, thirteen Government currency notes for Rs. 1,000 each, on D.'s representation that there was some company's paper at a certain place which he could procure at a more reasonable rate than in the Calcutta market, if the money were given him to purchase it. If the company's paper was not procurable, the notes were to be returned to the plaintiff. D. did not go to the place stipulated to purchase the company's paper; but, meeting the defendant and others, he went into a house hired for gambling, and lost at cards, and paid away to the defendant some of the notes he had received from the plaintiff. The

plaintiff now sued the defendant to recover the notes so entrusted to D., on the allegation that they had been entrusted by him to D. for a specific purpose, and that the defendant was not a *bonâ-fide* holder for value. He (the plaintiff) stated in evidence "that, if the paper had been bought, he would either have taken the papers at the most favourable market price for the bank, or have sold them and given D. the profit." *Held*, the plaintiff was entitled to recover. The defendant was not a *bonâ-fide* holder for value.

Per Paul, J., in the Court below, and *per* Norman, J., on appeal. The notes were especially entrusted to D. for the purchase of the company's paper. *Per* Phear, J.—Upon the case put forward by the plaintiff, the transaction was a short loan, and not a bailment, and did not bear the character of a trust. But upon the evidence the notes were the property of the bank, and remained so in D.'s hands, and therefore the plaintiff was entitled to recover on behalf of the bank.

In the Court below a decree was passed in favour of the plaintiff, with costs on scale No. 3. On appeal the decree as to costs was altered, it being ordered that each party should pay his own costs. *Buldeo Narayan* v. *Scrymgeur*, 6 B. L. R., 581.

(*a*) *Common Carriers.*

A Carrying Company held not liable for the loss of a box, the contents of which were falsely described by the party forwarding it. *Shaikh Roheemoollah* v. *T. G. A. Palmer*, Cor. Rep., 24.

Misdescription of the nature of goods entrusted to a common carrier disentitles the sender to recover for their loss, although the goods would not be subject to any extra rates had they been properly described. *Shaikh Roheemoollah* v. *T. G. A. Palmer*, Cor. Rep., 24.

So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. *Winter* v. *Way*, 1 Mad. Rep., O. C., 200.

Although a carrier may not be bound to deliver goods on any specific day, or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case. The damages claimable in a suit brought on account of delay in delivery are the excess which is found by comparing the price of the goods on the day when the plaintiff might have had delivery. A carrier is entitled to his freight and charges, and he is entitled to retain the goods in satisfaction of his lien upon them. *Buldeo Dass and others* v. *Nathoomull*, 2 Agra Rep., A. C., 132.

A company, though protected from certain risks by the risk note, is not absolved from all liability or able to impose on the consignor the burden of proving that the loss or non-delivery of the goods was caused by some default for which the defendants are liable. *Suntuch Rai* v. *E. I. Railway Co.*, Agra Rep., A. C., 200.

Although a carrier may not be bound to deliver goods on any specific day, or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined on consideration of all the circumstances of the case. *Buldeo Dass* v. *Nathoo Mull*, 2 Agra Rep., 132.

The Indian Government, like the Post-Master General, is not responsible for loss or damage occurring to anything entrusted to the Post Office for conveyance. *Winter* v. *Way*, 1 Mad. Rep., 200.

A person carrying on the ordinary business of a proprietor of dak-carriage does not come within the term "common carrier" as that term is understood in the English law. Such a person is bound to exercise reasonable and ordinary care in respect of baggage entrusted to him, but is not responsible for any loss which may not arise from the negligence or default of himself or his servants, he not being a common carrier bound to insure the safe conveyance of the baggage against all risk, save the act of God or the Queen's enemies. He is to be regarded as a bailee for hire, and the fact that he does not deliver the baggage at the end of the journey should be accepted as *primâ-facie* proof that the loss has been occasioned by negligence for which he is responsible, and, consequently, the *onus* of proof lies on him that reasonable care was exercised by him. *Todul Singh* v. *Thompson*, 2 N. W. R., 237.

A. and Co. at Madras shipped by the B. I. S. N. Steamer *Maharatan* a box of coral to be delivered to their agent M. at Bimlipatam. At the time of shipment they declared the value and paid enhanced freight on account of such value. By the bill of lading the company undertook to deliver the case in good order at Bimlipatam to the consignee M. subject to certain conditions annexed. By one of these conditions, if the consignee did not take delivery when the ship was ready to discharge, the goods might be warehoused at the merchant's risk, and the company's liability was to cease when the goods left the ship's side. The consignee did not take delivery at the ship's side, and the company's agent at Bimlipatam took the case to the Custom House, as he was bound to do by the Regulations of the Port. If the Superintendent of the Custom House had known that the case contained corals, it would have been placed in an inner room, but the company's agent did not know the contents of the case, and therefore was unable to give any such information to the Superintendent. While the case was lying at the Custom House, application was made on plaintiff's behalf to the company's agent for delivery of the case upon the usual guarantee. The agent refused to deliver the case without the production of the bill of lading. Afterwards the bill of lading was received from Madras and the case was delivered up. At some time between its leaving the ship's side and delivery to the consignee the case was opened and a portion of the contents stolen. *Held*, that the defendants were not liable. *Mackinnon and Mackenzie, Agents of the British India Steam Navigation Company* v. *Charles Minchin; Attorney on behalf of Arbuthnot and Co.*, 6 Mad. Rep., 353.

(*b*) *Stoppage* in Transitu.

A firm at Cawnpore sent an agent to Sarun, plaintiff's residence, to effect purchases in cotton, and the plaintiff, at the instance of the person so deputed, made purchases and supplied funds, both for purchase and for their carriage and insurance,

the agent doing nothing but consenting to arrangements and giving hoondees on his employer's correspondence in payment. The goods were despatched and insured, but before reaching their destination the firm became insolvent, and the plaintiff proceeded to take possession of them, but was prevented on account of the goods being previously attached by the defendant, a judgment-creditor. It was held on plaintiff's suit that the plaintiff was an unpaid vendor, and had a lien on the goods for the price, and might detain the goods till he received or was satisfied about the payment for the said goods, a completed contract of goods notwithstanding.

An unpaid vendor, in case of the vendee's insolvency, may stop the goods sold *in transitu*.

Agents for the purchase of goods have a lien on the goods when purchased for the moneys paid and liabilities incurred by them in respect to such purchase, and are not bound to deliver the goods until they are reimbursed or secured for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor.

Where the vendor is not otherwise paid than by having received the insolvent's acceptance, he may in the event of the purchaser's insolvency stop the goods, though he have negotiated the bills, and they are still outstanding and not yet at maturity.

Whilst the goods sold remain in the hands of the carrier employed to convey them to their original destination, as between buyer and seller, no case of constructive possession arises, unless when the carrier enters expressly into some new agreement, distinct from the original contract for carriage. So also the mere acts of making or sampling the goods, or giving notice to the carrier to hold the goods for the buyer, though done with intention to take possession, do not establish a constructive possession, or affect the right to stop *in transitu*.

Where the right of stoppage *in transitu* vests in the consignor, it cannot be defeated by the claims of other creditors of the consignee, the unpaid vendor having an elder and preferential lien. *Bholanath* v. *Baij Nath*, 2 Agra Rep., A. C., 11.

(c) *Railways.*

Where some coolies were employed in assisting a ballast train into motion at a railway station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life,—*Held* that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion. *Queen* v. *R. Flood*, 8 W. R., Cr., 43.

The plaintiff was a passenger travelling on the defendants' railway, and received severe injuries from a fall which he experienced in stepping upon the platform when the train stopped.

Held that the Railway Company was guilty of negligence in not keeping the station properly lighted, in allowing the train to overshoot the station, and in not warning the plaintiff against alighting; also that the injuries sustained by the plaintiff were caused by the negligence in question, and that the plaintiff did not by his own want of care contribute to the accident. *F. Woodhouse* v. *The Calcutta and South Eastern Railway Company*, 9 W. R., Cr., 73.

A passenger by railway, travelling in a carriage of higher class than that for which he has paid fare, is not guilty of cheating under Section 417 of the Indian Penal Code, but is indictable under the Railway Act XVIII of 1854. *Reg.* v. *Dayabhoy Parjaram*, 1 Bom. Rep., 140.

A railway company is liable for injury sustained by goods committed to their care, if they have been guilty of gross negligence. *The Assam Tea Company* v. *The East Indian Railway Company*, Bourke's Rep., O. C., 39.

Held that a conviction by a Magistrate with full powers under Section 26 was illegal for want of jurisdiction. *Reg.* v. *Lakshumah Balaj*, 3 Bom. Rep., 10.

By Section 35 of the Railway Act, District Police Officers in the Presidency of Bombay could punish to the extent of the power conferred upon them in petty offences any offence made punishable under the Act by fine not exceeding Rs. 21.

But Section 5 of Reg. XII of 1827 (authorizing the appointment of District Police Officers), and Section 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII of 1862,—*Held* that a Subordinate Magistrate had no jurisdiction to impose a fine under Section 17 of the Railway Act. *Reg.* v. *Tribhonna Ishvae*, 3 Bom. Rep., Cr., 54.

The East Indian Railway Company cannot under Section 11 of Act XVIII of 1854, limit their responsibility as carriers in respect of ordinary goods, so as not to be liable for loss or injury caused by gross negligence or misconduct, though possibly they may, with the consent of Government, limit their liability by contract or notice, for loss arising otherwise than by gross neglect. *East Indian Railway Company* v. *F. J. Jordan*, 4 B. L. R., O. C., 97, and 14 S. W. R., A. O., 11.

The Scinde Railway Company was incorporated by 18 and 19 Vict., c. 115, for the purpose of making and maintaining railways in India, and for other purposes. This was repealed by 20 and 21 Vict., c. 160, which authorized the Company to extend their operations and also their capital, &c. This Act, by Section 3, declared the Companies Clauses Consolidation Act, 1845, to be incorporated with it. By Section 18 the Company have a "seal for use in India in lieu of the common seal of the Company, and from time to time may vary and renew it, and make regulations for its use; and except, as by this Act otherwise expressly provided, every document sealed with such seal, in conformity with such regulations, or in pursuance of any order of the directors, or of any authority given by the Company under their common seal, shall be as valid and effectual as if the common seal were affixed thereto." By Section 54, "the Company from time to time may appoint and remove such committees, persons, or person as the Company think fit to act on behalf of the Company in India or elsewhere, with respect to the making, maintaining, managing, working, and using of the railways and other works of the Company, and the control and conduct of any of the affairs in India or elsewhere of the Company; and may delegate to any such committee, persons, and person respectively all or any of the powers of the Company, and of the directors and officers thereof,

which the Company thinks it expedient that such committee, persons, and person respectively should possess for the purposes of his or their respective appointment." In January, 1867, E. was the agent of the Company in India, and he entered, it was alleged, on their behalf into a contract with the plaintiffs for sixty sets of iron work for low-sided waggons. The plaintiffs' firm did not deal in iron work, and they had to get the goods manufactured for them in England. The Board of Directors were at the time supplying iron work for the Company. There was nothing to show that E. had been appointed under the provisions of Section 54 of the Act 20 and 21 Vict., c. 160, nor was there any evidence of the extent of his power or authority. A specification of the contract differed from it, in that it stated the waggons to be covered waggons, and not low-sided waggons. The contract was not made under seal of the Company, nor was the iron work, the subject of the contract, ever accepted by the Company. The defendants admitted that at the date of the alleged contract E. was the agent of the Company in India, but denied that his power extended to the making of such contract; they further stated that the contract, if entered into, had been afterwards cancelled.

Held, by Phear, J., that there was no evidence to show that E. had authority to make the contract. The contract was one which E. would have had power to make in writing only, under Section 97 of the Companies Clauses Consolidation Act, had he been appointed under Section 54, 20 and 21 Vict., c. 160, but there was no proof of such appointment.

Held on appeal that, assuming that E. had been appointed under Section 54, with powers as large as in the ordinary course could be conferred upon him under that section, the contract was not one by which, acting as such agent, he had power to bind the Company. *Stewart* v. *Scinde, Punjab, and Delhi Railway Co.*, 5 B. L. R., 195.

10.—INTEREST.

When by the terms of a contract money is to bear interest, interest is as much payable by virtue of the contract as the principal, and the Court has no power in such a case to withhold interest. *Bunwaree Lall Sahoo* v. *Maharajah Moheshur Singh*, Marsh., 544.

When a decree is silent as to interest, the Court executing the decree has no power to award interest. *Mosoodun Lall* v. *Bheekaree Singh and others*, 6 W. R., Mis., 109.

A judgment-debtor, in consideration of time being allowed him, promised in open Court, through his vakeel, to pay interest to his creditor, although the decree did not specifically award interest. *Held* by the majority of the Court that the debtor was bound by that promise, and that execution could issue as well for the sum decreed as for the interest promised. *Sreeshteedhur Shaha* v. *Woomeshnath Roy*, 5 W. R., Mis., 1.

Act XXXII of 1839 provides that the Court may allow interest on sums of money payable by virtue of a written instrument, at a certain time, or, "if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed." *Held* that the statute has not the effect of restraining the power of the Court to allow interest in other cases, in which interest was allowed before the Act. Therefore interest may be allowed on payments of revenue made by one co-sharer on behalf of others, notwithstanding no demand of interest may have been made before suit. *Golam Ahmed Shaw and others* v. *Behary Lall and others*, Marsh., 239.

The enactment of Section 20 of Act X of 1859, that arrears of rent, unless otherwise provided by written agreement, shall be liable to interest at twelve per cent. per annum, does not make it imperative on the Court to award interest in a decree for arrears of rents, but the Court has a discretion in awarding interest in such a case. In an ordinary suit for rent, the question whether the rent is fixed or variable is not involved. *Beckwith* v. *Kishto Jeebun Buckshee*, Marsh., 278.

Interest may be claimed on the interest of Government promissory notes withheld by another. *Tarucknath Mookerjee* v. *Goureechurn Mookerjee*, 3 W. R., 147.

In the case of money under attachment with the Collector, and invested by him in Government four per cent. promissory notes, the difference between that and legal interest is only claimable from the date of release from attachment. *Rajah Saheb Purhlad Sein* v. *Boodhoo Singh*, 3 W. R., 228.

According to the usage of native bankers at Moorshedabad, interest is claimable on hoondees drawn at 111 days' sight. *Dunput Singh Doogar* v. *Maharajah Jugut Indur Bunwaree Gobind Deb*, 4 W. R., 85.

Section 6, Regulation XV of 1793 (prohibiting the Courts from awarding as interest a sum larger than the principal) is not applicable to a suit instituted after the passing of Act XXVIII of 1855. Even under Regulation XV of 1793, it was the practice of the Court to allow interest in excess of principal where the interest had accumulated owing to reasons not ascribable in any degree to procrastination on the part of the creditor. *Huromonee Gooptia* v. *Gobind Coomar Chowdhry*, 5 W. R., 51.

Held that the deposit of the principal due, and a sum equal to the principal by way of interest, was sufficient under the law applicable to the case, and that no sum could legally accrue due as interest during the year of grace, as the law prohibited the recovery of interest beyond the principal. *Sheoburts and another* v. *Dharee Thakoor and others*, 3 Agra Rep., 194.

Both parties stipulated for payment of rent on certain dates, and, if not so paid, of a certain rate of interest until paid. The rent not having been paid at the time agreed on,—*Held* that the landlord's omission to claim interest, instalment by instalment, for the fractional time that the rent was not paid after it became due, did not justify the plea that the interest stipulated for was not due, or warrant the belief that the plaintiff had waived his claim to interest. *Rutty Kant Bose* v. *Gungadhur Biswas*, W. R., F. B., 13; S. C., Ind. Jur., O. S., 6.

Plaintiffs in execution of a decree against A. attached certain money deposited in the Collector-

ate to which A. was entitled, but were opposed by B., alleging that A.'s rights in the money had been transferred to him. The plaintiffs finally succeeded in obtaining the money, and then sued B. for interest upon it during the time he prevented them from obtaining it. Both Courts decreed the claim. *Parbutty Churn Soor* v. *Promothonath Ghose*, W. R., 1864, 174.

A mortgagee is entitled to interest on account of the balance of putnee rents paid by him. *Brojonath Singh Roy* v. *Sreemutty Bhugobutty Dassee*, 1 W. R., 133.

A transaction having all along been treated by both parties and by the Courts hitherto as a mortgage for a loan, on which interest was not only due, but had in part been paid, it is not competent to one of the parties or the Court on remand to raise the question that, by the terms of the ikrarnamah, no interest was due. *Gunga Phul Ojah* v. *Gopal Oopadhya*, 1 W. R., 136.

Where there was no time fixed or agreed for payment of the price of goods bought, nor was any demand of price made accompanied with an intimation that interest from the date of demand would be charged,—*Held* that interest could not by law be decreed for the period prior to the institution of the suit. *Palmer* v. *Madhoo Persaud*, 2 Agra Rep., A. C., 131.

In this case the Judge, after the lapse of six months, rejected the original application, on the ground that the decree-holder asked for costs and interest on costs, whereas, on enquiry, it was found that the decree did not specify interest on costs. The decree-holder thereupon presented a corrected application, which the Judge rejected as barred by limitation. *Held* that interest was chargeable on costs whether actually stated in the decree or not; and that, even if the Judge was right in ruling that interest could not be paid, the second application must be considered merely a correction of the original application, and was therefore not barred by limitation. *Chowdhry Purludh Mohapattur* v. *Chowdhry Jonardun Mohapattur*, 6 W. R., Mis., 15.

In a suit to recover arrears of rent at enhanced rates, the *onus* of proving both the quantity and the rates is upon the plaintiff; and where the rates are to be fixed by a Court of Justice, the plaintiff is not entitled to interest and damages, on the ground that the defendant did not pay the enhanced rates demanded by the plaintiff. *Golam Ali* v. *Gopal Lall Tagore*, 1 W. R., 56.

When an enhanced rate of rent is required to be fixed by a Court of Justice, interest or damages should not be awarded. *Sumeera Khatoon* v. *Gopal Lall Tagore*, 1 W. R., 58.

When a note of hand promised repayment of a loan, with interest at five per cent., without stating either *per mensem* or *per annum*,—*Held* that the construction that interest was to be calculated without reference to time was contrary to all practice, and that the ambiguity was one which might fairly be explained by previous transactions between the parties and by custom. *Mahomed Shamsooddeen* v. *Abdool Huq*, W. R., 1864, 379.

In a suit upon a bond, when the genuineness of the bond and the defendant's liability under it are clearly established, the plaintiff is entitled to interest from the time the defendant declined payment of the sum due upon the bond. *Gunga Bishun Tewarry* v. *Roy Mohun Lall Mitter*, W. R., 1864, 291.

Where a decree did not specify the rate of interest,—*Held* that the Court ought not to have allowed a higher than the usual Court rate, namely, twelve per cent. *Mussamut Soobadra Bebee* v. *Sheo Churn Lall*, 7 W. R., 375.

Where a contract of loan stipulated that the legally demandable rate of interest should be five per cent., it was held that a claim by the creditor of interest at eight per cent. founded upon a bare promise of the debtor to pay eight per cent., or upon the fact that the debtor had in account voluntarily debited himself with eight per cent. in lieu of five per cent., could not be maintained in law for want of consideration, amounting merely to *nudum pactum*. *Charles Sefton Guthrie* v. *Frederick George Lister*, 6 W. R., P. C., 59.

Where a lessor who has agreed to deduct rents in case of his special appeal being unsuccessful, compels payment of such rents notwithstanding a decree of the lower Court being against him, he must pay interest if the result of the litigation shows that he had no right to the money. *Taramoney Dassee* v. *J. Mackintosh*, 9 W. R., 272.

When neglect on the part of a decree-holder in executing his decree is not proved, there is no warrant for limiting the amount of interest claimable under the decree to the original sum due as principal. *Dwarkanath Sandial* v. *Purmeshur Singh*, W. R., 1864, Mis., 32.

When a decree of the Privy Council does not give interest, the Court executing such decree has no power to allow interest. *Joy Kissen Bose* v. *A. Wise*, W. R., 1864, Mis., 37.

When a bond under Section 52, Act XVI of 1864, is enforced on a decree, no interest is to be allowed on it, if the bond does not provide for interest after the date on which the debt was payable. *Kallooram Baboo* v. *Doorganath Talookdar*, 10 W. R., 175.

A decree for interest upon mesne profits from the date on which they are ascertained was held to mean from the date on which they are ascertained by the Court, and not by an Ameen. *Doorga Soonderee Debia* v. *Sibessuree Dabia and others*, 10 W. R., 391.

Where a decree-holder, under a misconception of the law, asked to receive interest, calculating that he was not entitled to more on account of interest than the principal sum decreed, and the judgment-debtor did not pay in the money,—*Held* that the decree-holder was entitled to fall back upon the original decree, and execute it according to its terms. *Abed Hossein and another* v. *Assud Aly*, 11 W. R., 29.

Where in a previous suit on a bond, which suit was lost on account of want of jurisdiction, the plaintiff sued for a specific sum, and for interest as from a certain date, he was declared, in a subsequent suit instituted by him on the same bond, entitled to interest on the bond only from the date from which he sued for it in the first suit, to the date of the present decree of the Judicial Committee. *Narain Dass* v. *The Estate of the ex-King of Delhi*, 10 W. R., P. C., 55.

Where a debt or law-suit has been purchased, interest ought not to be given thereon for the whole

period during which the purchaser allows the claim to be outstanding, nor necessarily on the whole debt when the purchase-money is very much below the amount of the principal. *Unnada Soonderee Dossee* v. *Oodhub Nath Roy*, 11 W. R., 125.

A Court is justified in giving interest at the rate specified in the bond down to the date of decree. After that date the decree-holder recovers such interest as according to the course and practice of the Court is allowed on debts for which the creditor has the security of the decree. *Rashessur Surmah* v. *Kaleekanath Surmah and another*, 11 W. R., 455.

A decree-holder is not bound to accept a sum tendered to him in part satisfaction of his decree. He is entitled to require payment of the principal and interest in full; and the refusal to receive a part of what is due to him will not deprive him of his right to interest. *Kunye Singh and others* v. *Tooydun Singh*, 7 W. R., 20.

Where, under Section 6, Regulation XV of 1793, interest upon the principal prior to the institution of the suit was adjudged to the plaintiff, limited to a sum equal to the principal, although that Regulation was repealed when the suit was brought, yet looking to the time when his contract was made, the plaintiff was held not entitled to any further interest before suit, but interest upon the principal was allowed to him from the date of suit to the date of decree. *Thakoor Geebnath Singh* v. *Kureemun Bibee, mother and guardian of Kureem Khan, minor, and others*, 7 W. R., 172.

Principles on which the Court allows interest on judgments. *Dhunput Singh Dogare* v. *Shaikh Goluam Hader*, Cor. Rep., 12; 2 Hyde's Rep., 12.

Interest at the bazar rate (8 per cent.) given on a judgment. *Gregory* v. *Dulsook Roy*, Cor. Rep., 9.

When a payment is made into Court by a judgment-debtor in full satisfaction of the decree, but which the Court accepted and retained as a payment on account, the judgment-creditor can have no right to claim interest upon the whole amount of his decree. The Court executing the decree has a discretion in allowing interest, which will not be interfered with in special appeal. *Pares Nath Mukhopadhya* v. *Kisto Mohan Saha*, 3 B. L. R., Ap., 105.

Where a decree of a lower Appellate Court, awarding interest to a suitor from the date of the institution of his suit, was affirmed by the High Court in special appeal, it was held that the decree-holder was entitled to recover interest for the period allowed in the decree, notwithstanding a subsequent declaration of the Judge of the lower Court that his meaning was not to allow interest, except from the date of his own decision in appeal. *Jumoona Moyee Debia* v. *Doorga Soondur Roy*, 9 W. R., 386.

Interest may be decreed with arrears of rent, but it should not be decreed upon instalments of rent as from dates during the currency of the year, unless the parties had agreed that the rent should be paid by instalments at those dates. *Bharuth Chunder Roy* v. *Bepin Beharee Chuckerbutty*, 9 W. R., 495.

When the proceeds of an eventual sale are less than the price bid by a defaulting purchaser, the difference leviable from him under Section 254, Code of Civil Procedure, must be levied without interest. *Soorj Buksh Singh* v. *Sreekissen Doss*, 9 W. R., 500.

When rents are withheld, the defaulter is liable to pay interest, whether provided for or not in the pottah. *Lalla Sheo Sahoy Singh* v. *Kummarunissa Begum*, 2 W. R., Act X R., 68.

A tenant who, instead of paying his rent when due, compels his landlord to sue for it, is liable to pay interest thereon. *J. Mayer* v. *Bebee Sowlutoonissa*, 2 W. R., Act X R., 96.

As long as a decree-holder does not incur the loss of right by limitation, he cannot be deprived of the interest which his decree gave him, on the ground of his dilatoriness in taking out execution. *Modhoo Soodun Roy Chowdhry* v. *Bhikaree Roy Chowdhry*, 5 W. R., Mis., 11.

Interest runs on sums decreed, as a matter of course, unless a specific order is recorded to the contrary. *Luchmee Narain* v. *Shudasheo Singh*, 5 W. R., Mis., 12.

Regulation XV of 1793 (prohibiting award of interest in excess of principal) applies to sums decreed only, and not to interest which has accumulated through the neglect of the judgment-debtor to pay. *Shib Chunder Goopto* v. *Allad Monee Dossia*, 5 W. R., Mis., 22.

The Court in execution cannot order payment of interest on the principal decreed, when the decree is silent as to such interest. *Nilambur Sein* v. *Pitambur Sein*, 5 W. R., Mis., 28.

The purchaser of a decree may apply for rectification of an error in the calculation of interest.

If a decree awards interest from the date of decree on a certain sum ascertained to be due at the time of the decree (consisting of the sum sued for with interest thereupon up to date of suit),—*Held* that that is not compound interest, and that the decree-holder is entitled to it. *Jodoonath Roy* v. *Dwarkanath Chatterjee*, 1 W. R., Mis., 15.

Costs carry interest, whether so expressed in the decree or not. *Haradhun Sandyal* v. *Rash Monee Dossia*, 2 W. R., Mis., 21; *Singh* v. *Lall Kalee Churn*, 3 W. R., Mis., 21.

The attachment of a decree does not deprive the decree-holder of the interest to which he has been declared entitled. *Wooma Pershad Shome* v. *The Collector of Beerbhoom*, 3 W. R., Mis., 10.

Act XXXII of 1839 (authorizing the allowance of interest in certain cases) does not affect debts contingent in amount and time of becoming due; *e.g.*, a wager's contract for the payment of the excess over the average price of opium at the next ensuing public sale.

Quære,—Whether the discretion of the Court, in allowing or refusing to allow interest in cases within that Act, is liable to review or appeal. *Juggomohun Ghose* v. *Manick Chund*, 4 W. R., P. C., 8.

Under the present law, a Court is bound to enforce an agreement between the parties as respects the amount of interest to be paid upon a bond, instead of limiting a claim for accumulated interest to a sum not exceeding the principal. *Kalica Prosad Misser* v. *Gobind Chunder Sein*, 2 W. R., S. C. C. Ref., 1.

A Court has no power to interfere with the contracts of parties in respect of interest. *Kotoo and Mah Ngwai* v. *Ko Pay Yah and others*, 6 W. R., 255.

A suit will not lie for interest in respect of money deposited under a decree subsequently reversed on appeal. *Ashruffunnissa Begum* v. *Mussamut Khanum Jaun*, 6 W. R., 285.

Interest cannot legally be awarded prior to suit in cases governed by the provisions of Act XXXII of 1839. *Abdool Kureem Khan* v. *Sheik Meah Jan*, 6 W. R., 288.

A Court executing a decree can award interest, from date of decree to date of payment, on the amount decreed to be paid by the judgment-debtor to the decree-holder, if the Court which passed the decree made no order on that point. *Beer Chunder Joobraj* v. *Ram Coomar Dhur*, 6 W. R., Mis., 26.

If a decree-holder gives up a portion of his claim and verbally agrees to receive the remainder by instalments, he does not thereby give up interest to which he is entitled under the decree. *Mahanund Mojoomdar* v. *Rajah Purtab Chunder Singh*, 6 W. R., Mis., 121.

When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit. *Sitanath Bose* v. *Mathoora Nath Roy*, 2 B. L. R., Ap., 10; S. C., 11 W. R. 68.

Where part payments were made on a bond, and credited in discharge of the principal, and an action was brought for the balance of the principal and for interest, and the lower Court allowed a sum for interest as due at the date of the plaint which was greater than the principal, the High Court disallowed the excess.

The provision in Section 4 of Regulation XXXIV of 1802, against an award of interest in excess of the principal, refers only to the amount claimed for interest at the time the suit is brought. The rule of Hindu law as to recoverable arrears of interest. *Kakarlapudi Sitaramaraja* v. *Uppalapadi Janakayya and others*, 1 Mad. Rep., 5.

The obligor having offered to pay the principal and interest into Court,—*Held* that he should be relieved from interest from the date of such offer. *Gudi Janakayya Garu* v. *Garruda Garu*, 1 Mad. Rep., 124.

The provision contained in Act XXVIII of 1855, that any rate of interest which the parties may have agreed upon shall be awarded, in no way prevents a Civil Court in India, which administers both law and equity, from examining into the character of agreements made between persons, such as mortgagor and mortgagee, trustee and *cestui-que* trust, between whom a relation exists, enabling one party to take advantage of the other, and from declining to enforce such agreements when they are shown to be unfair and extortionate. *Vinajak Sadashib Voze* v. *Raghi*, 4 Bom. Rep., A. C. J., 202.

Under Act VIII of 1869 (B. C.), Section 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent. *Maharaja Dhiraj Mahtab Chund Bahadur* v. *Srimati Debkumari Debi*, 7 B. L. R., Ap., 26.

In a suit relating to balance of accounts, probabilities are not sufficient to support a decree for interest in the absence of a contract for interest. *Joy Narain Bhuggut* v. *Kashee Chowdry*, 16 S. W. R., C. R., 148.

The defendant was invited, by an injunction issued upon him in another suit, to deposit in Court the money admittedly due under the bonds now sued upon, but, having refused to do so, was held liable to pay interest from the date of that injunction. *Ram Dass Gossamee* v. *Prossenq Moyee Dossee*, 16 S. W. R., C. R., 297.

Whether interest on decretal-money is payable up to the date that it was deposited in Court by the judgment-debtor, or up to the date on which the decree-holder applied to get it from the Court, will depend on whether the decree-holder had any notice of the money being so deposited to his credit. *Kalu Dass Ghose* v. *Puran Koomaree Bibee*, 16 S. W. R., C. R., 304.

In the absence of accounts or other evidence to show the profits of a business, interest is awarded at 12 per cent. per annum. *Bibee Hurun* v. *Bibee Marian*, 14 S. W. R., C. R., 87.

In a suit to recover money lent upon an agreement, to the effect that it should be repaid with interest at 8 annas per cent. *per mensem*, by instalments payable in a particular month of each year, with a promise that if the instalments were not paid in four years the interest would be at the rate of one rupee per cent. *per mensem*, where plaintiff demanded interest on the allegation that the instalments had not been paid for five or six years,—*Held*, that as the first rate was below the ordinary terms on which money is lent in this country, and the penalty was but the ordinary rate to be imposed in case of delay in payment, the plaintiff was entitled to a decree. *Petambur Chatterjee* v. *Kalee Churn Roy*, 14 S. W. R., C. R., 436.

In a suit to recover a sum of money due on an agreement under the term of which interest for fifteen days only was payable at the rate of one rupee *per diem*,—*Held*, that as no rate was agreed upon after the expiration of the fifteen days, the Court had power to fix a reasonable rate of interest subsequent to that time. *Moizoody Shaik, in the matter of*, 14 S. W. R., 452.

It is in the discretion of the Court to allow interest on arrears of rent. *Rajah Sattyanund Ghosal* v. *Zahir Sikdar*, 6 B. L. R., Ap., 119.

A Small Cause Court Judge has no discretion to allow interest at a rate below that stipulated in the bond. *Nobo Coomer Bose* v. *Gobind Chunder Poddar*, 17 S. W. R., C. R., 431.

Interest may be allowed in a suit for contribution, although no demand for interest may have been made before suit. *Nullit Biswas* v. *Prossono Moyee Dossee*, 17 S. W. R., C. R., 179.

When the rate of interest stipulated for in a bond is exorbitant, and there is no express understanding that the interest is to continue at the same rate after the expiration of the period fixed for repayment, a Court need not assume that the parties are bound by contract to that rate after such period. *Mirza Mahomed Hossein* v. *Shahazadah Tuqueeroodeen*, 15 S. W. R., C. R., 284.

Where a party borrowing money entered into a bond stipulating to pay Rs. 24 per cent. per annum as interest until the whole debt, principal, and interest, was paid off; and if the whole was not paid within the time mentioned, that the bond should be enforced as a registered deed,—*Held* that the rate

of interest was not a question of discretion, but must be paid at the rate stipulated. *Shaikh Reasut Hossein* v. *Jusmunt Roy*, 15 S. W. R., C. R., 396.

11.—Set-off.

A claim for rent cannot be pleaded as a set-off in a suit for money paid by the plaintiff on account of revenue to protect a lease in the nature of a mortgage held by him. *Heera Lall* v. *Bishen Sahaye*, 1 W. R., 296.

Questions as to set-off will be dealt with in the High Court upon the principles of English Courts of Equity, or of the Roman law of compensation, and no right will be given to objections derived from the peculiar language. *Rámagopal* v. *Majeti Malikarjanudee*, 1 Mad. Rep., 396.

If the cultivator suffer damage, in execution of a decree of the Civil Court, he may sue and claim compensation for such damage; but until such damage has been ascertained and decreed, it cannot be set-off against a claim for rent. *Rai Gobind Singh and others* v. *Soonder Pal and others*, 3 Agra Rep., 177.

A widow is liable for a debt contracted by her husband. Such debt may be set-off against a debt due to her. *Grish Chunder Lahoory* v. *Koomaree Dabea*, 1 W. R., Mis., 23.

In a suit for house rent, the tenant cannot be allowed to set-off a sum expended by him in repairing the house without authority from the plaintiff. *Mussamut Zummeerunnissa* v. *E. Gayer*, 6 W. R., 26.

Where a decree for the plaintiff has been obtained in a suit, and a cross-suit is pending, the Court will not stay proceedings in execution of the first suit, or order the proceeds of that decree to be paid into Court to abide the result of the second. *Moolchund and others* v. *Rajnarain Ghose*, 1 Ind. Jur., N. S., 330.

A. had dealings with a firm consisting of a father and two sons, who carried on business jointly. Shortly after the father's death, the two brothers separated, and A. dealt with each separately, having notice of the separation.

A. cannot set-off, against a claim made by one of the brothers in respect of the separate dealings between himself and A., a debt due to himself from the former joint concern. *Dhunput Singh* v. *A. J. Forbes*, 1 Ind. Jur., N. S., 354.

A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set-off against sums due for rent. *Watson and Co.* v. *Maharanee Brojosoondaree Debia*, 16 S. W. R., C. R., 225.

Setting-off an unascertained sum against another is a mode of settlement which, if suggested to the parties as a compromise, may, with their assent, be a fit end of a litigation, but cannot properly be made the basis of a decree between hostile litigants. *Mussumat Bibee Bachun* v. *Sheikh Hamid Hossein; Moulvie Abdool Azuz* v. *Sheikh Hamid Hossein*, 17 17 S. W. R., C. R., 113.

The right of set-off exists where there are cross demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit. In a suit to recover money due under a contract made between the plaintiff and defendants,—*Held* that the defendants were entitled to set-off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on. *Kistnasamy Pillay* v. *The Municipal Commissioners for the Town of Madras*, 4 Mad. Rep., 120.

In a suit for money due upon an account stated, the Judge ought not to go into the question of set-off, but should confine himself to giving plaintiff a decree for the amount which may be found to be due upon the account stated. *Kalee Coomar Chuckerbutty* v. *Huro Chunder Chuckerbutty*, 17 S. W. R., C. R., 177.

12.—Wholesale and Retail.

Held by a Division Bench (Peacock, C. J., and Hobhouse, J.) that a sale of a quantity of mustard seed, which was not required by the purchaser for his own private use, but with the object of making oil, which was sold, is a sale of goods wholesale.

Held by the Full Bench, that a suit for the price of goods sold wholesale, if there was no written agreement, must be brought within three years from the time the cause of action accrued under Clause 9, Section 14 of 1859. *Lall Mohun Haldar* v. *Mohadeb Ratee*, 9 W. R., 193.

A jeweller in the ordinary course of business sold to a customer a large quantity of pearls. The purchaser required them, and they were sold to him to be worked up as ornaments for members of his family, and not for the purpose of re-selling them or dealing with them as merchandize. *Held* that the pearls were articles sold by retail within the meaning of Act XIV of 1862. *Buldeo Doss Johurry* v. *Sreenauth Sein*, 1 Ind. Jur., O. S., 114.

13.—Assignment.

The obligee of a common money-bond, of which a *bonâ-fide* valid assignment has been made, is not liable to be made a defendant in a suit by his assignee to enforce payment of the bond, and to a decree against himself jointly with the obligor. *Anonymous* v. *Muttusámya Pillai and another*, 1 Mad. Rep., A. C., 140.

When a creditor accepts the assignment of a debt due by third parties to his debtor, and releases the latter, he has no action against him. *Bishen Chunder Saelah, Mahajun* v. *Gokool Chunder Lohata*, 5 W. R., 171.

The plaintiffs received an assignment of a debt due to a third person, not a party to the suit. The document assigning the debt showed on the face of it that the assignment was an absolute payment to the plaintiff, and evidence went to show that such payment was in part payment of a debt due from the defendants to the plaintiff.

Held that, in default of evidence to show that the defendants were aware of any intended alteration in the apparent purpose of the assignment, the plaintiff was precluded from saying that he had received it in any other light. *Scinde, Punjab, and Delhi Bank* v. *Mudhoosoodun Chowdhry and another*, Bourke's Rep., O. C., 322.

An assignment made *bonâ fide* and for valuable

consideration, before execution put in, and without notice of claim of execution creditor, held not to be void under the Statute 13 Eliz., c. 5. *Tarrucknauth Paulit* v. *Gladstone*, 1 Hyde's Rep., 178.

A joint debt cannot be amalgamated by a colourable assignment with a personal debt, so as to give the assignee the right to sue in respect of both debts. *Sreehurry Paul* v. *Nilmoney Sen*, 1 Hyde's Rep., 169.

Where a party who assigned over a decree was liable under a cross-decree for a considerable sum to the judgment-debtor,—*Held* that, until the respective liabilities of the two parties had been settled, the Court was justified in refusing to allow one of them to assign the decree to a third party. *Jodoonath Roy* v. *Ram Buksh Chulungu*, 8 W. R., 202.

In the practice of the Courts of India, it is lawful to assign choses in action, when there is neither fraud against individuals nor special violation of the rule of public policy. *Hurrinath Muzoomdar* v. *Moran and Co.*, W. R., 1864, Act X R., 127.

L. M. died in 1856, having bequeathed certain personal property to Mrs. J. S., who then was and still is a married woman, executed a power of attorney, authorizing A. G. and Co. to receive payment of the legacy, and to execute a settlement of a portion of the same according to articles contained in the powers. This settlement was made, and under it a portion of the legacy was assigned to trustees, who did not execute the deed or undertake the trust, and no other trustee was substituted for them. A. G. and Co. at various times advanced money to Mrs. J. S., and in acknowledgment received promissory notes from her for a portion of such advances; and in a suit by A. G. and Co. to revive the amount of these advances, it was held that A. G. and Co. standing in a fiduciary relation to Mrs. J. S., before they can avail themselves of her acts, must show that she did them with a full knowledge of the circumstances of the case and of her own position with regard to it. *Julia Smith and others* v. *Adam Steward Gladstone and others*, Bourke's Rep., O. C., 292.

If a trader or other person in this country assigns his stock-in-trade or effects to another, and such other person enters into a contract with him to pay the debts of the concern, or a certain portion of such debts, the contract and assignment create a liability to the creditors in whose favour the assignment is made, which they may enforce by suit.

An assignment of the stock-in-trade, under such circumstances, cannot be defeated by the creditors, nor can anything that takes place between the assignor and assignee affect the right of the creditors as against the original debtor. The creditors cannot compel the assignee to pay any debt which, as between himself and the assignor, he is not bound to pay, and the creditor is not bound to elect between the original debtor and assignee, but may look to either or both for payment, the assignee being sued as co-defendant with the original debtor, there being nothing to prevent the joinder of parties as co-defendants whose liability is not strictly joint.

A person covenanting can obtain relief from the express terms of his contract, if he can show that it was a mistake, and that the actual contract was to pay something less than was expressed in the writing.

Ordinarily the purchaser of a factory will not be liable for the debts, unless by express agreement.

Where any debt is a lien against particular property, it must be enforced by a suit to declare such property liable, and to obtain payment for it, and not by an ordinary action for debt against the person who has taken the property subject to the debt.

The case was remanded by a majority of the Court to try the nature of the real agreement between the assignor and the assignee with reference to the debt.

Dissentientibus Steer, J., and Seton-Karr, J., who objected to the remand, on the ground that, in contracting to take over the dena-pownа of the factory, and publishing the same by the act of registry, the assignee made himself liable for all the *bonâ-fide* debts of the factory; and that the private agreement between the assignor and assignee was of no force. *D. H. Kearnes and others* v. *Bhowaneechurn Mitter and others*, W. R., F. B., 167.

Choses in action are assignable in this country, and they are also assignable in England, although at law the assignee cannot sue in his own name. *Jug Mohun Lall* v. *Mussamut Buddun Koer and others*, 9 W. R., 243.

Choses in action are assignable by Civil Courts in this country, which are not merely Courts of Law, but also Courts of Equity. The purchaser of a decree-holder's rights and interests in decreed land may sue to recover possession, even if the thing purchased have no actual existence, but rests on mere possibility: if legally saleable, it was equitably an assignable cause of action. *Munrunjun Singh and another* v. *Leela Nund Singh and others*, 11 W. R., 5.

Semble,—There is nothing in equity which prevents a suitor, pending a suit, or any other legal proceedings, from assigning the whole or any part of the subject of litigation. *Per Phear, J., in Grose* v. *Amirtamayi Dasi*, 4 B. L. R., O. C., 1.

14.—LIEN.

The holder of a simple money decree does not acquire a lien on the property of his judgment-debtor. *Monohur Dass and others* v. *Kalee Dhun Dobey*, 8 W. R., 116.

The sale of property mortgaged to A., in execution of a decree against B, will not extinguish A.'s lien, whether notification was or was not given at the time of sale. *Jungee Loll Mahajun* v. *Brijo Beharee Singh*, 2 W. R., Mis., 21.

Where a plaintiff's bond gives him a separate lien on each and all of several mouzahs pledged as security, he is free to elect for sale whichever of the mouzahs he thinks most likely to satisfy his claim. *Mussamut Bibee Sufeehun* v. *Khajah Mahomea Hubeeboollah Khan and others*, 8 W. R., 379.

An innocent holder of property given in pledge for the payment of a debt, without notice of his debtor being a benamee owner for others, is entitled to maintain his lien on all the property in satisfaction of the debt, and on that ground should succeed as against the parties who by their acts enabled the benameedar to deceive him and take his money. *Bamasoonduree Debia* v. *Rashmonee Debia*, 4 W. R., 36.

Where C. entered into a contract with the Govern-

ment to construct a railway feeder, and purchased coal from a coal company, and after the coal had been delivered and deposited at a certain place C. absconded,—*Held* that the Government had no right to detain or claim the coal, or to take the same out of the possession of the coal company, who were entitled to retain possession of the coal against any claimant but C. himself. *Gordon, Stuart, and Co.* v. *The Executive Engineer of the Calcutta and Jessore Road Division on the part of Government*, 7 W. R., 426.

Where a party having a lien on account of a debt upon certain property belonging to another, and holding also a money decree for the same debt which he could satisfy by attachment and sale of other property belonging to her judgment-debtor, entered into a kistbundee with the latter, in which, in consideration of other properties pledged by its terms, she gave up her right of executing the decree against any of the judgment-debtor's property,—*Held* that the kistbundee did not extinguish the original debt, nor do away with the lien. *Ram Churn Lall and another* v. *Rughoobeer Singh and others*, 11 W. R., 481.

To constitute a lien on any property, there must be a clear agreement for the specific appropriation of the property, and further the property must be in the possession of the party who claims the lien. *Debnarain Bose* v. *Lisk*, 2 Hyde's Rep., 267.

The act of one of two holders of a bond cannot destroy the lien of the other on property pledged to both as security for a joint debt. *Indurjeer Koonwar* v. *Brij Bilas Lall*, 3 W. R., 130.

Where certain shares were deposited with a bank as security for the depositor overdrawing his account for a time, which, in fact, he never did, and other documents were deposited as security for drafts drawn on Eccles, Cartwright, and Co., against cotton, to which these latter documents referred, Eccles, Cartwright, and Co. failed,—*Held* that the bank had no lien on the shares in respect of the cotton transactions. *Gentle* v. *The Bank of Hindostan, China, and Japan*, 1 Ind. Jur., N. S., 245.

Agents for the purchase of goods have a lien on the goods when purchased for the moneys paid and liabilities incurred by them in respect to such purchase, and are not bound to deliver the goods until they are reimbursed, or have security for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor. *Bhola Nath* v. *Baij Nath*, 2 Agra Rep., 11.

A suit to enforce a lien on land which has been mortgaged will lie, and the land as it stood at the time of the mortgage free from subsequent encumbrances may be sold, although a decree for money due upon the mortgage has been obtained, and the right, title, and interest of the mortgagor thereto has under such been once sold. *Biswanath Mukhopadhya* v. *Gossain Dass Baramaduk*, 3 B. L. R., Ap., 140.

R. as mortgagee sued the D.s for possession after foreclosure. A razeenamah and safeenamah were put in and a decree passed thereon under which the D.s and others as principals, and their co-sharers as sureties, bound themselves not to alienate any portion of their property in the estate till the debt was satisfied, and that on failure the decree should be executed, the shares of the principals being sold first. After this the co-sharers granted a putnee of a portion of the estate to the defendants in this suit. Subsequently the rights of the D.s were sold in execution to B., who again sold them to plaintiffs, who had previously acquired twelve annas of the right and interest of R. under the razeenamah and safeenamah and decree, the remaining four annas having passed to G., now represented by defendant K.

The present suit was brought to set aside the putnee-lease as being in derogation of plaintiffs' right.

Held that the plaintiffs, to the extent of their share, had a valid lien upon the estate, and were entitled to priority over any right under the putnee lease and to hold possession until their claim was satisfied. *Dhunkristo Sein* v. *Erskine and Co.*, 16 S. W. R., C. R., 54.

The question in this case was, whether a right of lien and power of sale by virtue of a power of attorney over certain shares pledged with plaintiffs by defendant as security for the repayment of a loan originally secured by a first promissory note, was lost by the plaintiffs subsequently taking from defendant a second promissory note in lieu of the first, which was receipted and returned. *Held* that the original debt continued to exist; that the first promissory note and the shares were given as a security for that loan; that the second promissory note was also given as a security for the loan, no new debt being created; that the plaintiffs had a right to exercise the power given to them of selling the securities; that the act of the defendant in trying to prevent such exercise of power by revoking the power of attorney was unjustifiable, and that therefore the plaintiffs were right in coming to the Court to have that proceeding of the defendant set aside and declared inoperative. *A. Stewart* v. *The Delhi and London Bank, Limited*, 17 S. W. R., C. R., 201.

Hypothecation of property as security for a debt gives the party so secured a right to the application of such property, or its sale proceeds, in satisfaction of his claim. But if such property has been sold under execution of another decree, the secured party cannot cause re-sale without obtaining a decree for that purpose in a fresh suit. *Gajadhor Pershad* v. *Daibee Pershad*, 1 N. W. R., Par. 1. p. 29.

The fact that property is sold under a decree obtained by a plaintiff in respect of a debt due to him does not of itself prevent such plaintiff from insisting upon the lien to which he is entitled under a prior hypothecation to him, for another debt of the same property.

A decree obtained under the summary procedure prescribed by the Registration Act can be for money only, and not for the enforcement of a lien. *Juggen Nath* v. *Kimal Singh*, 3 N. W. R., 123.

A suit will not lie against the purchaser of property subject to lien to recover from him personally the amount of the lien, but the lien is not lost by the sale, and a suit may be brought against the purchaser with the object of obtaining a decree for the realization of the lien by the sale of the hypothecated property. *Jugernath* v. *Jlahidoy*, 3 N. W. R., 207.

15.—TORTS.

(*a*) *Miscellaneous.*

Held that a suit for the closing of a door on account of apprehended trespass will not lie. *Parum*

Sookh and others v. *Seeta Ram and others*, 2 Agra Rep., A. C., 19.

The plaintiff let a cargo-boat to U. C., who had been employed by the defendants to land certain goods. During the landing of the goods, a dispute as to the terms of hiring arose, and U. C. refusing to pay what was alleged by the plaintiff to be due to him for the hire of his boat, the plaintiff refused to give up 53 bales then remaining unlanded from his boat. U. C. communicated the circumstances to an assistant in defendants' firm, who afterwards went with U. C., and forcibly took the goods from the plaintiff's boat, without satisfying the plaintiff's lien thereon, and the defendants received them into their godowns. It was proved that U. C. and the assistants acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained.

Held that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and U. C., so as to render them liable in an action by the plaintiff for damages of the same. *Girish Chundra Dass* v. *Gillanders, Arbuthnot, and Co.*, 2 B. L. R., O. C., 140.

In a suit for the re-opening of an old road which the defendants had closed, and for the closing of a new road which they had opened in land alleged to belong to the plaintiff, the lower Appellate Court made a decree declaring the new road to be within the plaintiff's premises, and directed that it should be closed, and the old road restored.

Held that the decree was only in the nature of a declaration; that the act of the defendants in making a new road was a trespass; and that upon this question it was conclusive in point of fact and good in law. *Heera Chand Banerjee* v. *Shama Churn Chatterjee*, 12 W. R., 275.

The latter portion of Section 13 of Act III of 1857 having been repealed by Act XVII of 1862,—*Held* that the offences created by that section may be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure. *Reg.* v. *Mathur Pershotun et al.*, 4 Bom. Rep., Cr., 13.

The ground upon which a person is restrained from using another's trade mark is that he is gaining an advantage by the use of a particular trade mark which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. *Ewing* v. *Grant, Smith, and Co.*, 2 Hyde's Rep., 185.

This suit was brought to recover the value of certain articles stolen from the plaintiff's rooms at an hotel in Bombay. The defendant was the licensed proprietor of the hotel, who was in the habit of entertaining, for shorter or longer periods, all comers willing to pay the usual charges, and the plaintiff was an exchange broker, doing business in Bombay, who had lived at the hotel for more than a year, paying for his board and lodging at first by the day, and afterwards by agreement at the rate of so much a month, but neither was the plaintiff under any obligation to remain, nor the defendant to accommodate him for any fixed time, *Held* that the relation of innkeeper and guest (and not that of boarding-house keeper and lodger) subsisted between the parties; and that the defendant was *primâ-facie*, and without proof of actual negligence, liable to make good the loss sustained by the plaintiff. There is no law but the Common Law of England to regulate the relation of innkeeper and guest in Bombay, in a case between a European and Parsee. *Whately* v. *Palanji Pestanji*, 3 Bom. Rep., O. C. J., 137.

When a trespasser tortiously enters upon the land of another and builds a house thereon, the party injured is entitled to recover possession of the land by destroying the house, if there is no proof of acquiescence on his part in the act of injury done. *Gobind Puramanick* v. *Gooroo Churn Dutt*, W. R., 71.

To maintain a suit for false and malicious prosecution, the plaintiff must show that the criminal charge was instituted maliciously and without probable cause. *Nowcowree Chunder Shurmah* v. *Birmomoyee Debea*, 3 W. R., 169.

A suit will lie in the Civil Court to recover damages for breach of contract by defendant to certify, or for his fraudulently omitting to certify, in consequence of which, on an execution fraudulently issued against the plaintiff, his property was seized. *Soojan Mundul* v. *Woozeer Mundul*, 6 W. R., Civ. Ref., 20.

Suit by the secretary and manager of a Government-aided school for damages against the owner of the school premises for breaking down the building and removing the materials belonging to plaintiff. *Held* that the plaintiff, as secretary and manager, could maintain the action for the benefit of the school; that on the facts the plaintiff was not entitled to greater damages than had been awarded to him for the value of the materials removed by the defendant, or to compensation for the improvements made by him to the building; and that there was no presumption of gift in the case. *Sreedhury Roy* v. *James Hills*, 6 W. R., Civ. Ref., 21.

Held that male members of a family cannot sue for the injury or insult which they have sustained indirectly in consequence of ill-treatment of certain female members of the family, and that if there was any remedy by suit for such grievance or dishonour, it was open to the women themselves, and not to the plaintiffs. *Oodai and others* v. *Bhowanee Pershad*, 1 Agra Rep., A. C., 264.

A suit will lie for damages sustained by a lessee by his lessor's breach of contract to put him in possession of a portion of the property of which he granted the lease. *Firingee Singh* v. *Shah Amed Hossein*, 7 W. R., 22.

A suit will not lie between joint owners of an undivided estate for damages sustained by the plaintiff, by the sale of the estate at an inadequate price, in consequence of the default of the defendants in paying their share of the Government revenue. *Odoit Roy and others* v. *Radha Pandey and others*, 7 W. R., 72.

An action will lie for damages for mere abuse. *Ossemoodeen* v. *Futteh Mahomed*, 7 W. R., 259.

A suit will lie to establish a prescriptive claim to irrigation from a running stream, and for damages caused by the stoppage of the water by

the proprietors higher up the stream, erecting dams on their own lands. *Buddun Thakoor* v. *Mohunt Shunker Doss*, W. R., 1864, 106.

The plaintiff's naib (now dead) sent her a hoondee (found by the first Court to have been a forgery) on account of collections from her estates, which hoondee was on presentation accepted, but finally dishonoured. *Held* that she has a cause of action; that she has, if she can prove her case, suffered a direct injury to the extent she alleges; and that she is entitled to redress. *Ranee Surnomoye* v. *Dwarkanath Ghose*, 2 W. R., 178.

Where plaintiff had in a former suit brought to recover a part of the consideration-money, together with the excess rents paid by him on a putnee settlement which defendant had induced him to take on a false representation regarding the lots included in it, obtained consequential damages,—*Held* that he could not succeed in a second suit to get back so-called excess of rent paid by him in terms of the putnee pottah since the institution of the first suit. When once the cause of action is matured, the subsequent occurrence of further damage, after or before adjudication of the original matter, does not originate a fresh cause of suit. *Raja Nilmoney Singh Deo Bahadoor* v. *Issurchunder Ghosal*, 9 W. R., 121.

Where parties in possession of certain lands sued for a declaration of title, not only on the allegation that defendant had caused a demarcation to be made behind their backs, annexing a slice of their lands to defendant's estate, but had also, under colour of this proceeding, sued plaintiff's tenants for rent under Act X, and proceeded against them to enforce a measurement under Act VI (B. C.) of 1862, it was held that acts had been done hostile and obviously injurious to the plaintiffs, and that the suit would lie. *Puree Jan Khatoom* v. *Bykunt Chunder Chuckerbutty*, 9 W. R., 380.

In the case of damage occasioned by a wrongful act,—*i.e.*, an act which the law esteems an injury, —the same remedy by action lies against the doer, whether the act was his own, spontaneous and unauthorized, or whether it was done by the order of Government. Malice is not a necessary ingredient to the maintenance of the action. It is essential to an action in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party complaining,—that is, it must prejudicially affect him in some legal right: merely that it will, however directly, do him harm in his interests, is not enough. *Thomas Eales Rogers* v. *Rajendro Dutt*, 2 W. R., P. C., 51.

An action will lie for damages on account of abuse received, even though plaintiff's professional position and gains are not injured thereby. *Gour Chunder Pututundee* v. *Mr. B. L. Caly*, 8 W. R., 256.

To sustain an action for negligence, there must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury. *Svaminaudu* v. *Subramánia Mudali*, 2 Mad. Rep., 158.

The retaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will. *Paran Kusam Pantulu* v. *Captain R. A. C. Stuart*, 2 Mad. Rep., 396.

Where there is no original matter in the work, the strongest evidence of servile imitation and piracy must be afforded before an action for an infringement of copyright can be successful. *Roussac and Bengal Printing Co.* v. *Thacker and Co.*, 1 Hyde's Rep., 9.

A. sends a hoondee by post to a bank. The bank presents it for payment by one of its servants, B., who brings it back, reporting that payment had been refused. The manager of the bank, with the intention of returning it to A., places it in an envelope sealed and stamped, which is laid upon the table ready for the post, it being the custom of the bank to post all letters in that manner. The hoondee does not reach A., and it afterwards appears that B. presented it for payment the following day, and obtained cash for it. *Held* that the bank was guilty of such neglect as to render it liable to A. for the amount of the hoondee. *People's Bank* v. *Obbard*, 2 Hyde's Rep., 57.

Two notes are stolen from A. which B. (not a *bonâ-fide* holder for valuable consideration) tenders to C. in payment for certain articles. C., not knowing B., refuses to deal with him, whereupon B. brings D., who is known to C., and the purchase is made by him. *Held* that the part which D. performed in the transaction amounted to a "conversion of the notes to his own use," and that he is liable to A. *Kissorymohun Roy* v. *Rajnarain Sen*, 1 Hyde's Rep., 263.

Held that a suit will not lie for damages against the holder of a bond pledged as security for his omission to sue on that bond within the period of limitation. *Makund Lall* v. *Rughoput Doss*, 1 Agra Rep., A. C., 83.

To sustain an action for negligence, there must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury is an act contrary to law. *Suami Nayudu* v. *Subramabia Mudali*, 2 Mad. Rep., 158.

In execution of a decree against a judgment-debtor, his right, title, and interest in an elephant was sold. In a suit by a third party against the decree-holder and the purchaser for recovery of the elephant or its value, on the ground that the elephant was his property, and not the property of the judgment-debtor,—*Held*, that the decree-holder, as well as the purchaser, was liable to make good the loss caused by such sale. *Kanai Prasad Bose* v. *Hirachaund Manu*, 5 B. L. R., Ap., 71; 14 S. W. R., C. R., 120.

An assault made by parties proceeding together and acting in conjunction as to time, place, and assault, is a single act, and the cause of action is common to all parties. *Ramessur Bhuttachurjee* v. *Shibnarain Chuckerbutty*, 14 S. W. R., C. R., 419.

The plaintiff let to the defendants a godown, on an upper story over his own godown, for the purpose of storing goods, the only stipulation in writing being that no combustible or hazardous goods should be stored there. The plaint alleged that the premises were taken by the defendants on the understanding that the defendants should use the same in a tenant-like manner, yet the defendants used them in an untenant-like manner, and loaded an unreasonable and improper weight on the floor,

whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used by former tenants for storing light goods, but, in addition to light goods, the defendants had at the time the floor broke stored upon it several casks of white and red lead, and some cases containing tin plates. The evidence of professional witnesses showed that a warehouse-floor ought to be able to bear 1½ cwt. per superficial foot, and there was evidence to show that the pressure on the portion of the floor which fell was at the time 1 cwt. 1 qr. 6 lbs. The floor gave way in the part where the heavy goods were stored, but there was nothing to show that they were improperly stored. Evidence was given that it was not usual to store heavy goods on an upper floor, but that heavy goods were sometimes stored on upper floors. The evidence of the professional witnesses was to the effect that the floor was not a proper one upon which to store merchandize, but that 1½ cwt. was not a dangerous weight for a warehouse-floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders were not sufficient for the floor of an upper story to be used as a godown. In a suit for damage sustained by the plaintiff by reason of the breaking of the floor, —*Held* (*per* Macpherson, J., and on appeal), that it lay upon the plaintiff to show that the defendants had acted in an improper and untenant-like manner, and that he had failed to show that any improper or unreasonable weight had been placed by the defendants upon the floor, or such as a tenant exercising ordinary caution might not have placed there. *Koegler* v. *Yule*, 5 B. L. R., 401; 14 S. W. R., A. O., 45.

An action will not lie for the mere harbouring or sheltering a person who is under a contract of service to another, even with notice of such contract of service. *Blake* v. *Lanyon distinguished; Brukowsky, J.*, v. *Thacker, Spink and Co.*, 6 B. L. R., 107.

Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta,—*Held*, the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. *Luddy* v. *Johensin*, 6 B. L. R., 141.

A settlement having been made out of Court between a decree-holder and his judgment-debtor, the latter handed over certain property to the former, who undertook to release him from all liability under the decree. Subsequently the decree-holder, ignoring the settlement, took out execution against the judgment-debtor, but did not attach any of his property or otherwise endamage him in any way, and the execution case was struck off for default. Thereupon the judgment-debtor sued in the Court of Small Causes to recover the amount of the property which had been made over to the judgment-creditor.

Held, that as plaintiff was not endamaged by the conduct of the defendant, the suit was properly dismissed. *Mehim Mundle* v. *Kalee Chund Naik*, 13 S. W. R., C. R., 147.

A party whose conviction before a Criminal Court is reversed on appeal, and he himself released from confinement, cannot maintain a suit against the complainant for damages to his personal honour, unless he can prove that the complainant had no reasonable and probable cause for making the complaint and charge. *Kazee Koibatoollah* v. *Mitee Peshkur*, 13 S. W. R., C. R., 276.

In a suit for damages for an assault, the previous conviction of the defendant in a Criminal Court is no evidence of the assault. The factum of the assault must be tried in the Civil Court.

No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff. When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts, and a special appeal will lie to the High Court, although the damages claimed are below Rs. 500. *Ali Buksh* v. *Sheikh Samiruddi*, 4 B. L. R., A. C., 31, and 12 S. W. R., C. R., 477.

Deprivation of the right to a rise of water is an injury; and a claim to repair a bund for the purpose of securing such right, is not answered by the tender of another bund quite as good. *Shunkur Sahoo* v. *Gurbhoo Sahoo*, 15 S. W. R., C. R., 216.

In a suit for damages for the demolition of a *singha* or embankment intended to keep in surface water, if the embankment was situated on the defendant's land, such demolition could only be a cause of action where it not only infringed a definite right, but caused actual damage. *Seeta Rum* v. *Sheikh Kummeer Ali*, 15 S. W. R., C. R., 250.

Where defendants were asked to obtain information from a railway company as to the probable cost of carriage of coal, which they were about to sell to plaintiff, and they did so, communicating in good faith to plaintiff the result, no right of suit can arise against defendants, although plaintiff is ultimately compelled to pay to the railway company a much larger sum than defendant had represented. *Bengal Coal Company, Limited*, v. *Elgin Cotton Company, Limited*, 2 N. W. R., 13.

Proof of malice is essential to support a suit for damages for the wrongful suing out of mesne process. By malice in its legal sense something less is meant than malevolence or vindictive feeling. Acts done vexatiously for the purpose of annoyance, acts done wrongfully and without reasonable and probable cause, acts done wantonly and without the exercise of any caution in investigating the necessity for them, have been held to be malicious. At the same time, to make an act malicious, it must be shown that it was done with a wrongful intention. Acts done in good faith and without any wrongful intention, though they may be such as a cautious person would have abstained from, are not necessarily malicious. From proof of the absence of such cause as would influence a man of ordinary caution, malice may be presumed, but this is an inference which it is optional with the Court, and not compulsory on it, to draw, and it may be rebutted by proof of good faith. When the persons against whom malice is to be proved are not themselves present, but acts through agents at a distance, the inference of malice should not be drawn

from the mere proof of the absence of reasonable cause. *Goutiere* v. *Robert*, 2 N. W. R., 353.

A registered proprietor of the copyright of an ornamental design within the United Kingdom, under 5 and 6 Vict. c. 100 (amended by 6 and 7 Vict. c. 65, 13 and 14 Vict., c. 104, and 21 and 22 Vict. c. 70) cannot sustain an action against any person who applies such design to articles, or who sells any articles to which such design has been applied, in British Burmah. *Baker and others* v. *Sutherland and others*, 8 B. L. R., 298; 16 S. W. R., C. R., 90.

Action for malicious prosecution. The defendant had charged the plaintiff with cheating by personation in falsely pretending that his (plaintiff's) wife had been delivered of a son, and procuring a child and passing him off as the son so born. The case was dismissed by the Magistrate, and the plaintiff brought the present suit. The defendant alleged reasonable and probable cause and the absence of malice. The Civil Judge awarded Rs. 50,000 damages to the plaintiff. Upon appeal, it was contended that the charge was not malicious, though the facts upon which it was based were allowed to be false. *Held*, that this depended upon the question of the absence of reasonable and probable cause, and in case of the absence, upon the cogency of the inference derivable from it. The test which has received the most approbation is partly abstract and partly concrete. Was it reasonable and probable cause for any discreet man? Was it so to the maker of the charge? Upon the facts of this case,—*Held*, that if defendant's conduct was mere negligence, it was *dissoluta negligentia*. That the facts alleged in support of the charge were such as, if believed at all, could only be believed and acted upon through such negligence that the inference of malice was irresistible. In a suit for malicious prosecution, the expense of counsel is not a proper element in the calculation of damages awardable to a successful plaintiff. The damages were reduced to Rs. 10,000. *The Honourable Godory Narrain Gojpathi Ráu* v. *Sri Ankitam Venkula Narsing Ráu Guru*, 6 Mad. Rep., 85.

Suit for damages sustained by plaintiffs by reason of injuries caused to a line of railway, the property of plaintiffs, by the bursting of defendant's tank. Negligence on the part of the defendant was not alleged in the plaint. Upon the findings—(1) that the tanks were existent before living memory; (2) that they were breached by an extraordinary flood; (3) that they were tanks constructed in the ordinary manner, with escapements sufficient for all ordinary floods and such as are universally employed; (4) that they were absolutely necessary to human existence, so far as it depends upon agriculture; (5) that the railway was constructed with a full knowledge of their existence,—*Held*, that the suit was rightly dismissed. *Rylands* v. *Fletcher* (L. R., 3 H., 530) discussed; *Madras Railway Company* v. *Zamindar of Kuratinggur*, 6 Mad. Rep., 180.

Limitation in the case of a malicious act must be computed, if not from the time when the malicious act was committed, at least from the time when damage resulting from the injury was actually suffered. Damages are not usually awardable under the express head of "mental anxiety;" but in all cases in which damage arises from a tort, as distinguished from a breach of contract, the Courts in awarding damages are not compelled to estimate the damage too precisely, but are at liberty to give damages which may effectually protect the injured party from a repetition of the wrong. *Furookh Hossein* v. *Fuzeel Hossein*, 1 N. W. R., Par. 12, P. 209.

The plaint alleged that the railway which was in plaintiff's possession had been seriously damaged by water escaping from defendant's land in consequence of the bursting of a tank which was his property, and at the time of the bursting was under his control, but the plaint did not contain any direct allegation of negligence on the defendant's part. The Civil Judge dismissed the suit on the ground that the plaint disclosed no cause of action. *Held*, reversing the decree of the Civil Court, that the case stated in the plaint called for an answer on the part of the defendant. *Madras Railway Co.* v. *Srimun Mahamundaleswara Katari Salvah Makarujee Vunthay*, 5 Mad. Rep., 139.

(*b*) *Defamation.*

Defamatory matter is privileged only when written *bonâ fide*, and shown to a third party to give information which the third party ought to have. *Heckford* v. *Gulstin*, Cor. Rep., 134; S. C., Hyde's Rep., 274.

Held that the cause of action in a suit for damages on account of defamation of character, arises on the date of the publication of the letter containing the defamatory matter, and that a suit not instituted within one year from the date is barred by Clause 2, Section 1, Act XIV of 1859. *Mahomed Iniadally and others* v. *Sheikh Ameer Aly*, 2 Agra Rep., 47.

Where the consul of a foreign state wrote some defamatory letters to his Government, reflecting on the character of a commercial house in Calcutta, the Court held that, although the libellous matter was not known to the plaintiffs for a long time subsequently, the suit for damages must be dismissed under the Statute of Limitations, which confined the bringing of such suit within the year,—*Held* that such communications were not privileged; and the Court assessed damages subject to the opinion of the Appellate Court on the point of limitation. *Emile Charles Robert, Joseph Alexander Charriol, and Jacques Alfred Lemettais* v. *Jules Barthelemy Lambard*, 1 Ind. Jur., 192.

The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged. *Jacob Peter* v. *M. P. Dufour*, W. R., 1864, 92.

Held that, under the circumstances of the case, the allegations contained in a petition presented by respondent to the Magistrate acting in his administrative capacity, cannot be regarded as a privileged communication made in the course of judicial proceedings; and it being proved that the allegations so made were made with sinister motive and malicious intention, and that they were irrelevant to the occasion, the appellant was entitled to some substantial damages. *Chowdhry Groodut Singh* v. *Gopal Dass*, 1 Agra Rep., 33.

A party in applying to the Judge for the transfer of a case from the Moonsiff, on the ground of hostility between them, is not privileged in charging

the Moonsiff with other matters, without proving that such charges are true, or showing that he has reasonable ground for believing them to be true. *Shibnath Tulaputtro* v. *Sat Cowree Deb, Moonsiff*, 3 W. R., 198.

Held that, in cases of defamation, the *onus* of proving the statement, or at least of showing that he had reasonable ground for believing it to be true, and was actuated in making such statement not by malicious motives, but by an intelligent zeal for the public interest, lies on the person making the statement. *Altaf Hossein* v. *Tasuddook Hossein and others*, 2 Agra Rep., A. C., 87.

Making and publicly exhibiting an effigy of a person, calling it by the person's name, and beating it with shoes, are acts amounting to defamation of character for which a suit for recovery of damages will lie. *Pitumbur Dass* v. *Dwarka Pershad*, 2 N. W. R., 435.

A suit will lie in the Civil Court to recover damages for abuse. *Kali Kumar Mitter* v. *Ramjati Bhuttachurjee*, 6 B. L. R., Ap., 99; and 16 S. W. R., C. R., 84.

(*c*) *Libel and Slander*.

Suit for damages for libel. The lower Court decreed the full amount claimed, *viz.*, a lac of rupees, which on appeal was reduced to Rs. 500, on the ground that when two parties in this country litigate, the credit of either is little affected by the use of strong expressions in the petitions filed by them in Court. *Mirza Ekbal Bahadoor* v. *R. Solano*, 2 W. R., 163.

Suit for libel in describing the plaintiff, who was a Jounpore bunya, as a Telee, whereby the plaintiff lost his caste, &c. The alleged libel was contained in an answer to a suit. *Held* that the action was not maintainable, as it did not appear that the plaintiff had lost his caste or otherwise been damnified, or that defendant had knowingly misdescribed the plaintiff. *Futtick Chund Sahoo* v. *Markend Jha*, Marsh., 224.

L. M., an inspector of the O. G. Co., on visiting the Company's works at N., was informed that the Superintendent, W. M., had misappropriated the Company's money, and obtained money wrongfully from their workmen, and otherwise mismanaged the factory. On further enquiry and inspection of W. M.'s books, his suspicions being confirmed, he communicated them by letter to the Resident Director. The Company having declined to prosecute, L. M. presented a charge of breach of trust against W. M., on which he was arrested, and after a magisterial enquiry the charge was dismissed. It appeared from the evidence that the defendant had reasonable and probable cause for supposing that the plaintiff was guilty of the misconduct he was charged with, and there was no proof that the defendant was actuated by malice. Suit dismissed with costs.

Held that a communication such as the above is a "privileged communication."

That when an overseer has reasonable and probable cause for supposing that a workman has committed a breach of trust, and prosecutes him for it, the employers having declined to, no enquiry is to be made into the motives that prompted him to do so. *Thomas Whitehead Mills* v. *Lawrence Mitchell*, Bourke's Rep., O. C., 18.

A suit for damages for defamation of character is cognizable by a Civil Court, even though the words on which the suit is founded were spoken in a judicial proceeding. *Mohendro Chundra Chuckerbutty* v. *Surbo Kokhya Dabia*, 11 W. R., 532.

The omission of a mere courtesy cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong. *Sri Raja Sitarama Kristna* v. *Sri Raja Sanyasi Raju Pedda Baliyara Simbula*, 3 Mad. Rep., A. J., 4.

16.—DAMAGES.

(*a*) *Miscellaneous*.

A. having a right to sell an indigo factory pledged to him, subject to the rights of B., under his prior mortgage, has no right to invade or disturb the possession of the prior mortgagee by placing peons upon the property, in order to attach the factory as a step towards the judicial sale. B.'s resistance of A.'s unlawful attachment does not bar B.'s claim to damages for loss sustained by him consequent on the attachment.

In actions of tort, a plaintiff is never precluded from recovering ordinary damages by reason of his failing to prove the special damage laid, unless the special damage is the gist of the action. No case having been made for taking fresh evidence with a view to the assessment of damages in India, the Privy Council assessed the damages themselves. *Mohun Doss* v. *Gokul Doss*, 5 W. R., P. C., 91.

Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained. *Oojan Dewan and others* v. *Prannath Mundal*, 8 W. R., 219.

A suit for damages for personal injury cannot be tried by a Court of Small Causes, unless some actual pecuniary damage has resulted from the injury. *Ali Buksh* v. *Sheikh Sumeroodeen*, 12 W. R., 477.

If a decree-holder has omitted to do what he is legally bound to do, and has thereby caused injury, the party injured may claim damages. *Syud Ruznudeen Hossein* v. *Mussamut Fuzalun*, 3 W. R., 120.

A suit for damages to recover the value of personal property plundered and other consequential damages is governed by the limitation prescribed by Clause 16, Section 1, Act XIV of 1859. The objection as to the measure of damages assessed by the lower Appellate Court is not admissible in special appeal. *Sheikh Ahmedoolla* v. *Hur Churn Pandah*, 2 W. R., 236.

Defendant borrowed a sum of money below Rs. 500 from the plaintiff, with a view to redeem a mortgage on condition that, after redemption, he would sell the property to the plaintiff. He did not, however, redeem the property. *Held* that plaintiff's suit to recover his dues was one for damages as upon a breach of contract in which, under Section 27, Act XXIII of 1861, no special appeal would lie. *Khulle Mahomed* v. *Furzan Ally*, 12 W. R., 269.

The defendant bought a house belonging to the

plaintiff, and standing on his own land, on the condition that, as long as the house was not removed, he would pay the plaintiff a certain sum per month. The house not having been removed, the plaintiff sues for the stipulated sum from date of purchase. *Held* that this was not an action for rent, but a suit for liquidated damages, and as such cognizable in the Civil Court. *Debnath Roy Chowdhry* v. *Kally Kisto Roy Chowdhry*, 1 W. R., 2.

A suit for damages for mere verbal abuse, without actual injury and damage done, does lie in the Civil Courts. *Moulvi Gholam Hossen Vakeel* v. *Hur Govind Dass Tushildhar*, 1 W. R., 19.

Plaintiff had leased his share of an estate to defendant, and, with it, certain zerayat lands, which he cultivated within the estate as a ryot; but at the expiration of the lease, defendant, in giving him back possession, retained the zerayat lands, claiming to hold them from another co-sharer. Plaintiff sued to recover possession.

Held that the suit was cognizable by a Civil Court, the Revenue Courts having no jurisdiction in the matter.

Held that, as defendants had taken no exception in the lower Courts to the way in which plaintiff had calculated the damages he alleged himself to have sustained during his (defendant's) unlawful possession, he could not be allowed in special appeal to object to the amount claimed. *Charles Macdonald* v. *Rajaram Roy and others*, 11 W. R., 371.

A suit for damages for an amount not exceeding Rs. 500 is within the competency of a Small Cause Court to decide, notwithstanding that it involves an enquiry into a question of right. No special appeal lies in such a case. *Luckhee Debia Chowdhrain* v. *Sheikh Malick*, W. R., 1864, 237.

In a suit to obtain damages for defamation contained in a letter written and sent by the defendant to the plaintiff, where the only damage alleged was the injury to plaintiff's feelings, it was held that, as the letter was received and read by the plaintiff alone, this did not constitute publication. *Komulchunder Bose* v. *Nobinchunder Bose*, 10 W. R., 184.

If A. having reasonable grounds for believing that B. has stolen his property, prosecutes him for theft, the acquittal of B. is no ground for recovering damages in a civil suit against A. *Mohendronath Dutt and another* v. *Koylash Chunder Dutt*, 6 W. R., 245.

Held that there being no proof that the defendant acted maliciously, or without probable cause, the suit was not maintainable; and under the circumstances, the defendant was entitled to his costs. *Michel Patrick Dunne* v. *William Francis Legge*, 1 Agra Rep., A. C., 38.

In a suit for a malicious prosecution, the plaintiff is entitled and bound to show that the prosecution was malicious and without reasonable and probable cause; and if want of reasonable and probable cause be shown, malice may generally be inferred. *Vengama Naikar* v. *Raghava Chary and others*, 2 Mad. Rep., 291.

To sustain an action for malicious prosecution, the prosecution must have been malicious and without reasonable or probable cause. *Svami Nyandu* v. *Subrama Nia Mundali*, 2 Mad. Rep., 158.

The proposition that a man whose possession was unlawfully invaded by a wrongful attachment ought to have given effect to that invasion, because it was made under colour of legal process, by removing the lock of his own store-house, is untenable; and though the plaintiff might have received permission to use his own property, he was neither bound to accept the permission so accorded to him, nor, if he had accepted it, would he have lost his right of action, and he was entitled, at the very least, to a judgment for nominal damages.

The principle ordinarily applicable to actions of tort is that the plaintiff is never precluded from recovering ordinary damages by reason of his failing to prove the special damage he has laid, unless the special damage is the gist of the action. *Modun Mohun Doss* v. *Gokul Doss*, 1 Ind. Jur., N. S., 267.

In a suit to recover damages for loss caused during the years 1862, 1863, and 1864, by defendant's interference with plaintiff's right to the flow of water from a canal,—*Held*, with regard to the loss sustained in 1864, that plaintiff's right to recover depended upon whether or not the special damage claimed had accrued at the time of the bringing of the suit. *Sri Vishnambara Rajendra Penu Gâru* v. *Sri Sri Sri Sharadhi Charana Samantraya*, 3 Mad. Rep., A. J., 111.

Where a plaintiff sued for damages for value of timber carried away by Government after being washed on to his estate, and to have his right declared as against Government to all timber that in the future may be washed on to his estate,—*Held* that the suit was not one which was cognizable by a Court of Small Causes. *Held* further that it was not necessary for plaintiff to produce documentary evidence in support of the right, or some decree or decision of competent authority establishing the custom. Lords of manors are allowed to establish rights to wrecks, &c., by long-continued and adverse assertion of, and enjoyment under, such claim; and the plaintiff was entitled to have the question tried by the evidence he had adduced. *Chutter Lall Singh* v. *The Government*, 9 W. R., 97.

When one of two co-sharers in a property violates a secret engagement between them by selling to a stranger, the other cannot claim specific penalty, but has his remedy in an action for damages. *Sheikh Tosodookh Hossein* v. *Sheikh Meajan*, W. R., 1864, 337.

Plaintiff having paid arrears of rent to defendant as his landlord's authorized agent, was afterwards sued for those arrears by the landlord, who obtained a decree, the Courts holding that the payment to the mookhtear was one which did not bind the landlord. Plaintiff then sued the mookhtear who had received the money. *Held*, that the suit was an action for damages, which the Civil Court had jurisdiction to entertain. *Bykuntnauth Sandyal* v. *Kalee Churn Paul*, 13 S. W. R., C. R., 359.

In a suit for recovery of damages, the Court which tries the case must, before passing a final decree, assess the damages, and not leave them to be assessed in execution of the decree.

The practice of the original side of the Court discussed. *Mussamut Bibi Maniram* v. *Mussamut Bibi Mashihun*, 4 B. L. R., Ap., 66.

Regard being had to the constitution of the Courts of this country, which are Courts of justice, equity, and good conscience, a decree-holder should

be reimbursed damages for the time during which he is kept out of possession by the wrongful act of another party, whether his claim for subsequent damages be made in the execution of the first decree or in a regular suit. *Kashee Nath Kooer* v. *Deb Kisto Ramanoof Dass*, 16 S. W. R., C. R., 240.

Where a person whose cattle have been illegally distrained fails to take advantage of the remedy provided by Section 14, Act III of 1857, he is not thereby prohibited from bringing an action for damages in a Civil Court. *Nomaz Mollah* v. *Lall Mohun Tagadgeer*, 15 S. W. R., C. R., 279.

A suit to recover damages for abuse will lie in the Civil Court, but not in the Small Cause Court, and an appeal will lie also. *Kalee Coomar Mitter* v. *Ramgatta Bhuttacharjee*, 16 S. W. R., C. R., 84.

The failure of an injured party to institute criminal proceedings does not deprive him of his right to bring a suit in the Civil Court to recover damages for abuse. *Sreenath Mookerjee* v. *Komul Kurmokar*, 16 S. W. R., C. R., 83.

Where a false charge led to a party being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation, for which an award of Rs. 20 as damages was not unreasonable. *Madhub Chunder Sircar* v. *Banee Madhub Roy*, 15 S. W. R., C. R., 85.

In a suit for damages on account of a charge brought by defendant in a Criminal Court, which charge was ultimately dismissed, plaintiff must prove in the Civil Court that there was no reasonable cause for bringing the accusation : the proceedings in a Criminal Court are not evidence in the Civil Court. *Aghorenuth Roy* v. *Radhikee Pershad*, 14 S. W. R., C. R., 339.

A party who took from certain proprietors of an estate a lease of their interest therein without advance or premium, not having been put in possession, and finding another party in possession with an adverse title, commenced a suit against him, which was unsuccessful. He then sued the lessors and their representatives for damages to recover the expenses of the litigation, and the whole of the profits he had expected from the lease.

Held that the plaintiff had no right to recover from the lessors the expenses of the litigation, and as it was not contended that the lessors had wilfully misrepresented things, he was entitled only to nominal damages. *Mahomed Esa Khan* v. *Baboo Keshub Lall*, 14 S. W. R., C. R., 382.

The term "damages" in Section 6 of Act XI of 1865, include damages to crops, and a suit to recover damages for the wrongful reaping and carrying off the produce of certain fields is cognizable by a Court of Small Causes. *Daur Sinha* v. *Rughunundun Sinha*, 3 N. W. R., 101.

A suit lies against a vendor and another for recovery and registration of a document wrongfully taken back from a registrar upon such registrar's refusal to register the same on account of certain false statements made by the parties objecting to the registration. *Mitter Sein* v. *Narain Singh*, 1 N. W. R., Par. 12, p. 206.

A suit will, notwithstanding Section 206 of Act VIII of 1859, lie for damages for an alleged breach of contract in not certifying to the Court a payment of money in satisfaction of a decree, made out of and not through the Court, in consequence of which the same was fraudulently recovered a second time by the person omitting to certify the said payment. *Motee Lall Mookerjee* v. *Kandha Lall*, 18 N. W. R., 155.

A complainant who put the criminal law in motion against a person by whom he had been aggrieved, such prosecution not being malicious or groundless, should not be held civilly responsible for any injury or loss thereby sustained by the person prosecuted. *Enaeth Hossein Khan* v. *Kishoree Lall*, 1 N. W. R., Par. 2, p. 11.

The difficulty of assessing the amount of the damages, or the risk of numerous actions of the kind in the Civil Courts, form no ground for dismissing a suit for damages for injury done to a plaintiff's social position and estimation, if a legal ground of action is shown.

A plaintiff may be entitled to substantial damages for being beaten with a shoe, notwithstanding that he may not have lost his caste, or sustained a pecuniary loss, or physical injury by the act complained of. *Bhyran Pershaud* v. *Isharee*, 3 N. W. R., 313.

(*b*) *Liability to Damage.*

A party is not liable to damages in respect of an attachment made under a warrant issued by a Court. *Raj Bullab Gope* v. *Issan Chandra Hazrah*, 7 W. R., 355.

In a suit for compensation on account of damages done to plaintiff's reputation by defendant having, on the occasion of a theft in his house, given information to the police against plaintiff, who was acquitted by the criminal Court,—*Held* that, as the accusation was made in good faith,—*i.e.*, with good and reasonable cause, (defendant having, in common with other villagers, suspected plaintiff, and having, on being asked by the police, given them formal information),—it was not made with any malicious purpose. *Ruttun Sircar* v. *Nobin Ghuttack*, 12 W. R., 402.

Where certain inhabitants of a village which was flooded applied to the Magistrate to open a bund and let out the water, and the Magistrate without jurisdiction made an order that the bund should be cut, and the bund was cut by police officers,—*Held* that the applicants were not liable for damages. *Pureeage Singh and others* v. *Jugessur Suhaye*, 8 W. R., 111.

Where a cause of action is established, the plaintiff is entitled to some damages. His claim ought not to be dismissed altogether by the lower Appellate Court because the first Court assessed the damages at too large a sum. *Parusnath Shaha and others* v. *Brojolal Gossain and others*, 8 W. R., 44.

A decree in the nature of penal damages should be construed strictly and literally, and enforced only against the persons at whose application and instance the act complained of took place. *Deb Narain* v. *Gour Pershad Sahoo*, 2 W. R., Mis., 55.

In an action for damages against N. for bringing a false and malicious charge, and against M. for being the instigator, and others for giving false evidence in the case,—*Held* that plaintiff's failure to prove instigation on the part of M. did not affect the claim against N., and that if the charge were proved to be false it would lie upon the defendant N. to show that he had reasonable and sufficient cause for bringing it, and if he failed to

show such cause, malice might be inferred. *Held*, further, that plaintiff could not recover damages against the defendants who were witnesses, but his proper course was to obtain the leave of the Magistrate to proceed against them for perjury. *Bishonath Rukhit* v. *Ramdhone Sircar and others*, 11 W. R., 42.

Under Section 10, Act X of 1859, the power of a Judge to award damages for receipts withheld is discretionary only as to the amount to be awarded. Under Act VI of 1862 (B. C.) the power to award damages on arrears of rent is within the discretion of the Judge. *Zumeeroodinnissa Khanum* v. *C. J. Phillipe; Sadut Ali Khan* v. *C. J. Phillipe*, 1 W. R., 290.

A ryot injuring his land by taking or allowing another person to take earth for the purpose of making bricks, is liable for damages to his landlord for the permanent damage thus done to his property. *Kadumbinee Dabee* v. *Nobeen Chunder Adukh*, 2 W. R., 157.

Damages under Section 10, Act X of 1859, are recoverable only in respect of money actually paid as rent. *Sumeena Bebee* v. *Koylash Chunder Roy*, 6 W. R., Act X R., 79.

Damages cannot be claimed for mere abuse or threatening language. *Phoolbussee Koer* v. *Purpur Singh*, 12 W. R., 369.

In estimating damages for a malicious prosecution, a Civil Court is not necessarily wrong in taking into consideration the plaintiff's feelings. *Huro Lall Biswas* v. *Huro Chunder Roy*, 12 W. R., 89.

Injury might result to a man's feelings from abuse such as would entitle him to damages. *Shaikh Tukee* v. *Shaikh Khoshdel Biswas*, 6 W. R., 151.

In a suit for damages for defamation of character, the plaintiff is not required by any absolute rule of law to give affirmative evidence of the falseness of the charge.

Quære,—Before a suit can lie in a case of this kind, is it necessary to presume that actual pecuniary damage has resulted? *Dhurmo Doss Koondoo* v. *Koylash Kaminee Dabee*, 12 W. R., 372.

In an action for damages for a severe assault, the defendant being unable to prove provocation, the lower Court's decree against him was in the main upheld; but as, looking to the position of the defendant, the damages awarded were deemed beyond his means, they were reduced on condition of the defendant tendering to the plaintiff a written apology expressing his regret for what had passed. *J. K. MacIver* v. *Shungeshidi Dutt*, 6 W. R., 95.

Suit for damages caused to the plaintiff's land by the bursting of the defendant's bund. *Held* that the plaintiff was not entitled to damages, if the bund was made in a lawful manner, and if the breach was owing to no fault of the defendant. *Gooroo Churn Mullick* v. *Ram Dutt*, 2 W. R., 43.

Damages are not awardable for a groundless and malicious charge of abetment of riot and murder. 5 W. R., 134.

Where a party holding a dur-putnee lease virtually abandons possession, and takes a putnee of the same property, he cannot afterwards recover as damages the consideration he had paid for the dur-putnee. *Dwarknath Misser* v. *Sree Gopal Paul Chowdhry*, 5 W. R., 240.

The mere failure of a complainant in proving a *bonâ-fide* criminal charge does not make him liable to an action for damages for defamation. *Brojonath Roy* v. *Kishen Lall Roy*, 5 W. R., 282.

A suit for damages for detention of materials of a house involves no question of title. *Keshub Chunder Shaha* v. *Brommo Moyee Debea*, 1 W. R., 35.

Damages under Section 2, Act VI of 1862 (B. C.) are awardable, in addition only to *rent and costs*, and are to be regarded as in substitution for, not in addition to, the interest awardable under Section 20, Act XI of 1859. *Nobokanth Dey* v. *Rajah Borodakanth Roy Bahadoor*, 1 W. R., 100.

Suit to recover damages for trees cut down contrary to terms of lease. *Held* that the farmer and his surety were liable, but not the purchasers of the trees from the farmer. *Gopeekishen Gossain* v. *Sheikh Dowlut Mean*, 1 W. R., 156.

Suit for damages by a six-anna owner of a vessel for vessel and cargo which sank while under attachment by the defendant in execution of a decree against the ten-anna owners. *Held* that, if the defendant merely attached the vessel, he is not liable for damages. But if he discharged the crew, and left the vessel in the charge of an officer of the Court without any efficient crew on board, or did anything to prevent the plaintiff from taking proper care of his property, he is liable in respect of any damage proved to have been done. *Assud Ali* v. *Sheikh Moburak Ali*, 1 W. R., 158.

In a suit to obtain damages for defamation contained in a letter written and sent by defendant to plaintiff, where the only damage alleged was the injury to plaintiff's feelings,—*Held* that such injury was not in itself a ground for giving damages in a civil action. *Komul Chundra Bose* v. *Nobin Chundra Ghose*, 10 W. R., 184.

In a suit for money claimed on account of the carriage of goods in which defendant pleaded non-indebtedness and a set-off on account of damage caused to the goods,—*Held* that defendant could not answer the claim with the set-off on account of damages; though the extent, if any, to which defendant was entitled to draw back might be put in issue, after which it would still be open to defendant to bring an action against plaintiff for special damages. *Scanlan* v. *Herrold*, 10 W. R., 295.

Proof of infringement of a right, without proof of actual loss, does not necessarily entitle a plaintiff in this country to a verdict for nominal damages. *Nobakrishna Mookerjee* v. *The Collector of Hooghly*, 2 B. L. R., A. C., 276.

A landlord who ejects his tenant illegally and holds possession as a wrong-doer, although he settles another tenant on the land, is liable, not only for the rent he receives under such possession, but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejectment. *Mahomed Azmul* v. *Chadee Lall Pandey*, 12 W. R., 104.

Special damages are not necessary to be proved in a case of slander and assault. *Meer Hossein* v. *Meer Bakir Ali*, W. R., 1864, 302.

A joint owner who secretes the estate paper, and thereby deprives his joint owners of the means of collecting the rents and other debts due to them, is liable to be sued for damages. *Pittamber Doss* v. *Rutton Bullub Doss*, W. R., 1864, 213.

The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given. *Komathi* v. *Gurunada Pillai*, 3 Mad. Rep., A. J., 141.

Suit to recover damages for a malicious prosecution. The case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain-pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused. His sentence was reversed by the Court of Session, and then this suit was commenced. *Held* that, in the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the plaintiffs affords very strong evidence of reasonable and probable cause. *Párimi Báperáju* v. *Bellamkonda Chinna Venkayya*, 3 Mad. Rep., A. J., 238.

A. recovered from B., under the terms of his lease, a refund of the excess of rent paid by him in respect of the years 1861, 1862, and 1863. While that suit was pending, B. recovered from A. rent at the same rate in respect of the three succeeding years. *Held* that A. was entitled to bring another suit against B. for damages in respect of the excess of rent paid by him during the years subsequent to the institution of the prior suit. *Raja Nilmani Singh* v. *Annundaparsad Mookerjee*, 1 B. L. R., F. B., 97.

A. erected an embankment across a river, in consequence of which lands let by B. to ryots were overflowed, and the crops lost. The ryots paid rent to B. only when crops were reaped from the lands. *Held* that B. had such an interest as to entitle him to sue A. for damages. *Ram Chandra Jana* v. *Jiban Chandra Jana*, 1 B. L. R., A. C., 203.

A lessor may sue a third party for damages for injury sustained by reason of excavations made by the defendant on lands leased out by the plaintiff to a lessee. *Dheermonee Dossee* v. *J. C. Croft*, 3 W. R., S. C. C. Ref., 20.

Held that an action of trespass for false imprisonment lay against a Magistrate who proceeded without jurisdiction to convict a tailor, charged before him under Bombay Rule, Ordinance, and Regulation I of 1814, for misbehaviour as a domestic servant, there being no information or evidence on oath of the offence charged as required by the Regulation, as well as by Act II of 1839, and the plaintiff not being a domestic servant, or any servant within the scope of the Regulation; and when called upon to plead, having stated that he left the service because there were wages due to him from his employer, upon which statement he was convicted, without any proper investigation into the truth of it.

Held also that the Magistrate, who failed to act reasonably, carefully, and circumspectly, cannot be said to have in good faith believed himself to have jurisdiction within the meaning of Act XVII of 1850, and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court.

Where a legislative enactment renders a servant punishable who leaves his employer's service without due warning, a charge under such an enactment will not be sustainable, unless it aver not only that the accused left his employer's service without giving the required warning, but also without lawful excuse. *Vithdha Malhari* v. *A. K. Corfield*, 3 Bom. Rep., Ap., 1.

Held that, in a suit for compensation for damage done to property, each and every one of the persons was equally responsible to make compensation for the loss sustained, when he happened to be a part of the common assembly and executed a common purpose, and not in proportion to his share of the plunder received, or of the damage done by him. Coercion to form a member of the assembly, or bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *Ganesh Singh* v. *Ram Raja*, 3 B. L. R., P. C., 44; S. C., 12 W. R., P. C., 38.

The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty, without malice, will not be sufficient to sustain an action. *Parankusam Narasoya Pantulu* v. *Captain R. A. C. Stuart and others*, 2 Mad. Rep., 396.

Where a charge has been made against a person of having given false evidence in a judicial proceeding and the circumstances of the case show no reasonable suspicion, the Court will, on suit brought, award substantial damages. *Anundloll Doss* v. *Jointee Chunder Sen and others*, 1 Ind. Jur., N. S., 93.

An action for damages will not lie against a present proprietor for injury done to the land during the time of the former proprietor. Embankments are not encumbrances liable to be extinguished under Section 26, Act I of 1845, which refers only to tenures and leases. *Collector of 24-Pergunnahs* v. *Joynarain Bose*, W. R., F. B., 17.

A. sent cotton to B.'s screw-house, to be screwed. It was placed in B.'s godowns, in charge of which was a servant of B.'s who kept entries of cotton received and given out. B.'s durwan kept the key of the godowns. B. provided dunnage; no rent was paid for godown room, but it was shown that, on several occasions when cotton had been left by owners for some time in the godowns and removed unscrewed, rent had been paid; and it was allowed that it was for the mutual interest of both parties that the cotton should be so kept. The custom was that the screwing charges should be paid by the purchasers of cotton, to whom it was delivered by B., by the direction of the vendors. In an action by A., for the non-delivery of some of his cotton, —*Held*, *per* Norman, J., that B. was a gratuitous bailee of the goods, and that he was only bound to account for the manner in which they had been kept, which he had satisfactorily done. A.'s suit must be dismissed.

Decree affirmed on appeal; but *per* Peacock, C. J. *Quære*,—Was B. a bailee at all? *Per* Markby, J.,—B. was a bailee for custody, but not a gratuitous bailee. *Moolchand* v. *Robinson*, 1 B. L. R., O. C., 68.

(c) *Liquidated Damages.*

Defendant agreed to supply 100 kautlams of jaggery by a specified rate at Rs. 4½ per kautlam, and received Rs. 100 advance. Defendant further agreed that in default he would pay interest at one per cent. *per mensem*, and nafa at Rs. 7 per kautlam. No delivery was made by defendant.

In a suit by the plaintiff to recover Rs. 7 per kautlam and the interest,—*Held* that the amount sued for was in the nature of liquidated damages which plaintiff had a legal right to enforce, and not a penalty against which the Court would relieve.

The doctrines of the English and Roman law upon the subject of penalties and liquidated damages examined. *Adanky Ramachaudra Row* v. *Indukari Appalaraju Garu*, 2 Mad. Rep., 451.

(*d*) *Measure of Damages.*

The damages to be recovered from a trespasser for wrongful occupation should represent compensation for what the owner has lost,—that is, what would have been fair and reasonable rent for the land if the same had been let to tenants. *W. Chardon* v. *Ajeet Singh*, 12 W. R., 52.

When two parties have made a contract which one of them has broken, the damages which the other party ought to receive, in respect of such breach of contract, should be such as may fairly and reasonably be considered either arising naturally—*i.e.*, according to the usual course of things —from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. *Palmer* v. *Cohen*, 1 Hyde's Rep., 123.

Principles on which the Court grants injunctions, and assesses damages in the case of obstruction of ancient lights. *Lackersteen* v. *Tarrucknauth Poramanick*, Cor. Rep., 91.

The proper measure of damages for wrongful detention of property is the difference between the value of the property when seized and its value when restored. *Nundeeram Singh* v. *Inderchund Dagor*, Cor. Rep., 89.

In a suit to obtain specific performance of the conditions of a lease, and not to cancel the lease, or eject the tenant from his holding,—*Held*, on the construction of the lease, that it was not to determine on the change of ownership in the zemindary, but was to operate till determined by the landlord or the tenant. *Held* further that the plaintiff may be entitled to recover any damage directly consequent on the breach of contract, but he is not entitled to claim speculative profits which he might have derived from the most hazardous crops. *Abdool Ghunee and others* v. *Gudree Rai*, 2 Agra Rep., 192.

In a suit brought for damages for breach of a contract to admit the plaintiff into partnership,—*Held* that the damages to be awarded, although they should be estimated with reference to the profits which the plaintiff might ultimately have derived from the partnership, ought not to have been assessed at such a sum as would place the plaintiff in the position which he might have held at the conclusion of the partnership. Where the partnership was to endure for two years,—*Held* that one year's profits would be a fair award of damages. The appellant continuing to impute fraud to the respondent, which he could not sustain, was deprived of his costs in appeal. *Lewin* v. *Morrison*, 2 Agra Rep., 151.

Defendants assigned their mortgage rights under two deeds to plaintiff, stipulating to make good any loss which the latter might sustain by reason of the opposition or resistance of the mortgagors. Plaintiff, in a suit against mortgagors, failing to establish one of the mortgages, sued the original mortgagees to recover damages, with interest and costs, incurred by him in a suit against the mortgagors. *Held* that the measure of damages or loss to which the plaintiff was entitled is not the sum paid by him as consideration, but the value of the thing which he has been deprived of; and that the suit being in its nature a suit for unliquidated damages, plaintiff was not entitled to the interest on sum awarded as damages. *Mussamut Parbutty* v. *Misser Chimmun*, 1 Agra Rep., A. C., 82.

Held that the limit of damages recoverable under Clause 4, Regulation VI of 1823, is three times the sum advanced, and that the amount of advance itself cannot be included or considered, except as the mode of measuring the damages. *Zyn-ood-deen* v. *G. A. Wright*, 3 Agra Rep., 77.

Where a ryot took advance from a planter for the cultivation of indigo, stipulating to deliver a certain number of bundles of the plant, and further stipulating that, if he failed to do so by neglecting to cultivate or cut, he would pay as damages the price of manufactured indigo for the bundles ascertained to be due,—*Held* that, if the ryot's failure to supply the bundles stipulated for arose through his neglect to cultivate, he was bound to pay as damages the profit which the planter would have derived from converting the indigo plant, which ought to have been delivered, into indigo, and selling that indigo at a fair price : the risk of failure in the course of manufacture to be reckoned in estimating the damages. *A. Hills* v. *Budu Khan*, 12 W. R., 533.

Under an indenture of lease A. and B. covenant to give C. and D. possession of premises comprised therein. The lease was executed by A., C., and D., and B.'s assent was comprised therein ; but he refused to execute.

On breach by A. in an action for damages against A. and B.,—*Held*, B. was not liable; but as against A., there being no allegation of special damage, the measure of damages will be the difference between the rack rent and the rent that was agreed to be paid. *Goberdhun Dass and Nobin Chunder Aush* v. *Nittanund Mullick and Choytun Chunder Mullick*, 1 Ind. Jur., N. S., 41.

Suit for damages in respect of the value of trees, cut down by the defendant, not as a wrongdoer, but as one having some claim of right to justify him. *Held*, that the computation of damages in such a case is not a matter of exact calculation, but must be left to the discretion of the Judge who hears the evidence. *A. J. Forbes* v. *Meer Mahomea Kasseem*, 1 W. R., 238.

Suit on breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract.

Held (1) that the stamp duty depended upon the amount of consideration for the undertaking ; and (2) that unless it was clear that the intention of the parties to the agreement was to treat the sum mentioned as liquidated damages, behind which the Court should not look, the Court could not award damages beyond the amount of injury actually sustained. *John Doyle* v. *Mundaree Mundul*, 5 W. R., S. C. C. Ref., 10.

Where a party sued for Rs. 17-8 as rent, and a

like sum as penalty for non-payment thereof, it was *held* (1) that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit; (2) that the plaintiff could not recover more than the damages actually sustained. *Sheikh Hingun Sowdagur* v. *Boistum Churn Ojah and others*, 6 W. R., 5.

When a breach of contract to sow indigo arises, not from accident, but presumably from dishonesty, the case no longer falls within Clause 4, Section 5, Regulation VI of 1823, which limits the amount of penalty to three times the sum advanced, but the plaintiffs are entitled to recover an amount of damages not exceeding the sum which the defendant stipulated to pay on failure by him to perform his contract. *Lal Mahomed Biswas* v. *R. Watson and others*, 4 W. R., 62.

In a suit for the non-delivery of goods agreed to be sold by the defendant to the plaintiff in a case where no money has passed, the measure of damages is in general the difference (if any) between the agreed price and the market value on the day when the goods ought to have been delivered. *Sharman* v. *Gour Shah Bungally*, Marsh., 542.

In an action by a vendee against a vendor for non-performance of a contract to deliver goods, which specifies no time for delivery, the measure of damages is the difference between the contract price and that which goods of a like description bore on the lapse of a reasonable time for delivery. *Mansuk Dass* v. *Rangayya Chetti*, 1 Mad. Rep., O. C., 162.

In an action by the vendee against the vendor for breach of a contract to deliver goods "in two or three days," the measure of damages is the difference between the contract price and the price which similar goods bore on the lapse of a reasonable time for delivery, not less than three days from the date of the contract. *Ramji Mudali* v. *Ranga Chetti*, 1 Mad. Rep., A. C., 168.

In assessing damages caused by a wrongful act, the injury sustained should alone be considered, not the punishment to be inflicted. *Bulobhuddur Singh* v. *R. Solano*, 5 W. R., 107.

The amount of damages to be awarded is a question for a Jury to decide, and one with which the High Court cannot interfere in special appeal. *Hera Chand Bancrjee* v. *Banee Madhub Chatterjee*, 10 W. R., 164.

Suit for damages sustained by plaintiff during the period she was out of possession of an indigo factory with appurtenances. *Held* that the lower Court was right in taking, as the basis of its calculation of damages, a *bonâ-fide* agreement entered into between the plaintiff and her lessees, showing the amount of rent which she would have received yearly but for the illegal act of the defendant; that, as the indigo land was an appurtenance to the factory, by ousting the plaintiff from the factory all benefit derivable from chur lands fit only for indigo was lost by her, and that the sum which represented that loss had been rightly included in the calculation of damages to which plaintiff was entitled. *Hurish Chunder Koondoo* v. *Maharanee Bama Kalee Debia*, 5 W. R., 194.

In a suit to recover the value of crops alleged to have been plundered by defendants, where, on the intervention of a third party, the Court of first instance dismissed the suit,—*Held* that the Judge in appeal, who believed the plaintiff's witnesses and decreed the full amount claimed, was bound to have ascertained, upon evidence, whether the crop and damages had really been as extensive as alleged, even if no evidence had been recorded on this issue by the first Court. *Kheedoo Roy and another* v. *Heero Persad Singh*, 10 W. R., 252.

In a suit against the Collector personally, for damages on account of loss sustained by sale to the second highest bidder, the difference between the two bids is the proper measure of the plaintiff's loss, and not the actual or probable value of the estate. *Cornell* v. *Mussamut Oody Tara Chowdhrain and others*, 8 W. R., 372.

Damages should be awarded according to the loss caused to plaintiff by the wrongful act of the defendant; and, where such act renders it probable that plaintiff will be a loser in future time, the award should embrace prospective loss. *Koomaree Dassee and another* v. *Bama Soonderee Dossee*, 10 W. R., 202.

In a suit in which it is proved that defendants maliciously and from gross negligence allowed their cows to trespass on plaintiff's lands, and to destroy the indigo plants thereon, knowing the value of the crops to the plaintiff, it was held that the case was one of tort, in which the wrong being deliberate and malicious, the plaintiff was entitled by way of damages, not to the mere value of the growing plants destroyed as the actual loss sustained, but to substantial damages sufficient to compensate the plaintiff for the loss of profits which would have been obtained from the indigo plant. *Sreehury Roy and others* v. *James Hill*, 9 W. R., 156.

In a suit for damages on the ground that the defendants, after executing an agreement by which they stipulated to sell fish every day in the plaintiff's bazar, and to pay a fee *per diem*, and bound themselves to pay damages to a specified extent in the event of their leaving his bazar and resorting to another bazar, had left his bazar where they were selling fish,—*Held* that plaintiff was not entitled to recover, as damages, anything beyond the damages he had actually sustained. *Madhub Chunder Roy* v. *Luckee Jellanee and others*, 9 W. R., 212.

Striking an average on the amounts stated by several witnesses is not a proper mode of assessing the amount of damages sustained by the plaintiff in respect of injury done to his crops by the defendant's cattle. *Suriutollah Chowdhry* v. *Madur Bux Chowdhry*, W. R., 1864, 363.

In a suit for damages for loss of cultivation by the cutting of a bank, the plaintiff is entitled not merely to the rent of the land, but also to the profits of cultivation. *Rummun Singh* v. *Sheikh Meher Ali*, W. R., 1864, 365.

In a suit for damages for an assault made without provocation, the damages given should be commensurate to the injury and annoyance caused, even though there has been no serious personal injury sustained. *Ramjoy Muzoomdar* v. *Dr. C. M. Russell*, W. R., 1864, 370.

In estimating the measure of damages to be paid for breach of contract to cultivate indigo, the period of the breach should be taken as the time for estimating the damages. Generally, the natural and immediate consequence of the breach of contract should alone be looked to, and not some possible remote result. Supposed profits ought not to be

given as part of the damages, unless under special and extraordinary circumstances. *Mussamut Zeenuttunissa* v. *C. Tombs*, W. R., 1864, 251.

In a suit to recover damages under a kubuleut, in which defendant had engaged to sow and cultivate indigo, and in case of failure to pay as damages a specified sum for every year,—*Held* that the amount agreed to be paid should be treated as liquidated damages. *J. P. Ledli and others* v. *Bhadoo Poramanick*, 11 W. R., 558.

Where an appeal is preferred, on the ground that the damages awarded are excessive, it is not enough to show that the damages have not been assessed on a right principle. *M. P. Currie and others* v. *M. R. Chatty and others*, 11 W. R., 520.

A plaintiff who comes into Court with a monstrously exaggerated statement of injury sustained, is only rightly served if the Court dismisses his claim *in toto*, although some injury was found to have been sustained by him. *Thakoor Lulut Narain Deo* v. *Juggernath Misser and others*, 8 W. R., 476.

The doctrine that the injury caused by invasion of one's privacy is a sentimental grievance, rather than a substantial injury for which relief can be claimed at law, has not received judicial sanction from the Indian tribunal, and is opposed to the feelings and unsuited to the habit of the natives of the country. *Ram Buksh* v. *Ram Soohh*, 4 Agra Rep., 253.

In an action by a vendee against a vendor for non-performance of a contract to deliver goods, which specifies no time for delivery, the measure of damages is the difference between the contract price and that which goods of a like description bore on the lapse of a reasonable time for delivery. *Munsak Doss* v. *Rungayya Chetti*, 1 Mad. Rep., 162.

In an action by a vendee against the vendor for breach of a contract to deliver goods "in two or three days," the measure of damages is the difference between the contract price and the price which similar goods bore on the lapse of a reasonable time, not less than three days, from the date of the contract. *Ramji Madnaji* v. *Rangayya Chetti*, 1 Mad. Rep., 168.

In a lease for a period of nine years, without payment of salami, entered into between A. and B., A. bound himself by the following covenant: "In the event of B. not being put in possession of the leased premises, A. will have to make good anything in the shape of khisara or nuksan (loss) to which B. may be put in consequence." On A. failing to put B. in possession of the premises mentioned in the lease, B. brought a suit against the party in possession, but failed to recover possession.

In a suit by B. against A. for recovery of damages for breach of contract, measuring the amount of damages at the expenses he had to incur in the suit for possession, and also the whole of the profits which he expected to derive from the lease,—*Held* that the plaintiff was entitled to recover only nominal damages. *Khaja Mahomed Isa Khan* v. *Baboo Kisho Lal*, 6 B. L. R., Ap., 44.

An attachment without a probable cause evinces malice, and damages should be in the nature of a penalty as well as of compensation. *Valeat Ali Khan* v. *Mataoodeen Ram*, 13 S. W. R., C. R., 3.

In a suit for malicious prosecution on a false charge of dacoity, a Civil Court in awarding damages is not limited to the amount mentioned in Section 270 of the Code of Criminal Procedure. *Shamachurn Halder* v. *Beharee Lall Koilay*, 14 S. W. R., C. R., 443.

Ordinarily in a breach of a contract of sale the vendor can only recover as against the purchaser the difference between the price contracted for and the price at which the vendor might or could have sold the goods at the time of the breach. *Soorendernauth Roy* v. *Rughooburdyal Awusta*, 15 S. W. R., C. R., 392.

In a suit for damages for breach of contract to supply wood which defendant had engaged to supply for the construction of a house, where the intention was found to have been that the plaintiff should from time to time give defendant notice of the different articles of woodwork required,—

Held that defendant was only liable for damages to the extent of the wood which he did not supply according to the order given to him, not for the wood for which requisition had not been made. *Radha Gobind Shaha* v. *Inam Buksh Ostagur*, 15 S. W. R., C. R., 217.

In a suit for damages occasioned by abuse and assault, the plaintiff's position should be considered or the purpose of seeing how far the compensation awarded is commensurate with the injury inflicted, but not for giving a decree against the defendant beyond any possibility of his ever satisfying it, simply because the plaintiff is a man of a somewhat high position in life. *Joypal Roy* v. *Mukoond Roy*, 17 S. W. R., C. R., 280.

The plaintiff entered into a contract of charter-party with the defendants, whereby it was agreed between them and defendants "acting for the owners" that "the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and strong, &c., shall receive on board from the charterers a complete cargo of merchandize, to consist of 700 tons dead weight, &c., and being so laden shall therewith proceed to London, with liberty to call for any legal purpose at any intermediate port or ports, &c., freight to be paid on the above cargo on right delivery of the same at and after the rate of £4 2s. 6d. per ton. Charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on the 15th April, 1871." The defendants signed the charter-party as "agents of steamer *Atholl*." The steamer was not, at the time the charter-party was entered into, on her way to Calcutta; being then in the port of London, she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way, and did not arrive in Calcutta until 11th April. Rates of freight having declined since the middle of March, at which time, it was alleged, the steamer ought to have arrived, the plaintiffs sued the defendants for damages. *Held*, the defendants were liable. The statement in the charter-party, that the steamer was on her passage to Calcutta, was a condition precedent. The measure of damages was the difference between the value the steamer would have been to the plaintiffs as an instrument for earning freight at market prices, if she had been put at their disposal at the time when she ought to have been under the contract, *i.e.*, a fortnight or three weeks earlier, and what she

was worth to them in the same view at the time when she actually was delivered. *F. Schiller and others* v. *J. Finlay and others*, 8 B. L. R., 544.

Plaintiff and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The lower Appellate Court found, that, in consequence of this alteration, the rain from defendants' house descended upon plaintiff's verandah and caused damage to plaintiff, and decreed that defendants should restore the wall to its former height, and remove the beams placed on it. *Held*, on special appeal, that taking the finding to be that the alternative created "stillicidium," where it did not exist before, or that it rendered more burdensome an existent "servitus stillicidii," it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess; that in the present case the damages should be assessed and awarded, and the injunction to remove the roof of the house and reduce the wall be made conditional upon the defendants not removing the cause of the nuisance. In such a case, the measure of damages is the amount which will induce the defendants to abate the nuisance. *Akilandammal* v. *S. Venkata Chalu Mudali*, 6 Mad. Rep., 112.

VII.

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1.—RIGHTS OF VENDORS.

In a suit claiming possession of land purchased by the plaintiff from the defendant, the Moonsiff threw out the claim for want of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue for the purchase-money.

Held that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case, but as the District Judge had not decided whether the defendant had succeeded in proving that the purchase-money had not been paid, the suit should be remanded for a finding by him on that issue. *Yellappa bin Bishppá* v. *Mautappá Bin Basappá*, 3 Bom. Rep., A. C. J., 102.

Default by a purchaser in payment of the purchase-money, or any portion of it, does not necessarily invalidate the sale, and in a suit brought to redeem the purchased property, the mortgagee cannot avail himself of the objection, that the full amount of purchase-money has not been paid. The mortgagee has only the right to be satisfied that the person claiming redemption is not a stranger, but one to whom the equity of redemption has been transferred by a *bonâ-fide* sale. *Heera Singh* v. *Rugho Nath Suhai and others*, 4 Agra Rep., A. C., 30.

Persons who allow a property to leave their possession before the purchase-money is complete cannot recover from third parties who are *bonâ-fide* purchasers, even if those persons had notice of the amount of the consideration-money remaining unpaid. *Jogoo Koonwar* v. *Parbutty Koonwar*, 3 W. R., 139.

Where A. sold land to B., reserving a right to re-purchase by payment of a certain sum at a specified time, and before such time had arrived, B. re-sold to C. for valuable consideration without notice, and A. failed to make the payment, and forfeited his right to re-purchase,—*Held* that he had no title unless relieved against the forfeiture, and that such relief could not be given as against C. *Samakkaundan* v. *Perumál Chetti*, 2 Mad. Rep., 14.

Where a sale by two co-parceners in favour of another was set aside, on the ground that the sale by a co-parcener without the consent of the others was illegal,—*Held* on the suit of the vendee to recover the purchase-money from the descendants of the vendors, that the purchase-money was like a debt, and payable by the heirs, in proportion to the shares inherited by each. *Oomedee and another* v. *Cheda Lall and others*, 2 Agra Rep., A. C., 264.

In a suit for recovery of a sum of money alleged to be due under an agreement for the sale of land, dated 26th January, 1851, the lower Court decided that, on the construction of the agreement, the plaintiff was to put defendants in possession of the lands, besides assigning over the title-deeds to them. *Held* that the terms of the original agreement did not warrant such a construction.

Where there is a contract of sale of land, an action can ordinarily be brought by the vendor for purchase-money, whether or not the Court in which the action is brought has jurisdiction over the seat of the obligation which it is sought to enforce. *John Young* v. *Mangalapilly Ramaya*, 3 Mad. Rep., A. J., 125.

No action will lie against a vendor alone to compel him to procure the transfer by the revenue authorities to the name of the vendee of the registration of the property sold. The Collector (the registering officer) must be made a party to the suit. *Rangamma* v. *Tunmapaiya*, 3 Mad. Rep., A. J., 134.

A vendor legally conveying all his title cannot be sued for money had and received, although the title prove defective.

Accordingly, where the plaintiff bought two kanam claims, and sued upon them unsuccessfully, *Held* that he could not recover the purchase-money from his vendor's representatives, on the ground that the consideration for the payment had failed. A purchaser cannot recover the purchase-money in equity when the conveyance has been executed by all necessary parties, and he is evicted by a title to which the covenants do not extend. *Muhamud Mohiddin* v. *Uttayil Umache and another*, 1 Mad. Rep., 390.

Where a *bonâ-fide* sale is accompanied by a power to re-purchase, this will not make the transaction a mortgage, if such does not appear to have been the intention of the parties. Test of such intention. *Sundaramarti Mudali* v. *Valinayikka Ammal*, 1 Mad. Rep., 465.

Pleas set up in former suits for rent brought against a vendor by persons who have omitted to protect their interests by having their names inserted in the putnee pottah, do not constitute notice of their title to an innocent purchaser for valuable consideration. *Omul Chunder Chaklaynavis* v. *Dabeeooddeen and others*, 6 W. R., 318.

Nothing subsequently done or suffered by a vendor can affect the rights acquired by the purchaser at the time of the sale. *Bissonath Singh* v. *Brojonath Doss and another*, 6 W. R., 230.

When the purchaser of an estate paid earnest-money, and no time was fixed for the payment of the balance, and the vendor re-sold the property within a week,—*Held* that the vendor was bound to have waited a reasonable period; that the second purchaser took nothing; and that the first purchaser was entitled to a decree for specific performance. *Muthur Ali* v. *Sheo Sahoy Singh*, W. R., 1864, 281.

A mere agreement to sell a certain property, without any consideration passing, cannot bar the right of the vendor on the same day to sell a portion of the property to a third party, or invalidate the third party's purchase. *Bhyunkuree Debea* v. *Tariny Churn Chuckerbutty*, 7 W. R., 38.

Where it was made a distinct condition of sale that the property should be sold to the highest bidder, without any restriction of the purchaser being a rebel or not,—*Held* that the Government may, like any other seller, impose any condition it pleases in reference to the property which it offers for sale, prior to sale, but is not at liberty subsequently to the sale to disaffirm or annul it on a ground not only novel but directly at variance with the terms on which it offered the property for sale. *Seva Lall* v. *Sheikh Mahomed*, 2 Agra Rep., A. C., 160.

A. sold land to B. and continued in possession as B.'s tenant. More than two years after the sale A. and B. agreed that A. should have the right to re-purchase within a fixed time, but that such right should be forfeited if the conditions of the lease were not kept. The clause of forfeiture was so vaguely worded as to have the appearance of a mere threat. At the date of the agreement, A. was in arrear with his rent. *Held* that his right to re-purchase was not forfeited by his having incurred further arrears.

As to the necessity of pursuing literally a claim for re-purchase. *Chidambara Pillai* v. *Manikka Chetti*, 1 Mad. Rep., 63.

A party selling land may refuse to give delivery until the consideration is paid; but having given delivery, he has no right to retake possession and pay himself the purchase-money out of the usufruct. *Prem Soondery Dossia* v. *Grish Chunder Bhuttacharjee and others*, 10 W. R., 194.

Although ordinarily in a transaction of sale, it may be reasonable to suppose that the seller does not intend to pass the property to the purchaser, until the purchase-money has been paid or secured, it is not an absolute rule of law that the non-receipt of the consideration-money in full entitles a vendor to make void a sale which is otherwise complete. The intention of the parties from their acts should be ascertained; and when a deed is executed and delivered to the purchaser, a subsequent default by the purchaser in the due payment of purchase-money would not, in the absence of fraud, make void the sale, or give any other right to vendor than a right to sue for the money.

Further, if it be proved that the vendor intended to retain possession until full payment, the Court may pass a decree establishing the purchaser's right subject to execution or payment of consideration. *Mohun Singh* v. *Mussamut Shib Koonwar*, 1 Agra Rep., A. C., 85.

2.—Rights of Purchasers.

A *bonâ-fide* purchaser is entitled to refund of purchase-money in a case where some dispute having arisen as to the purchase, the matter was referred to arbitration; and it was held that the vendor had no authority to sell. The principle of *caveat emptor* does not apply to such a case. *Kishen Mohun Saha* v. *Ram Chunder Dey*, 3 W. R., 28.

In the absence of any reservation or restriction, the purchaser of a fraction of a share of an estate acquires a right either to cultivate a proportionate share of the lands cultivated by his vendors on the same conditions as to favourable rents as those under which they, as proprietors, cultivated it, or to claim his share of the rents of these lands just as he would from any ryot of the estate, but without any other sum as mesne profits. *Chytun Singh* v. *Kayessur Koonwar*, 5 W. R., 117.

Under a decree in a suit on a bond against the widow of the deceased obligor, property to which her son, of whom she was guardian, was entitled as heir, was sold. In the advertisement of the sale the property was described as that of the widow, and the interest to be sold was described as that

of the debtor. *Held* that the purchaser at the sale acquired the property of the deceased debtor in the estate, and had a good title against the heir. *Ishan Chunder Mitter* v. *Buksh Ali Soudagur*, Marsh., 614.

A *bonâ-fide* purchaser should not be deprived of the benefit of an honest purchase, even though the sale to his vendors was fraudulent, if he had no notice of the fraud. *Sheikh Golam Ahea* v. *Digumbur Singh*, W. R., 1864, 225.

The rights of *bonâ-fide* purchasers and mortgagees are not to be defeated by earlier obligations in the hands of third parties never in possession of the land in dispute. *Ramessur Bhomick* v. *Pooran Chand Golacha*, W. R., 1864, 225.

A purchaser under a conditional sale takes the property with all *bonâ-fide* incumbrances created by his vendor previous to the sale. *Raj Mohun Deb* v. *Nund Lall Dey*, 7 W. R., 363.

A. having two daughters, B. and C., granted a putnee talook of certain lands in his zemindary to them in their infancy, and transacted the business connected therewith as manager down to the time of his death. After his death, B. sold her interest to her sister C., and C. sold the putnee talook to D. The heirs of A. brought a suit against D. for the lands. *Held* that the lower Court might, upon these facts, infer that the grant of the putnee talook by A. to his daughters was by way of provision for them, and that it was not a case in which the daughters held benamee for the father. Secondly, that even if it were so, D. acquiring by a *bonâ-fide* purchase and without notice had a good title against the heirs of A., since they claimed through the person by whose act the apparent ownership was vested in his vendor. *Obhoy Churn Mookerjee* v. *Punchanun Bose*, Marsh., 564.

A party purchasing with notice that his vendor's title is contested, must take his chance if that title turns out invalid. *Bhikoo Sahoo* v. *Teik Ali Khan*, 9 W. R., 86.

The plaintiff agreed to purchase land and paid down the purchase-money, taking from the vendor an agreement that if he did not register the conveyance, he would return the purchase-money. The plaintiff entered into possession; but the vendor failing to register the conveyance, he sued to recover back his purchase-money. *Held* that he was entitled to a refund of the purchase-money. The purchaser who had obtained possession might or might not, according to the particular circumstances of the case, be liable to pay the vendor a reasonable amount for the occupation of the land; but when no set-off is pleaded, the vendor could only claim such amount by a separate action. *Court of Wards* v. *Nitta Kali Debi*, 3 B. L. R., A. C., 353; 12 W. R., 287.

Held that the plaintiff had no right to sue for the enforcement of the promise made in favour of the person from whom she bought, who did not convey to her the right to sue upon or otherwise enforce it. *Mussamut Kishoree* v. *Joy Kishore Doss and others*, 4 Agra Rep., A. C., 46.

The purchaser at a sale under a decree recovered in a suit by a mortgagee, is not bound by leases made by the mortgagor, after the date of the decree, unless he has recognized the lessees as his tenants,—as, for instance, by receiving rent.

When a party is declared entitled to a decree for mesne profits, he is entitled not only to recover as these profits such sums as may have been collected and appropriated by others in wrongful possession, but also such sums as he would have collected had he been in possession, and which he has been prevented from collecting by having been kept wrongfully out of possession.

If the plaint in a suit for mesne profits claims only rents and profits collected and received by the defendant, the plaintiff is not entitled to recover in respect of rents not received, but which by the wrongful dispossession he has been prevented from collecting; but if there is an appropriate allegation, he will be entitled to recover in respect of such rents.

In a suit for recovery of the possession of land in which the plaintiff recovers a decree, it is no ground for exempting a defendant from costs that he did not himself occupy any part of the land if he has denied the plaintiff's title in the suit, or was instrumental as the agent of others in dispossessing the plaintiff. *Mussamut Koomeroonissa Begum and others* v. *Hunuman Doss*, Marsh., 122.

Where land was sold on a condition of re-purchase, and no time was mentioned in the instrument of sale,—*Held* that the sale had not become absolute, and that the plaintiff, having bought the original vendor's rights, was entitled to maintain a suit for recovery of the land. *Gurusámy Aiyan* v. *Swamindha Aiyan*, 2 Mad. Rep., 450.

In suits arising out of the default on both sides to complete a contract for the purchase and sale of land in the mofussil, the Court should proceed as a Court of Equity, and should look to the acts and conduct of the parties subsequent to the making of the contract, as well as the language of the contract itself; and where the contract has been partially performed and the purchaser put into possession of a portion of the land and allowed by the vendor so to continue long after the period fixed for completion of the contract has elapsed, further time should be given by the Court for the performance of the contract in specie (Tucker, J., *dissentiente*).

The Court should not by its decree make for the parties a different contract from that which they themselves had entered into. *Balavalad Sanka* v. *Gabaji B. Kalkaru*, 2 Bom. Rep., 175.

Held that the mere fact that the sale to the plaintiff was instigated by some discharged mortgagee does not of necessity make void the plaintiff's right as purchaser, if it be found that the vendor to the plaintiff had some right or interest in the property by inheritance, and transferred it for valuable consideration, with the intention that it should take effect as a transfer of his rights as heir.

Held further, that the mere circumstance of the existence of a debt due from all the co-sharers is by no means of itself enough to confer authority on some of several co-sharers to dispose of the other share. *Mahomed Faiz Ali Khan* v. *Gunga Ram and others*, 1 Agra Rep., A. C., 112.

Bonâ-fide purchasers for valuable consideration, and without notice of a sale in execution of a decree, are not in every case protected from having the sale set aside under the present or former law. It must be decided in each in accordance with the

principles of justice, equity, and good conscience, as to whether the sale ought to be set aside or not. *Abdool Hye and others* v. *Nawab Raj and others*, 9 W. R., 196.

Where a plaintiff sued on the alleged purchase by him of the rights and interests of certain parties in an indigo concern, it was held that the rents collected and appropriated, and the indigo manufactured and taken away before the date of the purchase, could not form part of the stores and assets sold to the plaintiff, unless the sale of the assets, &c., had been as from some date prior to the date of purchase. *Chunder Coomar Roy* v. *C. J. Wilkinson and others*, 10 W. R., 311.

Property purchased in execution of a decree is not subject to any lien in favour of a person claiming under a bond and deposit of a hibbanamah pledged as security for a loan. *Syed Woozeer Alleal Hossenee Chowdhry* v. *Mussamut Luckee Beebee*, 1 W. R., 143.

Section 2, Act I of 1845, does not protect purchases made in the name of third parties from the operation of decrees against the persons beneficially entitled to the purchased property. *Ameeroonissa Beebee* v. *Binode Ram Sein*, 2 W. R., 29.

Where property hypothecated for a debt is sold in execution of a money decree passed under the bond hypothecating, if without any additional order in the decree for enforcing the lien on the property, and the holder of a subsequent similar bond, who has obtained an order on his decree directing the sale of the property, seeks to enforce his lien upon the property so purchased, the purchaser is entitled to go on the previous lien, as he not only stands in the shoes of the debtor, but has purchased all rights in the property if hypothecated by the debtor when his hypothecation was made, and has thus also acquired the rights of the decree-holder to satisfy whose due the property was sold when this purchaser purchased. *Sheo Proson Singh* v. *Brojo Sahoo*, 7 W. R., 232.

Held that non-payment of the consideration-money can be pleaded by the seller, and enquired into by the Court, the admission of the seller at the time of registration before the Registrar being no conclusive proof of payment of the consideration-money, with reference to the practice which obtains of preparing the sale-deed and registering it before payment. Under the ordinary rule of law, purchaser has a right to sue for possession when a portion of the consideration-money has been paid, unless the contrary be shown to be the intention of the parties, and the seller has a right to sue for the balance of price. *Goor Pershad* v. *Nunda Singh*, 1 Agra Rep., A. C., 160.

Where the damages claimed in a suit exceeded Rs. 500, and the Court gave the plaintiff less than Rs. 500 damages,—*Held* that the right of appeal is not taken away by Act XXIII of 1861, Section 7.

Where A. conveys to B. an interest in land under a description as to title which turns out to be erroneous, a suit by B. against A. for diminution of rent on the ground of the erroneous description ought to be brought in the Revenue Court.

In the absence of fraud or express warranty of title in a sale of land, the vendee cannot recover from the vendor the expenses incurred in defending a suit for possession brought against him by a third party having a better title. *Rajah Neelmoney Singh Deo* v. *Gordon, Stuart, and Co.*, 1 Ind. Jur., N. S., 356; 6 W. R., 152.

If a purchase is made of property in litigation while such litigation is actually going on, the purchaser is affected in the same manner as if he had notice of the dispute, though in point of fact he had no express notice or actual knowledge of the circumstances. *Digumburu Debia* v. *Eshan Chunder Sein*, 15 S. W. R., C. R., 372.

A party who buys a specified talook with the additional description that that talook contains so much land, gets the whole land which the specification of his vendor covers and which was intended to be sold, although it may be more than was contained in the description. *Ameeroonissa Khatoon* v. *Kumola Kant Roy*, 14 S. W. R., C. R., 117.

A party purchasing what he knows to be the right and title of some one else than his vendor, cannot claim the character of an innocent purchaser, and is not entitled to compensation for improvements to the property so purchased by him. *Sohun Singh* v. *Keala Bibee*, 16 S. W. R., C. R., 169.

Where a party has purchased joint family property under circumstances which prove that he must have had notice of its having been dedicated to religious purposes, and does not show that he made enquiries as to his grounds for supposing that the trust was legally at an end, he cannot exonerate the property from the trust attached to it. *Juggutmohinee Dossee* v. *Sookhemoney Dassee*, 17 S. W. R., C. R., 41.

The purchaser was held entitled to recover the amount paid by him on account of previous mortgages, when, in making these payments, he merely acted for the debtor who had borrowed the money from him, and what he did was to see that that money so borrowed was properly applied in clearing off the debts which rendered his own purchase unsafe, and of the existence of which he was at that time cognizant. Where the whole property was sold, and the purchasers agreed among themselves what shares they were to take in the property, the Court was unable, because of the apparent misconduct of one of the purchasers, who, after having acted as pleader for the other party, had now become one of the purchasers of the property which he knew had been previously sold to his clients, to limit the extent of that sale, or to declare that the said pleader was not entitled with the other purchasers to the whole sixteen annas. *Syud Wajee Hossein* v. *Hafez Ahmed Rezah*, 17 S. W. R., C. R. 480.

The plaintiff purchased an estate from a Hindu widow in possession, and after his purchase he paid a debt, for which the property sold had been mortgaged by the late husband of his vendor. Subsequently the daughter of the vendor claimed the property as heir of her father, and recovered possession of it from the purchaser by suit. The purchaser now sued the heir for a refund of the amount of the mortgage-debt paid by him. *Held*, that the purchaser was entitled to recover. *Poran Misra* v. *Harsaran Misra*, 8 B. L. R., Ap., 55.

Section 26 of Act I of 1845, which enables auction-purchasers at sales for arrears of revenue to eject tenants in the province of Benares, is by Section 1 of Act X of 1859, made subject to the

modifications contained in the latter Act. Therefore, notwithstanding a sale by auction for arrears of revenue, a mokururee tenant in the province of Benares is entitled to receive a pottah at the fixed rent theretofore paid by him. *Munro* v. *Baluck Singh*, 1 N. W. R., Par. 8, p. 153.

In 1865, C. gave H. a lien on his property, by a deposit of title-deeds. In 1867, B. purchased the same property *bonâ fide*, and without notice of H.'s lien.

Held that B. took the property free of the lien. *Bunseedhur* v. *Heera Lall*, 1, 6 N. W. R., 74.

Land subsequently sold is liable for a debt for which the land was previously hypothecated. *Sadagopa Chariyar* v. *Ruthna Mudali*, 5 Mad. Rep., 457.

Wilful misrepresentation by a vendor regarding property sold, practised in a matter within his knowledge, and concerning which the purchaser had no adequate means of knowledge, held to vitiate a sale, and to entitle the purchaser to recover the purchase-money actually paid by him. *Mahamed Share Khan* v. *Musst Sirdar Bahoo Bagum*, 1 N. W. R., Par. 2, p. 26.

Upon a division of family property, the parties to the division entered into an agreement that the property of any one of the parties to the agreement or their heirs dying, leaving no issue, should not be sold or transferred as a gift, but should on his death be divided by the other shareholders. In a suit by one of the shareholders to recover the share to which the plaintiff was entitled under the agreement from the defendant, a purchaser from the son of the person to whom the property was allotted upon the division,—*Held*, that an estate cannot be made subject to a condition which is repugnant to any of its ordinary legal incidents, and that the power of disposition, being a legal incident of the estate which passed to the vendor, could not be taken away by the agreement. *Venkatramanna* v. *Brammanna Sattruhu*, 4 Mad. Rep., 345.

3.—Liability of Purchasers.

Where a man buys in the face of hostile claims, whether he honestly thinks he has reason to disregard them or not, he cannot afterwards set himself up as an innocent purchaser without notice. *Nawab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

When personal property is sold by one co-sharer without the other's authority, the purchaser may be sued for the price of the share of the non-consenting party. *Radhanath Saha* v. *Kameenee Soondery Dossee*, 2 W. R., 37.

A. purchased immoveable property in the name of B., and allowed B. to occupy and retain possession of the property. B. mortgaged the property to C. for a valuable consideration. *Held* that A. and those claiming through him were estopped from asserting as against C., his or their title to the property, and that the mortgage was valid. *Kallydass Mitter* v. *Gobind Chunder Paul*, Marsh., 569.

A party who purchases the rights of one of a number of co-sharers comes into all arrangements made in respect to the collections; any express consent by him is not necessary for the payment of his share of the rent to any one else. *Ram Nath Singh* v. *Gondee Singh*, 10 W. R., 441.

The purchaser of property actually in litigation *pendente lite*, need not be made a party to the suit. The title acquired by the purchaser is subservient or subject to the right of the parties in litigation.

Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, the sale having been reversed in that suit, he was held liable for mesne profits. *Umamoye Burmonea* v. *Tariny Persad Ghose*, 7 W. R., 225.

Where a purchaser of immoveable property deals with a person having a qualified power of dealing with that property, it lies upon the purchaser to give some reasonable account of the need which actually existed, or was alleged to exist for the sale. *Vadali Râma Krisranma* v. *Manda Appahya and others*, 2 Mad. Rep., 407.

A ganteedar having assigned over his gantee tenure to A., who agreed to pay to the zemindar not only the gantee rent reserved, but also Rs. 100 a year until a debt due from this ganteedar to the zemindar was paid off,—*Held* that when the assignee having mortgaged his tenure, it was subsequently sold by the mortgagee, the purchaser was liable to pay the Rs. 100 annually as well as the original gantee rent reserved. *Mohima Chunder Ghose* v. *Rajah Burodakant Roy*, 2 W. R., 121.

A purchaser of the equity of redemption, who had obtained a decree against his vendor's mortgagee for possession in satisfaction of the debt, was held to be bound to such mortgagee alone, and not to be bound to see whether the mortgagee had made any subsequent transfer of his interests or effected any other mortgage. *Makoo Chowdhrain* v. *Ram Buksh Sahoo*, 11 W. R., 53.

In a suit by a purchaser of immoveable property to recover a deposit, paid by him on account of the purchase-money to the auctioneer, the vendor having refused to convey to the purchaser, save by a deed, which should describe the premises by reference to another deed, not shown to the purchaser at the auction, and of the contents of which he had not then any notice,—*Held* (1) that the purchaser was not bound to have tendered a conveyance engrossed to the vendor for execution, together with the residue of the purchase-money, before suing to recover the deposit; and (2) that the money having been deposited with the auctioneer as a stakeholder, and being in his hands, the action to recover it lay against the auctioneer, and not against the vendor. *Essájee Adamji* v. *Bhimji Purshotam*, 4 Bom. Rep., O. C. J., 125.

If the purchaser of an estate for value takes with notice, actual or constructive, of a trust, he is bound by such trust to the same interest and in the same manner as the person from whom he purchased. A person purchasing an estate where there is a tenant in possession is bound to enquire into the title of such tenant, and if he neglects to do so he takes subject to such rights as the tenant may have. The equities are the same where there is a person in possession as the object of a charitable trust and under the trust. *Mancharji Sorabji Chutta* v. *Kongseoo et al.*, 6 Bom. Rep., O. C. J., 59.

4.—Deeds of Sale.

Suit for possession of certain land under a deed of sale covenanting for the payment of the

purchase-money on the defendant registering the deed. It was found that no consideration was paid, and that the deed was retained in the seller's possession. Before declaring the equities, the case was remanded for an issue and finding as to the intention of the parties respecting the time of payment, and whether (as alleged by the defendant), in consequence of non-payment by the plaintiff, the defendant was jeopardized as to his other property and had to sell at a loss. *Goursahoy Singh* v. *Sheikh Futteh Ali*, 1 W. R., 39.

A suit based on a deed of sale by a father is materially affected by his son accepting a deed substituting another agreement and transaction in lieu of his father's deed of sale. *Rajah Saheb Pershad Sein* v. *Boodhoo Singh*, 3 W. R., 228.

The mere non-recital in a deed of sale by a mother during her son's minority of the legal necessity for the sale does not vitiate the deed. The necessity may be proved by other evidence. *Woomesh Chunder Sircar* v. *Degumburee Dossee*, 3 W. R., 154.

A deed of sale should not be deemed authentic merely from the fact of registration and production in other cases. Act XIX of 1843 contemplates independent proof of the authenticity of the deed. *Srishteedhur Lushkur* v. *Kala Chand Lushkur*, 3 W. R., 216.

A Court is not bound to consider a deed of sale to be a deed of absolute sale, and not take into consideration the acts and conduct of the parties in their own view and dealing in regard to the transaction. Thus, where the parties treat a transaction as a deed of conditional sale, the Court must not necessarily hold it to be a sale. *Kasheessuree Dossee* v. *Wooma Churn Doss*, 5 W. R., 104.

The non-delivery of a registered deed of sale to the purchaser until after the creation of a fresh bond in favour of a third party will not render the deed inoperative, or subject the purchaser to fresh liens not within his knowledge. *Maharajah Mohessur Buksh Singh* v. *Lalla Sonnar Chand*, 5 W. R., 109.

A deed of sale, though not strictly of a complete and final character, yet if genuine and duly attested, may be sufficient to bind the property and to give the purchaser the right to demand a specific performance of the contract and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property. Such a deed would necessarily prevail over any intermediate attachment of the property for debts due from the original proprietor. *Lalla Chooneelal Nagindas* v. *Sawaechund Namedas*, 5 W. R., P. C., 111.

Where a mooktearnamah was duly executed by A. authorizing B. to sign her name to a deed of sale, notwithstanding that the mooktearnamah was not verified until after A.'s death, the sale under that deed made after A.'s death was held to be valid as regards the right of the purchaser to recover the purchase-money. *Issur Chunder Chowdhry* v. *Sheikh Ameenooddeen Ahmed*, 6 W. R., 174; *Kanhya Lall and others* v. *Mahadeo Singh and others*, 6 W. R., 293.

In a case where a purchaser is a near relative of a debtor, it is not sufficient to decide that the deed of sale is proved to have been executed. Proof of the *bona fides* of the transaction is also necessary. *Jadubindur Roy and others* v. *Sheikh Kumurooddeen*, 6 W. R., 310.

In a suit for possession under a bill of sale, the defendant pleaded that a large portion of the purchase-money still remained unpaid. *Held* that the mere fact of a decree having been subsequently passed in another suit, could not affect the validity of the defence relied upon in this case. *Dookha Thakoor* v. *Ram Lall Sahee and others*, 8 W. R., 218.

When a bill of sale, though signed and registered, has not been delivered, and no part of the purchase-money has been paid, the vendor cannot be compelled to complete the transfer. *Lalla Indurjeet Lall* v. *Mussamut Jumoona*, 5 W. R., 248.

A bill of sale, though duly executed, was not delivered to the purchaser, but was deposited with a third party, to be held by him until the purchaser should perform certain acts; the performance of which was the consideration for the sale. The purchaser subsequently by a trick got possession of the bill of sale before he had performed all the acts in question. *Held* that, under such circumstances, no effect could be given to the bill of sale as against the vendor, so that a suit for possession of the lands covered by it would not lie. *Raj Chunder Chowdhry* v. *Raj Nath Chowdhry*, W. R., 1864, 222.

A deed of sale executed in 1201 (1794) was subject to the condition that if the vendors, "from the year 1202 to the year 1203, should repay the whole of the consideration-money, they should receive back the deed of sale, which shall then become null and void; and if within the said period they fail to pay the said consideration-money, this conditional sale shall become absolute, and be considered irrevocable." *Held* that Regulation XV of 1793 did not operate to prevent the assignment becoming absolute after the expiration of the time limited for repayment of the consideration, and that Regulation XVII of 1806 had not a retrospective effect, and therefore did not apply; and that even if the entire amount of the purchase-money were satisfied out of the proceeds of the estate before the time for the conditional sale becoming absolute, the vendees would acquire a perfect title. *Buldeo Singh* v. *Dhukrun Singh and others*, Marsh., 632.

A sale might be complete, and it still might be a condition of the contract that the purchase-money was to be paid afterwards, and the deed in evidence of the contract may not be completed. The bare fact of the deed not being registered would not annul a sale if, by mutual agreement, a sale had already been made. *Kally Churn Giree Gossain* v. *Lalla Mudon Kishore and others*, 7 W. R., 317.

Mere inaccuracy of language or misdescription will not vitiate a sale certificate. The intention of the parties must be looked to. *Sheikh Moula Buksh* v. *Huruck Lall and others*, 7 W. R., 245.

A deed professing to be a will, but making a gift of property during the testator's life-time, is held to be a deed of absolute gift. *Hurro Soonduree Dossee* v. *Chunder Mohinee Dossee*, 3 W. R., 200.

A deed of sale executed by judgment-debtors according to an agreement with a decree-holder, need not be set aside because of the failure of the judg-

ment-debtor to register the decree-holder's name. *Bhooman Mundar* v. *Badree Singh*, 1 W. R., Mis., 25.

Where several properties are comprised in one deed of sale, the purchaser runs the risk of having his title in all the properties shaken should the purchase as to one of them be called in question in a regular suit. *Raisona Bibee* v. *Kunee Mah and others*, 8 W. R., 483.

An alteration made in a deed, without the consent of the parties who originally executed the deed, and with the fraudulent view of benefiting him who propounds it, vitiates the deed only. The materiality or otherwise of the alteration does not affect this rule of law. *Kallee Coomar Roy* v. *Gunga Narain Dut Roy and others*, 10 W. R., 250.

A deed of sale is complete on the day when it is signed and attested by the Cazee, and consideration is paid for it. Delay in the delivery of the deed does not invalidate it. *Bhikun Singh* v. *Mussamat Jumeela Koonwar*, W. R., 1864, 62.

In construing deeds, where their terms are doubtful, it should be ascertained in what manner the terms of the deed were understood and acted upon by the parties during the years immediately succeeding the grant.

The suit was properly entertained in the Revenue Court, as the plaintiff's position was not that of a mere non-proprietary tenant. *Shunker Lall and others* v. *Poorun Mull and others*, 2 Agra Rep., A. C., 150.

A. sued B. in 1841 to recover possession of certain villages in Gujrat. B. produced a deed purporting to be a conveyance by way of mortgage by A.'s ancestors of their 6-16ths share in villages to B.'s ancestors. A. at first denied the genuineness of the deed, but, the suit of 1841 having been withdrawn by consent with a view to arbitration, took no steps to have the question decided until the deed was again produced (from the records of the Court, where it remained meanwhile) in the present suit brought in 1859 by A. against B. to recover the same villages.

Held, in the absence of evidence to show that the defendants had by their conduct during the interval admitted that the deed was not genuine, or that they did not intend to rely upon it, so as to mislead the plaintiffs, that the time which elapsed must be taken into account, and that they ought not to be required to prove the deed in the same way as they might have been when it was first produced and relied upon by them.

Held also, that the High Court sitting in special appeal will not examine the evidence with a view to determine whether such a document be genuine or not; nor will it consider the question whether there is any evidence to connect the plaintiffs with the parties to the deed, when the suit appears to have been conducted in the Courts below as if this was admitted. *Denaji Boyaji et al.* v. *Gadadbhai Godebhai et al.*, 2 Bom. Rep., 28.

Whatever may be the real intention amongst themselves of some of the members of a Hindu joint family in executing a deed of partition, purchasers from them have an undoubted right to bind them, by the execution of the deed and their public acts attending it, to the fulfilment of those obligations which such public acts cast upon them. *Srimati Sukhimani Dusi* v. *Mahendru Nauth Dutt*, 4 B. L. R., P. C., 16; 13 S. W. R., P. C., 14.

Where the *bona fides* of a conveyance is called into question, it is not sufficient for the claimant under such conveyance to give formal proof of the transactions involved, amounting simply to what might be expected if the transfer were benamee. *Bebee Zahrah* v. *Bhujwan Dass*, 16 S. W. R., C. R., 211.

Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons,—*Held* that such a document ought not to be construed narrowly by a strict interpretation of the literal meaning of the words, but that the object and general spirit are the best keys to the interpretation.

Where a family arrangement, if construed strictly, would have given a talook in the event of the death of a younger son to such of the lawful widows as should have male issue,—*Held* that, as such a disposition would contravene the ordinary rules of devolution of Hindu property, and be contrary to the usages of Hindus, and as there was no mention of any change of intention as to the proprietary right, a construction which would postpone male issue to their mothers was inadmissible. *Sri Gajaputhi Rudhika Pattu Muhudebi Guree* v. *Sri Gajaputhi Huri Krishna Debi Guree*, 6 B. L. R., 202, and 14 S. W. R., P. C., 33.

When several persons join in a conveyance and convey "the whole and entire property absolutely," they must be taken to have exercised every power which they possess, and to have parted with their whole interest, whether in possession or expectation. *Mohunt Kishen Geer* v. *Busgut Roy*, 14 S. W. R., C. R., 379.

A document obtained by the chief male member of a family from a purdah woman should receive a strict construction. *Sookyabaye Ammul* v. *Latchmi Ammul*, 13 S. W. R., P. C., 3.

This case turned upon the construction of an agreement by which (according to appellant's contention) the mortgagee was entitled to the payment of the principal and interest on the debt, but the payments of interest carried no interest themselves. The Privy Council, according to their construction of the agreement, were of opinion that the parties intended that the interest might be set off from time to time against the rents and profits, and that the mortgagee was only to account to the mortgagor for any rents and profits and interest on the same which he might have received over and above the interest due to him upon the debt; and *held* that Section 7, Regulation XV of 1793, did not apply to transactions of this kind. *Rudhabenode Misser* v. *Kripa Moyee Debia*, 17 S. W. R., C. R., 262.

A zemindar on giving up a four-anna share which he had theretofore held, but had mortgaged, stipulated for the retention of the holding in suit rent free for maintenance.

Held,—the retention of the holding was intended not only for the benefit of the proprietor himself, and to inure during his life only, but also for the benefit of his heirs.

Words of inheritance are neither necessary nor customary in such cases, and no inference is to be

drawn from their absence. *Gunga Deen* v. *Luchmun Pershad*, 1, 8. N. W. R., 147.

The absence of words of inheritance in a deed of grant of land is not of itself conclusive to show that such grant was not intended to be in perpetuity; but the hereditary character of the tenure may be inferred from evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son. *Gyan Singh* v. *Kooer Peetum Singh*, 1, 6 N. W. R., 73.

5.—Covenants.

The members of a Hindu family, jointly and severally interested in a certain house and premises, covenanted for themselves, their heirs, and executors, that the said house and premises should never be partitioned, except by the unanimous consent of the contracting parties. *Held* by the lower Court, and confirmed on appeal, that whether valid or not as regards parties representatives by purchase, the covenant is binding upon those who are personally parties to the deed. *Ramdhun Ghose* v. *Anund Chunder Ghose*, 2 Hyde's Rep., 93.

Mr. Serjeant Williams' rules for ascertaining whether covenants are dependent or independent, commented upon. *John Young* v. *Mongalapilly Ramaiya*, 3 Mad. Rep., A. C., 125.

Where defendants sub-rented an abkari farm for one year, from 31st July, 1864, under a muchalka, by which the defendants covenanted to pay monthly instalments of rent to plaintiff, and plaintiff covenanted to furnish defendants with the accounts of the farm from the month of July, 1864, during which period the management was in the hands of plaintiff's agent, in action by plaintiff for rent due to him, and the value of arrack supplied by him,—*Held* that the non-performance by the plaintiff of the covenant to furnish accounts was not sufficient to justify the entire dismissal of his suit against the defendants. *G. Ramaiya* v. *G. Narayanasamy*, 3 Mad. Rep., A. C., 209.

A. received from B. the use of his ground rent-free, which he thus acknowledged in writing:—"Building a house thereon, I shall enjoy so long as I and my kinsmen live therein. I shall have no right to sell the ground to another." A house was built on the site and inhabited by A. and his heirs for several years, until it was destroyed by fire, when the heirs commenced to build a new house upon a portion of the ground, having leased another portion of it for building upon, and having mortgaged the whole of it.

Held that the heir of B. was entitled to recover possession of the ground, as the conditions of the grant had not been observed, and that the word "sell" must be construed as prohibiting alienation of any kind. *Ráhálkar* v. *Náráyanbhat*, 3 Bom. Rep., A. C., 63.

In the case of covenants in restraint of trade, the deed of covenant must show a good consideration. The Courts will not enter into the question of the adequacy of the consideration. A covenant giving appellant the exclusive right to convey passengers to and fro on the road from Ootacamund and Metapollium, is not a contract in general restraint of trade, and therefore is one which the law will enforce. *Auchterlong* v. *Bill*, 4 Mad. Rep., 77.

The plaintiff sued to recover a sum of money with interest on a mortgage deed, which contained the following clause: "If, by sale of the above land, the money receivable by you be not satisfied with charges, then you will realize the proper amount by selling my other landed properties, to which I will make no objection or excuse." The plaintiff asked for a simple money decree. The defendant had other landed property besides the property mortgaged. *Held*, that the plaintiff was entitled to a simple money decree, available against his moveable property only. *Jogesmar Dutt* v. *Nitaichund Chuckerbutty*, 4 B. L. R., Ap., 48.

6.—Caveat Emptor.

Principle of caveat emptor not applicable to a case in which a bonus has been paid for a putnee not in existence. *Kristolol Moitro* v. *Nobbo Coomar Roy*, 5 W. R., 232.

T. sold a mouzah, of which he was owner, to Z. At the time of sale, the mouzah was under attachment in execution of a decree obtained against T. by R. Z. paid the amount of that decree to prevent the property which she had purchased being sold in execution. Z. was under no obligation otherwise to pay the amount of the decree.

Held that Z. was entitled to recover against T. the amount so paid. *Musst. Zahuran* v. *W. Tayler and another*, 2 B. L. R., A. C., 87.

Where a party purchases an estate sold in execution after notice that parties other than the judgment-debtor claim rights and interests in the property, the rule of caveat emptor applies. *Shahobooddeen Chowdhry* v. *Ramgutty Chuckerbutty*, 9 W. R., 556.

Plaintiff in 1862 purchased a house of first defendant, which was already hypothecated to second defendant. In 1863 second defendant sued first defendant in the Small Cause Court for the debt on account of which the hypothecation had been made, and got a judgment. He then had the house attached and put up to auction, bought the right, title, and interest of the judgment-debtor in the premises, and entered and continued in possession. Plaintiff claimed in the present suit to recover possession in right of his purchase in 1862.

Held that, as first defendant had no interest whatsoever in the property at the date of the purchase, second defendant's purchase was not a purchase from the debtor in part satisfaction of his debt. Second defendant's claim still existed, and he could pursue his remedy, either against the person or the property; and that as he was in possession, he had a right to demand the liquidation of the debt due to him before submitting to be turned out.

Held also that the obligation of the first defendant gave the second defendant a two-fold remedy: one against the person, and the other against the thing. *Moni Reddi* v. *Venkata Reddi*, 3 Mad. Rep., A. J., 241.

7.—Registration.

(*a*) *Miscellaneous.*

The owner of a share in a talook granted a se-patni pottah thereof to the plaintiff, but before registration

granted a se-patni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the se-patni talook, for damages caused by the refusal to register, and also for compelling registration of the se-patni pottah,—*Held* that three distinct causes of action were improperly joined; that the suit was not maintainable in a Civil Court, as the plaintiff's title rested upon an unregistered deed; that there was no cause of action as against the Company to enforce registration of the pottah; and that a distinct stipulation is not necessary to bind a person to cause registration of a deed required by law to be registered, but he virtually agrees to do so when he executes a contract, which by the law in force requires registration. *Prubhuram Hazra* v. *T. M. Robinson*, 3 B. L. R., Ap., 40; 11 W. R., 398.

A certificate of registration is evidence that a bond was registered, but not that it was executed. *Kripanath Tullapattur* v. *Bhashaye Moollah*, 6 W. R., 105.

A suit does not lie to compel registration of a lease executed when there was no law in force by which registration was necessary to give effect to such lease, and when there has been no express covenant to register. *Ashuna Begum and others* v. *Kheerum Singh and others*, 10 W. R., 360.

All instruments of gift of immoveable property must be registered, whatever be the value of the property. *Putona Kolita and others* v. *Mutia Kolita*, 2 B. L. R., Ap., 46; 11 W. R., 334.

In execution of a money-decree, the decree-holder caused the right, title, and interest of the judgment-debtor in a certain property which had been mortgaged to him by a registered bond to be sold, but without notice of the existence of such lien. He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached. The purchaser intervened under Section 246, but without success. On suit by the purchaser to establish his absolute right,—*Held* that, as the defendants' vendor had suppressed the fact of the charge, and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien. *Dullab Sircar* v. *Krishna Coomar Bukshi*, 3 B. L. R., A. C., 407; 12 W. R., 303.

Held that an unregistered mortgage, without possession, is not valid against a purchaser with possession. *Ganpat Bajashet* v. *Khandu Changshet et al.*, 4 Bom. Rep., A. C. J., 69.

In a suit against a principal and two sureties, to recover the amount advanced on a bond by which certain immoveable property was mortgaged, one of the sureties appeared, and contended that he was discharged from his liability in consequence of the plaintiff's neglect to have the bond registered.

Held that the surety was discharged, as he could only be liable by virtue of the mortgage bond, which, being invalid for want of registration, could not be used against him.

The principal, however, might be sued as for money lent, if the loan could be proved by the other evidence. *Shankar Bapu* v. *Vishun Narayan et al.* 4 Bom. Rep., A. C. J., 79.

Plaintiff sued for possession of land under an unregistered deed of sale; fourth defendant claimed the same land under a deed of subsequent date registered after the commencement of the suit. The latter deed was found to be fraudulently got up between the defendants.

Held that the registration of such a document does not give it the effect of invalidating a former unregistered deed of sale. *G. Nurasama* v. *R. Gavappa*, 3 Mad. Rep., A. J., 270.

A deed by which a defendant covenanted to pay monthly a certain sum "for the use and hire of a steam-engine, boiler, and machinery, sheds, and a bungalow," is one relating to immoveable property, and therefore not admissible in evidence without registration. *Winterscale* v. *Gopal Chandra Seal*, 3 B. L. R., O. C., 90.

Held that a certificate of sale is not a document of such a character as to be entitled by law to priority by virtue of its being registered over an unregistered lease, but that it comes within the class of documents described in Regulation IX of 1827, Section 3, Clause 2, as judicial process, which may, at the option of the holder, be registered, but the force and effect of which is in no wise to depend on their being registered. *Fakirchand Govindram* v. *Kahandas Bhagvandas*, 3 Bom. Rep., A. C., 167.

Where a house is let for a term exceeding a year, the registration of the kubuleut is compulsory; and no action will lie for the recovery of the rent stipulated to be paid under the kubuleut if that document is unregistered.

A party who retains and holds a building under such unregistered kubuleut is nevertheless bound to pay a reasonable compensation for the use and occupancy thereof. *Puroma Soondery* v. *Prollad Chunder Dass*, 12 W. R., 289.

Although a bond which created an interest in land as security for the debt is inadmissible in evidence if unregistered, it may be adduced as evidence of the debt, and a money-decree may be given on the basis of it for the sum secured by it. *Seeta Kulwar* v. *Jugurnath Pershad*, 4 Agra Rep., 170.

Held that it does not follow from the non-registration within the time fixed for registration of a deed which was executed before the Registration Act came into operation that the purchaser has acquired nothing by his purchase, or that the vendor is to resume possession of the property, if it be shown that there was a contract of sale; and that in pursuance of that contract, the purchaser paid the money, and obtained possession. *Held* further, that there is no provision in the law excluding such deed from being adduced in evidence. *Ram Surun Dass* v. *Ram Chand*, 1 Agra Rep., A. C., 283.

Held that there was no reason why plaintiff should not be permitted to show that non-registration is owing, not to any fault of his own, but to the fraudulent conduct of his adversaries. *Meer Helalooddeen* v. *Chowdhry Abdool Suttar*, 9 W. R., 351.

A person cannot claim, under an unregistered prior verbal contract, to the detriment of a party holding *bonâ fide*, under a subsequent registered deed. *Kylash Chunder Chatterjee* v. *Gopal Chunder Chatterjee*, 1 W. R., 78.

The act of registration after a proclamation under Section 20, Regulation XXXVII of 1793, amounts to a public, open, and notorious assertion of title on the one side, and the omission to register, unexplained by proof of the ill health of the claim-

ant, or absence in a distant country, or ignorance, affords an equally strong presumption of the non-existence of any title on the other. *Meer Usudoollah* v. *Bebee Imaman*, 5 W. R., P. C., 26.

The necessity for registration must be determined by the value of the consideration stated in the deed. *Rohinee Debia* v. *Shib Chunder Chatterjee*, 15 S. W. R., C. R., 558.

Where a kubuleut for one year contains a provision extending its term to more than that period, it cannot be admitted in evidence without registration. *Kisto Kalee Manshee* v. *Agemma Bewa*, 15 S. W. R., C. R., 170.

The defendant deposited certain title-deeds with the plaintiff as security for money due on a bond executed by the defendant in favour of the plaintiff. The deeds were sent with the following letter from the defendant to the plaintiff's attorney :—"I have the pleasure of handing to you the title-deeds of a house, 56, Lower Circular Road, as a collateral security for the Rs. 20,000 which falls due this day. Please accept them from my manager." In a suit for an account of what was due to the plaintiff on the security of the deeds,—*Held*, that the letter needed registration, as being a document which created an interest in land, and therefore being unregistered was inadmissible in evidence. *Dwarkanath Mitter* v. *S. M. Sarut Kumari Dasi*, 7 B. L. R., 55.

An order of a Civil Court directing the registration of an instrument of which registration has been refused, and as to which the person complaining of non-registration has presented no appeal to the registering officer under Section 83 of the Registration Act, nor made any application to the District Judge under Section 84 of that Act, would be illegal, as directing a public servant to do that which, by the express language of the Registration Act, he is prohibited from doing; and in so far as a person by suit seeks to obtain the registration of such an instrument, the suit will be dismissed. Nor can the person complaining of non-registration obtain a declaration that the unregistered instrument creates a valid charge upon the immoveable property therein hypothecated. But he may obtain adequate relief by a properly-framed suit. *Seppaee Singh* v. *Musumut Chunder*, 2 N. W. R., 160.

In a case where it is made to appear that the cause of suit arises upon a document which by law requires registration, but has not in fact been registered, the plaintiff cannot be permitted to establish a claim independently of the document, the existence of which is shown. *Rampershad* v. *Mussamut Ranee Mewa Kooer*, 2 N. W. R., 12.

Held that a bhádekhat is an agreement between a lessee and a lessor in the nature of a counterpart of a lease, and that an instrument of this character must, for the purposes of the Registration Act, be treated as a lease.

Held also that a provision in the bhádekhat, that the lessee might after six months remain in occupation at a monthly rent, till the lessor called upon him to vacate, did not extend the term for which the lease was granted, as to the conclusion of that term the lessee would be only a monthly tenant of the lessor. *Moro Vitheel* v. *Tukárám Mulhurji*, 5 Bom. Rep., A. C., 92.

The mere circumstance of a bond not being registered is not sufficient by itself to counterbalance the evidence if it is generally satisfactory in proof of the validity of the bond. *Baboo Gunga Persaud* v. *Mowjee Lall*, 16 S. W. R., P. C., 30.

By a bond specially registered under Act XVI of 1864, the obligor stipulated to pay the entire amount secured thereby, with interest at the rate therein mentioned, on a day therein mentioned. There was a further stipulation that, on default of payment, the bond was to be enforced as a decree. On failure of payment, the obligee applied for execution under Section 53, Act XX of 1866, but the Subordinate Judge ordered the payment to be made by instalments. On an application to the High Court under Section 15 of the Charter Act,—*Held*, that the Subordinate Judge had no jurisdiction to pass a decree on the bond altering or varying its terms. Section 194, Act VIII of 1859, did not apply. *Khettra Mohun Baboo* v. *Rashbehari Baboo*, 5 B. L. R., 167 ; 13 S. W. R., C. R., 252.

Whether an action will lie against the maker of an instrument requiring registration to render it valid, for a refusal to get such instrument registered, depends upon the question whether there is a contract, express or implied, on the part of the maker to register it. Such a contract is not to be implied in every case. *Girdhar Dalput* v. *Haribhái Narayan*, 7 Bom. Rep., A. C., 3.

Where a party borrowing money gave the lender an ekrar agreeing to execute a conveyance of certain landed property,—*Held* that the instrument was in substance an agreement the registration of which was optional, and which might be given in evidence in a suit for specific performance of the agreement to execute the conveyance for which it stipulates. *Asgur Ali Shikdar* v. *Methoora Nath Ghose*, 15 S. W. R., C. R., 354.

An order by an officer officiating for a Sub-Registrar refusing to register a document tendered to him for registration, is appealable to the Registrar-General. *Sarkies* v. *Sungram Singh*, 14 S. W. R., C. R., 194.

A dowl-durkast, being only a preliminary to a lease, does not require registration. *Bibee Mehgroonissa* v. *Abdool Gunna*, 17 S. W. R., C. R., 509.

An action lies in a Small Cause Court for the recovery of costs incurred by the plaintiff in a suit to compel registration of a document. *Chengulva Ráya Mudali* v. *Thungutchi Ammál*, 6 Mad. Rep., 192.

Registration can give no efficacy to a fraudulent and collusive deed. The remedy given by the Registration Act by appeal, where a registry officer refuses to register, does not affect the remedy by suit to compel the vendor to do all that is legally requisite to complete the sale, including the registration of the deed. *Ramphul Lall* v. *Chundee Pershad*, 1 N. W. R., Par. 12, p. 204.

The plaintiffs by letter dated October, 1864 (before Act XVI of 1864 came into force), ordered from the defendants twenty-one bales of cotton at so much per bale, and in the said letter the defendants said, "We will send the hoondee in another letter." *Held*, in a suit for balance of account in respect of the cotton sold, that such a letter was a written contract within the meaning of Clause 10, Section 1, of Act XIV of 1859, and that it was not an obligation for the payment of money within the meaning of Regulation XX of 1812, and being so, was incapable of registration. *Held* further, that the limitation

applicable to such a case is six years, under Clause 16, Section 1, of Act XIV of 1859. *Chunder Sein* v. *Gujadhur Lall*, 1, N. W. R., Par. 8, p. 148.

(*b*) *Priorities.*

Where, under the circumstances, it appeared that a sale of the share for which plaintiffs held a conditional sale deed had substantially taken place, in satisfaction of two decrees obtained on two bonds, one unregistered and the other registered, and of a prior date to that of the plaintiffs' mortgage deed, —*Held* that the share was not liable to a lien created subsequent to the registered deed; and though the plaintiffs may have, by reason of registration, a preferable right to that possessed by the decree-holder of the unregistered bond, yet they have no claim preferable to that of the decree-holder of the registered prior bond. *Mottee Ram and others* v. *Kaisree and others*, 1 Agra Rep., 52.

Held that property sold in satisfaction of a superior lien cannot be held to have been sold subject to an inferior lien, and that a registered deed of a subsequent date has preference over an unregistered deed of prior date. *Seetul Pershad* v. *Hur Chund Shahoo*, 1 Agra Rep., A. C., 263.

H. and U. were mortgagees of one V. U.'s mortgage was prior in point of time and registered. H. and U. obtained each a decree against V. U.'s decree was prior; but H., having applied for execution sooner, was put into possession. U. subsequently applied for execution, and dispossessed H.

Held, in a suit by H. against U. to recover possession of the mortgaged premises, that registration made U.'s mortgage complete, though he did not obtain possession of the mortgaged property at the time when the deed to him was executed, and that any subsequent disposition of the equity of redemption by the mortgagor would be subject to his mortgage. *Umáaji Válád Manáji Palil Damale* v. *Hair Ramchandra Kulhareni*, 4 Bom. Rep., A. C. J., 30.

Where a bond has been *bonâ-fide* executed before a purchase-deed, the former having been registered, and the latter not, it would be *primâ-facie* entitled to priority, and a defendant opposing it could not succeed without proof that he was a *bonâ-fide* purchaser for value. *Maharajah Mohessur Buksh Singh Bahadoor* v. *Bhiku Chowdhry*, 1 Ind. Jur., N. S., 122.

The purchaser under a decree for sale in satisfaction of a registered mortgage, is entitled in priority to the purchaser under another decree for sale in satisfaction of another unregistered mortgage, although the latter mortgage be of an earlier date. *Prahlad Misser* v. *Udit Narain Singh*, 1 B. L. R., A. C., 197; 10 W. R., 291.

A person cannot claim under an unregistered prior verbal contract to the detriment of a party holding *bonâ fide* under a subsequent registered deed. *Kylash Chunder Chatterjee* v. *Gopal Chunder Chatterjee*, 1 W. R., 78.

The benefit of priority over an earlier unregistered deed of sale does not extend to a registered document, which, although in form a deed of sale, is in truth a fraudulent deed of gift. *Nettro Gopal Chunder* v. *Dwarkanath Mullick*, 1 W. R., 314.

Held that a registered mortgagee, although without possession, is entitled to priority over a subsequent purchaser. *Sunder Jagjiwan* v. *Gopal Eshvant*, 4 Bom. Rep., A. C. J., 68.

The rule giving a registered document preference over an unregistered one does not apply to deeds of different descriptions. *Khettur Balsee* v. *Gour Hurree*, W. R., 1864, 387.

The first part of Clause 1, Section 16, Regulation IX of 1827, is unrepealed, and therefore a purchaser claiming under a deed of purchase duly registered is entitled to be preferred to a mortgagee claiming under a deed of mortgage executed before his purchase, but not registered until after the deed of purchase had been registered. *Purshotom Runchod* v. *Jugwan Mayaram*, 1 Bom. Rep., 60.

A. entered into an agreement with B. to convey to him a certain portion of land for a consideration of Rs. 98, of which Rs. 60 had been paid as earnest money. The agreement contained a proviso that on A.'s refusal to convey the property within the time mentioned in the agreement, this document should operate as a conveyance, and A. should forfeit his claim to the balance of the consideration. Before the expiry of the time mentioned in the agreement, A. sold by a registered deed, a portion of the property mentioned in the agreement. On suit by B. for possession of the property and for declaration that the agreement operated as a conveyance,—

Held, that under Clause 1, Section 18, and Section 50 of Act XX of 1866, the subsequent registered conveyance had priority over the unregistered agreement. *Shama Churn Neogi* v. *Nobin Chundra Dhobee*, 6 B. L. R., Ap. 1; and 15 S. W. R., C. R., 239.

As Act XIX of 1843 has been repealed, and the new Registration Act (VIII of 1871) contains no provision for the priority of registered deeds over any others, save in the cases of optional registration, the ordinary rule applies that the prior conveyance must prevail. *Raçhuri Venkubaiyammee* v. *Guduree Ramanna Pantulee*, 6 Mad. Rep., 391.

In a suit by a purchaser of a howla tenure which defendant was proceeding to sell under an *ex-parte* decree, which he had obtained upon a mortgage bond executed by plaintiff's vendor,—*Held* that plaintiff's registered purchase, though of a subsequent date, must take effect as against defendant's unregistered mortgage, which might have been registered. *Ali Azim Khan* v. *Islam Khan*, 14 S. W. R., C. R., 483.

In a suit for possession and ejectment founded upon a deed of sale, where plaintiff's conduct in collusion with his vendor was found to be fraudulent, it was held that the mere fact of the deed of sale being registered gave him no priority over defendant's deed of sale, which was of earlier date, though unregistered. *Bhikdharee Singh* v. *Kanhya Lall*, 14 S. W. R., C. R., 24.

A lien created by verbal contract and deposit of title-deeds of immoveable property in the island of Bombay by a Hindu in favour of a Hindu upheld.

Where such a lien was created before the 1st of January, 1865, when the first general Registration Act (XVI of 1864) came into force, and a Gujarati document (unregistered) was subsequently (on the 13th of June, 1865) executed by the giver of the lien which set out its particulars, and acknowledged the receipt of the loan on account of which

the lien was given: it was *held* that the original oral contract of lien, being in itself a perfected transaction, was not merged in or invalidated by the subsequent document, and that, therefore, the fact of the latter not being registered did not affect the validity of the prior transaction. Section 48 of Act XX of 1866, which enacts that all instruments duly registered under that Act and relating to moveable or immoveable property shall take effect against any oral agreement relating to the same property, does not apply to oral agreements completed before Act XVI of 1864 came into force.

The English equitable doctrine of notice, where there is a contest as to the priority of a deed registered under Act XVI of 1834, or Act XX of 1866, over an unregistered deed of a date prior to those Acts, is applicable in India. *Jivandás Keshavji* v. *Fráinji Nánábhái*, 7 Bom. Rep., O. J., 45.

An unregistered mortgage prior in date cannot take effect against a subsequent registered mortgage, whether the holder of the latter deed has or has not notice of the former. *Sunkur Sahoy* v. *Sheo Pershad Sookool*, 16 S. W. R., C. R., 270.

Held that a deed of sale of immoveable property, duly registered under Act XX of 1866, was to be preferred to a prior verbal sale of the same property accompanied by possession, where it appeared that it it was the intention of the parties to the verbal sale to complete the transaction by a deed.

Semble,—That the effect would have been the same if there had been no such intention. *Bhundu Valad Rujaram* v. *Damaji Valad Jivaji*, 6 Bom. Rep., A. C. J., 59.

An unregistered mortgage without possession, upon which a decree has been obtained but not executed, has not, by virtue of such decree, priority over a subsequent deed of sale which is registered. *Kánu Khander* v. *Krishná Bhulaji Shet*, 5 Bom. Rep., A. C., 147.

Where a conditional mortgagee had been in possession under an unregistered deed from 1853,—*Held*, that his title could not be defeated by a purchaser under a registered sale-deed executed in 1867. *Sheodyal Aheer* v. *Gool Mahomed Khan*, 2 N. W. R., 296.

The 50th Section of the Registration Act applies to instruments of which the registration is optional, giving priority between such instruments to the one which is registered, but not to a case in which the registration of one instrument is optional, but of the other compulsory. *Hamed Bux* v. *Bindra Bun*, 2 N. W. R., 37.

A Judge should record a distinct finding of fraud or collusion on the part of the holder of a registered deed, with the grounds on which it proceeds, before he gives an unregistered deed priority over it, and unless he does so, the case will be remanded to him for re-trial. *Gouri Kant Roy* v. *Giridhar Roy*, 4 B. L. R., A. C., 8; 12 S. W. R., C. R., 456.

A. lent B. Rs. 75, on 6th Asar, 1273 (June 19th, 1866), and B. executed a mortgage of two bigas of land, for the amount, in A.'s favour. On 23rd Asar (July 6th) B. sold to C. one biga of the same land. A.'s mortgage was not registered, C.'s deed of sale was. A. subsequently brought a suit for the amount owed him by B., and sought to attach the land mortgaged to him in execution. C. preferred a claim to the property attached, on the ground that the land was his; his petition was allowed. A. now sued to have the property mortgaged to him sold in execution of his decree, and to set aside C.'s purchase.

Held, that under Sections 18 and 50, Act XX of 1866, C.'s registered deed of sale must have preference over A.'s unregistered mortgage. *Gyaram Mazumdar* v. *Madhusudun Mazumdar*, 4 B. L. R., Ap. 73.

In a suit to recover possession of land under a registered pottah granted by the widow of the landlord, where the defendant set up an unregistered lease granted by the landlord himself in his lifetime, and pleaded that under that lease possession had been made over to him and rent received by the landlord,—*Held*, that if effect had been given to the unregistered lease by the transfer of the land, and such lease were dealt with merely in the view of a parol contract, the lease granted to the plaintiff, though registered, could not prevail against it. *Nursingh Poorkaet* v. *Bikram Majee*, 14 S. W. R., C. R., 250.

(*c*) *Registration Act XIX of* 1843.

A registered deed of sale does not invalidate a prior unregistered mortgage under the provisions of Act XIX of 1843. A *bonâ-fide* purchaser for value without notice is not entitled to priority over a prior unregistered mortgagee. *Maharajah Moheshur Buksh Singh Bahadoor* v. *Bhikha Chowdhry*, 5 W. R., 61.

Priority of registration gives priority of title under Act XIX of 1843 only when the authenticity of the document is proved. *Gandharee Dabea* v. *Sonatun Pandey*, 10 W. R., 215.

Held that the registration of a deed fraudulently got up and registered after the commencement of the suit does not give it the effect of invalidating a former unregistered deed of sale. The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court," were introduced in order to prevent any supposition that registration would give to a merely fictitious transaction any effect which it would not otherwise possess. *G. Narasanna* v. *R. Gavappa*, 3 Mad. Rep., A. J., 270.

A registered deed of sale gives the vendee no preferential right, under Act XIX of 1843, to avoid an unregistered lien given by the vendor to his judgment-creditor. *Bissonath Singh* v. *Raj Chunder Roy*, W. R., 1864, 141.

A subsequent registered mortgage was held, under Section 2, Act XIX of 1843, to invalidate a prior unregistered bond. *Gopal Doss* v. *Doomee Chowdhry*, W. R., 1864, 226.

The want of registration of a contract by A. to sell land to B. at some future time, on receipt of balance of sum agreed on, not then paid, is no bar *per se* to B.'s preferential claim over C., a subsequent purchaser, whose sale has been registered under Act XIX of 1843. *Ramtonoo Surmah Sircar* v. *Gour Chunder Surmah Sircar*, 3 W. R., 64.

Act XIX of 1843 does not give a registered kobala priority over a prior unregistered mortgage under which enjoyment has actually taken place. *Syud Furzund Ally* v. *Syud Abdhool Rahim*, 4 W. R., 30.

Act XIX of 1843 does not apply to pottahs, consequently a subsequently registered pottah cannot prevail over a prior unregistered pottah. *Anund Chunder Chowdhry* v. *Chundernath Roy*, 5 W. R., 205.

The words "any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding," in Section 2, Act XIX of 1843, refer not only to the mortgages and certificates mentioned in that part of the section which immediately precedes these words, but extend also to the deeds of sale or gift which are mentioned in the earlier part of the section.

The words "provided its authenticity be established to the satisfaction of the Court" in the same section, point not merely at the exclusion of a forged deed from the benefit of the Act, but also of a deed tainted by fraud, although in other respects genuine. *Sreenath Bhuttacharjee* v. *Ram Comul Gangooly and others*, 3 W. R., P. C., 43.

A registered deed of sale, though subsequent in date, invalidates as against the registered purchaser a prior deed of sale unregistered, notwithstanding that notice of the prior deed be alleged. Act XIX of 1843, Section 2, construed. *Krishnasami Pillai* v. *Vencatachella Alyan*, 3 Mad. Rep., A. J., 89.

Held that the preference given under Act XIX of 1843 to the latter of two deeds of sale of immoveable property when registered over the earlier unregistered deed, is not confined to cases in which the first deed has not been carried into effect, as every duly registered deed of sale, if authentic, invalidates any other deed of sale which may not have been registered. *Parabhudas Hirachand* v. *Dhonda Bhikaree Bhat*, 2 Bom. Rep., 233.

If a vendor sells the same property to two parties, and it is found that they both bought *bonâ fide*, the second kobala, if registered, will, under Act XIX of 1843, take precedence of the first one, if not registered. *Syud Nuzar Ali* v. *Syud Emdad Ali*, 1 W. R., 206.

Under Act XIX of 1843, a registered deed is entitled to priority over any unregistered deed of an earlier date. *Mushapa bin Kurvirapa* v. *Gosapa bin Ningapa Shetowneker*, 1 Bom. Rep., 10.

Act XIX of 1843 gives the preference, generally speaking, to a subsequent kobala which is registered over a prior one unregistered. To avoid its operation, plaintiff must show that the vendor not only sold and parted with his rights in the property, but actually made over possession to him. *Mussamut Butoohur* v. *Mussamut Ozeerun*, 8 W. R., 300.

The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court," were introduced in order to prevent any supposition that registration would give to a merely fictitious transaction any effect which it would not otherwise possess. *G. Narasama* v. *R. Gánappa*, 3 Mad. Rep., A. C., 270.

Held that a registered miraspatra was entitled, under Act XIX of 1843, to preference over an unregistered miraspatra of prior date, accompanied with possession. *Harnamgir* v. *Spiers*, 2 Bom. Rep., 1864, 213.

Where an instrument was executed under the Registration Act XIX of 1843, and was a valid instrument conferring a right or interest on the party in whose favour it was made, it does not become invalid by reason of the party not getting it registered within 12 months, nor is priority over it obtained by a subsequent conveyance which is registered under the Registration Law of 1864 or 1866. *Doolal Bibee* v. *Nada Shaha*, 13 S. W. R., C. R., 446.

(*d*) *Registration Act XVI of* 1864.

For the purpose of impeaching a deed of sale registered under Act XVI of 1864, so as to prevent the operation of Section 68, it is necessary to show that the deed was fraudulently executed, and that the purchaser was wilfully and intentionally a party to the fraud of the vendor, or at least that the deed was executed without consideration. *Ram Chand Koomar* v. *Modhoosoodun Mozoomdar*, 7 W. R., 119.

Under Act XVI of 1864, a decree to enforce registration cannot be passed in respect of a deed presented for registration four months after the execution of the deed. *Oojul Mundul* v. *Herasutoollah Mundul and others*, 7 W. R., 150.

A Civil Court was held to have done right in giving priority to a lease registered under Act XVI of 1864, as against an unregistered conveyance of an earlier date. *Gobind Chunder Roy* v. *Poorno Chundra Sein and others*, 10 W. R., 37.

B. sued for possession of certain lands, on a contract embodied in a document which purported to grant B. possession of these lands for a period of six years, on payment of Rs. 99,—*Held*, that the document in question was not a lease, but an usufructuary mortgage, and that the consideration-money being less than Rs. 100, its registration under Act XVI of 1864 was merely optional. *Ishan Chandra* v. *Sujan Bibi*, 7 B. L. R., 14, and 15 S. W. R., C. R., 331.

A Judge should record a distinct finding of fraud or collusion on the part of the holder of a registered deed, with the grounds on which it proceeds, before he gives an unregistered deed priority over it; and unless he do so, the case will be remanded to him for re-trial. *Gouree Kant Roy* v. *Giridhur Roy*, 4 B. L. R., A. C., 8; 12 W. R., 456.

Section 13.

It was not intended that compulsory registration under Section 13, Act XVI of 1864, should apply to deeds, like amuldustuks, which are merely preliminary to the main contract or engagement, or that deeds which are steps in, or mere parts of, a transaction, should be registered before they can be used as evidence.

Where A. in a suit against five defendants, B. to F., claimed under an alleged contract by B. to E. to grant him a lease, and sought to disturb F.'s possession under a subsequent registered lease from B. to E.,—*Held* that, in the absence of any suggestion to the contrary, F., who had gained his separate suit, must be assumed to have taken *bonâ-fide*, and without notice of the alleged contract with A., and that A.'s remedy for any wrong sustained by him must be by a suit against B. to E. only for damages for breach of contract. *Bunwaree Lall and others* v. *Sungum Lall and others*, 7 W. R., 280.

R. S. R., a Hindu, died in 1811, leaving a will, by which he gave his property to his five sons, subject to certain charges, and among other things directed

that the profits of a portion of it should be dedicated to a certain idol. After his death his sons partitioned the property. In 1857, B., one of the sons, brought a suit in the late Supreme Court to establish the will and to have the trusts carried into execution. The decree in that suit ordered that the portion so dedicated by the testator should be conveyed to N. C., B. D. N., and K. R. M., as trustees for the idol. In pursuance of this decree a conveyance was settled by the Master, but it was never executed, the parties having come to an agreement to compromise, and executed a deed to that effect on 15th March, 1866. The deed recited that the parties now agreed to compromise certain suits, and to execute mutual releases, &c., as thereinafter declared, and then witnessed that the real property belonging to the idol, which the trustees were entitled to hold under the will, was set forth in a schedule, and that it had been agreed that a conveyance should be executed to the plaintiff and others in trust for the idol, and the same be duly registered; provision was then made for the settlements of the dedicated portion when for more than one year, and extending beyond the term of the turn of worship of any one of the parties; and there was a declaration that all leases, &c., made without consent of the parties should only be valid for the turn of worship of such party; that the rents and profits were to pass to, and remain with, the party or parties who should for the time being be entitled to the turn of worship; and that a house of worship should be built for the idol on the land mentioned in the schedule: provision was also made for the forfeiture of interest of any party who should renounce the Hindu religion; and it was declared that a certain portion was not to be considered divided as theretofore, but that it belonged to the plaintiff, and was not liable to be sold. *Held* (reversing the decision of Markby, J.), that the document was one which required registration under Section 13 of Act XVI of 1864. *Cowar Rajkumar Roy* v. *Cowar Kalikrishna Roy*, 7 B. L. R., 197.

A document creating and transferring a right of use of growing trees for a term of years is a document which purports to create or transfer an interest in immoveable property within the meaning of Section 13 of the Registration Act of 1864; and therefore such document, if not registered, is inadmissible in evidence. *Surkey Kurdeppa* v. *Goondeekull Nagireddi*, 6 Mad. Rep., 71.

The registration of a dowl or an amuldaree, which are mere preliminaries to a lease, is not compulsory under Section 13, Act XVI of 1864. *Goluck Kishore Acharjee Chowdhry* v. *Nund Mohun Der Sircar*, 12 W. R., 394.

In a suit upon a razeenama, the execution of which was admitted by the defendants, which purported to create an interest to immoveable property, the Civil Judge dismissed the suit because the document had not been registered in accordance with Act XVI of 1864, Section 13.

Held (reversing the decree of the Civil Judge) that the existence of the agreement not having been disputed, its production was not necessary, and that the plaintiff was entitled to whatever relief the effect of the plaint and answer taken together would entitle him on the admission of the defendant. *Chedambaram Chetty* v. *Karunalyavanalgapuly*, 3 Mad. Rep., A. J., 342.

A. sued B. for recovery of possession of land which he alleged had been sold to him by B. under a bill of sale. The bill of sale had been duly registered, and was not disputed by B., but B. produced an unregistered ikrarnamah, executed by A., to prove that the sale was not absolute, but only by way of mortgage. B. alleged that the terms of the bill of sale were qualified and explained by the ikrarnamah. *Held* that the ikrarnamah was inadmissible in evidence, as it had not been registered under Section 13 of Act XVI of 1864, but that the Court might look at other and independent evidence—*viz.*, the acts and conduct of the parties—to throw a light upon their intention.

It has always been the policy of the Courts of this country not to apply the strict rules of English law to natives of this country. *Sheikh Parubdi Shani* v. *Sheikh Mahomed*, 1 B. L. R., A. C., 37.

Held that a suit for possession based merely on an unregistered sale deed must fail; such unregistered sale deed being inadmissible as evidence in any civil proceeding under Section 13, Act XVI of 1864. *Held* also that a suit to enforce registration lay where one of the parties to the deed refused to register it. *Rajah Krishen Kishore Chand* v. *Mahomed Zukahoollah and others*, 1 Agra Rep., F. B., 148.

A hibbah-namah executed before Act XVI of 1864 came into operation is admissible as evidence, though not registered. Section 13 does not apply to deeds executed before 1st January, 1865, and Section 17 contains no penalty for non-registration. *Bama Soonduree Dossia* v. *Madhub Chunder Goohoo*, 8 W. R., 69.

Sections 15, 16, 17, *and* 18.

A party, after purchasing a property, applied to have his deed registered; but the vendor not attending to admit the execution, the Deputy Registrar refused, under Act XVI of 1864, to register, and referred the applicant to the Civil Court. Application was accordingly made, under Section 15, to the Principal Sudder Ameen, who, after hearing the vendor's plea, that the whole consideration had not been paid, ordered the registration to be made, and this was accordingly done on 2nd February, 1866.

Held that though the Deputy Registrar's order was a proper one, the application to the Civil Court was warranted by the terms of Section 15, and the Civil Court had jurisdiction in the matter. *Ram Lall Singh* v. *Thakoor Dyal*, 9 W. R., 576.

A. sells certain property to B., and receives part of the purchase-money in advance, the rest to be paid after registration of the deed of sale. When the deed is executed, and taken to the registry office, A. objects to the registration, on the ground that the full price has not been paid, and the Deputy Registrar returns the deed to him, and he sells the property to other parties.

Held that, as the application for registration was made on the 27th March, 1866, before the new Registration Law (XX of 1866) came into operation, it was lawful for any person interested to institute a regular suit to establish his right to registration

under Section 15, Act XVI of 1864, notwithstanding the provisions of Section 84, Act XX of 1866.

Held, however, that the case did not come under the provisions of Section 15, Act XVI of 1864, nor of Section 84, Act XX of 1866. It was a suit to enforce a contract from which the vendor has receded, and notwithstanding the subsequent sale to a third party, and registration of such subsequent deed, there was nothing in the Registration Law to prevent plaintiff from enforcing this contract. *Bheemul Mathoon* v. *Mussamut Olimussa, alias Begum Jan and others*, 8 W. R., 423.

Held, in a suit to compel registration under Act XVI of 1864, Section 15, that where Courts found that the requirements of Section 29 of the Act had not been complied with before the registrar, he was justified in refusing to register the deed. *Bhagvan Jayarám* v. *Vithobá Govind*, 4 Bom. Rep., A. C. J., 140.

Where it is necessary to institute a suit under Section 15 of Act XVI of 1864 (Registration Act) in order to enforce registration, the suit should be limited to that object. The Court will not, after making the order to compel registration, suspend the further hearing of the case, until registration has been effected, and then proceed to consider and decide upon the rights of the parties. *Hakim Chadar Shaib* v. *Thadar Shibi*, 3 Mad. Rep., O. J., 149.

Section 15, Act XVI of 1864, applies only to cases in which the Registrar has improperly refused to register an instrument. *Gooroo Doss Dutt* v. *Dwarka Nath Manna*, 6 W. R., Mis., 61.

A Registrar to whom a deed is presented for registration has nothing whatever to do with its recitals or its possible operation as regards third parties who are not parties to it, but is bound to register it if the party applying for registration has complied with the provisions of Section 29, Act XVI of 1864.

According to Section 15 of the same Act, a regular suit, and not a miscellaneous application, must be brought to compel a Registrar to register. *Muttukdharee Lall* v. *Sheikh Fuzzul Hossein and others*, 6 W. R., Mis., 131.

Where it is necessary to institute a suit under Section 15 of Act XVI of 1864 in order to enforce registration, the suit should be limited to that object. The Court will not, after making the order to compel registration, suspend the further hearing of the case until registration has been effected, and then proceed to consider and decide upon the rights of the purties. *Hakim Khadar Saib* v. *Khadar Bibee*, 3 Mad. Rep., A. J., 149.

Where the registration of the sale deed was refused by the Registrar,—*Held* that a regular suit to prove the right of having the deed registered would lie under Section 15, Act XVI of 1864. *Shaik Inayet Ali and Vilayet Ali* v. *Syud Furzund Ali*, 1 Agra Rep., A. C., 21.

A suit under Section 15, Act XVI of 1864, is not a summary but a regular suit, and full fees should be awarded for pleaders. *Mowla Buksh* v. *Bahadoor Ali Khan*, 9 W. R., 101.

The words "any deed, bond, contracts, or obligation," in Clause 7, Section 16, Act XVI of 1864, include a promissory note which may therefore be registered. *Official Assignee* v. *Fraser*, 14 S. W. R., A. O., 51.

In a suit, under Section 15 of Act XVI of 1864, to compel the defendant to join in the registration of certain documents, the defendant admitted the execution of the documents, but set up a collateral agreement which would render the documents of no legal force. The Lower Courts found that the agreement relied on by the defendant was come to with the plaintiff.

Held (reversing the decrees of the Lower Courts) that, execution having been admitted, the documents ought to be registered. *Ramanudan Chetty* v. *Vigiasamy*, 4 Mad. Rep., 425.

Where the Registrar for any cause refuses to register a deed of sale presented for registration under the provisions of Section 17 of Act XVI of 1864, the law does not provide that the applicant can bring a suit against the vendor to enforce registration, unless there is an express condition or contract to register. *Mussamut Soorum Butty* v. *Mussamut Boodhessuree and others*, 10 W. R., 313.

Section 17, Act XVI of 1864, does not say that deeds executed prior to the passing of the Act shall not be received as evidence in Courts. It was intended merely to encourage parties to register old deeds at once. *Haroolall Thakoor* v. *Dhoonal Mundul and others*, 8 W. R., 86.

There is no provision in Act XVI of 1864 obliging or empowering a Registrar to register a deed after the expiry of the time specified in Section 18, whether under a decree of Court or otherwise, except in cases which come under the provisions of Section 15. *Monmohinee Dossee and others* v. *Bishen Moye Dossee*, 7 W. R., 112.

Where the sale deed was executed, and consideration paid, but the deed was not registered within four months, owing to the seller's fraud,—*Held* that such fraudulent vendor cannot benefit himself by pleading the provision of law (Section 18, Act XVI of 1864) as a bar to the purchaser's claim. *Purgas Rai* v. *Juggun Singh*, 2 Agra Rep., 201.

Section 29.

It is not necessary, under Act XVI of 1864, Section 29, that the Registrar of Assurances should be satisfied of the validity of the title of the person applying to have an instrument registered; he should merely enquire whether the person who purports to have executed the instrument did, in fact, do so; if he is satisfied of that, he should not refuse to register. *Raj Chunder Bundoo* v. *Rajessory Dossee*, 1 Ind. Jur., N. S., 240.

Section 51.

Section 51, Act XVI of 1864, does not require a Registrar to record the agreement there spoken of entirely with his own hand. The signature of the Registrar is sufficient.

Before enforcing a duly registered bond, without a suit, proof of the signature or handwriting of the Registrar is not necessary. The bond, with the further agreement endorsed thereon when registered, becomes a record, and is of itself *primâ-facie* proof of registration, and this with reference to the further agreement, as well as to the instrument itself. *Hobeebo Sobair* v. *Meer Hossein Ali*, 5 W. R., S. C. C. Ref., 14.

When a bond was registered under Sections 51

and 52 of Act XVI of 1864, and by its terms a fixed amount of interest was to be paid at the end of every month,—*Held* that, by virtue of special registration, the obligee was entitled to move for execution in respect of each instalment of interest due. *Manthareswara Alyar* v. *Kamala Naiker*, 3 Mad. Rep., A. J., 88.

Section 68.

Under Section 68, Act XVI of 1864, registered deeds are entitled to preference over unregistered deeds, even of that class the registration of which is optional; the practical distinction between the two classes being that deeds the registration of which is compulsory, if unregistered, will not be received in evidence at all; whereas deeds the registration of which is optional will be received in evidence, notwithstanding the absence of registration, though they must give way to registered documents of subsequent dates relating to the same property. *Munsoor Ali* v. *Ahmut Ali and others*, 9 W. R., 282. See also *Groo Doss Daw* v. *Kooshoom Koomaree Dassee*, 9 W. R., 547.

Where two parties claimed the same property by conveyance from the owner under registered deeds of sale of 1272, plaintiff's purchase and registration being of anterior date to those of defendant, who, besides being in possession, pleaded that he had previously to plaintiff's purchase obtained possession under a parol contract of sale, it was *held* that plaintiff was entitled to a decree, and that defendant could not set up the parol sale against the plaintiff's registered kobala of the same year, in the face of Section 68, Act XVI of 1864. *Bykantonauth Sett* v. *Russick Lall Bormono*, 10 W. R., 231.

(*e*) *Registration Act XX of* 1866.

The plaintiff lent defendant Rs. 20,000, and received a document in the following terms:—"On demand we promise to pay S. V. Mutu Ramen Chetty and C. T. A. Chiniah Chetty the sum of rupees twenty thousand, value received." Memo.—"For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months, the interest at Rs. 1-10 per cent. per mensem."

In a suit to compel specific performance and for damages in breach of the agreement contained in the above memo.,—*Held* that the memo. contained an agreement of which a Court of Equity would grant specific performance, had not defendant rendered specific performance impossible. *Held* also that the document did not contain an agreement creating an interest in land, and registration was not therefore necessary to render it receivable in evidence under the Registration Act of 1866. The fact that the document was received in evidence without a stamp, was no reason for reversing the decision in appeal. *Mark Ridded Currie* v. *S. V. Mutu Ramen Chetty*, 3 B. L. R., A. C., 126; 11 W. R., 520.

A genuine deed of sale given by the owner of an estate at a time when registration was not compulsory, cannot be invalidated by a subsequent deed given by that owner's heir and successor, the registration of which was compulsory by Act XX of 1866, merely on the ground that the last deed was registered, and the first was not. *Imrit Singh and others* v. *Koylashoo Koer and others*, 11 W. R., 559.

An unregistered document, requiring registration as affecting an interest in land, is admissible in evidence for any purpose for which registration is unnecessary. *Luchmiput Singh Dugar* v. *Mirza Khairut Ali*, 4 B. L. R., F. B., 18; 12 W. R., F. B., 11.

Under Act XX of 1866, a Registrar has no power to refuse to register a deed, on the ground that the full consideration there mentioned has not been paid. His duty is, when the parties appear in person before him, simply to ascertain whether the deed has been executed by the persons by whom it purports to have been executed. *In the matter of Act XX of* 1866, *and of the petition of Brindabun Chunder Shaw and Nobodeep Chunder Shaw*, 1 B. L. R., O. C., 47.

The Registering officer is not authorized to register a deed in the absence of the vendors and their agents, merely because he is satisfied that there has been a sale pursuant to a previous agreement.

The Registration Act, 1866, contains powers for compelling the attendance before the Registrar of persons whose presence is necessary for the due registration of deeds; but there is no provision enabling registering officers to proceed of their own authority to register in the absence of such persons.

Unless a deed is registered according to the provisions of the Act, it must be regarded as unregistered, though, in fact, it may have been improperly admitted to registration.

Decree-holder cannot be delayed or prejudiced by any incomplete arrangement between his judgment-debtors and third persons to which he is a stranger.

Where appellant satisfies the Court that he has been substantially injured by no issues being framed by the Judge previous to his decision, effect will be given to such objection. *Sah Koondun Lall* v. *Makhun Lall*, 1 N. W. R., par. 2, 168.

Section 2.

The right to take juice from date-trees is not, according to Section 2, Act XX of 1866, a right to immoveable property, but falls under the definition of moveable property. *Jalu Namdar* v. *Becha Namdar*, 3 B. L. R., A. C., 394; 12 W. R., 366.

Section 17.

Where defendants had contracted to execute a mourosee pottah of certain land at a given rent for a consideration of which a portion was paid as earnest-money, and the balance was to be paid within fifteen days, and had agreed that, if they failed to execute the pottah, the baeena-pottro was to be considered a pottah, and plaintiff on allegation of failure sued the defendants for possession on the footing that the baeena-namah was a mourosee pottah, *Held* that the deed under which the plaintiff sued was a pottah, and under Clause 2, Section 17 of Act XX of 1866, an instrument the regulation of which was compulsory. As an unregistered document, it could not hold its ground

against a registered pottah put in by intervenors. *Nund Ram Ghose and another* v. *Maunoo Bibee and others*, 10 W. R., 177.

A deed of bye-bil-wafa, or conditional sale, is a deed which, under Section 17 of Act XX of 1866, requires registration before it can become admissible as evidence. But so far as it is a covenant or agreement for the repayment of the money lent on a particular day, it is not an instrument requiring registration; and therefore for such purposes, notwithstanding Section 49, it is admissible in evidence. *Nilmadhub Singh Dass* v. *Futteh Chund Saha*, 3 B. L. R., A. C., 310.

A bond for money, in which land is pledged as a mere collateral security, is not one of the instruments defined in Clause 2, Section 17, Act XX of 1866, the registration of which is compulsory; but is one of which the registration is optional under Clause 7, Section 18 of that law. *Woodoy Chand Jaun* v. *Nitye Mundul and Poresh*, 9 W. R., 111.

The plaintiff sued as the assignee of a mortgagee of immoveable property to recover the amount of the debt from the mortgagor in pursuance of an express contract to pay the debt contained in the mortgage.

The mortgage was executed before the Registration Act (XVI of 1864) came into operation. The assignment to the plaintiff was executed after the last Registration Act (XX of 1866) became law.

Held, per Bittleston, Innes, and Collet, JJ., that the assignment, being an instrument operating to create an interest in immoveable property, and as such requiring to be registered under Section 17 of Act XX of 1866, was not admissible in evidence in a suit to enforce the personal obligation only. Small Cause Court Referred Case, No. 36 of 1868, dissented from. *Per* Scotland, C. J.—That an instrument which has the two-fold operation of a simple contract or bond to pay a debt and a collateral mortgage security for the debt, is admissible in evidence for the purpose of proving the simple contract debt. *Achoo Bayamah* v. *Dhany Raur*, 4 Mad. Rep., 378.

An istifanamah, or deed of surrender, surrendering pledged property of which the party executing it was in possession, on receiving back the amount of a bond debt, comes under Clauses 2 and 3, Section 17, of Act XX of 1866, and must be registered to be admissible in evidence. "Acknowledgments," in Clause 7 of Section 18, refer to transactions of quite a different description. *Bhyrub Chunder Dass* v. *Kalecchunder Chuckerbutty*, 16 S. W. R., C. R., 56.

Section 17, Act XX of 1866, does not provide for the registration of a petition asking for a lease. *Choonee Mundur* v. *Chunder Lall Dass*, 14 S. W. R., C. R., 178.

Where a bond pledges land for sums to be hereafter advanced not exceeding Rs. 100, and the sums actually advanced to exceed that amount, the bond becomes an instrument of which the registration is necessary under Section 17, Act XX of 1866. *Perrin* v. *Ledlie*, 15 S. W. R., C. R., 364.

The registration of a deed of division of immoveable property of the value of more than Rs. 100, executed by members of an undivided Hindu family, is optional under Clause 2, Section 17 of Act XX of 1866, and a suit will not lie to compel registration. 6 Mad. Rep., Rul. IX.

An instrument operating to create an interest in immoveable property, and as such requiring to be registered under Section 17 of Act XX of 1866, and also evidencing a personal obligation, is not admissible in evidence in a suit to enforce the personal obligation only. *Achoo Buyamah* v. *Dhumy Rum*, 4 Mad. Rep., 378.

Where an instrument purports to create an interest in immoveable property only as a collateral security for the payment of money, and is also a simple contract or bond for the payment of a debt, and where effect is sought to be given to the instrument only as a simple contract, it is admissible in evidence in a suit to recover the debt, though it has not been registered. So far as it is a contract for the payment of money, it is an instrument, the registration of which is made optional by Section 18 of Act XX of 1866. *Vellaya Padyachu* v. *Moorthy Padyachu*, 4 Mad. Rep., 174.

Sections 44 *and* 49.

A testator deposited his will in a sealed cover with the Registrar of Assurances at Bombay under Section 44 of Act XX of 1866; and upon his death, his executors applied to the Registrar to deliver over to them the will, in order to enable them to apply to the High Court for probate thereof. The Registrar gave a copy of the will under Section 46 of the Act, but refused to part with the original.

On application by the executors for a citation to the Registrar-General to bring the will into Court, and deposit it with the Ecclesiastical Registrar, —*Held* that the original should be brought into Court, where alone the *factum* of the will could be tried and determined; and that a copy, authenticated under Section 65 of the Act, was not sufficient. The Registrar-General should not, after the death of the depositor of a will, part with it otherwise than by order of Court. *In the goods of Nagindos, deceased*, 3 Bom. Rep., O. C. J., 135.

Where possession of immoveable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession, on the ground of the priority of his deed under Section 48, Act XX of 1866. *Narsing Porkaet* v. *Mussumut Bewa*, 5 B. L. R., Ap., 86.

An instrument acknowledging the payment of the consideration-money for what was to be ultimately an absolute sale of the property in question—for what in equity did presently operate as a sale of the property—is an instrument which by the 2nd Section of Act XX of 1866 is required to be registered, and cannot be received in evidence under Section 49, if it has not been registered. *Futteh Chund Sahoo* v. *Leehumbur Singh Doss*, 16 S. W. R., P. C., 26.

An unregistered deed of sale, so far as it is a receipt or acknowledgment of money paid, or an acknowledgment for old debts, is admissible in evidence, notwithstanding Section 49, Act XX of 1866.

A portion of an unregistered document requiring registration is admissible in evidence, when such portion does not relate to immoveable property. *Shib Prasad Dass* v. *Anna Purna Dayi*, 3 B. L. R., A. C., 451.

An unregistered contract of sale, though not such

as absolutely to require registration, according to Section 49, Act XX of 1866, in order to be admissible as evidence (even if sufficiently complete to pass rights of property from the vendor to the purchaser), cannot have any priority against any other authentic instrument of conveyance executed afterwards by the vendor, and duly registered. *Mofuzzull Hossein* v. *Gholam Ambia*, 10 W. R., 196.

A registered deed cannot, under Section 49, Act XX of 1866, prevail against an unregistered deed under which possession has been delivered to the alienee. *Selam Sheikh* v. *Baidonath Ghuttuk*, 3 B. L. R., A. C., 312; 12 W. R., 217.

A document which gives or purports to give a right to have immoveable property brought to sale, with a view to the recovery, out of its proceeds, of money lent (principal and interest), is an instrument which creates an interest in immoveable property, and as such cannot, under Section 49 of the Indian Registration Act, be received in evidence without being registered. *Kala Chund Mundul* v. *Gopaul Chunder Bhuttacharjee*, 12 W. R., 163.

Sections 50, 51, 52, *and* 53.

A registered lease to take juice from date-trees cannot, under Section 50, Act XX of 1866, have priority over an unregistered one of a prior date. *Jalu Namdar* v. *Becha Namdar*, 3 B. L. R., A. C., 394; 12 W. R., 366.

In this case the bond was executed at Arrah, and provided that payment should be made to plaintiff in person, and though it described plaintiff and defendant as inhabitants of Patna, yet the plaintiff having been admittedly a resident at Arrah at the time the bond was executed and for some years previously,—*Held* that the intention of the parties was to make the money payable at Arrah, and that consequently the Judge of Shahabad had jurisdiction. *Nirban Singh* v. *Kumla Sahay*, 17 S. W. R., C. R., 345.

A contract to pay money on a certain day with interest, wherein land is pledged as security for the payment, is an obligation within the meaning of Section 52, Act XX of 1866, and a Subordinate Judge was held to be acting within his jurisdiction in enforcing such a contract in the summary manner allowed by that section. *Wooma Churn Mookerjee* v. *Hurry Churn Bose*, 11 W. R., 60.

An agreement recorded on a bond or obligation under Section 52, Act XX of 1866, binds the obligor only, and not his heirs, who cannot be summarily called upon to show cause why a decree should not be passed upon them. *Ram Narain Doss Biswas* v. *Sreenath Poddar*, 9 W. R., 498.

There is no appeal from an order refusing to allow the amount due under a decree passed upon an obligation specially registered under Section 52, Act XX of 1866, to be levied by instalments, and directing immediate enforcement of the decree. *Petition of Rash Behary Baboo*, 7 W. R., 130.

The managing partner of a firm executed a promissory note in the name of his firm in favour of the petitioner, and specially registered the note under Section 52 of the Indian Registration Act, 1866, signing the special agreement also in the name of his firm. *Held* that, under Section 53, the petitioner was only entitled to a decree against the partner who actually signed the note and special agreement. *In the matter of the petition of Bakatrum Badrinath*, 6 Bom. Rep., O. C. J., 131.

A bond payable two years after date contained a stipulation, that in case of default being made in payment of interest on the principal sum secured, the principal sum, with interest up to the due date of the bond, should at once become payable. The bond was specially registered under Section 52 of the Indian Registration Act, 1866. *Held*, that such an agreement did not come strictly within the words of Sections 52 and 53 of the Act, and could not, therefore, be summarily enforced by petition under Section 53. *In re Ganput Manikji Patil*, 6 Bom. Rep., O. C. J., 64.

A suit to enforce an obligation was held to be taken out of the operation of Section 53, Act XX of 1866, by the fact that it was brought against the representative, the one of the original obligors, coupled with the fact that its object was to enforce a lien upon surplus sale proceeds in deposit in the Collectorate. *Boistub Churn Digpatty* v. *Gobind Pershad Tewaree*, 13 S. W. R., C. R., 203.

A kubuleut in which a ryot agreed to hold land under a pottah for a specified year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year, and not to need registration under Act XX of 1866 as being a lease for more than a year, although a clause intervened between the above clauses to the effect that year by year the ryot would pay rent at the above rate. *Jugdesh Chunder Biswas* v. *Abedollah Mundle*, 14 S. W. R., C. R., 68.

It is beyond the power of a Civil Court, under Section 53, Act XX of 1866, simply on the production of a registered bond and the petition of the bond-holder, either to make a decree to the effect that the amount decreed shall be realized out of the property mentioned in the bond, or to decree the whole amount of the bond on default to pay an instalment. *Greesh Chunder Chowdry* v. *Kristo Soondeer Sandyal*, 14 S. W. R., C. R., 277.

Where the lower Appellate Court passed a decree on a specially registered bond, setting aside an arrangement made by the first Court as to payment by instalments and its order about interest,—*Held* that Section 55 of the Registration Act applied to the case, and that the High Court was competent in subsequent execution proceedings to make an order under Section 243, Code of Civil Procedure, appointing a receiver, or giving opportunity to the judgment-debtor to pay off the decree by mortgage of the estate. *Kishen Coomaree Bibee* v. *Golab Coomaree*, 15 S. W. R., C. R., 477.

Sections 52 to 54, Act XX of 1866, contemplate money bonds only. A bond for the delivery of paddy without specification of its money value, or of the amount to be paid in case of non-delivery, cannot be summarily enforced under Section 53 of that law. *Jadub Mundle* v. *Bishco Sirdar*, 15 S. W. R., C. R., 369.

In a suit under Section 53 of the Registration Act XX of 1866 to recover two instalments, one of which had fallen due more than a year before the institution of the suit, the Small Cause Court came to the conclusion that the bond was not executed by the defendant and was not properly registered, and for that reason dismissed the suit. The High Court on a reference refused to allow the plaintiff

to waive the first instalment and to alter the nature of his suit, with a view to his obtaining a decree for an instalment to which he was not entitled upon the finding of the Small Cause Court after hearing the evidence. *Dhununjo Ghose* v. *Bemal Dhara Bagdee*, 17 S. W. R., C. R., 514.

Under Act XX of 1866, Section 51, the time for bringing a suit for money lent under a bond registered under Act XVI of 1864 is six years.

A decree obtained by the plaintiff upon a specially registered bond under Act XX of 1866, and set aside under Section 55 of that Act, *held* not to bar a regular suit upon the bond. *Utshab Narajain Chowdry* v. *Chittra Raka Gupta*, 8 B. L. R., Ap., 92; and 17 S. W. R., C. R., 154.

The plaintiff brought a suit upon a specially registered bond, under Section 53 of Act XX of 1866, to recover the whole amount secured by the bond. The bond contained a stipulation that the amount should be paid by three instalments, and that in default of payment of any one instalment the whole amount should become due immediately. Default was made by the obligor.

Held that the summary remedy provided by Section 53 of Act XX of 1866 was not available to the plaintiff to recover the whole amount secured by the bond.

A summary remedy like that provided by Section 53 must be strictly applied. *Venithithan Chetty* v. *Moothiroolandi Chetty*, 6 Mad. Rep., 4.

Bonds containing hypothecation of immoveable property are not excluded from the provisions of Sections 52 and 53 of Act XX of 1866. *Gobind Shunkerjee* v. *Girdharee Singh*, 14 N. W. R., 90.

The summary remedy under Section 53 of the Registration Act is made applicable only as between the immediate parties to the registered obligation. Such remedy cannot, therefore, be enforced by the representative of an obligee. *Subbuviyan, petitioner*, 4 Mad. Rep., 233.

The Small Cause Court in Calcutta has no jurisdiction to pass a decree in cases of special registration under Sections 52 and 53 of Act XX of 1866. *Nilcomul Bonnerjee* v. *Muddoo Soodun Chowdry*, 14 S. W. R., C. R., 478.

Section 53 of the Indian Registration Act does not apply to a case where the decree is sought against the alleged personal representatives of a deceased obligor. *Pudyafaragil Mamy* v. *Madakarall Amarun Kutti*, 3 Mad. Rep., A. C., 199.

Upon a case referred,—*Held* by the majority of the Court (Holloway and Collet, JJ., dissenting) that Section 53 of the Indian Registration Act (XX of 1866) does not apply to a case where the decree is sought against the alleged personal representatives of a deceased obligor. Reliance is placed upon the special registration as a substitute for any investigation by the Court; and when any question arises as to the matter subsequent to the registration, the summary remedy fails. It can only apply to cases in which the parties to the registration will also be the parties to the decree. *Pudiyaporayil* v. *Madakaratt Amman Kutti*, 3 Mad. Rep., A. J., 169.

No appeal lying against a decree made under Section 53, Act XX of 1866, the petition was directed to be returned, with a view to its being presented to the Court, if desired, by way of motion. *Rash Behary Baboo and others* v. *Gooroodass Baboo and others*, 7 W. R., 115.

In cases of application to the Court under Section 53 of the Registration Act XX of 1866, the Court ought not to summon the defendant, but the application is entitled to a decree merely on production of the obligation and the record duly signed.

Under Section 55, the Court may, after decree on a representation by the judgment-debtor, set aside the decree, and stay or set aside execution. *Kristo Kishore Ghose* v. *Brojonath Mozoomdar*, 6 W. R., S. C. C. Ref., 11.

A summary application under Section 53 of Act XX of 1866 by the assignee of a bond cannot be entertained. *Gourmohun Dass* v. *Ramput Mozoomdar*, 1 B. L. R., A. C., 42; 10 W. R., 84.

A bond, payable by instalments, stipulated that, in case of default in payment of two successive instalments, the whole amount secured should become due. *Held* that a petition in a summary way could not be presented under Section 53 of Act XX of 1866. *In the matter of the Indian Registration Act*, 1866, *and in the matter of Lachmipat Singh Dogar Roy Bahadoor and others*, 2 B. L. R., O. C., 151.

A petition for payment of a bond, which had been specially registered under Act XVI of 1864, was presented on the 3rd April, 1866. *Held* that it must be considered as having been presented under Section 53 of Act XX of 1866, by virtue of the 3rd Section of that Act, which repealed Act XVI of 1864; consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was, under Section 55 of Act XX of 1866, final. There could be no appeal from that decision, therefore the Judge had no jurisdiction to reverse the Principal Sudder Ameen's decision. *Grish Chundra Dutt* v. *Buzul-ul-Huq*, 5 B. L. R., A. C., 68; S. C., 11 W. R., 417.

Sections 83 *and* 84.

Section 80, Act XX of 1866, in no way empowered the Registrar-General to pass any rule directing by what particular description of evidence a person producing a deed to be registered shall prove his right to have it registered; nor could it empower him to frame a special law different from the ordinary law of evidence as to what fact shall be proved by oral and what by documentary evidence. Where all the executants of a deed admit before the Registrar-General that they have executed the deed, that officer has nothing to do with the recitals of the deed, or with its possible operation as regards third parties, *e. g.*, a minor whose rights are reserved in the deed. The representative, assign, or agent, mentioned in Section 36, means the representative, assign, or agent of one of the executors of the deed. *Ram Chunder Biswas, in the matter of*, 16 S. W. R., C. R., 180.

Act XX of 1866 does not give any appeal against an order refusing to exercise the authority given by the first part of Section 32, neither does such an order fall under the operation of Section 83, nor is it an order made under Section 82. *Sarkies* v. *Sungram Singh*, 14 S. W. R., C. R., 194.

Where an executing party to a document appears before the Registering officer and admits execution,

but refuses to sign on the back as admitting the execution, or do any other act towards its registration, the Registering officer cannot, without the order of the District Court, under Section 84 of Act XX of 1866, proceed with the registration of the instrument, as the provisions of Sections 66 and 67 could not be complied with. Denial of the receipt of part of the consideration-money by the executing party is not a sufficient ground for the District Court refusing registration under Section 84 of the Act.

Where two instruments are contained in the same paper and relate to the same property, and are both presented for, and in all other respects are entitled to registration, it is not a sufficient ground for refusing registration that in one of the documents the property is described only by reference to the other.

When any question arises under the Registration Act as to the nature or effect of any instrument, or the sufficiency of any description contained in it, the Court must endeavour to gather from the words used the intention of the parties, and give effect to it, and not require as a condition of registration that the instrument be drawn up in technical language.

Though in the later of two instruments there are no words directly referring to the first, yet the frame of the document showing that the second document should be taken to refer to the first, the second document must be taken to contain a sufficient reference to the first. Refusal by the executing party to initial an apparent alteration not materially affecting the instrument, unaccompanied by any suggestion that the alteration was improperly made after execution, does not render the document non-registerable. *Re Venkutasami Naik*, 4 Mad. Rep., 101.

The only two things which are absolutely required by Section 21 of Act XX of 1866 as conditions without compliance with which registration is prohibited are, first, that the instrument shall contain a description of the property sufficient to identify it; and, secondly, that if the instrument contains a map, a copy or copies of the map shall accompany the instrument when presented for registration. The other provisions of Section 21 are directory only. The circumstance, therefore, that the description of the parcels in the instrument does not specify the registration district, or sub-district, or division, or village, in which the property is situate, or the former occupancy, is not alone sufficient to disentitle a party getting an instrument registered, if the description in the instrument is sufficient to identify the property. Upon a petition under Section 84, Act XX of 1866, the District Court is bound to ascertain whether the description is sufficient to identify, notwithstanding the failure to supply some particular mentioned in Section 21 or the rules. It is not necessary that the executing party should attend in Court pursuant to notice served under Section 84, in order to authorize the Court to order the registration of the instrument. Under Section 84, the Court is not bound to direct registration of the instrument even if satisfied that the requirements of the law have been complied with, though in the exercise of this discretion the Court ought not to refuse registration unless very clearly satisfied that the registration will work injustice. The verified statement, in the petition for registration, of the execution of the instrument, is not, when the executing party fails to appear in Court, sufficient proof of the execution, in order that the Court may direct registration. *Semble*,—The words, "the revenue officer in whose jurisdiction the person whose attendance is desired may be," in Section 40 of the Act, point to the chief revenue officer of the district, *viz.*, the Collector, or if in any defined sub-district, the sub-Collector. Such sub-Collector has all the powers of a Collector. *In the matter of the petition of Narainasami Pillai*, 4 Mad. Rep., 91.

A. brought a suit in the Moonsiff's Court against B. and C., alleging that they had sold outright to him by saf-kobala certain landed property for Rs. 300, which was duly paid, and the kobala was executed; that possession was given to him; that B. and C. set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money, had not been embodied in the deed, and that part of the consideration-money was still unpaid; that, therefore, the Registrar refused to execute the deed; that in fact there was no such stipulation as set up by B. and C., and that the whole of the purchase-money was paid; and it was stated in the conclusion of the plaint, that the suit had been instituted to set aside the fraudulent objections, and to establish the full title of A. as purchaser.

Held (Mitter, J., dissenting) that the suit would not lie. The unregistered deed could not be admitted in evidence, nor parol evidence of the contract be given under which A. alleged that he acquired his title.

A. ought to have proceeded under Section 83 of Act XX of 1866. *Sheikh Rahomatullah* v. *Sheikh Suriutulla Kagchi*, 1 B. L. R., F. B., 59; 10 W. R., F. B., 51.

A. sued B. to enforce registration of a pottah, on the allegation that the Registrar had refused registration, on the ground that B. denied before him the execution of the deed.

Held that, under Act XX of 1866, a suit would not lie. A. should have proceeded under Section 83 of the Act. *Tulsi Sahu and others* v. *Mahendra Doss and another*, 2 B. L. R., A. C., 105.

A deed of sale of land situated in the Registration District of Calcutta was executed and presented by the purchaser for registration. The vendor appeared personally, and admitted execution, but refused to endorse the deed, on the ground that she did not intend to sell, but only to renew a certain deed of mortgage. The Registrar refused to register the deed. The purchaser petitioned under Section 84 of the Indian Registration Act, Act XX of 1866. It was objected, on behalf of the vendor, that an appeal should have been first made to the Registrar-General, in accordance with the proviso in Section 83 of the Act, as the refusal was made by the Registrar as Sub-Registrar. *Held*, that the proviso in Section 83 applies solely to the case where the Registrar for a district, including a presidency town, passes an order on an application which relates to such a portion of his district as is not included in a sub-district.

The order so passed becomes the order of a Sub-Registrar, and is not within the words of Section

84, which give a right of petition to the District Court, but in such case an appeal first lies to the Registrar-General.

There being no evidence that the premises which were the subject of the deed of sale were situated in a part of Calcutta not formed into a sub-district, the Court will infer that the order was made by the Registrar as Registrar, not as Sub-Registrar. The Registrar was justified in refusing to register the deed, on the ground that the vendor, one of the parties to it, refused to endorse it. *In the matter of the Indian Registration Act and Brajanath Pyne and Armala Dasi*, 3 B. L. R., O. C., 60.

A petition under Section 84, Act XX of 1866, need not be in English, unless the party presenting it understands that language sufficiently for the purpose of verification.

When an appeal is filed under that section, a notice in accordance with Clause 4 thereof ought to be issued on the registering officer, and on the other persons interested.

The Deputy Registrar is competent to fix the time for hearing, and to require the appellants to insert the names of persons interested, and also to serve them with notices.

The document, the registration of which is refused, should be put in with the petition, and the presentation should be in the office. *In the matter of Juggun Patnee*, 12 W. R., 2.

Held (by Kemp, J., whose opinion prevailed) that, where the executant of a deed denies execution, and the application for registration is refused by the Sub-Registrar or District Registrar, the applicant cannot enforce registration by a regular suit; but the District Court has jurisdiction, under Section 84, Act XX of 1866, to summon and examine witnesses, make an enquiry into the fact of execution, and order the Registrar to register the deed. *In the matter of Sunkur Dobey* v. *Obhoy Churn Mohaputtur*, 12 W. R., 385.

Held, in appeal under Section 15 of Letters Patent, that when registration of a document has been refused, because the execution of it is denied by one of those who are said to have executed it, and when a petition, under Section 84 of Act XX of 1866, is presented to the District Court by the party claiming under the document, in order to establish his right to have such document registered as having, in fact, been executed, the Judge must himself try the question whether the document was really executed or not, and has no power to remand the case to the Sub-Registrar for the purpose of examining witnesses. Such petition is not an appeal from the decision of the Sub-Registrar or Registrar-General, but is a mode of bringing the question before the Judge as a Court of original jurisdiction, in order to determine whether an order ought to be made for the registration of the document. The words "appealed against" in Section 84 mean "complained of" or "objected to." *Obhoy Churn Mahaputtur* v. *Sunker Dobey*, 12 W. R., 500.

Held that there was no appeal to the High Court from the decision of a District Court on a petition, under Section 84 of Act XX of 1866, to establish the right to have a document registered; nor would the Court interfere with such a decision under Regulation XI of 1827, Section 5, Clause 2. *Ex-parte Dharamdas Bhagbandas*, 3 Bom. Rep., A. C. J., 104.

Although the Registrar-General may have a discretion to refuse to register without endorsing his refusal on the document, yet, in cases where he does so endorse his refusal, the last clause of Section 82 is applicable, and the case falls within the provisions of Section 84; the party aggrieved has a right of petition to the District Court. Where the property, the subject of a deed presented for registration, was without the jurisdiction of the High Court, but the order of refusal was made by the Registrar-General, who was within such jurisdiction,—*Held*, the High Court was the District Court, under Section 84, to which the petition should be made. *In the matter of the Indian Registration Act* (*XX of* 1866), *and in the matter of Percy Wyndham*, 6 B. L. R., 576.

A. applied to a Registrar to have a deed of sale registered, alleging it to have been executed in his favour by B., who denied the execution. The Registrar refused to register the deed. A. then applied to the Judge by petition, under Section 84 of the Registration Act, to order the registration of the deed, alleging that B. had falsely denied the execution of the deed. The Judge dismissed the petition, on the ground that he had no authority to examine witnesses in the matter, or to determine whether the deed of sale was executed or not.

Held (Macpherson, J., *dubitante*), that the Judge had wrongly refused jurisdiction. He ought to have examined witnesses as to whether or not the deed was really executed. The petition to the Judge was not an appeal from the officer who refused to register the deed, but an original application to the Judges for an order to compel the Registrar to register. The words "appealed against" in Section 84 of the Registration Act, only mean "complained of" or "objected to." *In the matter of the petition of Sunker Dobey*, 4 B. L. R., A. C. 65, and 12 S. W. R., C. R., 385.

In an application to a Civil Court, under Section 84 of Act XX of 1866, for a declaration of petitioner's right to have a document registered, the Legislature intended to give the petitioner something more than a mere appeal from the order of the registering officer. It is intended that the Court should summarily determine the facts of execution in those cases in which it has not been admitted by the respondent, and that on proof of the execution and of compliance with the requirements of the Act, the Court should order registration, without concerning itself to enquire whether or not consideration has been received, or whether or not the petitioner is for other reasons disentitled to enforce the deed. The Court, therefore, is bound to enquire into the fact of execution; but is not bound to determine any issue respecting the payment of consideration. *Sheo Newaz* v. *Adjoodhya Khoombee*, 2 N. W. R., 254.

Where a person who is alleged to have executed a deed denies before the registering officer that the deed was executed by him, the Zillah Judge, having regard to the provisions of Section 84 and the form of the petition given in the Schedule to the Act, has jurisdiction to determine such a question. *Futteh Chund Sahoo* v. *Leehumbur Singh Doss*, 16 S. W. R., P. C., 26.

Sections 94 and 95.

The proceedings of a Magistrate who tries prisoners charged with having committed offences under Sections 93 and 94 of the Indian Registration Act XX of 1866 are not illegal and without jurisdiction, or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar. Under such circumstances, where it can be done, it would be better if the case were tried by some other person. *Queen* v. *Hira Lal Dass*, 8 B. L. R., 422.

Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under Section 94 of the Registration Act XX of 1866. *Queen* v. *Solecmooddeen and others*, 7 W. R., Cr., 99.

A Registrar under Act XX of 1866 is competent under Section 95 to institute a prosecution for any offence under that Act. *Queen* v. *Ramdhary Singh and others*, 10 W. R., Cr., 5.

Section 100.

A. purchased certain lands in 1866, and duly registered his bill of sale. B. had purchased the same lands in 1855 from the persons through whom A.'s vendors made their title, and had been in possession ever since, but had not registered his bill of sale, as he might have done, under Section 100 of Act XX of 1866. A. sued to obtain possession. *Held* that B. was not bound to register, and his title was good against A. *Girija Singh* v. *Giridhari Singh*, 1 B. L. R., A. C., 14; 10 W. R., 65.

(*f*) *Registration Act VIII of* 1871.

The effect of the first and fourth clauses of Section 2 of the Indian Registration Act of 1871, read with the provision in the first schedule as to the extent of the repeal of Act VII of 1870, is to keep in force all the provisions of Act XX of 1866 relating to the procedure for the recovery in a summary way of the amount of an obligation upon agreements recorded under Section 52 of that Act, before the 1st day of July, 1871. *Pachaiperumal Chetti* v. *Savayyar Avdoni Kurnsa Ravvel*, 6 Mad. Rep., 351.

Sale certificates under Section 259 of the Civil Procedure Code are instruments declaring an interest in property, and if the value of the interest so declared be Rs. 100, or upwards, the registration of these instruments is compulsory under Section 17 of Act VIII of 1871. 6 Mad. Rep., Rul. XL.

8.—STAMPS.

(*a*) *Miscellaneous.*

A bond stamped subsequently to the institution of a suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862, provided it be properly stamped when produced at the first hearing of the suit and when the Court is asked to receive it in evidence. *Atmaram Goobbrai* v. *Amirchand Rupchand*, 3 Bom. Rep., A. C. J., 92.

The decision of the Court of first instance as to the admissibility of a document subject to the payment of stamp duty is final, and cannot be reviewed by the Appellate Court. *Lakshomi Narayana Aiyar* v. *Suppara Gaundan*, 2 Mad. Rep., 321.

An endorsement upon the pottah transferring it for a consideration not exceeding 100 rupees, is not admissible in evidence unless it bears a stamp not less than the proper stamp, as per schedule annexed to Act X of 1862. *Pityee Ahung* v. *Girghee Koer Ajooah*, 11 W. R., 365.

A petition which has been accepted by the lower Court as good and valid evidence of a mortgage cannot be objected to in special appeal on the score of its not being engrossed on a proper stamp. *Doomah Sahoo* v. *Jomarain Lall*, 12 W. R., 362.

Where no application was made to the lower Court to receive unstamped receipts for rent on payment of the stamp duty and penalty, the Appellate Court held that it was not in a position to order their admission on such payment. *Gour Persaud Singh and others* v. *Lalla Nund Lall*, 7 W. R., 439.

An objection by way of cross-appeal will not be entertained except on payment of the stamp duty required by Section 6 of Act XXVI of 1867, though a petition setting out the grounds of such cross-appeal on a stamp of Rs. 2 had been filed before the passing of that Act. *G. L. Fagan and others* v. *Chunder Kant Banerjee*, 7 W. R., 452.

The plaintiff appealed to the Judge against a dismissal of his suit, who reversed the decision of the Court below, and gave the plaintiff a decree. The defendant thereupon appealed to the High Court, on the ground that a document had been admitted in evidence in support of the plaintiff's case which did not bear a proper stamp. *Held* that the defendant, having omitted to take the objection before the Judge, could not appeal on this ground. *Rambrem Lall* v. *Abbek Singh*, Marsh., 267.

The examination of stamps is a fiscal duty belonging to a revenue officer, and for which the Registrar of the High Court should not be responsible.

Where an appeal to the High Court in a case involving property not exceeding Rs. 3,000 in value was filed, under Act X of 1862, on a stamp paper worth Rs. 100, and the result was a remand in respect to a portion of the property of which the value was Rs. 1,756, it was *held* that as the appellant was successful in his appeal in respect of property representing a value which must of itself have required a stamp duty of Rs. 100, that portion of his appeal in which he failed did not necessitate the payment of any further stamp duty; consequently the appellant was entitled to a refund of the stamp duty in full. *Bhikoo Mollah and another* v. *Rash Monee Dossee and others*, 9 W. R., 357.

Where a case is remanded in part the appellant is entitled to a refund of stamp duty in proportion to the value of that part of the claim only which has been remanded. *Doorga Dass Doss and others* v. *Mookta Keessy Debee*, 1 Ind. Jur., N. S., 401.

Where a landlord claims to eject a tenant, he claims to recover the tenant rights in the holding, and the stamp duty chargeable on the plaint should

be determined with reference to the market value of that right only.

Held further that a defendant is legally chargeable with that amount of stamp duty which can legally be demanded from the plaintiff, and not with the excess which he was obliged to pay through a mistake in law of the Court. *Ajoodya Chowbey* v. *Daibee Singh*, 4 Agra Rep., 5.

The terms of the Bengal Stamp Regulation X of 1829 upon the subject of value should be carefully attended to. *Mohun Lall Sookul* v. *Debee Doss Dutt*, 2 W. R., P. C., 9.

The refusal to give a stamp receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamp receipt is not an indictable offence. *Reg.* v. *Gopoo Kom Koopsajee*, 1 Bom. Rep., 93.

A decree had been obtained by a party suing in *formâ pauperis* against the appellant. The Government now sought to recover against the appellant the amount of stamps which would have been paid by the plaintiff, if he had not been permitted to sue as a pauper. *Held* that the right of Government to recover the stamp fees in question, under Section 309 of Act VIII of 1859, is not affected by the Law of Limitation laid down in Section 10 of Act XIV of 1859. *Shami Mahomed* v. *Moonshee Mahomed Ali Khan*, 2 B. L. R., Ap., 22.

An unstamped document having been received in evidence by the lower Court, the objection of the want of stamp is unsustainable in the Appellate Court, as it does not affect the merits of the case or the jurisdiction of the lower Court. *G. Brawley* v. *R. Maling*, 1 Agra Rep., A. C., 63.

Held that, for the purpose of refund on half-stamp duty under Section 26 of Act X of 1862, the hearing of a suit in a Small Cause Court commences when proof of the service of the summons is taken on the day appointed for the hearing; and where proof of the service of the summons has been previously taken it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. *Amirchand Jamádus* v. *Magan Amthu*, 4 Bom. Rep., A. C., 176.

The words in Section 3 of Act X of 1862, "unless in any case in which a higher penalty is imposed," and "not exceeding," apply both to the penalty of Rs. 100, and one higher than ten times the value of the omitted stamp.

Attesting witnesses and persons who draft documents and note the fact with their signatures at the foot do not come within the words "make, execute, sign, or be a party to," used in the section, and are therefore not punishable under it. *Anonymous case*, 3 Mad. Rep., Ap., 27.

The mere engrossing of a deed on unstamped paper, or the using it as witness, is not an offence under Section 3 of Act X of 1862. *Reg.* v. *Jetha Moti; Reg.* v. *Verji Kuvarji*, 2 Bom. Rep., 135.

Note (*e*) to Article 11, Schedule B., Act XXVI of 1867, contains no reservation as to the stamp duty to be levied on a petition of objection under Section 348, Act VIII of 1859, filed by a pauper respondent. *Rashmonee Dassee* v. *Chowdry Jonmunjoy Mullik*, 9 W. R., 356.

The stamp duty is refundable, and should not be charged to the respondent in a case remanded. *C. B. Masseyk* v. *Juggobundhoo Dutt*, 1 W. R., Mis., 12.

Copies of decrees, applied for after the present Stamp Act (X of 1862) came into operation, but passed before that Act, must be prepared under the rules prescribed by the Act. *Haffeezoonissa Begum* v. *Radha Binnud Misser*, 1 W. R., Mis., 21.

An appeal does not lie from an order of the lower Court made on an application for refund of sufficient stamp duty and penalty, after a case remanded to it had been compromised. Redress should be sought by way of motion rather than as an appeal. *Mohunt Ramanooj Doss* v. *Government*, 2 W. R., Mis., 36.

The mere engrossing of a document requiring a stamp on unstamped paper constitutes no offence under the Stamp Act X of 1862. *Reg.* v. *Jotee Bin Satoo and three others*, 1 Bom. Rep., 37.

No refund of stamp duty can be allowed when a suit is compromised pending the hearing of an appeal preferred. *Land Mortgage Bank of India, Limited*, v. *Gregory Paul Mektus*, 4 B. L. R., Ap., 96.

An application presented on the 90th day from the date of the decree having been returned for deficiency of stamp was re-filed, after the deficiency was made up, beyond the time allowed. *Held*, that the application must be dealt with as filed after the 90th day. *Gour Mohun Surmah* v. *Jugger Nath Acharjee*, 14 S. W. R., C. R., 446.

(*b*) *Where Stamp is required.*

A sunnud which authorizes a gomasta to collect rents, and to sue for them, requires to be stamped. Such a sunnud requires a 4-rupee stamp under Art. 43, Schedule A. of Act X of 1862. *Raghu Nundun Thakur* v. *Ramcharan Kapali*, 1 B. L. R., F. B., 55; 10 W. R., F. B., 39.

Where notice of an objection to be taken by a respondent, under Section 348, Act VIII of 1859, at the hearing of the appeal, was given before Act XXVI of 1867 came into force, but the objection was taken after that Act came into force,—*Held* that the objection could not be taken without payment of the proper stamp duty prescribed by Clause 9, Article 11, Schedule B. of Act XXVI of 1867. *Sreenath Roy Chowdhry, petitioner*, 7 W. R., 462.

A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be re-distributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners.

In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands, and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held* that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the sharers in the village, and that the stamp on the plaint need only be proportioned to the value of the property actually sued for. *Venkatasami Nayak Ram and others* v. *Subba Ram*, 2 Mad. Rep., 1.

A security bond executed by a third party to

the abkaree renter is not exempt from stamp duty. *Ramasvami Chetti* v. *Puppu Reddi*, 1 Mad. Rep., 190.

An agreement on a Rs. 24 stamp paper between A., who had obtained from Government the abkaree farm of a certain talook, and B., stipulating that, in consideration of Rs. 2,000 advanced by B. for payment of deposit, the whole management should reside in B., that the parties should each have a half share and be respectively entitled and liable to profit and loss in respect of his share; that they should account with one another for the sums laid out by B., and should settle annually the accounts of profit and loss upon the half share,—*Held* to be a partnership agreement, and to be sufficiently stamped under Act XXXVI of 1860, Clause 20, Schedule A.

In determining the stamp to be affixed to a document, the state of things at its execution is alone to be regarded. *Chinnaiya Nattan* v. *Muthusvumi Pillai*, 1 Mad. Rep., 226.

It is open to an Appellate Court to consider the question whether a document which the Court of first instance has declared liable to be stamped under Act X of 1862 is properly so liable. *Chella Pillai* v. *Srinivasa Pillai*, 3 Mad. Rep., A. J., 71.

Where the objection is taken for the first time in special appeal that a document which, according to Act X of 1862, ought to have been stamped has been admitted by both the lower Courts unstamped, the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal), and to require payment of the stamp duty and penalty, or to reject the document. *A. Adinarayana Setti* v. *F. J. V. Minchin*, 3 Mad. Rep., A. J., 297.

(*c*) *Where Stamp is not required.*

A claim for possession and a claim for mesne profits may be brought separately, or may be united. When united, a separate stamp fee for mesne profits is not necessary. *Beebee Syedun* v. *Syud Allah Ahmed*, W. R., 1864, 327.

Under the old Stamp Law, agreements not on stamped paper executed in Calcutta *bonâ fide* by parties residing or carrying on business therein, when there is no intention of pleading such documents in the Mofussil Courts, were held to be good and binding. *Goury Churn Mookerjee* v. *Jogendronath Mookerjee*, W. R., 1864, 289.

Mourosee ryottee pottahs are not required either by the old or new Stamp Law to be written on stamped paper. *Moheeooddeen Ahmed* v. *Prannath Roy Chowdhry*, 3 W. R., Act X R., 142.

Held that as the original deed was on the face of it an absolute sale, and as the effect of it was merely controlled by the ekrar, the return of the latter extinguished the equity of redemption. A separate document requiring a separate stamp was unnecessary. *Raj Coomar Singh and others* v. *Ram Suhye Roy and others*, 11 W. R., 151.

In a suit for payment of rent for use and occupation of land, where the basis of plaintiff's claim was for a kubuleut, the agreement produced as evidence of the contract, not being the deed of contract itself, was held to be not liable to be stamped under Article 3, Schedule A, Act X of 1862.

A petition on a lease when used as evidence of a contract to be entered into between parties is not subject to the payment of stamp-duty. *Choonee Mundar* v. *Chundee Lall Dass*, 14 S. W. R., C. R., 334.

A complaint preferred by a Moonsiff under Section 168 of Criminal Procedure Code need not, though it do not bear the seal of the Moonsiff's Court, be on stamped paper. *Reg.* v. *Sajjan Valad Vitten*, 5 Bom. Rep., Cr. C. P., 104.

(*d*) *Amount of Stamp required.*

In cases where, for the purpose of stamp on appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market value and the date on which it has been calculated. If the Registrar consider the estimate clearly insufficient, the Court will issue a Commission to ascertain the proper market value.

The provisions of Schedule B. of Act XXVI of 1867 considered. *Moonee Rangappen ex-parte*, 3 Mad. Rep., A. J., 352.

In determining the stamp required for any particular instrument regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title is a misnomer.

The discretion vested in a Court of Justice must be exercised in a sound and reasonable manner, and a capricious and unreasonable exercise of discretion on the part of a Court of first instance is an error in law which it is the duty of an Appellate Court to correct. *Pendse* v. *Malse*, 3 Bom. Rep., A. C. J., 94.

Where a zemindar values his right to measure at a certain amount, the petition of appeal must be written on a regular stamp according to such valuation, and not upon a stamp used for miscellaneous petitions. *Ooma Churn Biswas* v. *Shibnath Bagchee*, 8 W. R., 14.

When the appeal of an appellant is against the whole of the decision of the lower Court, and upon the full value of the original suit, no additional stamp duty is required in respect of the respondent's objection under Section 348, Act VIII of 1859. *Anund Mohun Chatterjee* v. *Sutto Ram Mozoomdar and others*, 8 W. R., 124.

Petitions of appeal in cases where measurement is disputed may be written on the stamp used for miscellaneous petitions. *J. Smith* v. *Nundun Lall*, 6 W. R., Act X R., 13.

Security bonds for costs of appeal to the Privy Council come within Article 12, Schedule A, Act X of 1862, and ought to be executed on a stamp as therein specified. *Soorjharee Koonwar* v. *Rameswar Pandey*, 5 W. R., Mis., 47.

In valuing a suit relating to a share of land, the rental of the share is to be the criterion of the stamp. *Ram Buksh Thakoor* v. *Ojoodhya Lall*, 2 W. R., Mis., 45.

In a suit upon a bond for Rs. 40 with interest, the defendant filed a solehnamah admitting that the amount due from him was Rs. 25, and agreeing to pay that sum by instalments. *Held* that the solehnamah was not a petition within the meaning of Article 10, Act XXVI of 1867, but an agreement

within the meaning of Schedule A., of Act X of 1862, and was liable to a stamp duty of 2 annas as for an instalment bond. *Punchanun Sircar* v. *Gunnesh Mundul*, 8 W. R., 214.

A suit for the declaration of title to a fractional share in a zemindary paying revenue to Government is not a suit "for lands forming one entire mehal or a specific portion thereof with a defined jumma;" such share being "an interest in land" should be valued according to the provisions of note (*e*) Clause 11, Schedule B., Act X of 1862. *Raj Chunder Roy* v. *Chundee Churn Maik and others*, 8 W. R., 437.

Applications to the High Court for certified copies of the decree and judgment may be engrossed on a stamp of one anna, under Clause 6, Article 10, Schedule B. of Act XXVI of 1867. *Tarif Biswas, petitioner*, 7 W. R., 455.

Where, owing to an irregularity, a petition of appeal was returned before the new Stamp Act XXVI of 1867 came into force, and the appeal was not filed until after that Act came into force,—*Held* that the appeal must be filed on a stamp of the amount prescribed by the new law. *Arahdun Dey and another* v. *Golam Hossein Maloom and others*, 7 W. R., 460.

An application, under Section 25, Act X of 1859, for the assistance of the Collector in ejecting a ryot, is not a suit; and therefore the Revenue Courts should receive such petitions engrossed on a stamp paper of the value of eight annas. *Ryari Mohun Mookerjee* v. *Kinu Bewa*, 2 B. L. R., A. C., 226; 11 W. R., 90.

A suit to resume lands as lakheraj falls in respect of stamp duty, under Clause (*d*) Section 11, Schedule B. of Act X of 1862. The term "revenue" in Clause (*d*) must be read as meaning revenue or rent, whether to Government or to a zemindar. *Gopee Mohun Mojoomdar* v. *Mackintosh*, 9 W. R., 395.

Petitions of appeal may be filed on several stamps sufficient to make up the full amount required by law, even though the petition is written on one paper. *Tarinee Churn Nyaba Chusputty* v. *Taranath Gooho*, 12 W. R., 449.

The stamp on a plaint on an instalment-bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit. *Suth Bhama Dossea* v. *Jameeruddy Khan*, 4 W. R., S. C. C. Ref., 12.

Where the vakalutnamah of a petitioner was on an inadequate stamp, time was allowed for the production of a fresh vakalutnamah with a proper stamp, the opposite party not objecting, and it being clear that the omission was altogether inadvertent. *Anonymous*, 1 Ind. Jur., O. S., 36.

The only ground of special appeal being that the special respondent had appealed in the lower Appellate Court upon an insufficient stamp, it was *held* that such an objection (being one that did not go into the merits) ought to have been taken in that Court, and the special appeal was dismissed upon condition of payment of the deficient stamp duty. *Peziroodeen Mahomed and another* v. *Hureehur Mookerjee*, 6 W. R., 116.

Where a suit was remanded to a Moonsifi's Court, and on the defendants objecting that the plaint had been undervalued, an order was made by the Court that the plaintiff should in some shape or other put in the additional amount of stamp duty, and a supplemental plaint with the required stamp was accordingly put in and received, the irregularity was not considered to have affected the merits of the case or to call for a reversal of the Moonsiff's decision. *Guddadhur Banerjee* v. *Ranee Premoyee Debia and others*, 10 W. R., 286.

When a lower Appellate Court finds that a suit was undervalued in the first Court, it should give the plaintiff the option of supplying the necessary stamps. Such an error does not subject the first Court's order to reversal. *Wahed Ali Khan* v. *Hunooman Pershad*, 12 W. R., 484.

The Civil Court is authorized, under the present Stamp Law (Act XVIII of 1869), to receive the proper amount of stamp which should have been affixed on a plaintiff's pottah under the law in force when it was executed. *Mahomed Rijah* v. *the Collector of Chittagong*, 6 B. L. R., Ap., 117, and 15 S. W. R., C. R., 116.

The provisions of the Stamp Law, by which unstamped or insufficiently stamped documents are excluded, were framed primarily in the interests of the Government revenue, but were never intended to create or put an end to the rights of the parties. Where a document is admitted by the first Court as not requiring a stamp, its admissibility cannot be questioned in appeal. *Enayetoollah* v. *Shaikh Meajan*, 16 S. W. R., C. R., 6.

When a stamp of the full value is available, parties ought to use as small a number of stamps as they can. *Ranee Khajooroonissa* v. *Mussamut Rohimoonissa*, 16 S. W. R., C. R., 152.

There is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps of smaller values. *Mirza Dawd Ali* v. *Syud Nadir Hossein*, 16 S. W. R., C. R., 153.

Where plaintiff sued to establish her right as the heir of her deceased son, and to set aside a certificate under Act XXVII of 1860, granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government promissory notes belonging to the estate of the deceased, —*Held* that, as consequential relief was to follow the declaratory decree sought, the stamp fee of Rs. 10 prescribed by Article 3, Section 17, Schedule 11, Court Fees' Act, was not sufficient for the plaint. *Mikhoda Dassee* v. *Nobin Chunder Mitter*, 16 S. W. R., C. R., 259.

A contract taken by the Department of Public Works for the execution of works falls within Article 11, Schedule 11, Act XVIII of 1869, and must bear a stamp of 8 annas. *Anonymous*, 13 S. W. R., C. R., 353.

The objection that a bond is engrossed on an 8-annas stamp threaded to other stamps aggregating the full value is merely technical. *Dunne* v. *Ameeroonissee Khatoon*, 13 S. W. R., C. R., 41.

The plaintiffs drafted the following letter, dated 5th June, 1871, and sent it to the defendant for signature: "I have this day sold to you 500 to 700 cases of first quality of hogs' lard of my manufacture and mark, at Rs. 43 per case of eight tins of ten seers each, or two bazar maunds nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any party

besides yourselves, nor to make any shipments during the term of this contract, without first obtaining your consent in writing, or I will render myself liable to yourselves to a penalty of Rs. 5,000 by way of liquidated damages, without prejudice to your other rights. Should I fail to deliver the hogs' lard to you according to this contract, and should you fail to take delivery in any month of any of the instalments of hogs' lard when ready and after I have given you notice in writing, you must render yourselves similarly liable to a penalty of Rs. 5,000 as and by way of liquidated damages." This letter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them. The letter bore a stamp of one anna. In an action for a breach of the contract, it was tendered in evidence by the plaintiffs, and objection was taken to it that it was insufficiently stamped, that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII of 1869, Schedule 1. *Held* it was a document which required an 8-anna stamp only under clause 11 of Schedule 11 of the Act, and the document was admitted on payment of the stamp and penalty. *Robert and Charriol* v. *C. G. M. Shircore*, 7 B. L. R., 510.

The plaintiff sued his elder brother for a share in certain family property. The defendant raised a question of family custom, and relied on a certain deed of release which he said the plaintiff had given him, but the existence of which the plaintiff denied. That document was not stamped, though on the face of it it stated that it was to be stamped. No objection was taken on that score to the document before the first and the Lower Appellate Courts, who considered that the document was a genuine document executed by the plaintiff. After its production, it had an insufficient stamp of two annas put upon it. The High Court, on appeal, left the deed as part of the evidence in the case, but qualified its effect and the extent of its operation by making it a deed of release, releasing so much of that which the plaintiff might otherwise claim as would be covered by the insufficient stamp of two annas.

Held that the High Court might either have refused to admit the document for want of a stamp, or which would be more correct—it might have required it to be properly stamped and the penalty paid into Court; but the course taken was entirely without precedent, without principle, and without authority. *Mantappa Nadgowda* v. *Baswantrao Nadgowda*, 15 S. W. R., P. C., 33.

No *ad valorem* stamp duty is payable under Act XVIII of 1869 upon a conveyance where the consideration consists of shares in a public company made over to the vendor.

The word "amount" in Article 15, Schedule 1 of that Act, signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out-and-out conveyance. *The Port Canning Land Co., Limited*, 16 S. W. R., C. R., 208.

Where a decree had been prepared while the old stamp laws were in operation, and Rs. 6 were awarded in it as the value of the stamps for a copy thereof, the Court allowed a copy to be taken for Rs. 4 by a party applying after Act VII of 1870 came into operation. *Hureehur Mahtoon, in the matter of*, 14 S. W. R., C. R., 167.

No larger sum can be recovered under Section 14, Act XXXVI of 1860, upon a bond executed on an optional stamp than that optional stamp covers, and no amount of penalty can make up the deficiency in the stamp. *Syud Keramut Ali* v. *Moonshee Abdool Wahab*, 17 S. W. R., C. R., 130.

If the parties to an agreement add to the stipulations which it contains a provision whereby a sum of money is made payable by way of fine or penalty, in the event of the non-performance at the appointed time of the work contracted to be done, such a provision is in the nature of an obligation for the payment of money, and for the due execution of work within the meaning of Article 18 of Schedule A. of the Stamp Act X of 1862, and requires an optional stamp. *Collins* v. *Dewan Singh*, 2 N. W. R., 465.

Where a document contained two distinct contracts requiring separate stamps, but the whole was impressed with one insufficient stamp, it was *held* that this stamp might be taken into account in making up the aggregate of the stamps required. *Báláji Maháder* v. *Krishnáji bin Chimnáji et al.*, 6 Bom. Rep., A. C. J., 95.

Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. *Arunachillum Chetty* v. *Olagappah Chetty*, 4 Mad. Rep., 312.

Held that the description of a document delivered to the Court, under Section 40 of the Code of Civil Procedure, is neither a petition nor an application, liable to duty within the meaning of the Stamp Act. *Chotálál Amritlal* v. *Bombay, Baroda, and Central Indian Railway*, 5 Bom. Rep., A. C., 101.

In a suit for a declaration of right to an annuity (varshásan) it was held that the stamp for the petition of special appeal should be regulated by the market value of the annuity, and that *primâ-facie* ten times the amount of the annuity may be assumed to be its market value, as enacted for analogous agreements by Section 2, Schedule A, Act X of 1862. *Narsinváchárya et al.* v. *Svámi Ráyel Chárya*, 5 Bom. Rep., A. C., 55.

The stamp duty payable under Section B. of Act X of 1862, on a suit to redeem mortgaged land paying revenue to Government, should be calculated in the sum for which the land is mortgaged, and not on the market value of such land

Semble,—That an error in the valuation of the plaintiff's claim, on account of which error the defendant is compelled to pay more costs than he would otherwise have to pay, is not in general a ground of special appeal. *Nanarám Sundarji Náik* v. *Báláji Vithal et al.*, 5 Bom. Rep., A. C., 153.

An agreement to supply cotton in consideration of a sum of money received should be stamped under Article 4, and not under Article 15, Schedule A., Act X of 1862. *Samsuddin Sultán* v. *Rámji Bhiká*, 5 Bom. Rep., A. C., 151.

VIII.

CRIMINAL LAW.

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1.—MISCELLANEOUS RULINGS.

Held, that the act of the defendants in assembling and forcibly interrupting a procession was forbidden by Clause 4 of Section 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community. 5 Mad. Rep., Rul. VI.

The defendant was convicted under Section 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction. 5 Mad. Rep., Rul. XVII.

The prisoners were convicted, the one of disposing of and the other of receiving two children, females under the age of sixteen years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a Pagoda for the purpose of being brought up as dancing girls. *Held* that offences under Sections 372 and 373 of the Indian Penal Code had been committed, and that the prisoners were properly convicted. *Ex-parte Padmanati*, 5 Mad. Rep. 415.

The prisoner was tried upon a charge of having obtained possession of Dowlath Bee, a minor aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under Section 373 of the Indian Penal Code.

The evidence showed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by and allow him to have sexual intercourse with her. The girl went willingly with the prisoner, and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connexion. The Jury convicted the prisoner. *Held* by the High Court, that the case proved against the prisoner did not make out the offence charged. *Queen on the prosecution of Dowlath Bee* v. *Shaik Ali*, 5 Mad. Rep., 473.

In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (Sec 401, Penal Code), the Judge should, in his charge, put clearly to the jury,—1. The necessity of the proof of association. 2. The need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts. *Shriram Vehkutasámi*, 6 Mad. Rep., 120.

A sub-Magistrate convicted certain persons, under Section 174 of the Penal Code, of disobedience to summonses issued by him as Tahsildar,—*Held* that the convictions under the first part of Section 174 were sustainable. 6 Mad. Rep., Rul. XLIV.

Where the defendants, ryots of a portion of a zemindary sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the ryots were assembled in such numbers and so armed that nothing could be done against them,—*Held* by the High Court, that the acts of the defendants did not amount to an offence under Section 141 of the Penal Code. 4 Mad. Rep., Rul. LXV.

Held that the dedication of a minor girl under the age of sixteen years to the service of a Hindu temple, by the performance of a religious ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor knowing it to be likely that she would be used for the purpose of prostitution within the meaning of Section 372 of the Indian Penal Code. *Reg.* v. *Jaila Bhavin*, 6 Bom. Rep., Cr. Ca., 60.

Held that a person who placed in his toddypots juice of the milk-bush, knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to certain soldiers who purchased it from an unknown vendor, was rightly convicted, under Section 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure," and that Section 81, which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case. *Reg.* v. *Dhaniá Daji*, 5 B. R., Cr. R., 59.

Meaning of the word "dishonesty" in the Penal Code. *Anonymous*, 3 Mad. Rep., A. J., 6.

Escapes by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code. *Anonymous*, 3 Mad. Rep., A. J., 11.

A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of Section 30 of the Indian Penal Code. *Kapalavaya Saraya Ex-parte*, 2 Mad. Rep., 247.

The tearing up of a pottah is destruction of valuable security within the meaning of Section 477 of the Penal Code. *Queen* v. *Nittai Mundle*, 3 W. R., Cr., 38.

The words "accused person" in Section 436 of the Penal Code do not apply to a party who ha been convicted by the Magistrate under Section 411, from whose sentence there is no appeal. *Bajdeo Mangee* v. *Mohendro Narain and others*, 10 W. R., Cr., 16.

The feigning of an attempt to commit suicide in order to extort money is an offence under Section 387 of the Indian Penal Code. *Reg.* v. *Gregory*, 1 Ind. Jur., N. S., 423.

Section 201 of the Penal Code refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of their offences. But the person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge. *Queen* v. *Sham Soonder Chootar*, 7 W. R., Cr., 52. See also *Queen* v. *Goburdhun Bera*, 6 W. R., Cr., 80.

Section 75 of the Penal Code only applies to convictions of offences committed after the Code came into operation. *Queen* v. *Hurpaul*, 4 W. R., Cr., 9.

To obtain the benefit of the exception allowed by Section 94 of the Penal Code, it must be shown that the prisoners were compelled to act as they did from apprehension that instant death would be the consequence of a refusal. *The Queen* v. *Sonoo and others*, 10 W. R., 48.

A copy of a lease is not a valuable security within the meaning of Section 30 of the Indian Penal Code. *Reg.* v. *Khushul Heraman*, 4 Bom. Rep., Cr., 28.

Where a person applies for the execution of a decree which has already been executed, his offence falls, not under Section 209, but Section 210 of the Penal Code. Section 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought. *The Queen* v. *Begum Mahtoon*, 12 W. R., Cr., 37.

Retrospective effect is not to be given to the penal provision of Section 2, Act VI of 1862. *Nobokanth Dey* v. *Raah Boradakanth Roy Bahadoor*, 1 W. R., 100.

The mere possession of weights in excess of the authorized standard will not support a conviction under Section 266 of the Penal Code; a fraudulent intent must be charged and proved. *Reg.* v. *Damo Dhor Dalljee*, 1 Bom. Rep., 181.

Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining

stolen property. *Queen* v. *Doyal Shilydar and another*, 6 W. R., Cr., 87.

Quære,—Whether the words "during a voyage or journey" in Section 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. *Sage* v. *Nirunjun Chatterjee*, 9 W. R., Cr., 12.

Held by the majority of the Court (*dissentiente* Campbell, J.), that a warrant addressed to a police officer to apprehend an offender, and to bring him before the Magistrate, is not a "summons, notice, or order" within the meaning of Section 172 of the Penal Code, and that the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section. *Queen* v. *Womesh Chunder Ghose*, 5 W. R., Cr., 71.

In a case of separate convictions and sentences for housebreaking by night and theft under Sections 457 and 379 of the Penal Code, the conviction and sentence under Section 379 were quashed, and those under Section 457 were upheld. *Jogeen Pullee* v. *Nabo Pullee*, 6 W. R., Cr., 48.

Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself, under Section 173 of the Indian Penal Code. *Reg.* v. *Kúlyá bin Fakir*, 5 Bom. Rep., Cr., 34.

Where a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking they must, with reference to Section 114, Indian Penal Code, be considered guilty of the substantive offence under Section 378. *Queen* v. *Shibchunder Mundle and others*, 8 W. R., Cr., 59.

It is at all times desirable that questions of title should not be tried in criminal courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved.

A prosecutor, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title, and that accused asserted the title dishonestly or fraudulently in the sense in which these terms are used in the Indian Penal Code. *Queen* v. *Kishen Pershad*, 2 N. W. R., 202.

The actual driver, and not the owner of a carriage, is liable, under Section 279 of the Penal Code, in case of a collision and injury to another arising out of rash driving. *Larrymore, A. W.* v. *Pernendoo Deo*, 14 S. W. R., Cr. R., 32.

The offence defined in Section 312 can only be committed when a woman is in fact pregnant. *Queen* v. *Kabul Pattur*, 15 S. W. R., Cr. R., 4.

The mere possession of arms in a certain district being an offence, if there be satisfactory evidence that the prisoners were in the possession of arms they would be punishable for such illegal possession, notwithstanding the police may have also commited an illegality in their procedure in conducting the search for same. *Queen* v. *Sheopershun Roy*, 2 N. W. R., 57.

Where a first-class subordinate Magistrate sentenced a prisoner to six months' imprisonment, under Section 457 of the Penal Code, and finding that the prisoner was liable to enhanced punishment under Section 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment, under Section 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. 5 Mad. Rep., Rul. 111.

Upon conviction of the offence of housebreaking, the accused was sentenced by the Deputy Magistrate to six months' rigorous imprisonment, and to be whipped. On appeal, the Judge found that, as this was the first offence, the additional punishment of whipping was illegal; and setting aside so much of the sentence, passed a sentence of three months' rigorous imprisonment, in addition to the six months' rigorous imprisonment passed by the Deputy Magistrate,—*Held* that the commutation of the punishment was illegal. *Queen* v. *Bunda Ali*, 6 B. L. R., Ap., 95, and 15 S. W. R., Cr. R., 7.

An accused person cannot be punished, first on a charge for rioting, and afterwards on a charge for hurt, when the latter is included in the former. *Goonamonee and others*, 17 S. W. R., Cr. R., 59.

The measure of punishment is a matter entirely in the discretion of the Court of Session. *Queen* v. *Issenchunder Ghose*, 14 S. W. R., Cr. R., 53.

To warrant a sentence awarding an additional punishment, under Section 75 of the Penal Code, as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise. *Queen* v. *Naimuddi Sheikh*, 14 S. W. R., Cr. R., 7.

Upon a prosecution under Section 318 of the Penal Code, a person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old. 4 Mad. Rep., Rul., LXIII.

Section 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. *Felani Hariani*, 16 S. W. R., Cr. R., 12.

Maintenance of children—willingness of father to support them. *Panchudas* v. *Sm. Shudhamayi*, 16 S. W. R., Cr. R., 72, and 8 B. L. R., Ap., 19.

The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under Section 19 of the Income Tax Act (Act IX of 1869) to a Tahsildar. *Held* that the Tahsildar was not an officer competent to receive such a petition, and that no offence was committed. *Mooneappa Oodian, prisoner, Subraya Oodian, prisoner*, 5 Mad. Rep., 326.

The accused being entrusted to put a proper amount of stamps on a letter and return such as might not be required, did not return them, but misappropriated stamps to the value of two annas, and was convicted and punished under Section 49 of the Indian Post Office Act XIV of 1866, instead of under the Penal Code for Criminal Breach of Trust. As the accused had not been sentenced to a larger amount of punishment than could have been awarded for criminal breach of trust, nor shown to have been prejudiced by the error of convicting him under the Post Office Act, the High

Court could not, under Section 426 of Code of Criminal Procedure, reverse or alter the sentence, pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount misappropriated rather than to the gravity of the offence. *Nobin Chunder Dutt*, 17 S. W. R., Cr. R., 50.

Placing tanbans in a public thoroughfare is an offence under Section 34 of Act V of 1861. But Sub-Magistrate not competent of his own motion to institute the prosecution. *Queen* v. *Ameer and Jelal-ood-deen*, 2 N. W. R., 5.

Conviction and sentence under Section 186 of the Indian Penal Code reversed, as the conduct of the accused, refusing to accompany a measuring clerk, employed under Act I of 1865 (Bombay) to his (the accused) house, and permit it to be measured, did not constitute the offence of obstructing a public servant in discharging his public functions.

Quære,—Whether Section 11 of Act I of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them. *Reg.* v. *Bhagtidás Bhagvandás*, 5 B. R., Cr. R., 51.

Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1850) provides punishment for an offence, any person committing such offence may be tried under that law. *Watson and Co.* v. *Bykantnath Dass*, 14 S. W. R., Cr. R., 80.

Being in possession of salt earth, from which salt may be manufactured, with the object of making salt is an offence under the salt laws. 4 Mad. Rep., Rul. 53.

Where a labourer contracted with the manager of a silk factory for a money-consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside. *Koonjobeharry Lall* v. *Rajah Doomney*, 14 S. W. R., Cr. R., 29.

If salt exceeding 5 seers is found within the limits prescribed by Section 12, Act VII (B. C.), of 1864, unprotected by a rowannah, as required under Sections 13 and 15, the salt must be held as contraband under Section 16. The power of a Magistrate under Section 29 to confiscate salt not protected by a rowannah in a prohibited district is not affected because there was no attempt or intention to sell the salt within the prohibited district. *Queen* v. *Akutoollah*, 15 S. W. R., Cr. R., 21.

Where several persons knowingly harbour, keep, or conceal a parcel of smuggled opium, one penalty of double the value of such opium and of double the amount of duty leviable upon it only is recoverable, under Reg. XXI of 1827, Section 4. *Reg.* v. *Showdar Ghenar et al.*, 7 Bom. Rep., Cr., 39.

According to Section 38, Act XXI of 1856, no conviction can be had under Section 50 against a person whose license has not been recalled. *Queen* v. *Ram Dass*, 16 S. W. R., Cr. R., 69.

No person is liable to any penalty under Section 1, Act VII of 1865, except a person who without a license uses a place or building as a slaughter-house, either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein, but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house, or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing, and killing an ox or sheep there, does not use the place as a slaughter-house within the meaning of Section 1, Act VII of 1865 (B. C.). *The Municipal Commissioners for the Suburbs of Calcutta* v. *Zamir Shaikh*, 16 S. W. R., Cr. R., 4.

In construing Section 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem*. *Queen* v. *Mussamut Aimona*, 1 W. R., Cr., 43.

Held by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under Section 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt.

Held by Mitter, J., that the possession of a fire-ball and moving about with it cannot support a conviction under Sections 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under Section 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it. *Queen* v. *Doyal Bawri*, 3 B. L. R., A. Cr., 55.

2.—ABDUCTION.—(*See* KIDNAPPING.)

The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. *Queen* v. *Srimotee Poddu*, 1 W. R., Cr., 45.

A conviction of abduction quashed, no force or deceit having been practised on the person abducted. *Queen* v. *Komul Doss*, 2 W. R., Cr., 7.

The abduction of a minor girl under 16 years of age out of the custody of her lawful guardian is punishable under Section 361 of the Penal Code. It is not necessary to such a conviction that the abduction be proved to have been forcible. *Queen* v. *Modhoo Paul*, 3 W. R., Cr., 9.

The abduction of a girl under 16 years of age, with intent to marry, without the consent of her lawful guardian, is punishable under Sections 363 and 366 of the Penal Code. The consent of the girl is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud. *Queen* v. *Koordan Singh and Mohun Singh*, 3 W. R., Cr., 15.

The prisoners having been sentenced for abetment of abduction of a woman under Sections 109 and 498 of the Penal Code, and for wrongful con-

finement of her under Section 343,—*Held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone. *Queen* v. *Ishwar Chandra Jogee*, W. R., 1864, Cr., 21.

3.—Abetment.

There can be no conviction for abetment of murder without proof of murder. *Queen* v. *Askur*, W. R., 1864, Cr., 12.

Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and A., one of them, is not so armed, but picks up a stick and uses it, B. (the master of A.), who gives a general order to beat, is guilty of abetting the assault made by A. *Queen* v. *Rosoo Koollah*, 12 W. R., C. R., 51.

The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation,—*Held* that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only. *In re Audy Chetty*, 2 Mad. Rep., A. C., 438.

Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design, with the knowledge that such concealment would facilitate the commission of the dacoity, does not amount to an abetment of the dacoity. *Queen* v. *Jhugroo*, 4 W. R., Cr., 2.

The mere issue of a hookumnamah (to collect statistical information) by a police officer is no legal ground for a conviction of abetment of cheating or of extortion. *Queen* v. *Meajan and Obhoy Churn Doss*, 4 W. R., Cr., 5.

Persons punished as principals cannot also be punished for abetment of the same offence. *Queen* v. *Jeetoo Chowdry*, 4 W. R., Cr., 23; *Queen* v. *Ramnarain Josh*, 4 W. R., Cr., 37.

How a Judge should charge the Jury in a case of abetment, while present, of the forgery of a valuable document. *Queen* v. *Ichan Buksh*, 5 W. R., Cr., 68.

The prisoners having abetted an assault, and murder having been committed,—*Held*, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, but not of abetment of murder. *Queen* v. *Goluck Chung*, 5 W. R., Cr., 75.

The conviction of certain prisoners changed from abetting wrongful concealment under Section 368 of the Penal Code to abetment under Section 116. *Queen* v. *Srimotee Poddu*, 1 W. R., Cr., 10.

The conviction of a police inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *malâ-fide*. *Queen* v. *Muthoorapershad Panday*, 2 W. R., Cr., 10.

A person can only be convicted of abetment of theft under the 1st Explanation of Section 107 of the Indian Penal Code, if he has procured or attempted to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. *Queen* v. *Shumeeruddeen*, 2 W. R., Cr., 40.

Charge of abetment of the issue of a false certificate of summons. The intention of the prisoner being the gist of the offence, and it being probable that he (a stranger in the village) had been himself deceived, he was acquitted. *Queen* v. *Hissamuddeen*, 3 W. R., Cr., 37.

Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within Section 463, and Clause 1, Section 464, of the Penal Code. *Queen* v. *Sookmoy Ghose*, 10 W. R., Cr., 23.

The Excise Act of 1856 contains no provision for the punishment of abetment. *Queen* v. *Kullimoodeen*, 7 W. R., Cr., 53.

Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. Under Section 109 of the Penal Code the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. *Queen* v. *Ramlugun Lall Moonshee and others*, 7 W. R., Cr., 54.

Where A. ordered B. and C. to seize and forcibly take D. in the contemplation of an assault upon D., and D. was so beaten and tortured as to have died in consequence,—*Held* that A. was guilty at least of abetting the commission of voluntarily causing grievous hurt. *Queen* v. *Doorgessur Surmah*, 7 W. R., Cr., 97.

Held that the prisoners having abetted the suicide were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances. *Government* v. *Gopaul Singh*, 1 Agra Rep., Cr., 21.

A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within Clause 2, Section 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under Clause 3, Section 107, and Section 109, Penal Code, read together. *Queen* v. *Boodhun Mooshur*, 8 W. R., Cr., 78.

In order to bring a prisoner within Section 114 of the Penal Code it is necessary first to make out the circumstances which constitute abetment, so that "if absent" he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed. *Queen* v. *Mussamut Niruni and Moniroodeen*, 7 W. R., Cr., 49.

Under Section 94, Act XX of 1866, an abettor may be punished more severely than his principal can be. *Queen* v. *Gopalprosad Sein and others*, 8 W. R., Cr., 16.

Prisoner was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under Section 201 of the Penal Code. *Queen* v. *Goburdhun Bera*, 6 W. R., Cr., 80.

Section 114, and not Section 149 of the Penal Code was held to apply to a case where, upon a

charge of mischief by fire, the prisoner admitted that he was an abettor and that he was present at the time the offence was committed. *Queen* v. *Peer Mahomed*, 17 S. W. R., Cr. R., 52.

An omission to give information that a crime has been committed does not, under Section 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation.

A private individual is not bound by any law to give information of any offence which he has seen committed. *Queen* v. *Khadim Sheikh*, 4 B. L. R., A. Cr., 7.

According to Section 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor if present is to be deemed to have committed the offence, though in point of fact another actually committed it. 4 Mad. Rep., Rul. XXXVII.

Where a prisoner accused of adultery sets up in defence a Nàtrá contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the Nàtrá that the woman was the wife of another man. *Reg.* v. *Munohar Ràiji*, 5 Bom. Rep., Cr., 17.

The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chapter XV of the Criminal Procedure Code. Consequently a charge of adultery cannot be withdrawn by a complainant with the Magistrates' consent. *Queen* v. *Gumlheer*, 2 N. W. R., 234.

The death of the husband does not necessarily put an end to a prosecution for adultery under Sec. 497 of the Penal Code. 4 Mad. Rep., Rul. LV.

Where the husband of a woman with whom the accused was alleged to have committed adultery professed himself unwilling to proceed with the prosecution, and the Assistant Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere. *Reg.* v. *Rámlojerio*, 5 Bom. Rep., Cr., 27.

4.—Assault.

An unpremeditated assault, ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, comes within Exception 4 of Section 300 of the Penal Code. It is immaterial which party offered the provocation or committed the first assault. *Queen* v. *Zalim Ray*, 1 W. R., Cr., 33.

In a case of assault, a sentence inflicting a fine of Rs. 50 and awarding imprisonment for one month in default of payment of the fine is illegal, with reference to Sections 65 and 352 of the Penal Code. *Jehun Buksh*, 16 S. W. R., Cr. R., 42.

5.—Attempt to Murder.

In order to constitute the offence of attempt to murder, under Section 307 of the Indian Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events.

Aliter under Section 511 taken in connection with Sections 299 and 300.

Therefore where the prisoner presented an uncapped gun at F. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger,—*Held* that he could not be convicted of an attempt to murder upon a charge framed under Section 307 of the Indian Penal Code, but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under Section 511 in connection with Sections 299 and 300.

Unnecessary allegations in a charge may be rejected as surplusage.

Apparent inconsistency between the English law with reference to attempts, as laid down in *Reg.* v. *Collins* and the provisions of the Indian Penal Code, explained. *Reg.* v. *Francis Cassidy*, 4 Bom. Rep., Cr., 17.

6.—Bribery.

Or receiving Illegal Gratification.

Case of offering a bribe to a juryman. The sentence was a fine of Rs. 1,000, or, in default of payment, two months' rigorous imprisonment. Appeal rejected. *Queen* v. *Bawool Chunder Biswas*, 1 W. R., Cr., 36.

A joint Magistrate, in addition to punishing a police officer with fine under Section 161 of the Penal Code for taking a bribe, in his administrative capacity ordered his dismissal. *Held* that the joint Magistrate was competent to order both fine and dismissal. *Government* v. *Chunder Coomar Sein*, 5 W. R., Cr., 4.

When a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others. *Government* v. *Mahomed Hossein*, 5 W. R., Cr., 49.

A Subordinate Magistrate of the 2nd Class is not competent to initiate a charge, under Section 213 of the Penal Code, of accepting an illegal gratification to screen an offender. *Omit Ram* v. *Nonao Ram and others*, 6 W. R., Cr., 90.

The taking of a bribe by a serishtadar to influence a Principal Sudder Ameen in his decisions is sufficient for a legal conviction, whether the serishtadar did or did not influence or try to influence the Principal Sudder Ameen, since Section 161 of the Penal Code expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for what he has not done," is punishable. *Queen* v. *Kaleechurn Serishtadar*, 3 W. R., Cr., 10.

The evidence of the person who bribes is admissible against the person bribed.

A person who accepts for himself or for some other person a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under Section 161, but under Section 162 of the Penal Code. *Queen* v. *Obhoychurn Chuckerbutty*, 3 W. R., Cr., 19.

Held that bribery and other offences punishable under the Indian Penal Code with imprisonment exceeding six months are not triable under Chapter XV of the Code of Criminal Procedure, and cannot,

therefore, be compromised under Section 271 of the latter Code. *Anonymous*, 12 W. R., Cr., 59.

A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special sub-Registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant.

Held that the peon was a public servant under the definition in the 9th Clause of Section 21 of the Penal Code, and the trial of the charge against him must be proceeded with. *Queen* v. *Ram Krishna Das*, 7 B. L. R., 446; and 16 S. W. R., Cr. R., 27.

On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. Although no appeal lay in such a case, yet the High Court upon a reference, having power to interfere, quashed the conviction. *Mutty Lall Chattopadhya*, 16 S. W. R., Cr. R., 74.

7.—CHEATING.

The prisoner having passed himself off as a police officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant. *Queen* v. *Sodanund Dass*, 2 W. R., Cr., 29.

A chowkeedar who obtains money from any person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under Section 417 of the Penal Code (Cheating), or Sections 383 and 384 (Extortion), but not for criminal misappropriation of public money entrusted to him as a public servant. *Queen* v. *Ramnarain Chowkeedar*, 3 W. R., Cr., 32.

The mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention. *Queen* v. *Heeramun Hulwye*, 5 W. R., Cr., 5. See also 1 Ind. Jur., 97.

Case of conviction of cheating by inducing a man to part with his money and contract marriage with a girl under the false impression that she was a Brahminee. Appeal rejected. *Queen* v. *Puddomonee Boistobee*, 5 W. R., Cr., 98.

To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. To describe these consequences as more serious than they were likely to be may be to deceive, but is not cheating, if done without any fraudulent or dishonest intention. *Queen* v. *Rajcoomar Banerjee*, W. R., Cr., 25.

Where a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman,—*Held* that he was guilty of cheating by personation under Section 416 of the Penal Code, and that it was unnecessary to bring in Section 109 relating to abetment. *Queen* v. *Dhunput Ojhah*, 7 W. R., Cr., 51.

Where two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajpoots after receiving the usual bonus,—*Held* that the prisoners could not be convicted under Section 373 of the Penal Code, but of cheating and false personation under Sections 415 and 416. *Queen* v. *Dabee Singh and others*, 7 W. R., Cr., 55.

A person hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating. *Queen* v. *Kadir Bux*, 3 N. W. R., 16.

The prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender,—*Held* that they were guilty of cheating. *Queen* v. *Shrodurshun Dass*, 3 N. W. R., 17.

The defendant was convicted of cheating. He applied to the Tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. *Held*, a good conviction. 6 Mad. Rep., Rul. XII.

Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was *held* that such act did not amount to the offence of cheating, under Section 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in Section 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence. *Reg.* v. *Mehervanji Bejanji*, 6 Bom. Rep., Cr. Ca., 6.

8.—CONTEMPT.

A person is guilty of contempt under Section 185, Penal Code, who bids for the lease of a ferry sold at public auction by a Magistrate without intending to perform the obligation under which he lays himself by such bidding. *Queen* v. *Reazoodeen*, 3 W. R., Cr., 33.

In consequence of the default of appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under Section 174 of the Penal Code. *Held* that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate or on the report of a police officer." *Held* also that, notwithstanding Section 219 of Act XXV of 1861, the accused might have been proceeded against under Section 174 of the Penal Code. *The Queen* v. *Tajumaddi Lahory*, 1 B. L. R., A. Cr., 1; 10 W. R., Cr., 4.

A warrant addressed to a police officer to apprehend an offender and bring him before the Magistrate is not a "summons, notice, or order" within the meaning of Section 172 of the Penal Code, and the offence of absconding by an offender against whom a warrant has been so issued is not punishable

under that section. *Queen* v. *Womesh Chunder Ghose*, 5 W. R., Cr., 71.

Before a conviction can be had under Section 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act. *The Queen* v. *Ramtoonoo Singh*, 12 W. R., Cr., 49.

A Magistrate issued an order warning owners of cattle to take proper care of them; and that in case of disobedience or neglect they would be punished according to law; and did punish them for disobedience, under Section 188 of the Penal Code.

Held that the Magistrate was not competent, under Section 62 of the Code of Criminal Procedure, to pass such an order. The order contemplated under this section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. That the conviction under Section 188 of the Penal Code was illegal. *In the matter of Amiraddi*, 3 B. L. R., A. Cr., 45; 12 W. R., Cr., 36.

An order in writing under Section 62 of the Code of Criminal Procedure is necessary to sustain a charge under Section 188 of the Penal Code.

Quære,—Whether a Magistrate has not power to proceed under the former section instead of under Section 308, against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance. *Pitambur Day*, 17 S. W. R., Cr. R., 57.

9.—Contempt of Court.

A barrister, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court. *In the matter of C. Piffard and E. G. Francis*, 1 Hyde's Rep., 79.

When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time. *In the matter of Sittaram Atmarm*, 1 Ind. Jur., N. S., 23.

Land belonging to N. B. had been seized by the Sheriff under a writ of *fieri facias*, which expressly directed him to take that particular land; while in possession his officers were turned out by A., who knew that they were in possession by order of the High Court. A. had purchased the right, title, and interest of N. B. in the land at a sale held in the Court of the Zillah Judge of the 24-Pergunnahs, in execution of a decree of that Court against N. B. A. was put in possession by an officer of that Court. *Held* that the turning out of the Sheriff's officers was a contempt of the High Court. *Sreemutty Bhuggobutty Dassee* v. *Nobin Chunder Bose and others*, 2 Ind. Jur., N. S., 99.

The High Court, as a Court of Record, has the power of summarily punishing for contempt.

Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court, is guilty of a gross breach of duty and a contempt of Court.

So also any person who offers or gives such present is guilty of a contempt of Court. *In re Abdool and Mahtab*, 8 W. R., Cr., 32.

Where, in punishing for contempt of Court, the summary procedure sanctioned by Section 163 of the Code of Criminal Procedure is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with in a summary manner, the offence must, under Section 163, be tried by an officer other than the person before whom the contempt was committed. *The Queen* v. *Chunder Sekur Roy*, 12 W. R., Cr., 18.

An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice. *Queen* v. *Madhoosurun*, 7 W. R., Cr., 40.

Under Section 163 of the Code of Criminal Procedure, if a Court before which the offence of contempt, under Section 179 of Penal Code, is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt, and the statement of the accused, and forward the case to a Magistrate. *Queen* v. *Ruttun Sahoo*, 11 W. R., Cr., 49.

During the pendency of a suit for rent the plaintiff procured an attachment of the growing crops; and afterwards and without authority, and before the suit was determined, carried off some of the crops. *Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it was no ground for dismissing the suit. *Chuttoonath Singh* v. *Sooboon Singh*, Marsh., 21.

An officer before whom, whilst acting in a particular capacity, an offence under Section 228 of the Penal Code is committed, cannot, in another capacity, take up and try the offence. *The Queen* v. *Chunder Sekur Roy*, 12 W. R., Cr., 18.

Held that refusing or neglecting to return direct answers to questions does not constitute the offence under Section 228 of the Indian Penal Code, of intentionally offering insult, or causing interruption to a public servant sitting in a judicial proceeding. *Reg.* v. *Pandu bin Vithoji*, 4 Bom. Rep., Cr., 7.

Held that prevarication while giving evidence does not constitute the offence, under Section 228 of the Indian Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding. *Reg.* v. *Aubu bin Bhivrav*, 4 Bom. Rep., Cr., 6.

It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suit or under any pretext whatever to communicate with a Judge, except by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge or likely to come before him. *W. Tayler* v. *Ranee Asmedh Koonwar*, 4 W. R., 86.

An accused person, against whom a proclamation has been issued, must, until he has surrendered, be

regarded as in contempt, and the Court will not entertain any application on his behalf. *Queen* v. *Bissessur Pershad*, 2 N. W. R., 441.

The Magistrate convicted the defendant of contempt of Court under Section 163 of the Code of Criminal Procedure, and sentenced him to pay a fine of Rs. 10, or in default two days' imprisonment. *Held*, that the Magistrate had not exceeded his powers. 6 Mad. Rep., Rul. XVI.

The defendant was convicted of contempt of Court under Section 163 of the Code of Criminal Procedure for having refused to sign a deposition given by him as a witness in the course of a revenue inquiry. The High Court set aside the conviction. 6 Mad. Rep., Rul. XIV.

Before convicting a person under Section 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. *Shib Pershad Chuckerbutty*, 17 S. W. R., Cr. R., 38.

Where a writ of attachment for contempt was issued by the Court against a party to a suit in that Court,—*Held*, he could not claim privilege from arrest while proceeding to Court for the purpose of attending the hearing of his suit. *John* v. *Carter*, 4 B. L. R., O. C., 90.

A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. *Pancheenadee Tamberein*, 4 Mad. Rep., 229.

An appeal lies against an order of the Session Court imposing a fine upon a witness under Section 228 of the Penal Code for intentional insult to the Session Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside. *Queen* v. *Chuppu Menon*, 4 Mad. Rep., 146.

On the 17th of December, 1869, a rule nisi for the attachment, for contempt of Court, of the defendants U., G. & T., was granted. The rule, owing to one of the defendants keeping out of the way, was not drawn up and served until the month of April following, when it was served upon the defendants in the territories of the Gàikvàd of Barodà, the consent of the Gàikvàd's Minister to serve the notice having been previously obtained.

On motion to make the rule absolute, it was held that the rule was served in time, and that the service of it in the Gàikvàd's territories, with the consent of the Gàikvàd, was valid service.

Whether the service would have been valid if such consent had not been obtained, *quære*.

The High Court will not send a special bailiff into the Gàikvàd's territories to arrest a defendant who has been guilty of a contempt of Court, but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay.

A defendant guilty of contempt of Court is liable to imprisonment on the criminal side of the Bombay Jail. *Harivallalehdás Kulliándas* v. *Utamchaund Mánikchaund*, 7 Bom. Rep., O. C. J., 172.

When a Civil Court omitted (as directed by Section 163 of the Code of Criminal Procedure) to call upon a person who was charged with contempt of Court to make any statement he might wish to make in his defence, it was held that this irregularity was fatal to the order, and that the High Court would exercise its extraordinary jurisdiction, and reverse an order so made. *Káshináth Vithal* v. *Dájigovind*, 7 Bom. Rep., A. C. J., 102.

10.—Counterfeiting.

The passing off a one-anna stamp as a one-rupee stamp, is not counterfeiting a one-rupee stamp. *Queen* v. *Shurroop Chunder Doss*, 2 W. R., Cr., 65.

Section 239 of the Indian Penal Code is directed against a person other than the coiner, who procures, or obtains, or receives counterfeit coin, and not to the offence committed by the coiner. *Queen* v. *Sheobun alias Sheopersad*, 3 N. W. R., 150.

In order to a conviction under Section 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in Section 467 of the Penal Code. *Queen* v. *Rughoonundun Puttronuvees*, 15 S. W. R., Cr. R., 19.

11.—Criminal Breach of Trust.

A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under Section 405 of the Penal Code. *Reg.* v. *Joffer Naik and another*, 2 Bom. Rep., 133.

A servant who receives money for a specific purpose, and does not use it for that purpose, and on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under Section 408 of the Penal Code. *Watson and Co.* v. *Golab Khan*, 10 W. R., Cr., 281.

The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell. It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor.

Held, by Jackson, J., that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner but a servant; that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law; that the finding was correct in law; that the defence of the prisoner could not be taken to mean to say that he was a partner, but merely that he claimed a small share in the profits, and that such claim did not make him a partner, an agent's remuneration being a share in the profits not constituting the agent a partner.

Held, by Kemp and Mitter, JJ. (releasing the prisoner), that, though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded he was a partner, and not only that, he was entitled to a share in the profits; that the lower Courts did not specifically decide that the

accused was a servant; and that the prosecutor's remedy was a civil suit for an account. *In the case of Lall Chund Roy*, 9 W. R., Cr., 37.

The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust. *Bharut Chunder Christian, appellant*, 1 W. R., Cr., 2.

The prisoners were charged with having stolen a sum of money shut up in a box, and placed in the Police treasury buildings, over which they were placed in guard. *Held* that the charge should have been made under Section 381 of the Penal Code (Theft by Servant in Possession of Property) and not under Section 409 (Criminal Breach of Trust by Public Servant). *Queen* v. *Jugurnath Singh and others*, 2 W. R., Cr., 55.

A constable who dishonestly misappropriates to his own use the pay of his thannah police entrusted to him, is guilty of criminal breach of trust. *Queen* v. *Subdar Meeah*, 3 W. R., Cr., 44.

The mere fact of there being a large deficit of salt, without distinct proof of criminal misappropriation, is not sufficient to convict the Salt Darogah in charge of the golahs of criminal breach of trust under Section 409 of the Penal Code. *Queen* v. *Brinbadhur Putnaik*, 5 W. R., Cr., 21.

A Nazir is the head of an important department, and must be responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him. *Queen* v. *Tofuzzal Aly*, 7 W. R., Cr., 109.

Where a Court Inspector improperly delegated to a constable the custody, &c., of Government moneys (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under Section 408, and not Section 409, of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine. *Queen* v. *Banee Madhub Ghose*, 8 W. R., Cr., 1.

A prisoner acquitted of criminal breach of trust may, on the same evidence, be convicted of dishonestly receiving stolen property. *Queen* v. *J. J. Reghiline*, 4 W. R., Cr., 21.

Penal Code (Act XLV of 1860) S. 406—Dishonesty—Evidence—Conviction. Act I of 1871. *Queen* v. *Rajkrishna Biswas*, 8 B. L. R., Ap., 1; and 16 S. W. R., Cr. R., 52.

A person who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements—(1) the disposal, in violation of any direction of law or contract, express or implied, prescribing the mode in which the trust ought to be discharged; (2) such disposing dishonestly. 6 Mad. Rep., Rul. XXVIII.

To constitute the offence of criminal breach of trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. *Isser Chunder Ghose* v. *Penrimohun Paulit*, 16 S. W. R., C. R., 39.

12.—Criminal Misappropriation.

Held that Section 404 of the Indian Penal Code (relating to the misappropriating or conversion of "property" left by a deceased person) does not apply to immoveable property.

A Sessions Judge ought not to call for a report from the Magistrate of the district in any case in which it is not competent to such Sessions Judge to call for the record and proceedings, *e.g.*, in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate.

In trials by the Magistrate of the District, or Magistrate F. P. in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. *Reg.* v. *Girdhar Dharamdas*, 6 Bom. Rep., Cr. Ca., 33.

A person may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death (Section 404 of Penal Code) by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use. *Enayet Hossein, petitioner*, 11 W. R., Cr., 1.

A servant who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation. *Queen* v. *Bissesur Roy*, 11 W. R., Cr., 51.

To bring a prisoner within Section 403 of the Penal Code, there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to. *Queen* v. *Abdool*, 10 W. R., Cr., 23.

Held that it is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under Section 404 of the Penal Code, that the accused should misappropriate to his own use.

Held, by Markby, J., that, under Section 404, all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. *Queen* v. *Nobin Chunder Sirkar*, 12 W. R., Cr., 39.

This was considered to be a matter of trade between the prosecutrix and the prisoner, who took certain hides from the former but refused to pay for them, and was held not guilty of dishonest misappropriation under Section 403 of the Penal Code. *Queen* v. *Beystum Moocha*, 17 S. W. R., Cr. R., 11.

Section 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the Head Clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of Section 409, when he made away with the stamps. *Queen* v. *Ram Dheu-Dey*, 13 S. W. R., Cr. R., 77.

Where money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake and determines to appropriate the money, he is guilty of criminal mis-

appropriation, but he is not guilty of cheating. *Queen* v. *Shamsoondur*, 2 N. W. R., 475.

13.—CRIMINAL TRESPASS AND HOUSE-BREAKING.

Theft is the sequel of, and cannot be separated from, housebreaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case. *Mussahur Daoudh*, 6 W. R., Cr., 92.

If a man break into a dwelling-house at night, and steal property therefrom, the crime is in its nature one single and entire offence, and should be treated accordingly. *Queen* v. *Tonaokoch*, 2 W.R., Cr. 93.

Effecting an entrance into a house at night by scaling a wall constitutes housebreaking by night under Section 445 of the Penal Code. *Queen* v. *Emdad Ally*, 2 W. R., Cr., 65.

When the door of a shop was found broken open, —*Held* that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night. *Queen* v. *Kenaram Bousee*, 4 W. R., Cr., 19.

A person convicted of house-breaking followed immediately by theft, is punishable only under Section 457 of the Penal Code. *Queen* v. *Chytun Bowra*, 5 W. R., Cr., 45.

Section 71 of the Penal Code applies to the case of a person charged with "house-breaking" under Section 457, and "theft" committed under Section 380. *Ram Gholam Singh, petitioner*, 6 W.R., Cr., 59.

The entry by one man on another's property, accompanied by the cutting down of trees in that property, is criminal trespass. *Queen* v. *Jeenut Bebee*, 1 W. R., Cr., 46.

A Deputy Magistrate should adjudicate on charges of criminal trespass, unlawful assembly, and mischief, instead of referring the case, under Section 318 of the Criminal Procedure Code, to the Magistrate. *Queen* v. *Ootum Mal*, 2 W. R., Cr., 2.

In order to convict of criminal trespass, under Section 441 of the Penal Code, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence, or to intimidate, insult, or annoy any person in possession of the property." *In the case of Kalinath Nag Chowdhry*, 9 W. R., Cr., 1; and see *Queen* v. *Chooramoney Sant*, 14 S. W. R., Cr. R., 25.

Semble,—Criminal trespass is a part of the offence of mischief committed upon land, as well as of house-breaking by night. *Queen* v. *Lalloo Singh and others*, 8 W. R., Cr., 54.

Held, by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under Section 441 of the Penal Code because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. *Queen* v. *Surwan Singh and others*, 11 W. R., Cr., 11.

A person who forcibly enters upon property in the possession of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of Section 441 of the Penal Code, without reference to the question in whom the title to the land may ultimately be found. *Queen* v. *Ram Dyal Mundle*, 7 W. R., Cr., 28.

Accused was Ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entertained on this land. *Held*, that he had not committed the offence of criminal trespass. 6 Mad. Rep., Rul. XIX.

Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. *Held*, that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground, and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use. 6 Mad. Rep., Rul. XXV.

Defendant was convicted of criminal trespass for including in his own land a portion of a public foot-path. *Held*, that as the public generally were entitled to the use of the foot-path, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted. 6 Mad. Rep., Rul. XXVI.

Mere neglect on the part of an owner of cattle to keep them from straying into fields, is not causing cattle to enter a compound within the meaning of Section 425 of the Penal Code. The section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he is likely to cause damage. *Forbes, Major*, v. *Girish Chundra Bhuttachurjee*, 6 B. L. R., Ap., 3; and 14 S. W. R., Cr. R., 31.

Where the trespass (if any) was not committed with the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the *bonâ-fide* assertion of a claim of title, this does not amount to criminal trespass. *Queen* v. *Gokulchund*, 2 N. W. R., 82.

Entrance of a member of a Hindu joint-family into the family dwelling-house is not criminal trespass.

The entry of a stranger into a family dwelling-house, with the permission and license of one of the members, is not criminal trespass. *Prankrishna Chundra, in the matter of the petition of*, 6 B. L. R., Ap., 80; and 15 S. W. R., Cr. R., 6.

Where A. goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass, by putting such person in fear of wrongful restraint, under Section 452 of the Penal Code. *Queen* v. *Nundmohun Sircar*, 12 W. R., Cr., 33.

A person who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under Section 460, and not under Sections 457 and 324 of the Penal Code. *Queen* v. *Lukhun Doss*, 2 W. R., Cr., 52.

Discussion as to whether cumulative punishment

under Sections 454 and 380 is legal for lurking house-trespass and theft. *Queen* v. *Mussamut Mina Nuggerbhatun and Luckhea*, 3 W. R., Cr., 119.

The accused were convicted of criminal trespass under Section 443 of the Indian Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners.

Held, that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable. 5 Mad. Rep., Rul. XXXVIII.

14.—Culpable Homicide.

The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died.

Held that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. *The Queen* v. *Ramtahal Kahar*, 2 B. L. R., A. Cr., 33.

In a case of riot in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder. *Queen* v. *Mana Singh and others*, 7 W. R., Cr., 103.

Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but if done without premeditation, in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. *Queen* v. *Rajoo Ghose and others*, 7 W. R., Cr., 106.

The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed. *Queen* v. *Rubbeeoollah*, 7 W. R., Cr., 13.

Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death, or such bodily injury as was likely to cause death, is punishable under Section 304 of the Penal Code as culpable homicide not amounting to murder. *Queen* v. *Khedun Misser*, 7 W. R., Cr., 54.

The Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered. *Queen v. Soumber Gwala*, 4 W. R., Cr., 32.

The prisoners found the deceased lying in the same bed with their sister and ill-treated him, from the effects of which ill-treatment he died. *Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder. *Queen* v. *Kasseemoddeen and others*, 4 W. R., Cr., 38.

When a man of full age (*i. e.*, above 18 years) submits himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder. *Queen* v. *Baboolun Hijrah*, 5 W. R., Cr., 7.

Two prisoners confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. *Held* that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. *Queen* v. *Gour Chand Polie and Dwarkie Poli*, 1 W. R., Cr., 17.

The prisoner having struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. *Queen* v. *Suleem Sheikh*, 1 W. R., Cr., 23.

When the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed. *Queen* v. *Ram Ruchea Singh*, 4 W. R., Cr., 29.

Certain snake-charmers, professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite three of these persons died. *Held* that the offence was murder under Clauses 2 and 3 of Section 300 of the Penal Code, unless it could be brought within the 5th Exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. *The Queen* v. *Punai Fattama*, 3 B. L. R., Cr., 25; S. C., 12 W. R., Cr., 7.

Culpable homicide not amounting to murder is when a man kills another on being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. *Queen* v. *Yasin Sheikh*, 4 B. L. R., A. Cr., 6; 12 S. W. R., Cr. R., 68.

15.—Dacoity.

When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of Section 395 of the Penal Code. It is sufficient, for the application of the section, that the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint. *Queen* v. *Kissoree Pater and others*, 7 W. R., Cr., 35.

Section 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under

Section 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "Sections 397 and 511," and substituting "Section 395." *Queen* v. *Koonee*, 7 W. R., Cr., 48.

If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. *Queen* v. *Ram Coomar Chung*, 1 Ind. Jur., O S., 108.

A person convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* Loch, J.). *Bhyrub Seal* v. *Koobeer Chung*, W. R., 1864, Cr., 27.

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under Section 396 of the Penal Code. But he cannot be separately convicted of murder under Section 302, and of committing dacoity under Section 395. *Queen* v. *Rughoo*, W. R., 1864, Cr., 30.

Five men armed were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall while the others stood on guard. When the alarm was given the neighbours ran up, and one of the robbers cut down one of the villagers. *Held* that the crime of which they were guilty was house-breaking by night, and not dacoity. *Queen* v. *Rewat Rajwar*, W. R., 1864, Cr., 39.

The evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found was held insufficient, under the circumstances of this case, where the best witnesses were not examined, to support a conviction of the prisoners on a charge of dacoity. *Queen* v. *Ram Sagor and others*, 8 W. R., Cr., 57.

A sentence of fine only is illegal in a case of dacoity. *Queen* v. *Bhojah and others*, 6 W. R., Cr., 54.

In a case of dacoity a sentence of 14 years' transportation was held illegal, and reduced to 10 years' transportation, under Section 395 of the Penal Code. *Queen* v. *Ramchand Punjah*, 6 W. R., Cr., 88.

Severe sentence of transportation for life in a case of aggravated dacoity confirmed, as required by the state of the district. *Queen* v. *Khooda Sonthal and others*, 6 W. R., Cr., 9.

When stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, *e.g.*, length of time or distance. *Queen* v. *Aboot Hossein and others*, 1 W. R., Cr., 48.

Case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government he was arrested, and, after conviction, was sentenced to transportation for life. *Queen* v. *Roopa*, 2 W. R., Cr., 49.

The Sessions Judge should record under what section, and on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant. *Queen* v. *Bissonath Mundle and others*, 2 W. R., Cr., 58.

When persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers. *Queen* v. *Cassy Mul*, 3 W. R., Cr., 10.

The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. *Queen* v. *Khoyrat Ally Beg*, 3 W. R., Cr., 60.

When a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form. *Queen* v. *Motee Jolaha*, 5 W. R., Cr., 66.

On an application to the High Court of revision to discharge an order made by a Sessions Judge, under Section 435, Criminal Procedure Code, for the committal of certain accused persons for trial on a charge of dacoity,—*Held* that as all that was done was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained. *Karaka Nachiar, petitioner*, 3 Mad. Rep., A. C., 254.

A sentence of fourteen years' imprisonment cannot be passed for dacoity under Section 395 of the Penal Code. *Queen* v. *Huroo Rujwar*, 13 S. W. R., Cr. R., 27.

Merely being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen.

To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under Section 150 of the Code of Criminal Procedure, it must be shown that the admission was antecedent to the discovery of the money. *Queen* v. *Kamal Fukur*, 17 S. W. R., Cr. R., 51.

16.—Defamation.

The gomastah of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. *Held* that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged, and if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation. 6 Mad. Rep., Rul. XLVII.

A pleader or mookhtear relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th exception to Section 500 of the Indian Penal Code, but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith. *Queen* v. *Chrestian*, 2 N. W. R., 473.

A report made by an officer in execution of his

duty and as the result of an order from his superior which contained sweeping imputations against others,—imputations which did not appear from the report to be made recklessly or unjustifiably,—does not amount to defamation, and is covered by the 9th Exception to Section 499 of the Penal Code. *Raj Narain Sein* v. *Deegobur Paul*, 14 S. W. R., Cr. R., 22.

The accused, an inspector of police, was sent to enquire if it was true that one Brojonauth was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under Section 499 of the Penal Code supported under the circumstances of the case. *Rajnarain Sein, in the matter of the petition of*, 6 B. L. R., Ap., 42.

The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of Section 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of Section 499 of the Penal Code, and not on what may be the English law on the same subject. *Greene* v. *Delanney*, 14 S. W. R., Cr. R., 27.

Case of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such a case. *Assaruddee Khan* v. *Baboo Khan*, 1 W. R., Cr., 6.

The Penal Code makes no distinction between written and spoken defamation. *Queen* v. *Mohunt Parsoram Doss*, 2 W. R., Cr., 36.

Act XVIII of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to mofussil Courts. Section 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9, Section 499 of the Penal Code, he must show that he has exercised due care and caution. *Sealy* v. *Ramnarain Bose*, 4 W. R., Cr., 22.

17.—Escape from Custody.

To constitute the offence of escaping from transportation, under Section 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation,—*Held* that he had committed an offence punishable under Section 224 and not under Section 226 of the Penal Code. *Queen* v. *Ramasamy*, 4 Mad. Rep., 153.

To escape from custody under civil process is not a criminal offence within the meaning of Section 8 of the Presidency Towns Police Amendment Act of 1860.

Quære,—Whether such an escape without force is a misdemeanour at Common Law. *Reg.* v. *Ichen Connon*, 6 Bom. Rep., Cr., Ca., 15.

18.—Extortion.

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury and thereby dishonestly inducing him to part with his property. *Queen* v. *Meajan and Obhoy Churn Doss*, 4 W. R., Cr., 5.

A chowkeedar who obtains money from another person, either by fraudulent inducement or dishonesty or by putting that person in fear of injury, is punishable under Section 417 of the Penal Code for cheating, or under Sections 383 and 384 for extortion. *Queen* v. *Ramnarain Chowkeedar*, 3 W. R., Cr., 32.

Held that it is not necessary in a case of extortion, under the Indian Penal Code, that the threat should be used and the property received by one and the same individual, nor that the receiver should be charged with abetment, although that might be done. *Reg.* v. *Shoukar Bhogvatetal*, 2 Bom. Rep., 417.

A conviction of extortion by a full-power Magistrate, and an order on a Sessions Judge rejecting an appeal therein, reversed by the High Court under Section 404 of the Criminal Procedure Code, as there was no such fear of injury as is contemplated by Section 383 of Indian Penal Code, nor was the delivery of money by the complainants thereby induced, nor did it appear from the evidence that the money was obtained dishonestly by the prisoner who might have demanded it, believing in good faith that he was entitled to it. *Reg.* v. *Abdul Kádar*, 3 Bom. Rep., Cr., 45.

The terror of a criminal charge is a fear of injury within the meaning of those words in Section 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false. *Queen* v. *Mobarick and others*, 7 W. R., Cr., 28.

19.—False Charge.

Where a person is charged under Section 211 of the Penal Code with having, with intent to injure, falsely charged another with an offence knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him. *Reg.* v *Nevalaulvalad Umedmál*, 3 Bom. Rep., C. A., 16.

A person may in good faith institute a charge which is subsequently found to be false, or he may with intent to cause injury to an enemy institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under Section 211 of the Indian Penal Code. To constitute this offence it must be shown that the person instituting criminal

proceedings knew there was no just or lawful ground for such proceedings. The averment that the accused knew that there was no lawful ground for the charge instituted is a most material one. *Queen* v. *Chidda*, 3 N. W. R., 327.

It is not a sufficient ground for a charge, under Section 211 of the Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not or ought not to be sufficient to satisfy a reasonable mind, if in truth he did not know at the time he made the complaint that there was no just and lawful grounds for making it. *Queen* v. *Pran Kishen Bid*, 6 W. R., Cr., 15.

Under Section 211, Indian Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence. Where a person is charged with instituting a criminal proceeding, with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance to show that he had just or lawful grounds. *Queen* v. *Nobokisto Ghose*, 8 W. R., Cr., 87.

To prefer a complaint to the police, in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of Section 211 of the Penal Code. *Queen* v. *Bonomally Sohai*, 5 W. R., Cr., 32.

Where a man burns his own house and charges another with the offence of doing so, he should be convicted and sentenced under Section 211 (and not under Section 195) of the Penal Code. *Queen* v. *Bhugwan Ahir*, 8 W. R., Cr., 65.

Sections 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning. *Raffee Mahomed* v. *Abbas Khan*, 8 W. R., Cr., 67.

To constitute the offence of preferring a false charge, under Section 211 of the Penal Code, the charge need not be made before a Magistrate. Nor need the charge have been fully heard and dismissed; it is enough if it is not pending at the time of trial. *The Queen* v. *Subbanna Gaundan and others*, 1 Mad. Rep., 30.

The false charge referred to in Section 211 of the Penal Code must not necessarily be made before an officer exercising magisterial powers; it may be made before the proper police officer. To support an indictment under this section, it is not essential to show that the alleged false charge has been finally disposed of; it is sufficient to show that the charge was not pending at the time of the trial, which may also be assumed. *The Queen* v. *Toofanee Gounden*, 1 Ind. Jur., O. S., 136.

20.—False Evidence.

Upon a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused intentionally gave false evidence. *Queen* v. *Amere Abi Khan*, 3 N. W. R., 133.

Where a witness was at the beginning of the day solemnly affirmed once for all to speak the truth in all the cases coming before the Court that day,—*Held* that he might be convicted, under Section 193 of the Penal Code, of giving false evidence in a suit which came on on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered. *Queen* v. *Venkatachalam Pillai and others*, 2 Mad. Rep., 43.

Held by a Full Bench (Campbell, J., dissenting) that to establish a charge of perjury the evidence of one witness not corroborated as to the falseness of the statement on which the perjury is assigned is insufficient. *Queen* v. *Lallchand Kowra, Chowkeedar, and others*, 1 Ind. Jur., N. S., 83; S. C., 5 W. R., Cr., 23.

The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court.

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder.

Held that such witness was guilty under Section 193, and not under Section 194, of the Penal Code, as he did not know that he would cause a conviction for murder. *The Queen* v. *Hardyal*, 3 B. L. R., A. Cr., 35.

In cases of giving false evidence, a separate charge against each prisoner must be framed, and separate trial held of each charge. *Anonymous*, 3 Mad. Rep., Ap., 32.

A charge of giving false evidence should specify the false evidence which the prisoners are supposed to have given. *Queen* v. *Fuzul Meeah*, 5 W. R., Cr., 71.

An enquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under Section 193 of the Penal Code. *Queen* v. *Bykunt Nath Banerjee*, 5 W. R., Cr., 72.

In trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true. *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved.

The true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. *Queen* v. *Ahmed Aly and others*, 11 W. R., Cr., 25.

In a case of false evidence it is necessary to

prove the deposition alleged to contain the false statement. *Queen* v. *Bhakoas Tuteene*, 7 W. R., Cr., 13.

Where a prisoner produced as evidence an account book, one page of which had been fraudulently abstracted and another substituted for it,—*Held* that he was not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered. *Queen* v. *Modhoosoodon Shaw*, 7 W. R., Cr., 23.

A deliberate misstatement made in a Court of justice, whether it tends to endanger the life and property of others or to defeat and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple misstatement from which no such inferences can be drawn a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court. *Queen* v. *Gurgoon Aheer*, 7 W. R., Cr., 37.

A conviction for false evidence was upheld in a case where the false statement was to stop the prosecution of certain Brahmins on a charge of riot or dacoity and murder.

The commitment and trial of several persons on separate charges, each man's statement forming a distinct offence, approved. *Queen* v. *Bhairo Misser and others*, 7 W. R., Cr., 51.

The offence of making a false charge, and the offence of intentionally giving false evidence, are not cognate offences or parts of the same offence, but may be punished separately. *Queen* v. *Abdool Azeez*, 7 W. R., Cr., 59.

The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years. *Queen* v. *Soonder Putnaick*, 3 W. R., Cr., 59.

A charge of false evidence is held unproved until evidence is recorded to prove that the prisoner's statement on which the charge is founded was given on solemn affirmation under Act V of 1840, instead of on oath. *Queen* v. *Munwar Khan*, 4 W. R., Cr., 24.

Section 177 of the Penal Code does not apply to the case of any person who is examined by a police officer making a false statement, but to cases where, by law, landholders or village watchmen are bound to give information, and to other analogous cases of the same description. *The Queen* v. *Luchmee Singh*, 12 W. R., Cr., 23.

In a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be independent evidence of the falseness of either story. *The Queen* v. *Kola*, 12 W. R., Cr., 66.

Unsatisfactory conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable, reversed.

The discretion vested in a Civil Court under Section 169, Code of Criminal Procedure, of sanctioning a criminal charge of perjury, is one that should be most carefully exercised.

Remarks on the present case in which the discretion was improperly exercised. *Queen* v. *Poosa Ram and two others*, 6 W. R., Cr., 11.

A Sub-Registrar is competent, for any purpose contemplated by Act XX of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. *Queen* v. *Juggut Chunder Dutt*, 6 W. R., Cr., 81.

In a case of false evidence it is not necessary for the Judge in his charge to show how the false statements, even if made intentionally, are material in the case. *Queen* v. *Parbutty Churn Sircar*, 6 W. R., Cr., 84.

A conviction on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence. *Queen* v. *Nagboonsee Lall*, 6 W. R., Cr., 89.

A. made an application for a new trial under Section 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., dissenting) that he had not thereby committed an offence under Section 191 or 192 of Penal Code. *In re Harman Manual*, 2 B. L. R., A. Cr., 1.

A witness falsely deposing in another's name should be charged with giving false evidence under Section 193, and not with cheating by personation under Section 419 of the Penal Code. *Reg.* v. *Prema Bhica*, 1 Bom. Rep., 89; 6 W. R., Cr., 39.

Where a witness intentionally gives false evidence, and it is doubtful whether the false statement was made before the Magistrate or before the Sessions Judge, the witness may be convicted of the offence of giving false evidence upon an alternative finding (Norman and Campbell, JJ., *dubitantibus*). The deposition voluntarily given before the Sessions Judge is admissible in evidence against the witness to show the falsehood of his deposition before the Magistrate, anything in Section 32, Act II of 1855, notwithstanding (Campbell, J., *dissentiente*). *Queen* v. *Mussamut Zumeerun*, 6 W. R., Cr., 65.

Held by the majority of the Court that a sentence of five years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding, with the intention of defeating the ends of justice by procuring the acquittal of a guilty person. *The Queen* v. *Anoo*, W. R., 1864, Cr., 16.

Before an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and further that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under Section 193. The Court must be satisfied as to the intention with which the statements were made. *Queen* v. *Denonath Bujjur*, 9 W. R., Cr., 52.

In a case of giving false evidence, the charge should show the particular matter in respect of

which the accused is put upon his trial; and only so much of the prisoner's statement ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution.

The mere fact that a person has made a statement which contradicts a previous statement, is not itself necessarily sufficient to bring him within Section 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must in each case be considered before it can be held that the offence has been committed. *Queen* v. *Soondur Moohuree*, 9 W. R., Cr., 25.

Where C. falsely represented himself to be U., and the writer of a document signed by U., and T. knowing that C. was not U., and had not written such document, adduced C. as U., and as the writer of that document,—*Held* that T. ought to have been convicted on a charge of abetting the giving of false evidence. *Queen* v. *Chundi Churn Nauth and others*, 8 W. R., Cr., 5.

Discussion as to the extent of punishment to be passed on certain ryots who, in a case of criminal trespass, brought by an indigo planter, falsely swore that cotton, and not indigo, had been raised on the land in question during the past year. Punishment reduced. Seton-Karr, J., would have reduced the punishment still more for reasons given. *Queen* v. *Dhurruni Dutt Rai and others*, 8 W. R., Cr., 7.

The making of a false return of service of summons is an offence punishable, not under Section 181, but under Section 193 of the Penal Code, and is cognizable by the Court of Session alone. *Queen* v. *Shama Churn Roy*, 8 W. R., Cr., 27.

In charges of false evidence under Section 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false. *Dowlut Moonshee, appellant*, 8 W. R., Cr., 95.

A general sanction by a Judge to a prosecution for giving false evidence, under Section 193 of the Penal Code, and for false verification is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under Section 120, Act VIII of 1859, but under Section 209 of that Act, and need not therefore be verified. *Queen* v. *Kartick Chunder Haldar*, 9 W. R., Cr., 58.

In a case of false evidence, reading extracts from the alleged conflicting statements of the prisoner is not sufficient to enable the Jury to form a fair opinion on the question. The whole of the depositions given on each occasion ought to be laid before the Jury. *Queen* v. *Kally Churn Gangooly*, 6 W. R., Cr., 92.

It is essential, in order to sustain a charge, under Section 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. A charge under this section should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made.

The knowledge by the Sessions Judge of the handwriting of the judicial officer before whom the statement was made, is no evidence of the statement having been made before that officer. *The Queen* v. *Fatik Biswas*, 1 B. L. R., A. Cr., 13; S. C., 10 W. R., Cr., 37.

There is nothing in Section 169 of the Code of Criminal Procedure which gives a Judge, not sitting in appeal, any original jurisdiction to entertain a charge of giving false evidence before another Court. No other Court than that before which false evidence is given can direct a prosecution in respect thereof. In a prosecution for false evidence, there must be some specific charge of making some particular and specific false statement, and some direct evidence that such specific statement was false. *Ranee Asmedh Koonwar* v. *W. Tayler*, W. R., 1864, 15.

A Moonsiff sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence, under Section 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Moonsiff, who finally committed the prisoner. *Held* that, while the Moonsiff could have committed the prisoner himself, under Section 173 of the Criminal Procedure Code, without sending him before the Magistrate to conduct the preliminary investigation on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the enquiry. Case remanded to the Magistrate accordingly. *The Queen* v. *Jan Mahomed*, 3 B. L. R., A. Cr., 47.

In an attempt to establish the offence of perjury, the charge should distinctly state the false statement of which the offence consisted. But the omission is not material if the accused is not prejudiced thereby. *Queen* v. *Bhuttoo Lalljee and Seeboo*, 2 W. R., Cr., 51.

Corrupt intention in giving false evidence may be inferred from circumstances. *Queen* v. *Bhutten Ram*, 2 W. R., Cr., 63.

Discussion as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion. *Queen* v. *Nogena Ourut*, 3 W. R., Cr., 6.

In a case where it was impossible to decide which of the prisoners' contradictory statements was false, and which was true, the prisoners were convicted on the alternative charge. *Queen* v. *Narain Doss*, 1 W. R., Cr., 15.

A Magistrate has no jurisdiction to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under Section 318 of the Code of Criminal Procedure. *Queen* v. *Buloram and another*, 7 W. R., Cr., 104.

An alternative finding under Section 381 of the Code of Criminal Procedure should not be resorted to until both committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements which

are not absolutely contradictory, the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made. *Queen* v. *Bedoo Noshyo*, 12 W. R., Cr., 11.

In a case of giving false evidence by making contradictory statements, a Court of Session cannot, without making further enquiry, commit a person for trial under Section 172 of the Code of Criminal Procedure, when both contradictory statements are not made before it. By the words "under its own cognizance" in that section, it is meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. *Queen* v. *Nomul*, 12 W. R., Cr., 69.

The provision of the Penal Code (Section 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under Section 196, it must be shown that the accused made some use of the false evidence after it was in existence. *Queen* v. *Sheikh Suffuruddee*, 1 Ind. Jur., O. S., 122.

A Magistrate making a commitment for giving false evidence, in respect of any offence enquired into under Chapter XII or XIV of the Code of Criminal Procedure, must set out the precise words recorded as used by the accused, containing the statement which he undertakes to prove false, and not stated the effect of those words. *Queen* v. *Boodhun Ahir*, 17 S. W. R., Cr. R., 32.

A person who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. A charge "that he on or about the 15th April, 1871, gave false evidence," is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence. *Queen* v. *Sheo Churn*, 3 N. W. R., 314.

The making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions. 6 Mad. Rep., Rul. XXVI.

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement when satisfactorily proved is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground,—that it is an admission of the accused person inconsistent with his innocence.

As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. *Queen* v. *Ross*, 6 Mad. Rep., 342.

Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false. *Reg.* v. *Gangoji bin Pandji*, 5 B. R., Cr. R., 49.

To constitute the offence of giving false evidence under Section 191 of the Indian Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under Section 192.

Where the senior Assistant Sessions Judge, without taking evidence, acquitted the accused after calling upon him to plead, the prosecutor being able to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with. *Reg.* v. *Damodhar Ram Chandra Kalkarni*, 5 Bom. R., Cr. R., 68.

In a case of giving false evidence under Section 193 of the Penal Code, the statement which the accused is charged with having made before the Magistrates should be clearly proved to have been made by him. The procedure in the case of a charge under this section pointed out. *Queen* v. *Siddhoo*, 13 S. W. R., Cr. R., 56.

Proof of contradictory statement on oath, or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under Section 72 of the Indian Penal Code, Sections 242, 381, and 382 of the Criminal Procedure Code. The English law upon the subject stated. *Queen* v. *Palany Chetty*, 4 Mad. Rep., 51.

A conviction may be had for giving false evidence under Section 193, Penal Code, even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Regulation XIX of 1814), but it must be proved that the false statement was made under the sanction of the law. *Audhun Roy*, 14 S. W. R., Cr. R., 24.

21.—False Personation.

It is necessary to a conviction for false personation, under Section 205 of the Penal Code, that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual *held*, under the circumstances of the case, to be insufficient to show any intention of falsely personating such person. *Queen* v. *Narain Acharj*, 8 W. R., Cr., 80.

A vendor proceeded, in company with three persons, to Dacca to register her deed of sale.

Falling ill on the way, the three companions went to the Registrar's office; one of them there proceeded to personate the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held* on revision that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under Sections 92 and 94 of the Registration Act, and not under the Penal Code. *The Queen* v. *Luttee Bewa*, 2 B. L. R., A. Cr., 26.

Fraudulent gain or benefit to the offender is not an essential element of the offence of false personation under Section 205 of the Penal Code, and a conviction for such offence may be upheld even where the personation is with the consent of the person personated. *Ex-parte Suppâkon and others*, 1 Mad. Rep., 450.

To establish a charge under Section 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. Under Section 205 of the Penal Code it is criminal to personate an imaginary person. *Queen* v. *Bitoo Kahar*, 1 Ind. Jur., O. S., 123.

To constitute the offence of false personation under Section 205 of the Penal Code, it is not enough to show the assumption of a fictitious name, it must also appear that the assumed name was used as a means of falsely representing some other individual. *Reg.* v. *Bhitto Kular* (1 Indian Jurist, 123) dissented from. *Queen* v. *Kâdar Raouttan and Ayamganu Raouttan*, 4 Mad. Rep., 18.

22.—Forgery.

To constitute the offence of forgery the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person.

A writing which is not legal evidence of the matter expressed may yet be a document within the meaning of Section 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter. *The Queen* v. *Shifait Aly*, 2 B. L. R., A. Cr., 12; 10 W. R., Cr., 61.

A specially registered bond was presented before the Small Cause Court Judge for execution, under Section 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further enquiry, set aside the decree, and sanctioned the prosecution under Section 170 of the Criminal Procedure Code. *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree. *The Queen* v. *Nawab Singh*, 3 B. L. R., A. Cr., 9.

When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document or of abetting forgery. *Queen* v. *Mohesh Chunder Acharjee and another*, 6 W. R., Cr., 20.

The signing of a vakalatnamah in the name of co-decree-holders without their authority to do so, and delivering it to a vakeel, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of Section 463 of the Penal Code. *Queen* v. *Gyanee Ram*, 6 W. R., Cr., 78.

No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it. *Gunga Narain Sircar* v. *Azeezoonissa Beebee*, 5 W. R., Mis., 18.

The fraudulent alteration of a Collectorate chellaun is the forgery of a document as described in Section 467 of the Penal Code. *Queen* v. *Hurish Chunder Bose*, W. R., 1864, Cr., 22.

A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1st, 1862, can be dealt with only under the old Procedure Law (Act I of 1848), according to which the sanction of the Court before which the offence is alleged to have been committed is necessary before criminal proceedings can be instituted. *Radhajeebun Moostaffee, petitioner*, 5 W. R., Cr., 8.

In a case of filing a forged vakalatnamah in a Civil Court before January 1st, 1862, the prosecution can only proceed in the ordinary way, *i.e.*, by way of commitment by a Magistrate on the complaint of the party aggrieved. *Queen* v. *Enayet Hossein*, 5 W. R., Cr., 43.

A person who consents to act under a mooktearnamah, and attaches his name in token of such consent, does not thereby become a forger if the mooktearnamah turns out to have been forged. *Queen* v. *Burjo Barick*, 5 W. R., Cr., 70.

The offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law. *Queen* v. *Mohesh Chunder Sircar*, 3 W. R., Cr., 13.

Counterfeit seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. *Queen* v. *Kisto Soonder Deb*, 2 W. R., Cr., 5.

A conviction for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made. *Queen* v. *Ramgopal Dhur*, 10 W. R., Cr., 7.

The false alteration of a Police diary by a head constable was held to fall under Section 471 of the Penal Code, as the forgery of a document made by a public servant in his official capacity. *Queen* v. *Raghoo Barick*, 11 W. R., Cr., 44.

D. was tried on a charge of forging, &c., document, A., and acquitted. In order to prove the charge, evidence was given in respect of another document, B., which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A. and B., both of which, it was said, exactly resembled a third signature admitted to be genuine. *Held*, by Peacock, C. J., and Kemp, J. (Markby, J., dissenting), that the acquittal in respect of the document A. did not operate as an acquittal

in respect of the document B. *Reg.* v. *Dwarka Nauth Dutt*, 2 Ind. Jur., N. S., 67; 7 W. R., Cr., 15.

A Court has power, under the 171st Section of Act XXV of 1861, to order that the Magistrate shall investigate whether forgery has been committed with reference to a particular document offered in evidence before such Court; and such order is good notwithstanding it does not particularise any individual as the suspected person, or require that the Magistrate should enquire whether forgery was committed by a particular person.

The offence of forgery within the definition of the 463rd Section of Act XXV of 1861, is committed by a person who fabricates a false document purporting to be a copy, for the purpose of the same being given in evidence. *Eshan Chunder Dutt and others* v. *Prannauth Chowdhry*, Marsh., 270, and W. R., F. B., 171.

It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document before the accused can be found guilty under Section 464 of the Penal Code of making a false document. *The Queen* v. *Nujeebutoollah*, 9 W. R., Cr., 20.

There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under Section 471 of the Penal Code. *Queen* v. *Jaha Bux*, 8 W. R., Cr., 81.

Where an intention to use a forged document, if necessary, was inferred from the facts of the case, and from the conduct of the prisoner. *Queen* v. *Hatim Moonshee, alias Mahomed Hatim*, 8 W. R., Cr., 11.

A conviction may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon. *Queen* v. *Prosono Bose*, 5 W. R., Cr., 96.

A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it. *Queen* v. *Nujum Ali*, 6 W. R., Cr., 41.

The term "fabrication," in Section 193, refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by Section 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. *Queen* v. *Rajcoomar Banneijea*, 1 Ind. Jur., O. S., 104.

Where a forged document is put in evidence before the Collector, the power of commitment rests with the revenue authorities, and does not under any circumstances extend to the Magistrate. *Government* v. *Hungessur Sein*, 1 Ind. Jur., O. S., 11.

A deed of divorce is a "valuable security" within the meaning of Section 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within Section 471 of that Code. *Queen* v. *Azimoodeen and another*, 11 W. R., Cr. 15.

The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid.

Held that the prisoner was guilty of forgery under Section 464 of the Penal Code.

Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another. *Anonymous*, 1 Ind. Jur., N. S., 46.

The accused was charged with two others with criminal breach of trust. Evidence was taken in support of the charge of embezzlement; but considering that there was no evidence to convict him under Section 408 of the Penal Code, the Assistant Magistrate charged him under Section 208. Five days afterwards he was charged with forgery, and called upon to plead to that charge, but no separate grounds of committal were drawn up. The High Court agreed with the Sessions Judge that the commitment in its present state was incomplete, and should be quashed. *Queen* v. *Mooktaram Chatterjee*, 17 S. W. R., Cr. R., 44.

The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under Section 467 of the Indian Penal Code.

The High Court will not alter a conviction by a Sessions Court, aided by a Jury, on a charge only triable by a Jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised. *Reg.* v. *Noro Gopal*, 5 Bom. Rep., Cr. R., 56.

Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Indian Penal Code. *Queen* v. *Lal Gamul*, 2 N. W. R., 11.

Where several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that under Section 473 of the Penal Code there was a complete and separate offence committed in respect of every seal found, and that prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals in their possession were for the purpose of committing one particular forgery. *Queen* v. *Goluck Chunder and Teluck Chunder*, 13 S. W. R., Cr. R., 16.

To support a conviction of the offence under Section 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged. *Queen* v *Bholay Pramanick*, 17 S. W. R., Cr. R., 32.

The offence of altering one part of a document executed in two parts for the mutual security of both the parties concerned deserves to be severely punished. *Queen* v. *Kishoree Mohun Dutt*, 17 S. W. R., Cr. R., 58.

The prisoner was charged, under Section 471 of the Indian Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and Jury, was convicted of that offence.

The Sessions Judge, considering the forged document to be of the nature of those specified in Section 467, sentenced the prisoner to ten years' transportation. On appeal, the High Court *held* that the charge should have distinctly set forth the offence as that of using a forged document of the

nature of those specified in Section 467, and that that not having been done, the trial by Jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried. *Reg.* v. *Gangaram Malji*, 6 Bom. Rep., Cr. Ca., 43.

23.—Gambling.

Gambling is not ordinarily punishable as an offence; it is only so punishable when carried on in a common gaming-house, or in a public street or place. *Queen* v. *Sheosunkur Singh*, 3 N. W. R., 1.

Common gaming-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instrument of gaming, or of the house, or otherwise howsoever. *Queen* v. *Suffud Ali*, 3 N. W. R., 134.

To authorize an entry or search of a house, under Section 5 of Act III of 1867, there must be credible information before the Magistrate or police officer, who may take action under such section, that the house is a common gaming-house.

Unless a house is entered or searched under the provisions of Section 5, the finding of cards, dice, &c., therein will not be *primâ-facie* evidence for the purposes mentioned in Act III of 1867. *Queen* v. *Subsookh and others*, 2 N. W. R., 476.

The gist of the offence, under Section 4 of Act III of 1867, consists in the fact that the house in which the gambling takes place is "a common gaming-house." The gist of the offence under Section 13 is "the gambling in a public street or place."

Gambling in a private house is not an offence under the Act.

A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of Section 268 of the Indian Penal Code. *Reg.* v. *Hàu Nàgji*, 7 Bom. Rep., Cr. Ca., 74.

24.—Hurt and Grievous Hurt.

Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under Section 334, and not under Section 324 of the Indian Penal Code. *Reg.* v. *Bhula Chube*, 1 Bom. Rep., 17.

The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under Section 394 alone, and not under Sections 392 and 394. *Queen* v. *Mooktee Kora*, 2 W. R., Cr., 1.

The prisoner having received great provocation from his wife pushed her with both arms so as to throw her with violence to the ground, and after she was down slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. *Held* under the circumstances that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder. *Queen* v. *Punchanun Tantee*, 6 W. R., Cr., 97.

Case of a man knocked down by a blow behind the ear, and then hung up to a tree where he was found dead, in which the Magistrate convicted one of the prisoners of voluntarily causing hurt and the other of abetting the same. Conviction quashed with a view to commitment of the parties implicated before the Sessions. *Gour Gobind Thakoor and another*, 6 W. R., Cr., 55.

To bring a case under Section 330 of the Penal Code it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offences or misconduct punishable under the Indian Penal Code. That section therefore does not apply to a case where the confession extorted had reference to a charge of witchcraft. *Queen* v. *Baboo Moondee*, 13 S. W. R., Cr. R., 23.

A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court.

What amounts to "grievous hurt." *Reg.* v. *Auta bin Dadoba and another*, 1 Bom. Rep., 101.

The prisoners found a man in the act of theft, and were beating and cuffing him, when one of the witnesses for the prosecution threatened to call a chowkeedar, and they released him. Two days afterwards he was found drowned. *Held* that there was no evidence to convict the prisoners of causing grievous hurt. All presumptions consequent on the man's body being found drowned should have been put aside, and the original assault alone considered. *Queen* v. *Nunkoo Doss*, 2 W. R., Cr., 48.

Causing grievous hurt on grave and sudden provocation, without any intention of causing grievous hurt, or knowledge that such hurt was likely to be caused, is punishable under Section 335 of the Penal Code. *Queen* v. *Umbica Tantinee*, 4 W. R., Cr., 24.

The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt),—*Held* that it was not necessary to pass a separate sentence for the offence of house-trespass. *Queen* v. *Bassoo Rannah*, 2 W. R., Cr., 29.

The offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine. *Queen* v. *Sharoda Peshagur*, 2 W. R., Cr., 32; *Queen* v. *Menazoodin*, 2 W. R., Cr., 33.

When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt. *Queen* v. *Megha Meeah*, 2 W. R., Cr., 39.

When the result of a joint attack by several persons on one man is the fracture of his arm, the offence committed is grievous hurt, and not assault. *Queen* v. *Ramtohul Singh*, 5 W. R., Cr., 12.

When bone fractures are caused, in addition to

other injuries, the offence committed is grievous hurt, triable by a Court of Session, and not hurt cognizable by a Magistrate. *Queen* v. *Ramtohul Singh*, 5 W. R., Cr., 65.

A man who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty of causing grievous hurt on a grave and sudden provocation. *Queen* v. *Chulbundee Poramanick*, 3 W. R., Cr., 55.

The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the grievous hurt, whether it was at the instant the husband found himself dishonoured, or long afterwards. *Queen* v. *Sutamut Russooa*, 4 W. R., Cr., 17.

Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life,—*Held* that the husband was guilty of an offence under Sections 319 and 321 of the Penal Code, and not an offence under Sections 320 and 322. *Queen* v. *Bysagoo Noshyo*, 8 W. R., Cr., 29.

Where, in a case of robbery attended with death, there was no intention of causing death, or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery. *Queen* v. *Chakor Huree and others*, 6 W. R., Cr., 16.

A disability for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt. *Queen* v. *Bishnooram Surma*, 1 W. R., Cr., 9.

There must be evidence to prove that hurt, as described in Section 320 of the Penal Code as grievous hurt, has been caused before a conviction can be had under Section 320 of that Code. *Queen* v. *Kaminee Dossee*, 12 W. R., Cr., 25.

Defendant was convicted under Section 338 of the Indian Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town, between the hours of 7 and 8 p.m.; that the carriage was being driven at an ordinary pace, and in the middle of the road; that the night was dark, and the carriage without lamps, but that the horsekeeper and coachman were shouting out to warn foot passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held* upon a reference that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed. 6 Mad. Rep., Rul. XXXII.

25.—KIDNAPPING AND SLAVERY.

The subject of an independent State, though not amenable to the British Court on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories. *Queen* v. *Dhurmonarain Moitro and others*, 1 W. R., Cr., 39.

The consent of a kidnapping person is immaterial, and it is not necessary for a conviction, under Section 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. *Queen* v. *Bhungee Aheer*, 2 W. R., Cr., 5.

The consent of a girl under 16 years of age, kidnapped or abducted to compel her marriage, does not affect the offence, nor is it necessary to prove the taking or enticing away to have been by force or fraud. *Queen* v. *Amgod Bugeah*, 2 W. R., Cr., 61.

To bring a case under Section 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of its lawful guardian, without his consent. *Queen* v. *Gunder Singh*, 4 W. R., Cr., 6.

A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping punishable under Section 363 of the Penal Code. *Queen* v. *Gooroodass Rajbunsee*, 4 W. R., Cr., 7.

The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. *Queen* v. *Mussamut Bhoodeea*, 8 W. R., Cr., 3.

Section 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. *Queen* v. *Sheikh Oojeer*, 6 W. R., Cr., 17.

The offence described in Section 363 of the Penal Code is included in that described in Section 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. *Queen* v. *Shama Sheikh*, 8 W. R., Cr., 35.

Under Section 361 of the Penal Code (kidnapping from lawful guardianship), the consent of a minor is immaterial, nor do force and fraud form elements of the offence. *Queen* v. *Sookee*, 7 W. R., Cr., 36.

When a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under Section 363 of the Penal Code only, and of the latter under Section 368 only, while the separate conviction of both under Section 366 was quashed. *Queen* v. *Isree Pandey and others*, 7 W. R., Cr., 56.

An enticing away of a child playing on a public road is kidnapping from lawful guardianship. *Queen* v. *Mussamut Oojeerun*, 7 W. R., Cr., 98.

The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping.

There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution. *Queen* v. *Doorga Doss and others*, 7 W. R., C. R., 104.

To support a conviction for kidnapping under Sections 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped. *Queen* v. *Neela Bibee and another*, 10 W. R., Cr., 33.

A husband, or those who aided him, cannot be

convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they take possession of her by force and violence and in the darkness of night. *Queen* v. *Asken*, W. R., 1864, Cr., 12.

If knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Indian Penal Code.

Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailer. *Queen* v. *Mirza Sikundur Bhukut*, 3 N. W. R., 146.

The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under Section 370, Penal Code, of having detained a woman against her will as a slave. *Queen* v. *Firman Ali*, 16 S. W. R., Cr. R., 73.

To constitute the offence of kidnapping, under Section 363 of the Indian Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is a guardianship by a person who is lawfully entrusted with the care or custody of a minor. *Queen* v. *Buldeo*, 2 N. W. R., 286.

There can be no conviction of the offence of kidnapping under Section 366 of the Penal Code, unless it is proved that the accused has taken the girl out of the keeping or custody of her lawful guardian without her consent.

Where the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl really was of the Sudra caste, it was held that he was guilty of cheating by false personation under Section 416 of the Penal Code. *Queen* v. *Mehim Chunder Sil*, 16 S. W. R., Cr. R., 42.

26.—Mischief.

The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of Section 425 of the Penal Code. *Ram Gholam Singh, petitioner*, 6 W. R., Cr., 59.

Section 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and Section 17, Act III of 1857, supposes the mischief (cattle trespass) was done intentionally, and not by negligence. *Case of Araz Sircar*, 10 W. R., Cr., 29.

The defendants were convicted of mischief under Section 427 of the Indian Penal Code for grazing their cattle upon waste lands without payment of certain capitation fees, to which the prosecutor was entitled. *Held*, that there was no evidence that the defendants caused mischief. 5 Mad. Rep., Rul. XXX.

The accused were convicted of mischief. The facts were, that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad. 5 Mad. Rep., Rul. XL.

The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. 6 Mad. Rep., Rul. XXXVII.

To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property or such a change in the property, or the situation of it, as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief. 4 Mad. Rep., Rul. XVI.

Without evidence that the accused intended or knew that he was likely to cause wrongful loss or damage to the complainant, the offence of mischief under Section 425 of the Penal Code was held not made out. *Kasin Nath Ghose* v. *Dinobundhoo Myter*, 16 S. W. R., Cr. R., 72.

27.—Murder.

The words "or other thing" in Section 328 of the Penal Code must be referred to the preceding words, and be taken to mean "unwholesome or other thing," and not "other thing" simply. *Jotee Ghoraee, appellant*, 1 W. R., Cr., 7.

Held by the majority of the Court (*dissentiente* Seton-Karr, J.) that the offence of administering deleterious drugs without endangering life is punishable under Section 328 of the Penal Code, and not under Section 326 as grievous hurt. *Queen* v. *Joygopal*, 4 W. R., Cr., 4.

Capital sentence should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery. *Queen* v. *Panhee Arnut*, 15 S. W. R., Cr. R., 66.

When the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then under Section 59, change it to transportation for that period. *Queen* v. *Rughoo*, W. R., Cr., 30.

In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence. *Queen* v. *Mahomed Hossein*, W. R., Cr., 31.

A conviction for murder was held to be wrong in a case when a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent and knocked him over, thereby causing his death. *Queen* v. *Kewal Dosad*, W. R., Cr., 36.

Prisoner found deceased in act of house-breaking by night in his house, and killed him with a kodali which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for

any purpose of defence, and that not whilst deprived of power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed.

The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months. *Regina* v. *Durwan Geer*, 1 Ind. Jur., N. S., 253.

When a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder and convicted of an offence under Section 314 of the Penal Code. *The Queen* v. *Kalla Chand Gope and another*, 10 W. R., Cr., 59.

A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. *Queen* v. *Budderoodeen*, 11 W. R., Cr., 20.

Where an accused killed A., whom he had no intention of killing, by a blow with a highly lethal weapon intended to kill B., he was held guilty of the murder of A. *Queen* v. *Phomonee Ahum*, 8 W. R., Cr., 78.

In this case the prisoner was convicted of murder, but the intention of causing death not being fully established, the sentence of death was commuted to transportation for life. *Queen* v. *Shobha Sheikh Gorman*, W. R., 1864, Cr., 2.

In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it does not palliate any offence, may be taken into account as throwing light on the question of intention. *Queen* v. *Ram Sahoy Bhar*, W. R., 1864, Cr., 24.

Section 380 of the Code of Criminal Procedure does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, and it requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record these circumstances and submit them for the consideration of the Government, and the Government may, under Section 54, act as to it seems proper. *Queen* v. *Dabee*, W. R., 1864, Cr., 27.

Held that where, from the circumstances, it appeared that a child had been exposed by the prisoner died, but that death was not caused except very remotely by the exposure, the prisoner, though guilty under Section 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure. *The Queen* v. *Khodabux Fakeer*, 10 W. R., Cr., 52.

To bring a case under Clause 4, Section 300 of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must in all probability be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. *Held* that a case in which the accused person pursued after a thief, and killed him after the house-trespass had ceased, did not fall within the 2nd Exception to Section 300 of the Penal Code; the right of private defence of property continuing, under Clause 5, Section 105 of that Code, only so long as the house-trespass continues. *Queen* v. *Balakee Jolahed*, 10 W. R., Cr., 9.

Intoxication is no excuse for a man throttling to death another and a weaker man, who was also intoxicated. The Assessors having brought the case within Exception 4 of Section 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder. *Queen* v. *Akulpattee Gossain*, 5 W. R., Cr., 58.

Held by the majority of the Court, that when a person wilfully and deliberately killed a man who was endeavouring to escape after having been detected in the act of house-breaking by night for the purpose of theft, the offence committed was murder. *Queen* v. *Durwan Geer*, 5 W. R., Cr., 73.

A person who beats another brutally and continuously, so that death results, is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. *Queen* v. *Tepra Fakeer*, 5 W. R., Cr., 78.

When prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction. *Queen* v. *Petta Gazi*, 4 W. R., Cr., 19.

The offences of murder and of culpable homicide not amounting to murder both suppose an intention to cause death, or knowledge that the injury inflicted was likely to cause death. In the absence of such intention or knowledge the offence committed may be that of causing grievous hurt. *Queen* v. *Bhadoo Poramanick*, 4 W. R., Cr., 23.

Held by the majority, that when two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder. *Queen* v. *Nazoor Fakir*, 4 W. R., Cr., 26.

Held by the majority, that when four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder, and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. *Queen* v. *Pooshoo and Hurriah*, 4 W. R., Cr., 33.

The prisoner kicked several times a man who was in his charge (who, having been severely beaten, had fallen senseless on the road) and thereby caused his death; the prisoner was found guilty of murder, and sentenced to transportation for life. *Queen* v. *Nilmadhub Sircar*, 3 W. R., Cr., 22.

Sentence of transportation for life in a case of murder instead of capital punishment, there being some reason to suppose that at the time of the murder both the deceased and the prisoners were drunk, and that the murdered man excited the prisoner's passion by calling him a thief. *Queen* v. *Ram Nath Gwala*, 3 W. R., Cr., 27.

The Sessions Judge having found the prisoners

guilty of striking the deceased with the knowledge that the act was likely to cause death,—in other words, guilty of murder,—convicted and punished them for culpable homicide not amounting to murder. The case was remanded for a new trial. *Queen* v. *Beria Bazikur*, 3 W. R., Cr., 38.

The absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. *Queen* v. *Mahomed Elim Abdool Kureem*, 3 W. R., Cr., 40.

The prisoner was convicted of murder and sentenced to death; but before confirming the sentence, as doubts were entertained of his sanity, the case was referred to the Sessions Judge with instructions for further enquiry. *Queen* v. *Azoo Bebee*, 2 W. R., Cr., 33.

When murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death. *Queen* v. *Kuchee Ahen*, 2 W. R., Cr., 39.

Discussion as to the sufficiency of the evidence in a case of murder, and the necessity of applying to Government for a pardon on behalf of the prisoner. *Queen* v. *Gobindo Bagdee*, 3 W. R., Cr., 1.

Discussion as to insanity in the case of a person charged with murder. *Queen* v. *Mussamut Poochee*, 3 W. R., Cr., 9.

Case of conviction of murder on the confession of the accused, together with evidence as to his conduct both before and after the murder. *Queen* v. *Petu Ram Thappa*, 3 W. R., Cr., 11.

The prisoners detected a weak, half-starved old woman stealing their rice, and so used their right of private defence that she died from the injuries they inflicted. The prisoners were held guilty by the majority of the Court of murder (*dissentiente*, Campbell, J.). *Queen* v. *Gokool Bowree*, 5 W. R., Cr., 33.

It is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death. *Queen* v. *Sheikh Solim*, 5 W. R., Cr., 41.

Under the Penal Code no constructive, but an actual intention to cause death is required to constitute murder. Thus, when a boy of fifteen years old, in the heat of discovering the deceased in the act of adultery with the wife of a near relative, and, without the use of any weapon, joined that relative in committing an assault upon the deceased which caused his death, the offence committed was held to have been culpable homicide not amounting to murder. *Queen* v. *Goreeboollah*, 5 W. R., Cr., 42.

A Judge should clearly acquit a prisoner of murder when so charged, and not merely find him guilty of culpable homicide not amounting to murder.

When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in Clause 4, Section 300 of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error or enhance the sentence. *Queen* v. *Toyab Sheikh*, 5 W. R., Cr., 2.

The punishment of transportation for life inflicted instead of capital punishment, in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death. *Queen* v. *Khoaj Sheikh*, 5 W. R., Cr., 20.

When a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder.

The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers. *Queen* v. *Sobeel Mahee*, 5 W. R., Cr., 32.

Murder by poison. A man and a dog die a few hours after eating the same food, but no traces of poison are found in their bodies or in the possession of the accused. The mode of investigation by the police and by the Magistrates in such cases fully laid down. *Chutto Chumar, appellant*, 1 W. R., Cr., 3.

Two prisoners confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. *Held* that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. *Queen* v. *Gour Chund Polie*, 1 W. R., Cr., 17.

A capital sentence mitigated in a case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner. *Queen* v. *Bhekye, alias Sheikh Auser*, 1 W. R., Cr., 46.

Though the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence and pass one of transportation for life. *Queen* v. *Lall Jhah*, 1 W. R., Cr., 48.

When two persons take an active part in a murder they become principals in the first degree, though one of them only may have been the actual killer. If one stood by while the crime was being committed he would be an abettor. *Queen* v. *Jan Mahomed and Kamoo Gazee*, 1 W. R., Cr., 49.

Held, in a case of murder, that the Judge had not given a proper direction to the Jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplices, to point out any independent evidence proving facts showing that the prisoners were or must have been present at or cognizant of the murder. *The Queen* v. *Karoo, Rumnee, and Nundoo Khettree*, 6 W. R., Cr., 44.

The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion. *Queen* v. *Tonoo and another*, 6 W. R., Cr., 46.

In a case of murder by consent,—*Held* that evidence of consent which would be sufficient in a

civil transaction must be equally sufficient in exculpation of a prisoner's guilt. *Queen* v. *Anunto Rurnanyat*, 6 W. R., Cr., 57.

A sentence of death was commuted into one of transportation for life in the case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that by killing the deceased the child's life might be saved. *Queen* v. *Oaram Sungra*, 6 W. R., Cr., 82.

A person may be convicted of murder on his own confession.

Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent. *Queen* v. *Hyder Jolaha*, 6 W. R., Cr., 83.

A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. *Queen* v. *Bhootoo Mullick*, 6 W. R., Cr., 85.

Where a prisoner convicted of murder against the opinion of the Assessors was sentenced to transportation for life, the High Court reduced the sentence to 10 years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country. *Queen* v. *Hossein Aly*, 7 W. R., Cr., 47.

Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death. *Queen* v. *Jaichand Mundle and others*, 7 W. R., Cr., 60.

Curious case of murder where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice. *Queen* v. *Bishendharee Kahar*, 7 W. R., Cr., 100.

In a case of murder, where a man was struck on the head in a boat with a heavy paddle and knocked overboard in a large river in the height of the rains, and had never been heard of since, it was held impossible to suppose that the man was still alive. *Queen* v. *Pooreesoollah Shikdar*, 7 W. R., Cr., 14.

Where a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under Exception 1 of Section 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her. *Queen* v. *Nokul Nushyo*, 7 W. R., Cr., 27.

Two parties met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of Clauses 2 and 3, Section 300, Indian Penal Code. *Queen* v. *Dasser Bhooyan*, 8 W. R., Cr., 71.

Explanation of the difference between murder, culpable homicide not amounting to murder, and grievous hurt. *Queen* v. *Madur Jolaha*, 8 W. R., Cr., 28.

Under Exception 1, Section 300 of the Penal Code, the finding of a Jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder, is a question of fact with which the High Court cannot interfere. *Queen* v. *Shraie*, 13 S. W. R., Cr. R., 33.

In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, a Sessions Judge has himself power under Section 4, Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court. *Queen* v. *Busti Singh*, 14 S. W. R., Cr. R., 76.

On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life. *Queen* v. *Bani Dâss*, 14 S. W. R., Cr. R., 2.

The High Court has no power, even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder. *Queen* v. *Jamal*, 16 S. W. R., Cr., 75.

28.—Offences against the Public Health, Safety, &c.

To sustain a charge under Section 289 of the Indian Penal Code there should be evidence not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt. *Anonymous*, 3 Mad. Rep., A. J., 33.

In a case of public nuisance, under Section 290 of the Penal Code, it must be proved that injury, danger, or annoyance has been caused, either in regard to the enjoyment of property or the exercise of a public right on the part of a portion of the community or of any particular class of people. *Onooram* v. *Lamessor*, 9 W. R., Cr., 70.

The accused was fined by the Magistrate for not having closed the drain in pursuance of the verbal order of the Magistrate. *Held* that the Magistrate should have proceeded under Chapter XX, Act XXV of 1861, inasmuch as the nuisance was not one from which immediate danger was apprehended, and not under Section 62 which empowers the Magistrate to put an immediate determination to the continuance thereof. A written order not having been given the procedure was faulty, and therefore quashed. Only Magistrates of a district or division can act under Chapter XX, Section 308. *Government* v. *Chooneelall*, 2 Agra Rep., 1.

When a case falls both under Section 62 and under Section 308 of the Criminal Procedure Code, the order of the Magistrate ought not to be absolute in the first instance: he should give the defendant an opportunity to show cause against the order.

Semble,—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate

has made the order. *In the matter of Hurimohun Malo and the Queen* v. *Jayakrishna Mookerjee*, 1 B. L. R., A. C., 20; S. C., 10 W. R., Cr., 53.

Where a Magistrate dismissed a complaint under Section 308 of the Code of Criminal Procedure, it was held that it was competent for him to pass an order under Section 62 of that Code in the same case, provided he called on the defendant to show cause why Section 62 should not be applied. *Kalidas Bhuttacharjee* v. *Mohendro Chatterjee*, 12 W. R., Cr., 40.

Section 311 of the Code of Criminal Procedure and the other Sections of Chapter XX of that Code refer to public thoroughfares, and not to private roads over which a right of way has been established. *Gooroo Churn Goon and others* v. *Gunga Gobind Chatterjee*, 8 W. R., 269.

Where a Magistrate, acting within his jurisdiction, orders a nuisance to be removed under Act XXI of 1841, the remedy of a person aggrieved is by appeal from the order; and he cannot afterwards, notwithstanding the order may have been informal, maintain a suit to have the order set aside, and the land restored to its former state. *Solum Patuck* v. *Omoola Koowur*, Marsh., 7.

Section 308 of the Code of Criminal Procedure refers to nuisances in a thoroughfare or public place, and has nothing to do with the interior of private houses, and therefore does not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property. *Full Bench Ruling of Koer Bejoy Keshub Roy* v. *Shama Soondery Dassee; Eshan Chunder Banerjee and others* v. *Nund Coomar Banerjee and others*, 8 W. R., 239.

A Deputy Magistrate should proceed, under Chapter XX of the Code of Criminal Procedure, for the removal of an unlawful obstruction from a thoroughfare, and not under Section 320, which relates to disputes concerning use of land or water. *Barodapersad Mustafee* v. *Modhoosoodun Biswas*, 5 W. R., Cr., 5.

A Magistrate ought not to direct a party to restore a road and canal to their former state, and to show cause why he should not enter into recognizances to keep the peace, without hearing such party. *Queen* v. *Mahomed Afzul and another*, 7 W. R., Cr., 59.

No suit will lie in a Civil Court to set aside an order duly made by a Magistrate, under Chapter XX, Section 308 of the Code of Criminal Procedure, relating to nuisances or to restrain him from carrying such order into effect. *Ujalmayi Dasi* v. *Chandra Kumar Neogi*, 4 B. L. R., F. B., 24; S. C., 12 W. R., F. B., 18.

A Magistrate cannot, under Section 62, Code of Criminal Procedure, in general terms forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance. *Ram Chunder Geer Gossain and another, petitioners*, 6 W. R., Cr., 40.

The omission of a person to keep his ponies from straying is not a public nuisance punishable under Section 290 of the Penal Code. *Joynath Mundul and others* v. *Jamul Sheikh and another*, 6 W. R., Cr., 71.

The occupier who suffers the land to be in a filthy state is the person liable for the penalty. *Queen* v. *Brojo Lall Mitter*, 8 W. R., Cr., 45.

Where persons who were served with notice, under Section 313 of the Code of Criminal Procedure, to remove a nuisance showed cause before the Magistrate, but did not ask him to take evidence or to summon a Jury, the High Court declined to interfere with the order passed by the Magistrate under Section 308 to remove the nuisance, as there appeared no illegality in the order. The Magistrate should, however, in these cases, fully record the grounds on which he acts, and his reasons for rejecting the objections made to the removal of the nuisance. *Queen* v. *Alah Buksh*, 12 W. R., Cr., 24.

Where a Magistrate has commenced proceedings under Section 308 of the Code of Criminal Procedure, he is not at liberty to proceed otherwise than in conformity with the rules laid down in Chapter XX of the Code. *Queen* v. *Pitti Singh*, 8 W. R., Cr., 37.

A Magistrate ordered the rival holders of two hauts to abstain from holding their hauts on the same day upon adjacent pieces of ground, as he apprehended a continuance of riots and affrays, and annoyance or injury to persons lawfully employed in them. *Held* that the order was strictly within the provisions of Section 61 of the Code of Criminal Procedure, and the High Court accordingly refused to interfere with it. *Re Kalipershaud*, 11 W. R., Cr., 5.

Section 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks, on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public. *In re Golam Durbesh*, 10 W. R., Cr., 36.

The order of a Magistrate under Section 308, Code of Criminal Procedure, should be confined to a direction to remove the nuisance complained of. In the case of a tank, the Magistrate cannot order the proprietor to excavate it. The proprietor ought to have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If a Magistrate is compelled to direct the excavations of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposition the soil taken out in the course of excavation must be placed. *In the case of Paul Doss*, 10 W. R., Cr., 51.

Held that a Magistrate cannot proceed to pass an order for the removal of a nuisance, under Section 308 of the Code of Criminal Procedure, without calling on the party to show cause why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case.

A Magistrate's power to fill up a tank is by Section 308 limited to having it fenced in; but where the tank is proved to be injurious to the community he may under that section treat it as a public nuisance, and cause it to be filled up. *Case of Bistor Chum Chuckerbutty*, 10 W. R., Cr., 27.

Section 314 of the Code of Criminal Procedure

authorizes the Magistrate to take immediate measures to prevent imminent danger, pending the enquiry of a Jury, but not when no Jury has been appointed, and after the danger has passed away. *Queen* v. *Raja Indoobshooshun Deb Roy*, 1 W. R., Cr., 8.

The Magistrate of a district issued an order, under Section 308 of the Code of Criminal Procedure, calling upon the petitioner to remove a building, on the ground that it was unlawful obstruction upon a high road. A Jury of five persons was appointed by the Magistrate's successor, under Section 310, to report within fifteen days whether the order was reasonable and proper. The Jurors, being without instruction, took different views as to the performance of their duties; but four of them visited the premises, and were unanimous in finding that the building complained of was not on the high road at all. Five days after receiving reports to this effect the Magistrate issued another order to the petitioner, requiring him to pull down his house within fifteen days, as the Jurors had made no report within the time prescribed. The petitioner showed cause under Section 313, but without effect, and the order was repeated. The Sessions Judge meanwhile, upon application of the petitioner, called for the proceedings under Section 434; but the Magistrate wrote questioning the Judge's authority to interfere; and without waiting for the reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to twenty-five days' imprisonment, under Section 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of nuisance. *Held* (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Sessions Judge, under Section 434, and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of an Appellate Court.

Held also that the petitioner had shown sufficient cause to satisfy the Magistrate, under Section 313, that the order to pull down the house was not reasonable and proper.

Quære,—Whether Act XVIII of 1850 would protect a Magistrate in such cause from being sued for damages. *Reg.* v. *Dalsukrow Haribhai*, 2 Bom. Rep., 407.

The condition and the conduct of an old-established slaughter-house were proved to be, in fact, an offensive nuisance and dangerous to the health of neighbours; but the evidence did not show it was in a worse condition than at any time since its establishment; the ocupiers, when summoned, refused to ask for a Jury under Section 310, Criminal Procedure Code. *Held*, the Magistrate was justified in suppressing the "trade or occupation" under Section 308. No length of enjoyment can legalize a public nuisance. *Municipal Commissioners of the Suburbs of Calcutta* v. *Mahomed Ali*, 7 B. L. R., 499, and 16 S. W. R., Cr. R., 6.

No suit will lie in a Civil Court to set aside an order duly made by a Magistrate under Chapter XX, Section 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying such order into effect. *Ujalamaji Dasi* v. *Chundra Kunar Neogi*, 4 B. L. R., F. B., 24, and 12 S. W. R., F. B., 18.

29.—Offences upon the High Seas.

In prosecuting a British subject for an offence committed on board a British ship upon the high seas,—*Held*, 1 (*dubitante*, Phear, J.), That he must be charged with an offence under English law; 2, That the punishment must be according to English law; 3, That the trial must be according to the procedure of the local Court.

Therefore where a British subject was charged before the High Court with having committed an offence under 7 William IV, and 1 Vict., c. 85, s. 82, on board a British ship upon the high seas, within the Admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict., c. 19, s. 5,—*Held* that the conviction was good, and that the prisoner was rightly punished with "rigorous imprisonment which is defined by Section 53 of the Indian Penal Code to be imprisonment with hard labour," and that the trial had been rightly proceeded with under Act XIII of 1865. *Queen* v. *Thompson*, 1 B. L. R., O. Cr., 1.

The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English Law, and not the Penal Code, notwithstanding the provisions of Statute 30 and 31 Vict., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed. *Reg.* v. *Elmstone Whitwell*, 7 Bom. Rep., Cr. Ca., 89.

30.—Offences relating to Marriage.

In a charge under Section 498 of the Penal Code, the words of the section, "conceals or detains," must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments. *Queen* v. *Sundura Dass Tevan*, 4 Mad. Rep., 20.

A woman who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband, without disclosing the fact of the former marriage to her second husband,

is liable to enhanced punishment under Section 495 of the Penal Code. *Queen* v. *Enai Beebee*, 4 W. R., Cr., 25.

A person convicted of adultery under Section 497 of the Penal Code need not be convicted also under Section 498, especially when there is no taking or enticing away of the woman. *Queen* v. *Pochun Chung*, 2 W. R., Cr., 35.

The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. Strict proof of marriage is necessary. *Queen* v. *G. R. Smith*, 1 Ind. Jur., N. S., 8; S. C., 4 W. R., Cr., 31.

Case of a person convicted of adultery on his own admission coupled with the evidence. *Queen* v. *Kally Churn Potial*, 7 W. R., Cr., 59.

Proof of dishonest or fraudulent intent is necessary for a conviction, under Section 496 of the Penal Code, of falsely going through the ceremony of marriage.

The mere allowing the marriage to take place in one's house does not amount to the abetment of an illegal marriage. *Queen* v. *Kudum*, W. R., Cr., 13.

Upon an indictment under Section 498 of the Indian Penal Code, charging that the prisoner took away one A., who was then and whom he then knew to be the wife of one M., with the intent that he might have illicit intercourse with the said A.,—*Held* that there was a taking within the meaning of the section, although the advances and solicitation had proceeded from the woman, and the prisoner had for some time refused to yield to her request. *Queen* v. *Kumarasámi*, 2 Mad. Rep., 331.

S., a married Mahometan girl under 16, while living with N., her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindus, with the knowledge of N.; S. and N. were then induced by the Hindus to remove to another village, that S. might take up the trade of a prostitute; they there met J., a public woman, with whom they went to reside, and who introduced visitors to S., and received the money paid by them, in exchange for the board and food supplied to S. and N. N. was convicted, under Section 372, Indian Penal Code, of disposing of a minor for the purpose of prostitution, and J. was convicted, under Section 373, Indian Penal Code, of obtaining possession of a minor for the purpose of prostitution. *Held*, per Jackson, J.—That on the facts proved no offence was committed under the Penal Code. *Per* Glover, J.—N. and J. were both guilty under Sections 372 and 373 respectively, and their appeals should be dismissed. *Queen* v. *Nourjan and Jaggut Tara*, 6 B. L. R., Ap., 34, and 14 S. W. R., Cr. R., 39.

Enticing or taking away, with a criminal intent, a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, during his temporary absence, is punishable under Section 498 of the Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her. *Mutty Khan* v. *Mungloo Khansama*, 5 W. R., Cr., 50.

31.—Public Servant.

A collectorate peadab, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his purwanah. *Held* that they were rightly convicted under Section 353 of assaulting a public servant while in the execution of his duty. *Queen* v. *Methi Mullah*, 13 S. W. R., Cr. R., 49.

Before a conviction can be had under Section 228 of the Penal Code of offering an insult to a public servant, it must be proved that there was an intention to insult. *Queen* v. *Hurri Kishen Dass*, 15 S. W. R., Cr. R., 62.

No ground for a complaint of giving false information to a public servant under Section 182 of the Indian Penal Code exists on the part of any one but the public servant against whom the offence was committed. *Queen* v. *Hurra Ram*, 3 N. W. R., 194.

The Naib Nazir is a public servant within the meaning of Section 409 of the Indian Penal Code, and not the mere private servant of the Nazir. *Queen* v. *Mahmood Hossein*, 2 N. W. R., 298.

A putwaree taking grain as a consideration for showing favour to the giver in the discharge of his functions as putwaree, should be convicted under Section 161, and not Section 165 of the Indian Penal Code. *Queen* v. *Mudsooddeen*, 2 N. W. R., 148.

A conviction under Section 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused or tended to cause obstruction, annoyance or injury, or risk or obstruction, annoyance or injury to any person lawfully employed, or that it caused or tended to cause danger to human life, health, or safety, or caused or tended to cause a riot or affray. 4 Mad. Rep., Rul. VI.

A village shroff whose duty it was to assist in collecting the public revenue received grain from ryots and gave receipts as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under Section 409 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue. 4 Mad. Rep., Rul. XXXIII.

An engineer who receives and pays to others municipal moneys is a public servant within the meaning of Section 21, Clause 10, of the Indian Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.

When an Appellate Court, under Section 422 of the Code of Criminal Procedure, directs a Court of first instance to take additional evidence, an appeal on the merits to the High Court is not thereby given. *Reg.* v. *Nantamrum Ultamrum*, 6 Bom. Rep., Cr. Ca., 64.

Section 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation. *Phool Chund Brajotassee*, 16 S. W. R., Cr. R., 35.

A conviction for non-attendance in obedience to an order from a public servant, under Section

174, Penal Code, cannot be had unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend. *In the case of Sreenauth Ghose*, 10 W. R., Cr., 33.

It is only necessary for a conviction under Section 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him. *Queen* v. *Abdool Jalael*, W. R., 1864, Cr., 5.

A person against whom information has been falsely given with a view to his injury, has a right to bring a civil action for damages, with or without the consent of the public servant against whom the offence was committed; but he cannot bring a criminal charge under Section 189, or any other Section of Chapter X of the Penal Code, without the permission of such public servant; the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given.

To constitute an offence under Section 182 of the Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. *In the case of Moulvie Abdool Luteef, petitioner*, 9 W. R., Cr., 31.

Convict warders are "public servants" within the meaning of Section 223 of the Penal Code. *Queen* v. *Kallachand Moitree*, 7 W. R., Cr., 99.

Convictions and sentences for disobeying an order promulgated by a public servant reversed, as the mamlatdar who stated that he proceeded under Bombay Act V of 1864 was not thereby empowered to make the order. *Reg.* v. *Bhamhin Vithu and another*, 3 Bom. Rep., C. A., 53.

Conviction under Section 186 of the Penal Code, of obstructing a mouzadar in the discharge of his duty reversed, there being nothing to show that the mouzadar is a public servant. *Joynath* v. *Soorjaram*, 8 W. R., Cr., 66.

Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of Section 177 of the Penal Code. *Held*, that Section 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence. 6 Mad. Rep., Rul. XLVIII.

32.—Rape.

Sexual intercourse by a man with a woman without her free consent—*i.e.*, a consent obtained without putting her in fear of injury—amounts to rape; and the Judge should leave the question to the Jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory. *Queen* v. *Akbar Kajee*, 1 W. R., Cr., 21.

Held to be physically impossible that a girl of tender age should be killed by rape and not show any external signs of violence. *Queen* v. *Banee Madhub Mookerjee*, 1 W. R., Cr., 29.

The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. *Queen* v. *Jhantah Noshyo*, 6 W. R., Cr., 59.

A. was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under Section 59 of the Penal Code, to transportation for the same term. *Held* that, under Sections 376 and 511 of the Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under Section 59, to transportation for a longer term. *Queen* v. *Joseph Meriam*, 1 B. L. R., A. C. 5; 10 W. R., 10.

33.—Rebellion.

The punishment for a prisoner convicted of waging war with an Asiatic Power in alliance with the Queen must, under the Penal Code, be either transportation for life or imprisonment of either description which may extend to seven years. Where such a prisoner was sentenced to ten years' transportation the sentence was held to be illegal. *Queen* v. *Keifa Singh*, 3 W. R., Cr., 16.

Application for pardon or mitigation of punishment for a political offence (*e.g.*, for waging war against a Power in alliance with the Queen) should be made to the Executive Government. *Queen* v. *Sajowpa*, 7 W. R., Cr., 100.

Where N. and M. were convicted of rebellion under Act XI of 1857, Section 1, and sentenced, the former to be transported for life, and to have all his property confiscated, and the latter to have all his property confiscated, the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General does not restore the property.

The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to other property of the convicts, the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November, 1858) coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated.

Held also that the property in question being Government paper was liable to confiscation; and lastly, that N.'s widow was not entitled to maintenance out of the property confiscated by the State. *Gunga Baee, widow of Narain Rao* v. *Charles Swinton Hogg*, 2 Ind. Jur., N. S., 124.

34.—Receiving Stolen Property.

Held that the prisoner, who having received stolen property concealed it in his house, could not

be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under Section 411, Indian Penal Code, and of assisting in the concealment of stolen property under Section 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it. *Government* v. *Mussamut Nowlia*, 1 Agra Rep., Cr., 9.

In order to sustain a conviction, under Section 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. *Queen* v. *Jogeshur Bagdee and others*, 7 W. R., Cr., 109.

A prisoner cannot be convicted, under Section 411 of the Indian Penal Code, for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under Section 409, Indian Penal Code, of having obtained possession by committing criminal breach of trust. *Queen* v. *Shunkur*, 2 N. W. R., 313.

Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and unless he can do so a Jury may fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own. *Queen* v. *Shurruffoodeen*, 13 S. W. R., Cr. R., 26.

In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. *Meer Yar Ali*, 13 S. W. R., Cr. R., 70.

35.—RIOTING.

Conviction and sentence both for rioting and for grievous hurt upheld, the punishment being on the whole not more severe than might properly have been awarded if the conviction had been for grievous hurt only.

A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself. *Queen* v. *Azgur*, 5 W. R., Cr., 19.

Held by the majority of the Court (*dissentiente*, Seton-Karr, J.) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves who had been captured during the night, and in which murder was committed, was a premeditated attack for which all concerned were liable to conviction for riot attended with murder. *Queen* v. *Bhunjun Pauray*, 4 W. R., Cr., 8.

A zemindar ought not to be made liable, under Section 155, Penal Code, for a sudden and unpremeditated riot, which there was no reason to infer he could have anticipated. *Queen* v. *Hurnauth Roy*, 3 W. R., Cr., 54.

There cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. *Meelan Khalifa* v. *Dwarkanath Goopto*, 1 W. R., Cr., 7.

The Court has no power to enhance a sentence (though it may consider it much too lenient) on persons convicted under Sections 143 and 148 of the Penal Code. *Queen* v. *Mullookram Doss*, 1 W. R., Cr., 13.

An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting is committed. *Queen* v. *Khemu Singh*, 1 W. R., Cr., 19.

It is not necessary that there should be a conviction of rioting in order to admit of a Magistrate taking recognizances to keep the peace. *Queen* v. *Seetaram Hazra*, 1 W. R., Cr., 45.

Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. *Queen* v. *Phoolell Misser*, 12 W. R., Cr., 72.

The prisoners having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under Section 147 of the Penal Code, and not under Section 11, Act V of 1857. *Queen* v. *Bokoo Sheikh and others*, W. R., 1864, Cr., 21.

The offence of rioting, armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under Sections 148, 149, and 324 of the Penal Code,—Section 149 being read as a proviso to Section 148. *Queen* v. *Kalla Chand and others*, 7 W. R., Cr., 60.

In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. *Queen* v. *Moorut Mahton and others*, 8 W. R., Cr., 3.

A dismissal by one Court of a charge of riot against A. may be a bar to A.'s trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal.

The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. *Queen* v. *Morly Sheikh*, 6 W. R., Cr., 51.

Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt. *Queen* v. *Hurgobind*, 3 N. W. R., 174.

The prisoners who, in resisting a sudden attack made upon them by certain persons, for the purpose of cutting their crop, and when they had no time to complain to the police, inflicted a wound on one of them with a bamboo, from the effects of which the man died, were convicted by the Sessions Judge, under Sections 148 and 304 of the Indian Penal Code.

The High Court acquitted the prisoners, holding that the force used, or the injuries inflicted, were not such as to exceed their rights of private defence

of property. *Queen* v. *Gurucharan Cheny*, 6 B. L. R., Ap., 9, and 14 S. W. R., Cr. R., 69.

Where the accused were convicted under Section 147 of the Penal Code of rioting, and also under Section 353 of using criminal force to a constable who went to arrest them, the High Court set aside the conviction under the former section. *Nilrutton Sein*, 16 S. W. R., Cr. R., 45.

36.—Robbery.

On conviction for theft in a dwelling under Section 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. *Sheikh Dulloo* v. *Zaniah Bebee*, 16 S. W. R., Cr. R., 17.

When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion. *Queen* v. *Dabelooddeen Sheikh*, 5 W. R., Cr., 19.

When in committing a theft there is an intention and an attempt to cause hurt, the offence is robbery. *Queen* v. *Teekai Bheer*, 5 W. R., Cr., 95.

Discussion as to the distinction between robbery and theft. *Queen* v. *Ruhman Khan*, 3 W. R., Cr., 14.

The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under Section 394 alone, and not under Sections 393 and 394. *Queen* v. *Mootkee Kora*, 2 W. R., Cr., 1.

Theft with violence is robbery. A conviction, under Section 397 of the Penal Code, of using a deadly weapon whilst engaged in the commission of robbery or dacoity, is equally good whether the number of thieves be five or under. *Queen* v. *Dwarka Aheer*, 2 W. R., Cr., 49.

A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property. *Queen* v. *Sheikh Muddun Ally*, W. R., 1864, Cr., 27.

A charge of robbery, under Section 392 of the Penal Code, is, under Act VIII of 1866, triable only by the Court of Session, or by the Magistrate of the District, but not by a Deputy Magistrate. *Madhub Ghose* v. *Bullye Metea and others*, 7 W. R., Cr., 11.

Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges.

Remarks on the irregularities in the investigation of the present case. *Queen* v. *Itwaree Dome and others*, 6 W. R., Cr., 83.

By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment. *Queen* v. *Hushrut Sheikh*, 6 W. R., Cr., 85.

The accused was convicted of robbery, but the Magistrate found that the property taken was not taken with any dishonest intention,—*Held* that the conviction was bad. 5 Mad. Rep., Rul. XXXIX.

37.—Suicide.

A prisoner found guilty under Section 309 of the Indian Penal Code of an attempt to commit suicide, must be sentenced to some imprisonment, and not merely to payment of a fine. *Reg.* v. *Chenviowa*, 1 Bom. Rep., 4.

The English law of forfeiture of the personal property of persons committing suicide, if ever applied to Europeans in India, is not applicable to Natives.

Quære,—Whether the law ever had existence as regards Europeans in India. *Advocate-General of Bengal* v. *Ranee Surnomoyee*, 1 W. R., P. C., 14.

Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her stepsons crying "Ram, Ram," and one of the accused admitting that he told the woman to say "Ram, Ram, and she would become suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee. *Queen* v. *Mohit Pandey*, 3 N. W. R., 316.

38.—Theft.

The term "dishonest" in the Penal Code is applied to a person who does anything with the intention of causing wrongful gain or wrongful loss. *Queen* v. *Preo Nath Banerjee*, 5 W. R., Cr., 68.

Theft is defined (Section 378 of the Penal Code) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent. *Queen* v. *Madaree, chowkeedar*, 3 W. R., Cr., 2.

Theft by constables of property from the house they were employed to guard is punishable under Section 380, and not Section 409, Penal Code. *Queen* v. *Boidonath Singh*, 3 W. R., Cr., 29.

Whipping may be substituted for any other punishment for the offence of theft in a dwelling-house. *Queen* v. *Junghoo Khan*, 3 W. R., Cr., 36.

A person can be convicted of abetment of theft under the first explanation of Section 107 of the Indian Penal Code only if he either procure or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. *Queen* v. *Shumeeruddeen*, 2 W. R., Cr., 40.

The offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust. *Bharut Chunder Christian, appellant*, 1 W. R., Cr., 2.

Held by the majority of the Court, that the omission of the Judge to enter into details regarding the identification of stolen property does not amount to a misdirection to the Jury. *Queen* v. *Madhub Mal and others*, 1 W. R., Cr., 22.

The prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury buildings, over which they, as burkundauzes, were placed in guard. *Held* that the charge should have been made under Section 381 of the Penal Code (theft by servant in possession of property), and not under Section 409 (criminal breach of trust by public servant). *Queen* v. *Juggurnath Singh*, 2 W. R., Cr., 55.

Amends cannot be awarded for a false charge of theft. *Queen* v. *Gogun Sein*, 2 W. R., Cr., 57

The theft and the taking and retention of stolen

goods form one and the same offence, and cannot be punished separately. *Queen* v. *Sreemun Adup*, 2 W. R., Cr., 63.

Housebreaking by night and theft form a single and entire offence, and cannot be punished separately. *Queen* v. *Tanaokoch*, 2 W. R., Cr., 63.

Although Section 270 of the Code of Criminal Procedure forbids compensation to a person falsely and vexatiously charged with theft, yet the law does not prevent a Magistrate from fining an unjust accuser. *Chidee Choubee* v. *Bhowany and Jhaw*, 1 W. R., Cr., 1.

A prisoner may be convicted of theft in a building and of housebreaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second. *Queen* v. *Tincowree*, W. R., 1864, Cr., 31.

A Deputy Magistrate has no power to convict of theft (Section 380, Penal Code), where the offence charged is lurking house-trespass by night with aggravating circumstances (Sections 458 and 459, Penal Code), but must commit on the latter charge. *Puran Telee* v. *Bhuttoo Dome*, 9 W. R., Cr., 5.

A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. *Queen* v. *Ram Churn Singh*, 7 W. R., Cr., 57.

A hired boatman does not come within the definition of a clerk or servant under Section 381 of the Penal Code. Theft by such a person on board a boat comes under Section 380. *Queen* v. *Bawool Manjee*, 8 W. R., Cr., 32.

A double sentence for theft and mischief is illegal and improper. *Bichuk Aheer* v. *Auhuck Bhoonea*, 6 W. R., Cr., 5.

The prisoner acting *bonâ fide* in the interests of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. *Held* that the prisoner was not guilty of theft. *Queen* v. *Nobeen Chunder Holdar*, 6 W. R., Cr., 79.

The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad. 5 Mad. Rep., Rul. XXXVII.

The moving by the same act which effects the severance may constitute a theft. 5 Mad. Rep., Rul. XXXVI.

Theft—Penal Code, S. 378. *Kiamuddin* v. *Allah Baksh*, 6 B. L. R., Ap., 133; and 15 S. W. R., Cr. R., 51.

A boat may be the subject of theft. Although under Section 442 of the Penal Code it is for certain purposes classed with houses, it does not cease to be moveable property under Section 378. *Queen* v. *Mahar Dowalia*, 16 S. W. R., Cr. R., 63.

39.—Torture.

Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others. *Queen* v. *Tarinee Churn Chuttopadhya and others*, 7 W. R., Cr., 3.

Exposition of a police officer's power of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of torture. *Queen* v. *Behary Singh and others*, 7 W. R., Cr., 3.

40.—Unlawful Assembly.

Where house-trespass and mischief were not separate offences, but were included in the graver offence of being members of an unlawful assembly, armed with deadly weapons, separate convictions and sentences are not requisite. *Queen* v. *Surroop Napit*, 3 W. R., Cr., 54.

Case of an unlawful assembly, the members of which were held guilty of an offence under Section 402 of the Penal Code, on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living. *Queen* v. *Kendra Kamar and others*, 7 W. R., Cr., 97.

Where persons join an unlawful assembly for the purpose of committing an assault, and instead of preventing those armed from using their weapons encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows. *Queen* v. *Dushruth Roy and others*, 7 W. R., Cr., 58.

Held that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under Section 154 of the Penal Code, unless there is a finding that the riot was premeditated.

Where two opposite factions commit a riot it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of Section 141 of the Penal Code. *Queen* v. *Surroop Chundra Pall*, 12 W. R., 85.

In order to convict of the offence of being members of an unlawful assembly it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under Section 141 of the Penal Code. *Queen* v. *Dinnobundho Rai and others*, 9 W. R., Cr., 19.

A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held* (by Norman, J., whose opinion prevailed) that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under Section 149 of the Penal Code, be made liable for the subsequent murder. *Held* by Jackson, J., that he remained a member of the unlawful assembly. *Queen* v. *Kabil Cazee*, 3 B. L. R., A., Cr., 1.

Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother,—*Held* that all those who were members of the assembly at the time such person was killed, were guilty of the offence of killing her. *In the matter of Golam Arfin*, 4 B. L. R., Ap., 47.

IX.

CRIMINAL PROCEDURE AND COURTS.

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1.—MISCELLANEOUS RULINGS.

An alternative finding is perfectly legal. *Queen* v. *Tarinee Mytee*, 7 W. R., Cr., 13.

The course taken by a Magistrate before preparing a charge, under Chapter XIV of the Code of Criminal Procedure, must depend upon the circumstances of each case, and the Magistrate should exercise his discretion in the matter. 3 Mad. Rep., Cr., 1.

Magistrates may, under the Criminal Procedure Code, issue summonses for service upon witnesses beyond the limits of their districts. 3 Mad. Rep., Cr., 5.

The Code of Criminal Procedure does not by *ex post facto* legislation place a person in a worse position in cases of offences committed before it came into execution than he would then have been. *Radha Jeebun, petitioner*, 1 Ind. Jur., N. S., 97.

The Deputy Magistrate adjourned the case to the 21st, on which day he ordered the case to be dismissed for non-attendance of the complainant; but on the following day cancelled that order, and revived the case on the ground of his having dismissed it by mistake in ignorance of the complainant having petitioned for an adjournment by reason of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate. As the order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings, and restored the case to the position in which it stood before the 21st. *Queen* v. *Ram Narain Ghose*, 8 W. R., Cr., 5.

Where a prosecution of an offence under Chapter X of the Penal Code is instituted by an inferior ministerial servant under sanction of the authority of his official superior, the provisions of Section 168 of the Code of Criminal Procedure are complied with. *Queen* v. *Ram Gholam Singh and others*, 11 W. R., Cr., 22.

A Deputy Magistrate has no authority to acquit a prisoner of an offence under Chapter XIV of the Code of Criminal Procedure for which he had not regularly put him upon his trial. He must proceed agreeably to Section 250 of that Code. *Goonath Mundul* v. *Troyluckonath Chuckerbutty*, 9 W. R., Cr., 15.

That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order. *Eman Ali* v. *Suddeerooddeen and others*, 9 W. R., Cr., 18.

Where there is a *primâ-facie* case (of abduction in this instance) made out, a Magistrate should send for the witnesses, and form his opinion on the evidence, and not merely on the strength of the police report reject the complainant's petition and refer him to the Civil Court. *Barodakant Mookerjee* v. *Kali Bhuttacharee and others*, 9 W. R., C. R., 21.

The Court quashed the evidence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked. *Bhugwan and others* v. *Doyal Gope*, 10 W. R., Cr., 7.

When a Judge has recorded his finding of facts in an unintelligible manner, and has left the country, the Court will order a new trial. *The Queen* v. *Gorachand Gope and others*, 1 Ind. Jur., N. S., 177.

In a case falling under Chapter XIV of the Code of Criminal Procedure, a Deputy Magistrate has no power to dismiss a complaint on account of the non-attendance of complainant, even if a summons, instead of a warrant, is issued in the first instance requiring the attendance of the complainant. *Nundo Lall Sootrodhor* v. *Bhagiruthy Sotrau and others*, 10 W. R., Cr., 31.

The reversal of a Magistrate's order in a purely civil case, though it may deprive the petitioner of an immediate remedy, is necessary to prevent his being prejudiced in his civil remedy. *Queen* v. *Sheikh Meerun*, 1 W. R., Cr., 25.

A Deputy Magistrate should adjudicate on charges of criminal trespass, unlawful assembly, and mischief, instead of referring the case, under Section 318 of the Criminal Procedure Code, to the Magistrate. *Queen* v. *Ootum Mal*, 2 W. R., Cr., 2.

Section 316, Code of Criminal Procedure, does not bar a suit by a wife against her husband for maintenance. *Lalla Gopeenath* v. *Mussamut Jeetun Kooer*, 6 W. R., 57.

A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1, 1862, can be dealt with only under the old Procedure Law (Act I of 1848), according to which the sanction of the Court before which the offence is alleged to have been committed is necessary before criminal proceedings can be instituted. *Radhajeebun Mustaffee*, 5 W. R., Cr., 8.

In deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by Chapter XXII of the Code of Criminal Procedure. *Queen* v. *Ramnath and others*, 7 W. R., C. R., 45.

Where a person is charged (Section 218, Indian Penal Code) with framing a report incorrectly, or (Section 201, Indian Penal Code) giving false information, with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt. *Queen* v. *Hurdut Surma*, 8 W. R., Cr., 668.

A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial. *Queen* v. *Muthoorapershad Panday*, 2 W. R., Cr., 10.

Where two prisoners were charged with distinct offences in the same indictment, the calling of evidence on behalf of one does not give the Crown a right of reply upon the other. *Reg.* v. *Sheikh Abbas and Munneeroodeen*, 2 Hyde's Rep., 247.

A Sessions Judge must allow a prisoner whose conviction he has affirmed to execute a vakeelutnama to appeal. *Queen* v. *Vayapuri Gaundan*, 1 Mad. Rep., 4.

An order made by a Magistrate under Section 316 of the Code of Criminal Procedure must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case. *Lopotee Domnee* v. *Tikha Moodai*, 8 W. R., Cr., 67.

Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. *Madhub Kybertho* v. *Keshub Singh and others*, 9 W. R., Cr., 22.

Court peons may pursue into the yard of a lodging-house, the door leading into which is open, a prisoner who has escaped from their custody. *Dukhoo Peon* v. *Chundro Kant Chowdhry*, 3 W. R., Cr., 68.

Taking the statements of both parties without recording evidence in proof of either is not an "enquiry." *Queen* v. *Sonaoollah*, 2 W. R., Cr., 44.

A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code. *Queen* v. *Moulvie Ahmedoollah*, 2 W. R., Cr., 60.

The fact that there is a special law to meet a particular offence (in this case, cattle trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established. *Onooram* v. *Lamessor*, 9 W. R., Cr., 70.

Before a person can be legally punished for refusal to remove and reconstruct roof drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and whether such disobedience has produced, or is likely to produce, harm. *Queen* v. *Shabuckram Bukoolee*, 2 W. R., Cr., 32.

Section 152 of the Code of Criminal Procedure does not apply to cases in which there has not been a continuous detention of 24 hours. *Indrobur, appellant*, 1 W. R., Cr., 5.

A charge properly laid under the Penal Code should be investigated, even if the case be one in which a civil action will lie. *Khosal Singh* v. *Toolsee Chowdhry and others*, 10 W. R., Cr., 40.

Cases instituted and tried under Chapter 14 of the Criminal Procedure Code cannot be struck off the file at the request of the complainant, or for want of prosecution on his part. The Magistrate

must proceed in such cases in the manner prescribed by that Chapter, notwithstanding the complainant may desire to withdraw his complaint. *Queen* v. *Jugroop Ugruba and others*, 3 N. W. R., 341.

Until the finding is recorded the trial is incomplete. If before the finding is recorded the presiding officer of a Court is removed, the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor. 4 Mad. Rep., Rul. XLIII.

Following the *Queen* v. *Gora Chund Gope* the Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried, not on evidence taken before himself in the case, but entirely on evidence in another case before another officer (the joint Magistrate). *Tukheya Rai* v. *Tupsee Kooer*, 15 S. W. R., Cr. R., 23.

An accused should plead by his own mouth and not through his counsel or pleader, though his counsel or pleader may at the proper time address the Court on his behalf. *Queen* v. *Roopa Gowalla*, 15 S. W. R., Cr. R., 42.

The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good. *Nassib Chowdry* v. *Nannoo Chowdry*, 15 S. W. R., Cr. R., 47.

In a case in which the accused was charged under the Penal Code with an offence which was committed before the Penal Code came into operation, it was held that, having regard to Section 4, Act XVII of 1862, and Section 426 of the Code of Criminal Procedure, the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was the legal penalty for the offence before the Penal Code became law. *Mohabeer Singh*, 15 S. W. R., Cr. R., 48.

No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case. *Queen* v. *Bhugwan Lall*, 15 S. W. R., Cr. R., 3.

Signature of Jailor. Act XV of 1869, S. 16. *In re Tamor Sing* v. *Kulidas Roy*, 4 B. L. R., O. C., 51.

The High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge: the first, because the Judge considered that mere persistence in demand of rent did not amount to trespass justifying the right of private defence as held by the Magistrate. The second, because the Judge considered that the Magistrate's reasons, *viz.*, (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed, (2) want of explanation of delay in making, and (3) want of material evidence in the shape of bruises, were not sufficient in law to justify a summary dismissal. The third, because the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper enquiry and dispose of the case after recording evidence. And the fourth, because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered. *Mahomed Jan* v. *Khadi Sheikh; Huranauth De Khashkhil* v. *Joygopaul De Sarkur; Hurris Chunder Dass* v. *Bolair Audhicuru; Sheikh Ahmuddy* v. *Annund Mohun Mojoomder*, 16 S. W. R., Cr. R., 75.

The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal. *Mahomed Alum* v. *Sheikh Akil*, 16 S. W. R., Cr. R., 68.

There is no necessity, under Section 198, Code of Criminal Procedure, for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement. *Queen* v. *Madan Mundle*, 16 S. W. R., Cr. R., 71.

When a written defence is tendered in a case tried under Chapter XV of the Code of Criminal Procedure, the Magistrate is not bound to take down the defence of the accused by personally examining him. *Dila Mundul* v. *Kally Sahee*, 16 S. W. R., Cr. R., 63.

Section 193 of the Code of Criminal Procedure applies also to cases under Chapter XV of that Code, and a Magistrate cannot dispose of a case under that chapter without examining the witnesses called for the prosecution. *Kishore Sahai* v. *Mungeri Sahai*, 16 S. W. R., Cr. R., 48.

Remarks upon the objectionable practice of permitting police officers to conduct prosecutions in the Sessions Court. *Queen* v. *Ram Chunder Sircar*, 13 S. W. R., Cr. R., 18.

The practice of dividing the facts which constitute parts of one offence into several minor offences condemned. *Queen* v. *Sahubut Sheikh*, 13 S. W. R., Cr. R., 42.

All applications from Judges and Magistrates for bringing into operation the provisions of Section 196 of the Code of Criminal Procedure should be made through the High Court. 5 Mad. Rep., Rul. IX.

In a case within Section 62 of the Code of Criminal Procedure which also falls within the scope of Section 308 of the same Code, a Magistrate must conform to the more particular directions of the latter section, not to those of the former. *Khan Chand* v. *The Collector of Bootundshahur*, 1, 7 N. W. R., 110.

A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence. *Queen* v. *Balkishen*, 3 N. W. R., 166.

A deaf and dumb prisoner was convicted of an offence. Upon the trial, no attempt was made to communicate with the prisoner respecting the charge against him. The High Court quashed the conviction. 6 Mad. Rep., Rul. VII.

There is no provision in the Code of Criminal Procedure for a review of judgment. *Queen* v. *Tiloke Chund and another*, 3 N. W. R., 273.

Trial on a Sunday. Irregularity of proceeding, Criminal Procedure Code, Act XXV of 1861,

Section 171. *Queen* v. *Hargobind Datta Sircar*, 8 B. L. R., Ap., 12.

To enter up findings on every head of charge is not only not illegal but the most convenient course. Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. 6 Mad. Rep., Rul. XLVIII.

After complainant's preliminary examination the case was referred to the Police for report, and complainant had notice to appear on 6th November to hear the report. On 31st October the Assistant Magistrate dismissed the case upon the report of the Police officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he directed to conform to Circular 5 A., dated 7th September, 1868. *Bullu Singh* v. *Kannai Chowdhra*, 17 S. W. R., Cr. R., 2.

As a general rule, one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does do, the hearing of the criminal case ought to be postponed until the suit is concluded. But although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. *Queen* v. *Achert Lall*, 17 S. W. R., Cr., R., 46.

The Deputy Magistrate censured for his precipitancy in dismissing a complaint of a deliberate attempt at extortion, supported as it was by evidence on the record. The prisoners having been acquitted, the Court passed no further order regarding the case. *Bhim Pariru* v. *Bhignessur Putnaik*, 17 S. W. R., Cr. R., 7.

In this case the Court declined to say that as a matter of law the Magistrate acted illegally in calling upon complainant to produce proof *ex-parte* to justify the issue of process, and upon default of such proof in dismissing the charge. *Shibu Manja* v. *Noshee Mookerjee*, 17 S. W. R., Cr. R., 3.

The not examining a complainant and not reducing his examination into writing is not such an irregularity as to require the interference of the High Court in a trivial case, unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result. *Kabil Nusyo Pyada* v. *Baharutta*, 17 S. W. R., Cr. R., 37.

Application for revision by the High Court of an order passed in appeal by a Sessions Judge must be by motion. *Sheikh Hazari* v. *Chundi Churn Chuckerbutty*, 16 S. W. R., Cr. R., 72.

In a case apparently coming under Chapter XIV of the Code of Criminal Procedure, where the complainant has deposed on solemn affirmation, the mere denial of the accused proves nothing. The complainant's witnesses should be examined and the investigation proceeded with. *Jungi Khan* v. *Hur Chunder Rai*, 16 S. W. R., Cr. R., 69.

A Judge should not refuse to try a prisoner brought up in chains to stand his trial, but the Judge may direct the removal of the fetters, unless satisfied by a representation from the proper officer that they are necessary. 4 Mad. Rep., Rul. LXIX.

An accused charged with voluntarily causing hurt and with abetment of that offence was acquitted by the Magistrate of the former offence and convicted of the latter. On appeal to the Sessions Judge, that officer, professing to act under Section 426 of the Code of Criminal Procedure, convicted the accused of causing hurt, and acquitted him of the abetment. *Semble*,—(Phear, J.) that Section 426 is in its terms confined in its operation to cases where error or defect either in the charge or in the proceedings is the foundation on which the alteration of the finding or sentence is brought; and the finding a prisoner guilty without evidence upon one charge, and acquitting him of another charge, against which the evidence is really directed, is not an error or defect in the charge or in the proceedings. *Held*, (by Mitter, J.) that as the prisoner appealed to the Sessions Judges on the ground that the evidence did not warrant his conviction, and not on the ground of any error or defect in the charge or proceedings, Section 426 did not apply, and the Sessions Judge was not competent under that section to convict the prisoner of an offence of which he had been acquitted by the Magistrate. *Held*, (by Phear, J.), on a consideration of the evidence, that there was not sufficient evidence on the record to support the conviction of the accused on either of the charges laid against him. *Quære*,—(by Mitter, J.) whether the High Court, sitting as a Court of Revision under Section 404 of the Code of Criminal Procedure, can enter into the question whether the view of the evidence taken by the lower Appellate Court is correct or not. *Gour Mohun Ghose* v. *Mohindro Nauth Chatterjee*, 13 S. W. R., Cr. R., 78.

Private prosecutor not allowed to appear on a reference to the High Court, under Section 434 of the Criminal Procedure Code. *Queen* v. *Ramjai Mazumdar*, 6 B. L. R., Ap., 46.

In a case under Chapter XIV of the Code of Criminal Procedure, in which the accused had full opportunity given him to answer the case which was made against him, the High Court felt itself precluded by Section 426 of the Code of Criminal Procedure from interfering with the judgment of the lower Court, even if it found that there was an irregularity in the proceedings in consequence of the absence of a formal charge. *Queen* v. *Ramdyal Singh*, 15 S. W. R., Cr. R., 3.

A private prosecutor cannot move a Court of Sessions under Section 419 of the Code of Criminal Procedure in a case which is not before that Court in appeal, though he may do so under Section 435 of that Code in cases in which the Court of Sessions can interfere. A private prosecutor has no right to be heard before the High Court in a case in which he could not be heard in the Sessions Court. *Suddurudun Sircar* v. *Ramjoy Mozomder*, 14 S. W. R., Cr. R., 51.

The plain intention of the Legislature in Section 171 of the Criminal Procedure Code was that the Court before which an offence was committed and by which the preliminary enquiry was made should not be the Court to investigate, try, or commit for trial. *Queen* v. *Tarraproshad Sahoo*, 15 S. W. R., Cr. R., 88.

Where a Magistrate convicted under certain repealed sections of law, the High Court refused to set aside the conviction, having regard to Section

426, Code of Criminal Procedure, as the conviction and sentence might have been passed under sections of the Penal Code and no substantial injury had been done to the accused. *Rughoonath Dass* v. *Chuckerdhun Dutt*, 15 S. W. R., Cr. R., 49.

The words "order the attachment of any moveable or immoveable property," in Section 184 of the Criminal Procedure Code, are enabling and not restrictive, and the Magistrate may attach both kinds of property. But he must issue his warrant of attachment simultaneously with the proclamation, if he resorts to attachment at all. 4 Mad. Rep., Rul. XLVIII.

Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Chapter XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of Section 271 of that Code. *Anonymous case*, 4 B. L. R., F. B., 41.

Held with reference to the provisions of Sections 445A and 445B of Act VIII of 1869, that the chief executive officer of a non-Regulation Province is bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Sessions, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions. *Queen* v. *Kishtoram Dass*, 13 S. W. R., Cr. R., 59.

Section 308 of the Code of Criminal Procedure is not applicable where a private individual charges the public with committing a nuisance in the exercise of an admitted right. *Becharam Ghororee* v. *Boistubnath Bhoorjan*, 14 S. W. R., C. R., 177.

A Civil Court may, under Section 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation, without specifying the particular officer by whom it is to be investigated, and the deposition of the Civil Court officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint. *Queen* v. *Madhub Chunder Misser*, 13 S. W. R., Cr. R., 45.

No charge for the offence (of keeping a lottery office) under Section 10, Act XXVII of 1870, 294A, can be entertained without the authority of the local government. *Queen* v. *Nga Cho*, 6 B. L. R., Ap., 98; and 15 S. W. R., Cr. R., 2.

Under Section 372 of the Code of Criminal Procedure an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was re-called after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. *Queen* v. *Assanoollah*, 13 S. W. R., Cr., 15.

The jurisdiction given by Section 320 of the Code of Criminal Procedure to decide for a time the right to enjoyment of property, should not be exercised except on clear and satisfactory proof. Where the only evidence is that of user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time. 4 Mad. Rep., Rul. XXVI.

Section 273 of the Code of Criminal Procedure is inapplicable to a case referred to a Magistrate under Section 171. 6 Mad. Rep., Rul. XLI.

Circumstances may exist in which a special order of the nature contemplated in Section 152 of the Criminal Procedure Code may properly be passed: for instance, if, in the case into which the police are inquiring, the suspected or confessing parties have voluntarily offered to conduct the police to a place where the stolen property will be found, and such offer cannot be carried into execution within the limited period of twenty-four hours, the power which the above-mentioned section confers on a Magistrate may be rightly exercised.

But to return accused persons to the Police, that they may be forced to give a clue to the stolen property, is to abuse the provisions of Section 152, with a view to the breach of the injunctions of Section 146 of the Criminal Procedure Code. *Queen* v. *Rugnath Pershad*, 3 N. W. R., 275.

The actual possession intended by Chapter XXII of the Code of Criminal Procedure, does not include the occupancy of a mere trespasser. 6 Mad. Rep., Rul. XIII.

Section 270 of the Code of Criminal Procedure applies only when a complaint of an offence, triable under Chapter XV of the Code, is dismissed. 6 Mad. Rep., Rul. XLIX.

A Magistrate, proceeding under Section 318 of the Code of Criminal Procedure, is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute before passing an order. 6 Mad. Rep., Rul. IV.

The offences specified in Sections 411 and 414 of the Penal Code cannot be considered as two distinct offences, so as to allow of the procedure of Section 46 of the Criminal Procedure Code being adopted. 4 Mad. Rep., Rul. XIV.

Where a Judicial Officer from over-anxiety for the due administration of justice in his Court makes a mistake in taking steps against parties whose conduct appears to obstruct the Court of Justice, somewhat too hastily and without due circumspection, it is not to be presumed that he had acted vexatiously in the sense of Section 270 of the Criminal Procedure Code, or otherwise than in perfect good faith. *Anonymous*, 15 S. W. R., C. R., 506.

2.—Rulings under Special Acts.

A Magistrate has no power under Section 25, Act IX of 1869, to sentence to imprisonment in default of the payment of fine imposed for not paying Income Tax. *Queen* v. *Nodiar Chaund Koondro*, 14 S. W. R., Cr. R., 70.

No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter under Section 25 of the Income Tax Act IX of 1869. *Queen* v. *Mudhoo Dutt*, 14 S. W. R., Cr. R., 71.

Prisoners were sentenced to fines under Sections 21 and 22 of Madras Act III of 1864, and in default of payment of fine to rigorous imprisonment,—*Held*, that as fine in these cases was the only assignable punishment, and, by Sections 30, 31

and 32 a specified procedure is laid down for the levy of the penalty, Section 64 of the Penal Code had no application. 6 Mad. Rep., Rul. XL.

A sentence of flogging cannot be carried out after the expiry of the limit of 15 days from date of sentence provided in Section 9 of Act VI of 1864. 6 Mad. Rep., Rul. XXXVIII.

A Railway watchman was charged before a Head Assistant Magistrate with an offence under Section 26 of Act XVIII of 1854. That charge was dismissed, but the Sessions Judge ordered a fresh trial. *Held*, that in so doing the Sessions Judge acted without jurisdiction. 6 Mad. Rep., Rul. XLI.

Section 34 of Act XVIII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. 6 Mad. Rep., Rul. XXXVII.

On the construction of Section 2 of Act XIII of 1859,—*Held*, that gold and silver money given to an artificer as raw material therewith to make the article contracted for, is an "advance of money" within the meaning of the section. *Held* also, that a sentence of imprisonment should not be announced beforehand in the order directing performance of the contract, but should follow on a complaint of non-compliance. 6 Mad. Rep., Rul. XXIV.

The provisions of Section 61 of the Criminal Procedure Code do not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property. *Queen* v. *Jungli Beldar*, 8 B. L. R., Ap., 47.

There is no appeal from a conviction under Section 11, Act XIV of 1868, for a registered prostitute neglecting to appear for examination. *Re Mukta Bibee*, 17 S. W. R., Cr. R., 11.

Held that the committal of the accused to the Court of Session by a Magistrate for trial on a charge under Section 91 of the Indian Registration (Act XX of 1866) was legal. The Session Court was accordingly directed to try the accused. *Reg.* v. *Ravlojirův bin Hummuntrův*, 5 Bom. Rep., Cr., 7.

A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under Section 47 of the Indian Post Office Act (Act XIV of 1866). *Reg.* v. *Vithu bin Mállu*, 5 Rom. Rep., Cr., 36.

A Magistrate is not empowered to try an European British subject under Clause 5, Section 83 of Act I of 1859 (the Merchant Shipping Act). 4 Mad. Rep., Rul. XXIII.

The only acts or omissions over which a Magistrate has jurisdiction under Act I of 1858, are those specified in the 1st Section. Cases under Section 6 of the Act are not cognizable by a Magistrate. 4 Mad. Rep., Rul. XXI.

It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under Section 41 of Act XVIII of 1862, before the Jury has been sworn, and it is not ground for arrest of judgment. *The Queen* v. *Thompson*, 1 B. L. R., O. Cr., 1.

Where the High Court could have directed the preliminary investigation of a charge against N. by the Deputy Magistrate of Serampore, but it did not appear in the caption of the charge or in evidence that the Court had so directed it,—*Held* that it was no ground for arrest of judgment, but the objection might have been raised before the Jury was sworn, under Section 41 of Act XVIII of 1862. *Queen* v. *Nabadwip Goswami*, 1 B. L. R., O. Cr., 15.

Where it is sought to recover the penalty described in Section 17, Act IX of 1868, from any person who omits to take out a certificate, the Collector who issued the notice should prefer a complaint before a Magistrate, and the Collector cannot prefer the complaint before himself in his capacity of Magistrate. 4 Mad. Rep., Rul. LXII.

A sentence of rigorous imprisonment under conviction for an offence under Section 48, Act XXIV of 1859, is illegal. 5 Mad. Rep., Rul. XXXV.

Certain persons were convicted under Section 13, Act III of 1857, and sentenced to fifteen days' imprisonment and a fine, or in default imprisonment for the term of seven days. No provision is made in the Act for awarding imprisonment in default of payment of fine, but the prisoners were liable under the section to six months' imprisonment and a fine of Rs. 500. The High Court refused to interfere with the sentence passed. 5 Mad. Rep., Rul. XXI.

Where a Magistrate sentenced a person, who had neglected to take out a licence, under Act XXI of 1867, Section 15, and Act XXIX of 1867, Section 3, to pay a fine of ten rupees, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had under the Act no power to make such an order. *Reg.* v. *Chenáppá Valad Nagáppá*, 5 Bom. Rep., Cr. R., 44

Held that an order passed by a Mamlatdar under Act V of 1864 (Bombay) directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was, therefore, within the jurisdiction of the Mamlatdar. *Reg.* v. *Krishnassett bin Narayanshet*, 5 Bom. Rep., Cr. R., 46.

Imprisonment in default of payment of a fine inflicted under Act (Bombay) VII of 1867, Section 31, ought to be simple not rigorous. *Reg.* v. *Bechar Khushal*, 5 Bom. Rep., Cr. R., 43.

Bombay Act VII of 1867, Section 31, became at once operative in all places where a Magistrate was resident, without having been specifically extended thereto by Government notification. *Reg. Keru bin Ramshe*, 5 Bom. Rep., Cr. C. P., 100.

The word "Magistrate" in Section 62 of Act XXII of 1855 includes a Subordinate Magistrate; such Magistrate has, therefore, power to try the master of a vessel for an offence committed against Section 46 of that Act. *Reg.* v. *Tungá Tuká*, 5 Bom. Rep., Cr., 14.

Conviction and sentence for disobeying an order made by a Mamlatdar, under Bombay Act V of 1864, directing the accused to keep a gateway open, reversed, as the Mamlatdar was not empowered under that Act to make the order. *Reg.* v. *Khandoji bin Tanáji*, 5 Bom. Rep., Cr., 21.

Magistrates of all grades are, under Madras Act III of 1865, competent to try persons charged with offences under Section 26 of the Railway Act XXIII of 1856. 4 Mad. Rep., Rul. IX.

Recruiters of emigrants charged under Section

71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. 4 Mad. Rep., Rul. IV.

By Madras Act III of 1865 a Native Deputy Magistrate has power to try police-officers above the rank of a private charged with offences under the Madras General Police (Act XXIV of 1859) notwithstanding the proviso in Section 50 of the latter enactment. 4 Mad. Rep., Rul. LIV.

Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859. 4 Mad. Rep., Rul. LXIV.

By virtue of Sections 1 and 2 of Madras Act I of 1863 and the proviso in Section 273 of the Code of Criminal Procedure, a Subordinate Magistrate is enabled to convict persons accused under Section 174 of the Penal Code for disobedience to summonses issued by himself. 4 Mad. Rep., Rul. LI.

In cases of convictions under Sections 11 and 12 of the Military Cantonment Act (Bombay Act III of 1867), a simultaneous sentence of fine and imprisonment in default of the payment of the fine can only be awarded, under Section 14 of the Act, in the event of no property sufficient for the payment of the fine being found.

Reports of police or medical officers are not a sufficient sanction for prosecutions under this Act. A complaint on oath or solemn affirmation is necessary. *Reg.* v. *Ladu*, 7 Bom. Rep., Cr. Ca., 87.

An order issued under Section 28 of the Bombay District Police Act (VII of 1867) need not be in writing, disobedience of a verbal order given under that section is punishable under Section 29.

The words of Section 28 of the District Police Act, which authorize the police to keep order in the neighbourhood of places of worship during the time of public worship, confer upon the police a power of regulating traffic and putting a stop to noises in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order at and within all places of public resort, temples, jutrus, or the like, when necessary. *Reg.* v. *Bâssuji Gungârâin*, 7 Bom. Rep., Cr., 2.

Conviction of a Police Pâtil for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of Section 9 of Bombay Act VIII of 1867. *Reg.* v. *Ukhâ Sâv.* 7 Bom. Rep., Cr. Ca., 88.

The Indian Income Tax Act (Act IX of 1869, supplemented by Act XXIII of 1869) having been passed subsequently to the General Clauses Act (No. 1 of 1868), Section 5 of the latter authorizes the award of imprisonment in default of payment of the fine imposed under Section 25 of the former. *Reg.* v. *Sangâpâ bin Bashâpâ*, 7 Bom. Rep., Cr. Ca., 76.

A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under Act XXVI of 1850 because he has paid a fine under Section 6 of Act III of 1857. *Reg.* v. *Durgarâin Mâdhavrâin*, 7 Bom. Rep., Cr., 55.

By virtue of Section 21 of the Criminal Procedure Code, a Subordinate Magistrate of the first class has jurisdiction to try an offence under Section 18 of Act III of 1857 (Cattle Trespass Act), there being no provision in that Act as to the authorities by which offence committed under it are to be tried. *Reg.* v. *Gangâ Kone Mhasu*, 5 Bom. Rep., Cr., 13.

3.—European British Subject.

The prisoner pleaded that he was a British born subject, and therefore not amenable to the jurisdiction of the Sessions Judge of Tellichery, by whom the prisoner had been convicted of criminal misappropriation.

The evidence showed that the prisoner was the legitimate great-grandson of John Turnbull, said to have been a sergeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete.

Held that the plea to the jurisdiction was not made out. *T. N. Turnbull*, 6 Mad. Rep., 7.

Mode of procedure by a Magistrate with regard to European British subject accused of an offence. *Queen* v. *Robert Sheriff*, 6 W. R., Cr., 13.

Whether or not an accused is a European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question. *Joseph Parks, petitioner*, 10 W. R., Cr., 6.

A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is a European British subject.

The mere statement of a prisoner that he is a European British subject, made before the Deputy Magistrate after the trial was completed, cannot be acted on. *Clark* v. *W. Beane*, 5 W. R., Cr., 53.

Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under Section 426 of the Indian Penal Code, the High Court annulled the conviction and sentence, and directed the accused to be committed to take his trial before the High Court, unless the complainant withdrew the charge, under Section 271 of the Criminal Procedure Code. *Reg.* v. *Wells*, 7 Bom. Rep., Cr., 1.

A Magistrate being also a Justice of the Peace, has no jurisdiction to try a British-born subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. III, c. 155, s. 105, and Act VII of 1853, neither of which gives him power to award imprisonment in default of payment of a fine. *Reg.* v. *Dixon*, 6 Bom. Rep., Cr. Ca., 14.

The prisoner was committed to a Criminal Sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act No. I of 1866,—*Held* that the High Court had no jurisdiction, inasmuch as the Act which creates the offence declares it to be punishable by a Magistrate. Holloway, J., dissented from the judgment.

Quære,—Whether the Local Legislature has power to enact that a European British subject

shall be punishable by a Magistrate on summary conviction for an offence newly created by the Local Legislature. *Regina* v. *Donoghue*, 5 Mad. Rep., 277.

4.—POWERS OF HIGH COURT—(*See* COURTS AND THEIR OFFICERS.)

The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code.

Held that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that Bangalore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore. *William Dillon Shallard* v. *James Watkins*, 2 Mad. Rep., 444.

The High Court has no jurisdiction to quash the proceedings of a Sessions Judge, and to declare that the Judge acted illegally in making observations upon the Magistrate's order and giving an opinion upon the evidence, while at the same time he admitted that he had no power to interfere. *Pel Charrier and others*, 5 W. R., Cr., 2.

The High Court cannot interfere with the failure of Judge and Assessors to convict a prisoner of the graver of the two charges against him, however well that graver charge is supported by the evidence. *Queen* v. *Sobul Maher*, 5 W. R., Cr., 32.

The High Court (like the Sessions Judge) cannot nullify the verdict of a Jury by interfering to lessen the punishment. Section 405 refers to cases where the offence is proved, but where the punishment inflicted is held to be too severe, and not to cases where the conviction itself is considered improper. *Queen* v. *Bissonath Mitter*, 6 W. R., Cr., 6.

The High Court of Madras has no jurisdiction to try offenders for crimes committed in the province of Coorg. *William Dillon Shallard* v. *James Watkins*, 2 Mad. Rep., 448.

Under Section 405, Code of Criminal Procedure, the High Court cannot mitigate or remit a sentence passed by a Magistrate, and confirmed in appeal by the Sessions Judge, when there is no error of law in the conviction. *Ramdhone Mundul, appellant*, 4 W. R., Cr., 15.

Held that there was nothing in the manner in which the district of North Canara was detached from the Madras Presidency and annexed to the Presidency of Bombay, to prevent the Code of Criminal Procedure from operation therein as if it had always formed a part of the Presidency of Bombay, or to deprive a convict, found guilty by the Sessions Judge of the district on the 18th September, 1862, of the right of appeal which he then would have had to the High Court by virtue of Section 408 of the Criminal Procedure Code, and of 24 & 25 Vict., c. 104, and the Letters Patent (1862) Clause 26. The power given by 16 & 17 Vict., c. 95, to alter the distribution of territories among the presidencies was vested by 21 & 22 Vict., c. 106, in the Secretary of State for India, by whose order of 28th of February, 1862, North Canara was annexed, the new arrangement of territory to take effect from such date as the Governor-General of India in Council should by proclamation appoint for the purposes of Indian Council's Act, 1861, which Act has reference solely to the constitution and functions of the Legislative Councils, and does not purport to affect in any way the exercise of the general powers of Government, or the administration of justice, and the jurisdiction and authority of the Courts of Justice, the annexation for those purposes being made by the Secretary of State, and not being qualified or controlled by the proviso in Section 47 of 24 & 25 Vict., c. 67, which cannot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State.

Meaning of the term "Sudder Court" as defined by Act VIII of 1842, and by Section 19 of the Criminal Procedure Code.

Giving an appeal to the High Court under the Criminal Procedure Code is not subjecting a district to the Regulations within the meaning of Regulation II of 1827, Section 16, Clause 2. *Reg.* v. *Vyanktasvami*, 2 Bom. Rep. 112.

Held that proceedings under Section 318 of the Criminal Procedure Code (Act XXV of 1861) are judicial proceedings within the meaning of Section 404 of that Act, and that therefore the High Court has power to interfere with an order passed by a Magistrate under such section. Under Section 318 a Magistrate is bound to enquire who is in actual possession, without regard to the question who is legally entitled to possession of the premises in dispute. *Bápuji Jagjivan* v. *The Magistrate of Kelta*, 4 Bom. Rep., A. C. J., 153.

When an application has been made to a Magistrate for the removal of a wall, under Sections 308 and 320, Code of Criminal Procedure, as affecting the public convenience, the High Court will not compel the Magistrate to proceed under Section 320, and enquire whether the land on which the wall was built was open to the use of the complainant's people. *Ram Lall Mookerjee, petitioner*, 5 W. R., Cr., 66.

In the Sessions Court the prisoners were convicted and sentenced. On appeal to the High Court, the senior Judge held that the case against the prisoners was not proved, and the junior Judge held that there was sufficient evidence to support the conviction. As the two Judges differed in opinion, the conviction was, with reference to Section 36 of the Letters Patent, set aside, and the prisoners released. *Queen* v. *Sheikh Shoobhanee and others*, 6 W. R., Cr., 88.

The drunkenness of a guard or under-guard in charge of a railway train, or any part thereof, is an offence included in Section 35 of Act XVIII of 1862; but the High Court has no jurisdiction to try a prisoner charged with such offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras. *The Queen on the prosecution of the Madras Railway Company* v. *Jones*, 1 Mad. Rep., O. C., 193.

The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary.

Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to

make that charge, and the prisoner pleaded not guilty,—*Held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. *Queen* v. *Nabadwip Goswami*, 1 B. L. R., O. C., 15.

In a case in which a legal sentence, however light it may be, has been passed, the High Court, sitting as a Court of Revision under Section 404 of the Code of Criminal Procedure, has not the power to interfere with that sentence, inasmuch as under Section 405 the Court cannot say that the sentence is contrary to law. *Watson and Co.* v. *Bykuntnauth Dass*, 15 S. W. R., Cr. R., 83.

A Judge of the High Court making an order in original criminal jurisdiction is not deemed a Court subject to the control of the High Court under Section 15 of the 24 and 25 Vict., cap. 104. *In the matter of Ameer Khan, the Government of Bengal, petitioner*, 15 S. W. R., Cr. R., 60.

Although Section 36 of the Code of Criminal Procedure does not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to him to his own or to any other subordinate Court, the High Court set aside an order of a Magistrate transferring a case after the Subordinate Magistrate, before whom it was, had taken the evidence for the prosecution, and had expressed an opinion unfavourable to the prosecution. *Queen* v. *Nobocoomar Bonnerjee*, 14 S. W. R., Cr. R., 12.

On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds, mainly, that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by these means was created such a feeling of dread and insecurity among the witnesses and others in Patna as would prevent a fair trial from taking place there; that some of the witnesses for the defence, although willing to give evidence in Calcutta, refused to go to Patna to give evidence; and that many difficult points of law were likely to arise at the trial; but these allegations were denied by the affidavits filed in opposition to the application,—*Held* (Macpherson, J., doubting), the High Court had power under Clause 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application on the ground that a sufficient case had not been made out for the exercise of the power of the Court.

Per Phear, J., a single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the Mofussil to the High Court in the exercise of its extraordinary original criminal jurisdiction. *Queen* v. *Ameer Khan*, 7 B. L. R., 240; and 15 S. W. R., Cr. R., 69.

The High Court declined to interfere with an order of a Deputy Magistrate discharging an accused without trial in a case under Section 342 of the Penal Code, because the complainant and his witnesses were not present. *Santoo Mundee* v. *Abdool Biswas*, 13 S. W. R., Cr. R., 35.

A Dufflah hill tribe woman having refused to obey the Deputy Commissioner's order directing her to return to her husband's protection, the Commissioner of Assam directed that, in case she persisted, she should be taken across the border and put back into her own country. On a protest by way of appeal against the order of the Deputy Commissioner, the judicial Commissioner referred the matter to the High Court for orders under Chapter XXIX of that Code of Criminal Procedure. *Held* that this was not a case which could be referred under Chapter XXIX of that Code; that the order of the Deputy Commissioner was a judicial order, not made in a criminal matter, but in a suit for restitution of conjugal rights, and as such appealable to the judicial Commissioner; that the proper form of the order in such a case was that the woman should return to her husband and live with him; and that the only way in which such an order could be enforced was by imprisonment of the wife and attachment of her property, or both, under Section 208, Act VIII of 1859. *Mussamut Berey* v. *Neeahgam*, 17 S. W. R., Cr. R., 13.

The extraordinary power given by Section 404, Code of Criminal Procedure, was declined to be exercised to quash proceedings held under a *bonâfide* exercise of discretion in a case where a fine was imposed for keeping a piggery in a filthy state. *Aman Chinaman*, 17 S. W. R., Cr. R., 58.

Although an improper adjournment of an enquiry by a Magistrate was scarcely an error in the decision upon a point of law, or involved any question of law, justifying the interference of the High Court, under Section 404, Code of Criminal Procedure; yet the Court, under Section 15 of the Charter Act, set aside the order of the Magistrates adjourning the enquiry when, according to Section 224, there was not the absence of a witness or other reasonable cause rendering it necessary or advisable to adjourn the enquiry; the power conferred by Section 224 being one which can only be exercised in cases which come really within the terms of that section. *Muthoora Nauth Chuckerbutty* v. *Heeru Lull Dass*, 17 S. W. R., Cr. R., 55.

When there is evidence to be considered and weighed by the Court which is called upon to determine whether a person charged with an offence or offences is guilty or not guilty, an error as to the probable force and effect of the evidence is one of fact, and not open to corrections except on appeal, in the case of conviction. Where the prisoners were charged with culpable homicide amounting to murder, and culpable homicide not amounting to murder, and the Sessions Court convicted of the latter offence, and the High Court were of opinion that the evidence established the charge of culpable homicide amounting to murder,—*Held* that the High Court had not the power as a Court of Revision, under Section 405 of the Code of Criminal Procedure, to order a new trial. 5 Mad. Rep., Rul. X.

The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without risk of any improper interference with the course of justice, and without

much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. *Arunechalla Reddi*, 5 Mad. Rep., 212.

The severity of a sentence is not of itself a ground on which the High Court can call for the record of a trial or other judicial proceeding, under the general power of revision, given by Section 404 of the Code of Criminal Procedure. *Narapureddy, Rumarddy, and Vakkala Adanna*, 4 Mad. Rep., 242.

The High Court, as a Court of Revision, has jurisdiction to set aside a finding of acquittal by a Sessions Court, by virtue of Section 405 of the Code of Criminal Procedure. 4 Mad. Rep., Rul. LXX.

5.—Criminal References.

It is competent for the Magistrate of a District to refer for trial to a full-power Magistrate a case submitted, under Section 276 of the Code of Criminal Procedure, to such Magistrate of the district by a Subordinate Magistrate. *Reg.* v. *Mangla Bhulia et al.*, 7 Bom. Rep., Cr., 69.

A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of Section 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate, who tried and convicted the offender.

Held, per Kemp, J., that non-compliance with the provisions of Section 66 of Act XXV of 1861 made the subsequent proceedings void.

Held, per Ainslie, J., that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under Section 66B of Act VIII of 1869, and that the subsequent proceedings therefore were valid. *In the matter of Iswar Chundra Koer* v. *Umesh Chundra Pal*, 8 B. L. R., 19.

Where a Magistrate of the district thinks that in any case tried by a Magistrate subordinate to him a failure of justice has occurred, in consequence of the latter not committing the accused for trial at the Court of Session, he should refer the case, with an expression of his opinion, to the Sessions Court, which has power, under Section 435 of the Code of Criminal Procedure, to direct a commitment to the Sessions Court for trial.

Section 435 having been altered by Act VIII of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Courts ruling in *Reg.* v. *Chanveraya bin Chanbasáya. Reg.* v. *Kula bin Hari Gama et al.*, 7 Bom. Rep., Cr. Ca., 72.

Where, on appeal from a conviction by a Subordinate Magistrate of the district, is of opinion that the offence which the evidence brings home to the prisoner is one not triable by a Magistrate, and that an illegality has been committed, he should refer the matter for the orders of the High Court, under Section 434 of the Criminal Procedure Code; such Magistrate cannot himself, under Section 427, annul the conviction, and direct the committal of the prisoner to the Court of Session upon the proper charge. *Reg.* v. *Chanveyráyá bin Chanbásaya*, 5 Bom. Rep., Cr. R., 65.

6.—Criminal Appeals.

The right of appeal to the High Court given by Section 445C, of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in Section 445A, is confined to cases in which the officer has exercised that power. *Queen* v. *Dhoona Bhoorjee*, 5 B. L. R., 658; 14 S. W. R., Cr. R., 33.

Held that no appeal lies where the sentence of imprisonment, and of further imprisonment in default of payment of a fine, does not in the aggregate exceed the term of one month. *Reg.* v. *Shankar Venkaji and another*, 3 Bom. Rep., Cr., 15.

A Sessions Judge, in trying an appeal, has to look to the offence, as charged, of which the accused has been found guilty, and to determine whether it is proved or not. He has nothing to do with the form the offence may take owing to subsequent events. A conviction for an offence for which the accused was tried will not prevent his conviction, if guilty, of another distinct offence subsequently committed. *Ramjee Doss* v. *Meeajan Sheikh*, 9 W. R., Cr., 65.

Held (Markby, J., dissenting) that no appeal lies from the order of a Magistrate under Section 316 of Act XXV of 1861, directing a man to pay a monthly allowance for the support of his illegitimate child. *Reg.* v. *Golam Hossein Chowdhry*, 2 Ind. Jur., N. S., 88; 7 W. R., Cr., 10.

The High Court has no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity of Magistrate of the district. *Queen* v. *Radhakishen Sein*, W. R., 1864, Cr., 18.

In a case of dismissal of complaint by a Deputy Magistrate it was held that a prosecutor had no right of appeal, but ought to have moved the Magistrate to procure, under Section 434 of the Code of Criminal Procedure, a reversal by the High Court of the order of dismissal. *Lyall and Co.* v. *Sam Mundle*, W. R., 1864, Cr., 23.

A person tried by a Jury is entitled to an appeal on the facts, if the offence was committed before the passing of the Penal Code. *Queen* v. *Grish Chunder Bundoo*, 6 W. R., Cr., 1.

There is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment. *Queen* v. *Morly Sheikh*, 6 W. R., Cr., 51.

No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law. *Queen* v. *Poorno Chunder Doss and others*, 8 W. R., Cr., 59.

In a case tried by a Jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected. *Queen* v. *Gopal Bhereewalla*, 1 W. R., Cr., 21.

Objections to the sufficiency of evidence are not a ground of appeal. The deposition of a single credible witness is sufficient in law. *Queen* v. *Muddun Sirdar and others*, 2 W. R., Cr., 3.

Pleas that the prosecutor is at feud with the prisoner, and the prisoner's confession was given at the instance of the police, are not grounds of appeal. *Queen* v *Gopal Doss*, 2 W. R., Cr., 5.

Petitions of appeal to the High Court must be presented within 60 days. *Queen* v. *Sreemutty Surno*, 4 W. R., Cr., 31.

Convictions under the Police Act V of 1861 are appealable like other convictions. Where the appellants are convicted by an officer exercising the powers of a Magistrate, and sentenced to imprisonment exceeding the limit prescribed by Section 411 of the Code of Criminal Procedure, the appeal lies to the Sessions Court. *Thakoor Doss* v. *Godi Sheikh*, 5 W. R., Cr., 22.

An appeal preferred out of time, and without any explanation of the delay, may be rejected at once, under Section 415 of the Code of Criminal Procedure. *Queen* v. *Hullodhur Ghose*, 5 W. R., Cr., 40.

When a Sessions Judge and Assessors find a prisoner guilty on his own plea, there is no ground of appeal. *Queen* v. *Kurmoo Koormee*, 5 W. R., Cr., 52.

There is no right of appeal to the Privy Council in Criminal cases. *Joykissen Mookerjee, petitioner*, 1 W. R., P. C., 13.

The order of a Sessions Judge under Section 354 of the Code of Criminal Procedure fining an Assessor is not appealable, nor liable to be interfered with by the High Court under Section 404 of that Code. *Gour Suran Dass, petitioner*, 8 W. R., Cr., 83.

In computing the time within which it is competent to a defendant to appeal against the sentence of a Magistrate, the number of days taken by the Court to prepare a copy of the sentence should be omitted. *Toti Chengun*, 6 Mad. Rep., 349.

Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. Such evidence having been taken by the Magistrate, the case was returned to the Appellate Court. The Sessions Judge then disposed of the case in the manner prescribed by Section 419 of the Criminal Procedure Code. On an application by the prisoner to the High Court to be allowed to appeal on the merits of the case under Section 408, Act XXV of 1861,—*Held*, no appeal lay to the High Court on the merits. *Dhanobar Ghose, in the matter of the petition of*, 6 B. L. R., 483, and 15 S. W. R., Cr. R., 33.

Every facility should be allowed to prisoners to enable them to prepare their petition of appeal. *Nitto Gopaul Paulit, Dinnobundoo Surmoker*, 13 S. W. R., Cr. R., 69.

No appeal lies to the High Court, under Act XXXVII of 1865, from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs. *Queen* v. *Boydonauth Mookerjee*, 17 S. W. R., Cr. R., 11.

Criminal appeals to the High Court may be disposed of by single Judges. No second petition of appeal can be allowed to be considered after a first one has been rejected by a single Judge. *Queen* v. *Chundro Joogi*, 17 S. W. R., Cr. R., 47.

In disposing of an appeal the Magistrate at first reversed the Sub-Magistrate's decision and directed the release of the appellant; subsequently he recalled this order and confirmed the Sub-Magistrate's decision. *Held* that the second order of the Magistrate ought to be set aside, and the original order restored. 6 Mad. Rep., Rul. VIII.

Duty of an Appellate Court. Defect in Investigation. Insufficiency of Finding. *Mussamut Anisul Futwa and another* v. *Mussamut Chandoo and others*, 8 B. L. R., Ap., 3.

When an Appellate Court directs further evidence to be taken by a Subordinate Court under Section 422 of the Code of Civil Procedure, it is competent to the Subordinate Court before which such evidence is given, if any offence against public justice, as described in Section 169, is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of Section 171.

The words "whether for the decision of such cases in the first instance or an appeal, or for commitment to any other Court or officer," in Section 11 of the Code of Criminal Procedure, are not an exhaustive enumeration of the functions of Criminal Courts. *Queen* v. *Baktear Maijaraz*, 6 B. L. R., 698, and 15 S. W. R., Cr. R., 64.

Appeals from convictions on trials by Jury, where illegal evidence has been admitted, should be dealt with on the same principles as appeals in which there has been a misdirection by the Judge, or an omission on his part to give the Jury proper direction.

The Appellate Court, where it finds that illegal evidence has been admitted, should consider whether it is such as is likely to have exercised prejudicial influence on the minds of the Jury, and if the Court be of opinion that it is so, it will treat the case as if it had been tried by a Sessions Judge with the aid of assessors. If the evidence (after omitting that portion of it which should not have been admitted) is sufficient to sustain the verdict, the conviction will be upheld.

In exceptional cases, where the evidence is of such a character as to suggest the consideration that its real value cannot fairly be appreciated except by a Court which has heard that evidence given, a new trial will be directed. *Reg.* v. *Ramsoami Madliar*, 8 Bom. Rep., Cr. Ca., 47.

Where several persons were tried together and convicted under Section 147 of the Indian Penal Code of rioting, and two of them were sentenced to pay each a fine of Rs. 50, or in default of payment to undergo rigorous imprisonment for a month, and the others were sentenced to a severer punishment, the Sessions Judge entertained an appeal by all the prisoners, being of opinion that the test, under Section 411 of the Code of Criminal Procedure, as to whether a case is appealable, is the maximum sentence passed in it.

The High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined Rs. 50, and restored the original sentences passed upon them. *Reg.* v. *Kálubhái Meghálhái et al.*, 7 Bom Rep., Cr., 35.

An appeal from a sentence passed by an officer in a Non-Regulation District invested with the powers mentioned in Section 445A, Act VIII of

1869, lies under Section 445C to the High Court only. *Luntro Singh*, 14 S. W. R., Cr. R., 18.

7.—POWERS OF SESSIONS JUDGES.

The Sessions Judge has no jurisdiction to annul a conviction, and order a commitment for an offence triable by a Magistrate. Section 435, Act VIII of 1869, relates to offences triable by the Sessions Judge. *In the case of Wazir Singh*, 3 B. L. R., A. Cr., 65; S. C., 12 W. R., Cr., 46.

The power conferred on a Court of Session by Section 435 of the Code of Criminal Procedure extends only to offences not triable by a Magistrate, and regarding which the accused has been discharged by the Magistrate. *Queen* v. *Jeetun Khan and another*, 11 W. R., Cr., 45.

A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. *Reg.* v. *Hurree Bin Wittojee*, 1 Bom. Rep., 139.

A lower Court has no power to quash its own conviction, though illegal. *Banowree Bhobea and Jhandeo*, 6 W. R., Cr., 70.

A Sessions Judge is competent, under Section 435, Code of Criminal Procedure, to order the committal of a person accused of giving false evidence after the discharge of such person by the Magistrate, Section 359 notwithstanding (*dissentiente*, Kemp, J.) *Queen* v. *Bhohisan Mahatoon*, W. R., 1864, Cr., 3.

It is only when a Court subordinate to a Court of Session convicts a person of an offence not triable by such Court, that the Court of Session can annul the conviction and sentence.

If the prisoner is guilty of an offence beyond the jurisdiction of the Subordinate Court, the Court of Session should refer the case to the High Court. *Queen* v. *Ichabur Dobey*, 4 W. R., Cr., 11.

A Sessions Judge has no authority to enhance a sentence on appeal. *Queen* v. *Baloram Doss*, 4 W. R., Cr., 20.

A Sessions Judge is quite competent on appeal to reverse a conviction by a Deputy Magistrate, if he thinks that the evidence is insufficient to establish a criminal offence against the prisoner. *Punchanun Biswas*, 5 W. R., Cr., 56.

A Sessions Judge has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot he interfered with by the High Court. *Queen* v. *Sheetaram Chowdhry*, 2 W. R., Cr., 44.

The offence of giving false evidence in a stage of a judicial proceeding is not cognizable by an Assistant Magistrate. A Sessions Judge in appeal can quash an illegal conviction by an Assistant Magistrate in such a case. *Queen* v. *Heeramun Singh*, 8 W. R., Cr., 30.

Held that a Sessions Judge has no jurisdiction to hear an appeal from the order of a Magistrate, under Section 319, Chapter XXII of the Criminal Procedure Code, and that the object of the Chapter is to prevent breaches of the peace likely to be occasioned, and not the adjudication of title. *Dutt Ram Misr, petitioner*, 1 Agra Rep., Cr., 29.

The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (No. 1 of 1859). *William Martin Evans and others*, 2 Mad. Rep., 473.

The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the Jaghirdar, or Rajah, of Sundoor for offences committed in the plateau of Ramandoorg upon native inhabitants of the village of Ramandoorg. Ramandoorg is a portion of the territory of Sundoor, and the Rajah is in the position of a native chief or ruler.

A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation :—

"It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, &c. The Collector is to have jurisdiction in such matters."

Held that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons, not native subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons. *The Queen* v. *Vencanna and Narasa*, 3 Mad. Rep., A. J., 354.

The Civil Judge made an order, under Sections 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and if so by whom. *Held* that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order. *Radhanath Banerjee* v. *Kungalee Mullah and others*, Marsh., 407.

When a Sessions Judge and Assessors find a prisoner guilty on his own plea, there is no ground of appeal. *Queen* v. *Kurmoo Coormee*, 5 W. R., Cr., 52.

A Sessions Judge ought not to refer to the High Court, under Section 434 of the Code of Criminal Procedure, the case of a prisoner who has appealed to him, but should decide it himself. *Sreekishen* v. *Jughul and others*, 9 W. R., Cr., 5.

The Assistant Magistrate having decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge, on appeal, ordered the evidence of those witnesses to be taken by the Assistant Magistrate. Their depositions having been returned to him, the Sessions Judge proceeded to deal with the case under Section 422 of the Code of Criminal Procedure, and, convicting all the prisoners, confirmed the judgment and sentence passed by the Assistant Magistrate. *Held* that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that under Section 408 an appeal lay from it to the High Court upon the merits. *Queen* v. *Mohesh Chunder Chuttopadhia and others*, 2 W. R., Cr., 13.

A Judge is bound to state in his judgment the

evidence on which he convicts. *Queen* v. *Ishur Manjee*, 5 W. R., Cr., 17.

Under Sections 379 and 382, Code of Criminal Procedure, a Sessions Judge should sum up the evidence on both sides, and record the ground of his decision, and the sentence, when passed, should be recorded in a certain specified form. *Queen* v. *Aruj Shaikh*, 4 W. R., Cr., 18.

The grounds of a Sessions Judge's decision should be given in English, and a memorandum recorded, in accordance with Section 382, Code of Criminal Procedure, setting forth the precise offence of which the prisoner is convicted. *Queen* v. *Bhobannesshur Gossamy*, 4 W. R., Cr., 19.

It is the duty of a Sessions Judge to explain to the Jury the legal construction to be put upon a document adduced in evidence. *Queen* v. *Setul Chunder Bagchee*, 3 W. R., Cr., 69.

Where an accused was charged before the Sessions Judge under both Section 409, Penal Code, and under the Special Law, Section 29, Act V of 1862, and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone has jurisdiction to convict under that law. *Bhoobun Singh, prisoner*, 9 W. R., Cr., 36.

A Sessions Judge has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence. *Gopal Mozumdar* v. *Hurro Soondery Boistnaee*, 16 S. W. R., Cr. R., 69.

In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer and discharged the prisoner, not considering it necessary that the case should go before a Jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence to the Jury. *Queen* v. *Hurroo Saha*, 16 S. W. R., Cr. R., 20.

Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and the Sessions Judge considered the case so grievous that it should not have been disposed of summarily,—*Held* that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge. *Queen* v. *Huddan Khan*, 2 N. W. R., 285.

The Sessions Judge has jurisdiction to try a case of abetting false personation of a witness before a Registrar of Assurances, under Section 95 of the Registration Act (XX of 1866). The word "instituted" in that section should be construed to mean "commenced." *Queen* v. *Sheogolam Dass*, 6 B. L. R., 692, and 15 S. W. R., Cr. R., 58.

Held that a Sessions Judge has no power to quash a sentence passed by an Assistant Judge, and by him submitted for confirmation, and to direct a new sentence to be passed, even supposing the sentence of the Assistant Sessions Judge to be illegal. *Held*, also, when more than one offence is proved, it is not proper to convict only of one and to acquit of the other, although the offence may be cognate. *Reg.* v. *Marár Srikam*, 5 Bom. Rep., Cr., 3.

The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, when parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan is the act of the whole.

The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by Section 496 of the Code of Criminal Procedure.

The issue of a warrant of commitment by the Governor-General in Council, under Regulation III, 1818, cannot be treated in the nature of a conviction of the person so placed under personal restraint, so as to give immunity to the person so committed and afterwards discharged from all political offences committed before that period, on the ground that he has already been tried, convicted, and punished. *Queen* v. *Ameer Khan*, 17 S. W. R., Cr. R., 75.

A Court of Session has no power to interfere under Section 435 of Act XXV of 1861 with an order of a Magistrate permitting a prosecution under Section 169 of Act XXV of 1861. *Gopal Mazumdar* v. *Haro Sundari Baistam*, 8 B. L. R., Ap., 20.

Where the Sessions Judge is of opinion that a Subordinate Magistrate has convicted the defendant of an offence which the Subordinate Magistrate has no power to try, the Sessions Judge may, under Section 435 of the Code of Criminal Procedure, annul the conviction and direct the committal of the accused for trial. 5 Mad. Rep., Rul. XXXII.

8.—Powers of Magistrates.

(a) *Magistrate of the District.*

Meaning of the words "Magistrate of the District" in Section 61 of the Criminal Procedure Code. *Anonymous*, 3 Mad. Rep., Cr., 29.

The offence of possessing above a quarter of a surat ser of opium not shown to have been legally obtained is exclusively cognizable by the District Magistrate. *Reg.* v. *Narayan* v. *Natha and others* (Criminal Reference No. 209 of 1869). overruled. *Reg.* v. *Hirá Jivá*, 7 Bom. Rep., Cr., 59.

Held that the Magistrate of a district, to whom a case has been sent for investigation by a Civil Court, has no power to refer it to a Magistrate, F. P., and the latter has therefore, under such circumstances, no jurisdiction to take up the case without complaint made to him. *Reg.* v. *Dip Chand Khusal*, 4 Bom. Rep., O. C. J., 30.

A case originating with a Magistrate of the district must, under Section 88 of the Code of Criminal Procedure, be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. *Hossein Manjee, prisoner*, 9 W. R. Cr., 70.

Government may by proclamation declare and direct that an Assistant Collector in charge of the Collectorate during the absence of the Collector shall be, during that period, "the officer in charge with the executive administration of the districts in criminal matters;" and such officer being, within the meaning of Section 14 of the Criminal Procedure Code, the Magistrate of the district, may hear appeals from Subordinate Magistrates under Section 412 of the Code. *Reg.* v. *Bhaishankar Hariram*, 3 Bom. Rep., C. A., 18.

On a reference by a Sessions Judge, circulars issued by a District Magistrate forbidding all the Subordinate Magistrates from taking up cases, if they thought they should have to act under the provisions of Section 277 of the Criminal Procedure Code, were annulled as beyond the competence of the District Magistrate, and based on a misunderstanding of Section 277. *Reg.* v. *Gaunbin Raguak and others*, 3 Bom. Rep., C. A., 29.

A Deputy Commissioner in a non-Regulation Province comes, under Section 19 of the Code of Criminal Procedure, under the designation of Magistrate of the District, and is competent to decide upon an appeal preferred under Section 412 from an order of a Subordinate Magistrate who has exercised jurisdiction in a case in which he had no jurisdiction. *Queen* v. *Boron Dhoon*, 16 S. W. R., Cr. R., 1.

The Magistrate of a District can alone hold proceedings in a case (such as the removal of a thatched house) under Section 308 of the Code of Criminal Procedure. The Joint Magistrate while in charge of the Magistrate's office has no such jurisdiction. *Queen* v. *Greesh Chunder Chuckerbutty*, 15 S. W. R., Cr. R., 36.

A Joint Magistrate of a district has no power to make a reference to the High Court under Section 434 of the Code of Criminal Procedure. Such references can be made only by the Sessions Judge or by the Magistrate of a district. *Queen* v. *Chooramoney Saut*, 14 S. W. R., Cr. R., 25.

The accused was charged before a Deputy Magistrate with an offence, under Section 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the district then called for the proceedings, and having looked at them considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail.

Held that the Magistrate was not only competent butbound to discharge the prisoner, if his conclusion that no offence was made out was correct. But held also that the Magistrate's conclusion was wrong, and that the act complained of, if true, did amount to an offence under Section 431 of the Penal Code, therefore the Magistrate's order was set aside, and further enquiry ordered. *Niamutulla* v. *Gopal Saha*, 6 B. L. R., Ap., 6; and 14 S. W. R., Cr. R., 63.

A Magistrate of a district, before whom a complaint had been made without complying with the provisions of Section 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case the Magistrate took it up and tried it himself.

Held, that non-compliance with the provisions of Section 66 of Act XXV of 1861, made the subsequent proceedings void. *Held*, also, that the Magistrate, having once sent the case to the Deputy Magistrate for trial, had no power to try the case himself without formally recording a proceeding under Section 36 of Act VIII of 1869. *Queen* v. *Girish Chundra Ghose*, 7 B. L. R., 513, and 16 S. W. R., Cr. R., 40.

Held that the Magistrate of a district before whom a criminal case is brought, either on complaint preferred directly to such Magistrate, or on the report of a police officer, cannot, under Section 273 of the Criminal Procedure Code, refer such case to a Magistrate F. P.

A Magistrate F. P., though executively inferior to the Magistrate of the District, is not a subordinate Magistrate within the meaning of Chapter XVI of the Criminal Procedure Code, nor is he "immediately subordinate" to the District Magistrate within the meaning of Section 434 of the same code. *Reg.* v. *Krishná Parashrâmet & Co.*, 5 B. R., Cr. R., 69.

A Magistrate of the District has no power to direct a Subordinate Magistrate to commit for trial in the Sessions Court accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal. The Sessions Court is the only authority empowered by law to direct a committal. 4 Mad. Rep., Rul. XXXI.

The power which a Magistrate of a district, or a Magistrate in charge of a division of a district, has to issue a summons, without any complaint, is not affected by the circumstance that the offence with which the accused was charged came to the knowledge of the Magistrate, otherwise than through a petition which was presented against the accused. *Bisseshur Roy* v. *Hurpershud Singh and others*, 11 W. R., Cr., 1.

(*b*) *Magistrate with full powers.*

Held that, under the provisions of Section 23 of the Code of Criminal Procedure, a Magistrate, F. P., is, for the purposes of Section 434, immediately subordinate to the Magistrate of the District, and not to the Court of Session. *Reg.* v. *Keshavshet et al.*, 6 Bom. Rep., Cr. Ca., 74.

The temple of Pandharpur, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding, and to improve the ventilation, the Magistrate, F. P., by a written order, under Section 62 of the Criminal Procedure Code, directed the hereditary priests of the temple to widen and heighten the doorway,—*Held* that such order was legal under the above section.

Semble,—That the case would have been the same had the temple been private property; and also that the power of Magistrates to issue orders under the section in question is entirely discretionary. *Reg.* v. *Ram Chundra Eknath et al.*, 6 Bom. Rep., Cr. Ca., 36.

A Magistrate, F.P., is not immediately subordinate to the Sessions Court, and therefore a Sessions Judge has no concurrent jurisdiction with the Magis-

trate of the District, under Section 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a Magistrate, F. P., is to make a report to the High Court, which will then, if it thinks fit, call for the proceedings, under Section 404. *Reg.* v. *Shiabasápá*, 7 Bom. Rep., Cr. Ca., 73.

Held that a Magistrate F. P., though empowered to hear appeals, is not thereby placed in the position of the Magistrate of the District, and that, therefore, subordinate Magistrates should not refer cases, under Section 276 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the District, to whom alone they are subordinate. *Reg.* v. *Bhágulim Shábbáji*, 5 B. R., Cr. R., 47.

Held that the power conferred upon the Magistrate F. P., at Broach, to hear appeals, does not exclude the jurisdiction which the Magistrate of the District has by law, and that the proceedings in any case in which a prisoner has appealed from the decision of a Subordinate Magistrate to the District Magistrate, must be forwarded to the latter. *Reg.* *Umthá Rugnáth*, 5 Bom. Rep., Cr., 8.

Per Ainslie, J.—A Magistrate as an executive officer, is not bound to attend to a Judge's extra judicial observation not warranted by law. *Gomamenee and others*, 17 S. W. R., Cr., R., 59.

Under Section 273 of the Criminal Procedure Code, a full-power Magistrate may refer for enquiry to a Subordinate Magistrate (criminal cases, that is, *primâ facie*, any criminal case). The reference may be for enquiry or for trial by the Sub-Magistrate, or with a view to commitment either to a Court of Session or the High Court. 4 Mad. Rep., Rul. XL.

The Sessions Judge on appeal reversed a conviction passed by a Magistrate, F. P., of an offence under Section 182 of the Penal Code (which the Magistrate, F. P., was competent to try), and directed the Magistrate, F. P., to institute proceedings against the accused under Section 211; considering that, on the complaint which had been made to him, the Magistrate, F. P., was bound to institute proceedings under the latter section. The High Court reversed that part of the order of the Sessions Judge which directed the Magistrate, F. P., to institute proceedings, as the case did not fall within Section 435 of the Criminal Procedure Code, and there was no provision of law giving the Judge jurisdiction to make such an order. *Reg.* v. *Gopál Lakshuman and Gunput Beibáji*, 5 Bom. Rep., Cr., 25.

(c) *Magistrates and Joint Magistrates.*

Under Section 66, Code of Criminal Procedure, a Magistrate is bound to examine the complainant and record his deposition, and then to pass orders for summons or otherwise as may be necessary. *Nilmony Bhuttacharjee on the part of Kaminee Soondoory Debey*, 16 S. W. R., Cr. R., 68.

A Magistrate ought not to use a lithographed stamp of his signature. *Queen* v. *Dedar Nushyo*, 14 S. W. R., Cr. R., 81.

A Magistrate to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the Sessions without himself recording evidence and examining the complainant and his witnesses in the presence of the accused. *Queen* v. *Ramdhone Singh*, 11 W. R., Cr., 22.

Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under Section 181 of the Penal Code, but should commit to the Sessions under Section 193 of that Code. Where an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers illegal, the Sessions Judge should himself deal with the case, instead of referring it to the High Court under Section 434 of the Code of Criminal Procedure. *Queen* v. *Nusseeroodeen Shazwal*, 11 W. R., Cr., 14.

Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence, when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence,—*Held* that it was in the competency of the Magistrate, under Section 68 of the Code of Criminal Procedure, even without a charge or complaint, to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. *Queen* v. *Doorga Nath Roy and others*, 8 W. R., Cr., 9.

In the case of a prosecution under Act XX of 1866, a Magistrate has full power to entertain and finally adjudicate on the charge, and is not bound to commit to the Sessions. The words in Section 95 of that Act, "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate," being interpreted to mean that the whole of a criminal trial from complaint to adjudication shall be carried out before and by the same person. *In re Ashanoollah and others, petitioners*, 10 W. R., Cr., 21.

A Magistrate can take cognizance of an offence, under Section 174, Penal Code, committed against his own Court. *Queen* v. *Gugun Misser*, 8 W. R., Cr., 61.

A Magistrate cannot, under Section 62, Criminal Procedure Code, interfere with the civil right of a landowner to establish hâts within his estate, and to hold them on any day most convenient to him. *Sheeb Chunder Bhuttacharjee* v. *Saadut Ally Khan*, 4 W. R., Cr., 13.

A Magistrate only, and not a Sessions Judge, has power to try cases under Section 29, Act V of 1861. *Indrobur Thaba, appellant*, 1 W. R., Cr., 5.

A Magistrate can maintain a chowkeedar in the possession of his chakeran land (*i.e.*, land set apart for his subsistence by his zemindar). Any such order of the Magistrate is appealable to the Superintendent of Police. *Queen* v. *Zemindar of Colgong*, 1 W. R., Cr., 12.

Where a Magistrate made an order for the removal of a shed as being an obstruction to a thoroughfare under Section 308 of the Code of Criminal Procedure, and the owner of the shed on disobeying that order was fined under Section 291 of the Penal Code,—*Held* that no suit would lie in the Civil Court to establish the owner's right to keep up the shed. *Bakas Ram Shahoo* v. *Chumun Ram*, 7 W. R., 11.

Where a case is committed to a Magistrate, under Section 277 of the Code of Criminal Pro-

cedure, the Magistrate alone has jurisdiction, and cannot commit to the Sessions, on the ground that he considers the sentence which he is empowered to inflict is insufficient. *In re Bheekree Mallick and others*, 10 W. R., Cr., 50.

Section 31 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try a subject of a foreign state for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories. *Reg.* v. *Pechar Mává*, 4 Bom. Rep., Cr., 38.

Held that a stipulation contained in the lease of the tolls, to the effect that if the rent should not be paid it could be recovered in the mode prescribed for the recovery of money embezzled by native ministerial officers, could not legally be made, and that the Magistrate, as lessor, had no power to reserve a remedy other than that which the law provided. *In the matter of the petition of Bunkoo Behary Ghose*, 11 W. R., 26.

Where a person in the employment of the Court is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from his office. *The Queen* v. *Chunder Koomar Sen*, 1 Ind. Jur., N. S., 97.

When a Magistrate interferes with a private way, his acts, being beyond the scope of his jurisdiction, may be set aside by a civil suit. *Sham Dass* v. *Bhola Dass*, 1 W. R., 324.

Under the Code of Criminal Procedure a Magistrate has only jurisdiction to entertain a criminal charge, either when a complaint is made before him by a person properly qualified to complain and prosecute, or when he himself of his own knowledge and discretion starts the proceedings in cases in which he has such power given him.

Where, therefore, a Registrar, under Act XX of 1866, transferred a complaint made before him to the Magistrate's Court, and afterwards himself, sitting as Magistrate, ordered the matter to be made over to the Police, it was *held* that this did not amount to the institution of a criminal charge under the Criminal Procedure Code. *In the matter of Ashanoollah*, 10 W. R., Cr., 21.

A Magistrate may take cognizance of a case on the information of a third person without any complaint by the party injured. *Ramruttun Neogee and others, petitioners*, 6 W. R., Cr., 3.

Case of abduction of a child for the purpose of stealing its ornaments, which, instead of being committed to the Court of Sessions for trial, was improperly disposed of by the Magistrate as a case of theft. *Queen* v. *Sohoy Dome*, 6 W. R., Cr., 2.

Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge. *Held* that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate Magistrate, who held a preliminary enquiry into a charge of forgery preferred by the defendant against the plaintiff. *Rámasámi Ayyan* v. *Rmáa Mupan*, 3 Mad. Rep., A. J., 372.

Parties who act honestly in initiating proceedings in a Magistrate's Court cannot be held civilly responsible for any order which the Magistrate may pass in the case, whether it lies within his jurisdiction to make such order or not. *Chinta Monee Bapoolee and another* v. *Digambur Mitter and others*, 10 W. R., 409.

A Joint Magistrate vested with full powers is not, *quoad* cases instituted and tried by him, subordinate to the Magistrate; and the latter officer has no power to quash his proceedings, or to hear them on appeal. *Queen* v. *Toyluck Nauth Sircar*, 2 W. R., Cr., 64.

On a reference by a Sessions Judge in reviewing the monthly magisterial returns,—*Held* that a conviction and sentence recorded by a Magistrate under Section 50 of Act XVII of 1854 (corresponding with Section 48 of the Act of 1866) were illegal, as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to commit it for trial before the Court of Sessions. *Reg.* v. *Atenaram Bhandarbrar*, 3 Bom. Rep., Cr., 8.

If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence, and there is *primâ-facie* reason to suppose the accusation true, the Magistrate is bound to proceed, though he may consider a civil suit more applicable. *Queen* v. *Nubas Muhton*, 8 W. R., Cr., 65.

The proper course for a party dissatisfied with the order of a Magistrate, passed with jurisdiction under Act XXI of 1841, to pursue, is to appeal against that order, and not to bring a civil suit for its reversal. *Omoolah Koowur* v. *Gokun*, 1 Ind. Jur., O. S., 36.

No suit will lie against a Magistrate acting in his judicial capacity and *bonâ-fide* for having fined the plaintiff for illegally exacting tolls. *Hureehur Mookerjee* v. *The Magistrate of Howrah*, 5 W. R., 104.

The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under Section 317, Code of Criminal Procedure. *Goyamoney Surinee* v. *Mohesh Chunder Shaha*, 9 W. R., Cr., 1.

The discretion of a Magistrate, under Section 202, Code of Criminal Procedure, to ask questions of an accused, is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the accused that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer. *Queen* v. *Dinoo Roy*, 16 S. W. R., Cr. R., 21.

The power of a Magistrate to delegate the receiving of complaints under Section 66B, Code of Criminal Procedure, is not equivalent to the power of the local government to invest with local jurisdiction under Section 23D, and no Magistrate can act under Chapter XX who has not been legally invested with local jurisdiction. No order of the local government under the latter section can legally have retrospective effect. A plea of want of jurisdiction may be taken in the High Court, though not taken below. *Macdonald and Macrae* v. *Riddell*, 16 S. W. R., Cr. R., 79.

A Magistrate is not competent to interfere under Section 318 of the Code of Criminal Procedure with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regard-

ing the whole or any portion of disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute Section 318 proceedings regarding the land covered by it. *Rai Mohun Roy* v. *Wise, J. P.*, 16 S. W. R., Cr. R., 24.

Where a complaint was made by A. that timber belonging to his master, which had been cut and stacked in a certain place had been removed by B., who said that the timber was cut not by A.'s master but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under Section 62 of the Code of Criminal Procedure, but was bound to try the charge brought against B., and either restore the timber to A. or leave it where it was according to the result of the investigation. *Kartick Chunder Bal* v. *Chunder Nath Chuckerbutty*, 15 S. W. R., Cr. R., 56.

A sub-Registrar, who is also a Magistrate, cannot investigate a case against one of his subordinates in the Registry office, and afterwards himself try and convict him. *Bharut Chunder Sein, petitioner*, 14 S. W. R., Cr. R., 74.

Proceedings under Section 308 of the Code of Criminal Procedure for the removal of obstructions may be originated by a Joint Magistrate in charge of a division of a district. *Punchanun Bose, petitioner*, 15 S. W. R., Cr. R., 41.

Interference by the High Court in a case where the Magistrate had improperly exercised his discretion in removing a case from the file of a Deputy Magistrate. *Naba Kumar Banerjee, in the matter of the petition of*, 5 B. L. R., Ap., 45.

Under Section 62 of the Code of Criminal Procedure a Magistrate has no power to issue an order *ex-parte* to cut down trees, on the representation of a party, supported by the report of the police that the existence of the trees was a nuisance. *Queen* v. *Ram Chandra Mookerjee*, 5 B. L. R., 131.

The head of a village is within the definition of a Magistrate as defined in Section 15 of the Criminal Procedure Code. 4 Mad. Rep., Rul. 11.

Under Section 62 of the Code of Criminal Procedure a Magistrate cannot pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed. *Queen* v. *Rai Lachmipat Singh*, 5 B. L. R., Ap., 81; 14 S. W. R., Cr. R., 17.

A Magistrate has no power under Section 62 of the Code of Criminal Procedure to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do, is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees. *Uttam Chunder Chatterjee* v. *Ram Chunder Chatterjee*, 13 S. W. R., Cr. R., 72.

A Magistrate has no jurisdiction to order a sum of money, deposited under Section 228 of the Code of Criminal Procedure, for the refund of which an application was made, to be credited to Government. 6 Mad. Rep., Rul. IX.

The prisoner was convicted under Section 475 of the Penal Code, and having been previously convicted of an offence punishable under Chapter XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. *Held*, that the Magistrate had power to pass sentence of two years' imprisonment only. 6 Mad. Rep., Rul. III.

The Joint Magistrate of Tellichery has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore. 6 Mad. Rep., Rul. III.

A Magistrate not being the Magistrate of the District, nor in charge of a division of the District, is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him, nor any charge made by the police. *Queen* v. *Oomrao Singh and others*, 3 N. W. P., 317.

A Magistrate has no power to seize the property of a person convicted, has not been directed to pay a fine; nor has a Magistrate power to take property from one defendant and give it to another defendant. 4 Mad. Rep., Rul. XXVIII.

On receipt of a petition from the complainant, the Magistrate, without examining him, and reducing his examination into writing, and obtaining his signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Session Judge, on the ground that the proceedings were irregular, under Section 66, Act XXV of 1861, and that therefore the order of the Deputy Magistrate was without jurisdiction,—*Held* that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. *Queen* v. *Umeschandra Chowdry*, 5 B. L. R., 160, 14 S. W. R., Cr. R., 1.

(*d*) *Assistant and Subordinate Magistrates.*

A Subordinate Magistrate of the 1st Class has no power, under Section 45 of the Code of Criminal Procedure, to award any greater sentence of imprisonment in default of payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly. *Phoolman Tewary* v. *Satram Ojha and others*, 6 W. R., Cr., 51.

A Deputy Collector having committed an agent for false verification of a plaint, the Assistant Magistrate acted without jurisdiction in taking security from the agent for the appearance of his principals before obtaining the sanction of the Deputy Collector to proceed against the principal. *In re Indro Chunder Bose*, 4 W. R., Cr., 7.

A 1st Class Subordinate Magistrate has no jurisdiction to try a charge of theft in a house under Section 380 of the Indian Penal Code. *Reg.* v. *Koosha*, 1 Bom. Rep., 89.

Semble,—When a charge is dismissed by a Subordinate Magistrate without enquiry, a Magistrate has no power, under Section 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. *Queen* v. *Hiralal Singh*, 5 B. L. R., Ap., 48; 14 S. W. R., Cr. R., 8.

Where the proceedings of an Assistant Magistrate are submitted to the Magistrate under Section 277 of the Code of Criminal Procedure, the prisoner has a right to be present at the proceedings before the Magistrate under that section, and to be heard in his defence. *Queen* v. *Guresh Sircar*, 7 W. R., Cr., 38.

A Subordinate Magistrate has no power to try an offence punishable under Section 174 of the Penal Code committed against his own Court, but is bound, under Section 171 of the Code of Cri-

minal Procedure, to send the case, if in his opinion there is sufficient ground, for investigation to a Magistrate having power to try or commit for trial. *Queen* v. *Chandra Sekhar Roy*, 5 B. L. R., 100; 13 S. W. R., Cr. R., 66.

An objection was taken before the Sessions Judge in the hearing of an appeal that the Head Assistant Magistrate had no jurisdiction to try the case, he having a distinct local jurisdiction which did not include the town where the offence was committed. It appeared that the Head Assistant Magistrate had received general instructions from the Magistrate of the district, as a temporary arrangement, to take up criminal cases arising within the limits of the said term, which was not within his division,—*Held*, upon these facts, that the Head Assistant Magistrate had no jurisdiction. 6 Mad. Rep., Rul. XLIII.

A village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the village Magistrate in the course of a trial under Section 10, Regulation XI of 1816. 5 Mad. Rep., Rul. XXXIII.

The Sub-Magistrate issued an order to two persons directing them to remove a certain embankment, whereby the adjacent lands of the complainant were in danger of being flooded. *Held* that the act of the defendant was not an act which could be prohibited by the Sub-Magistrate under Section 62 of the Code of Criminal Procedure. 5 Mad. Rep., Rul. XIX.

The Assistant Magistrate, on a review of the proceedings of the Subordinate Magistrate, passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under Section 132A of the Criminal Procedure Code.

Held that the orders of the Assistant Magistrate were made without any jurisdiction. 5 Mad. Rep., Rul. XXII.

A Subordinate Magistrate has no power to dismiss a charge of criminal misappropriation under Section 403 of the Penal Code for non-appearance of the complainant, under Section 259 of the Code of Criminal Procedure. That section only applies to cases which fall within Chapter XV of the Criminal Procedure Code. 4 Mad. Rep., Rul. XLI.

A Subordinate Magistrate has no power under the provisions of the Criminal Procedure Code to take recognizances from a complainant and witnesses to appear on a certain day before a Magistrate of co-ordinate jurisdiction, and recognizances thus taken cannot be forfeited. 4 Mad. Rep., Rul. XVIII.

A Subordinate Magistrate cannot bind over witnesses by recognizances to appear before himself. The proper course to enforce attendance is by summons, and, if that fails, by warrant. 4 Mad. Rep., Rul. VI.

Orders by Sub-Magistrates in one case directing the removal of a house on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary on the ground that it had been improperly erected upon land required to be kept unoccupied for common purposes, were set aside by the High Court because the Sub-Magistrate acted without jurisdiction. 4 Mad. Rep., Rul. XXXV.

A Subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons, notwithstanding the repeal of Madras Act I of 1863. 4 Mad. Rep., Rul. LII.

Where a Subordinate Magistrate of the 1st class acting without jurisdiction held a trial and acquitted the accused person under Section 255 of the Code of Criminal Procedure,—*Held* that the High Court alone could set aside the finding under Section 404, and that the Magistrate of the District had no power to do so under Section 435 of the Code as amended by Act VIII of 1869. 4 Mad. Rep., Rul. LXI.

A Subordinate Magistrate has no power to order a recognizance executed by a prosecutor before a police-station officer, binding himself to appear before the Subordinate Magistrate to be forfeited on the failure of the prosecutor to appear. 4 Mad. Rep., Rul. XVIII.

(*e*) *Deputy Magistrates.*

The legality or formality of the mode of attachment allowed by a Civil Court is not a matter for a Deputy Magistrate's consideration.

Where a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under Section 424 of the Penal Code, the conviction was set aside. *Queen* v. *Brojo Kishore Dutt*, 8 W. R., Cr., 17.

A Deputy Magistrate restored to an accused money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor.

Held that the order of the Sessions Judge was made without jurisdiction. *Held*, further, that the order of the Deputy Magistrate was one which could not be interfered with by the High Court as a Court of Revision. *Shib Chunder Rai, appellant*, 9 W. R., Cr., 57.

A Deputy Magistrate has no jurisdiction in the case of an offence coming under Section 458 of the Penal Code. *Queen* v. *Shadry*, 1 W. R., Cr., 34.

Where a charge was preferred before a Deputy Magistrate against certain persons of having come armed with swords and with large retinue and torches, and of having entered the complainant's house by night and carried off thence a large amount of property, the Deputy Magistrate on the evidence convicted the parties of house-trespass under Section 448 of the Penal Code. The Sessions Judge thought that the offences charged, if proved, amounted to housebreaking by night, or to some other offence within the jurisdiction of the Court of Sessions, and asked whether he could direct a commitment.

Held that the Deputy Magistrate had neither convicted nor discharged any person of an offence not triable by him; that he had jurisdiction to try the offence charged; and that the sentence passed was within his competency. *Pakhee Singh and Bajnath Singh*, 6 W. R., Cr., 70.

A Deputy Magistrate has no jurisdiction under Section 320 of the Code of Criminal Procedure to order a ditch which was once a pathway, but afterwards filled up, to be opened out, and a wall to be pulled down, which had been built upon it before any complaint was made about filling up the ditch.

Even if he had jurisdiction, no such order should be passed without legal proof that the ditch and pathway had been open to the use of the public and of the prosecutor. *Sreemunto Dulion* v. *Ramchand Aduck*, 5 W. R., Cr., 57.

A Deputy Magistrate cannot try a case which includes a complaint of wrongful confinement and extortion, but should follow the rule laid down in Section 276 of the Code of Criminal Procedure. *Queen* v. *Shamsoondur Ghosal*, 3 W. R., Cr., 28.

A Magistrate may direct a Deputy Magistrate, vested with the full powers of a Magistrate, to pass proper orders in a case of disputed possession of land decided by him under Section 318, Code of Criminal Procedure, but he cannot withdraw the case from the file of the Deputy Magistrate, and, instituting a fresh case, dispose of it himself. *Queen* v. *Juggobundoo Sircar and John Stevenson*, 3 W. R., Cr., 53.

A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction, under Section 29, Act V of 1861, to fine police officers for violation of duty. *Anonymous*, 4 W. R., Cr., 2.

Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order, and replace the case on his own file. *The Queen* v. *Chunder Shekur Roy*, 12 W. R., Cr., 18.

A Deputy Magistrate has no jurisdiction to try and convict, as for theft, persons whose offence is in reality that of dacoity. He can only commit them to the Sessions. *Shumbhoo Roy* v. *Ajail Aheer and others*, 6 W. R., Cr., 49.

The jurisdiction of a Deputy Magistrate competent to try the offence charged is not affected by the previous conviction of the prisoner. *In re Sheikh Boolluck*, 5 W. R., Cr., 53.

S. T. brought a charge of theft against B. before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a Police enquiry. The Police Superintendent reported that in his opinion the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the Police proceedings. The Magistrate recorded the following order: "The case has been dismissed, and the accused, Mrs. B., has received permission to prosecute the woman S. T. for false charge; the present petition may be put in in defence in that case." *Held* that the order of the Magistrate must be quashed, because he had no jurisdiction, the case having been made over to the Deputy Magistrate, because the order above was not a judicial dismissal of the case. The case remanded for the trial of the original charge, as brought by S. T. *Shanto Teorni* v. *Belilias*, 3 B. L. R., Ap., 151; S. C., 12 W. R., Cr., 53.

A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVII of 1850, to an action for damages if the prisoners are eventually acquitted. By Section 22 of the Code of Criminal Procedure, a Magistrate may, by a written order, from time to time adjourn an enquiry for a period not exceeding fifteen days. *Queen* v. *Shahon and another*, 11 W. R., Cr., 19.

A Magistrate has no power, under Section 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate, having only the powers of a subordinate Magistrate of the second class. *Gobind Chundra Biswas* v. *Hem Chundra Barder*, 6 B. L. R., Ap., 115.

A Deputy Magistrate should adjudicate on charges of criminal trespass, unlawful assembly, and mischief, instead of referring the case to the Magistrate.

A Deputy Magistrate vested with the powers of a Subordinate Magistrate of the second class cannot institute proceedings under Section 318 of the Criminal Procedure Code. *Queen* v. *Ootum Mal*, 2 W. R., Cr., 2.

A Deputy Magistrate cannot commit a person for forgery under Section 170 of the Code of Criminal Procedure, when the Civil Court has sanctioned the prisoner's committal under Section 169, unless with the express sanction of that Court. *Queen* v. *Dwarkanath Bose*, 2 W. R., Cr., 31.

9.—Duties of Criminal Judges.

When a Judge differs from the Jury, he should pass such a sentence as he would have passed had he agreed with the Jury. *Queen* v. *Sheikh Golam Mustuffa*, 3 W. R., Cr., 29.

If personal property of which a complainant has been forcibly or illegally deprived comes into the Magistrate's hands, he may order its restoration to its owner, otherwise the complainant must seek to recover it or its value through the Civil Court. *Ramjeebun Doobey* v. *Luchmonee Dabea*, W. R., 1864, Cr., 5.

A. charged B. before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the Police, and reported to be false. The Magistrate, without recording the complaint under Section 66 of the Code of Criminal Procedure, sent for the Police papers, and under Section 180 of the same Code dismissed the case. *Held* that the proceedings were illegal; that the Magistrate was bound, under Section 66 of the Code of Criminal Procedure, to record the examination of the complainant, before he could, under Section 180, dismiss the complaint. *Dulali Bewa* v. *Bhuban Shaha*, 3 B. L. R., A. Cr., 53.

Under Section 66 of the Code of Criminal Procedure, the examination of the prosecutor should be

reduced to writing, and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under Section 273 of the Code of Criminal Procedure, refer the case to a Deputy Magistrate for trial. Sections 426 and 439 do not apply to a case where the prosecution is not commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. *The Queen* v. *Mohim Chundra Chuckerbutty*, 3 B. L. R., A. Cr., 67; S. C., 12 W. R., Cr., 77.

A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by Section 205 of the Code of Criminal Procedure. The Sessions Judge therefore refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter.

Held that the examination of the prisoners was inadmissible in evidence; that it being wholly within the discretion of the Judge, under Section 366, to say whether or not he should postpone the trial, or summon any witness to give his evidence, the High Court, as a Court of Revision, would not interfere or order a new trial. *The Queen* v. *Radha Jana*, 3 B. L. R., A. Cr., 59; S. C., 12 W. R., Cr., 44.

Under Section 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. *The Queen* v. *Mookun*, 12 W. R., Cr., 22.

A conviction and sentence for criminal breach of trust as a public servant reversed, owing to irregularities in the preliminary enquiries and irregular procedure as to the examination of the prisoner in the Court of Session. *Reg.* v. *Deaz*, 3 Bom. Rep., C. A., 51.

Section 373, Code of Criminal Procedure, only empowers a superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a Police Officer, but not cases where he himself takes cognizance of an offence. *Bhugoban Chunder Poddar* v. *Mohun Chunder Chuckerbutty*, 12 W. R., Cr., 49.

The High Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings. *Queen* v. *Bipro Dass*, 8 W. R., Cr., 45.

When the examination of the prisoner by the Magistrate has not been recorded in full so as to include the questions as required by Section 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session, under Section 366, without further proof.

When the examination would either alone or with other evidence be sufficient for the conviction of the accused, the proper course is to remand the case to the Court of Session, in order that proof may be taken of the examination.

When the evidence, exclusive of the inadmissible examination, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case, and the admission of such an examination by the Court of Session does not invalidate the trial and conviction under Sections 426 and 439 of the Code. *Reg.* v. *Timini observed upon. Reg.* v. *Kalla Lakhmaji*, 2 Bom. Rep., 479.

A Court has power to send a case for investigation to a Magistrate under Section 171 of the Criminal Procedure Code, where no particular individual has as yet been accused. *Essan Chunder Dutt* v. *Prannath Chowdhry*, W. R., F. B., 171.

The jurisdiction of the Foujdary Court is confined to cases of possession, and it is beyond its province to enquire into and ascertain titles to landed property. *Maharajah Moheshur Singh* v. *The Government of India*, 3 W. R., P. C., 45.

A Collector who entertains a charge, under Section 168 of the Code of Criminal Procedure, of an offence against any Court or public servant should not try the case himself as Magistrate, nor, unless under very exceptional circumstances, give evidence as a witness before himself as Magistrate. *Nehal Mahtee. prisoner*, 9 W. R., Cr., 13.

A Collector trying a suit under Act X of 1859 has authority to commit to the Sessions Judge. *Queen* v. *Bunsee Singh*, 1 W. R., Cr., 47.

Case of a conviction under Section 185 of the Penal Code, on a charge made by a Magistrate and Collector, without signing his order as Collector. *Queen* v. *Gooroochurn Mozoomdar*, 2 W. R., Cr., 52.

Magistrates should not take up judicial work on Sundays. *Grijamonee* v. *Ishenchunder*, W. R., 1864, Cr., 2.

When a prisoner is on his trial by a Jury upon a charge of murder, it is the duty of the Judge to point out to the Jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the Jury to the evidence, and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty.

Where the provisions of Section 379 of the Code of Criminal Procedure were neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. *Elahi Buksh's case* (5 W. R., Cr., 80) *considered; Queen* v. *Shamshere Beg*, 9 W. R., Cr., 51.

In charging a Jury on the point of provocation in a case of culpable homicide, a Judge should tell the Jury that, to bring the case within the exception to Section 300, Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not wilfully occasioned by the prisoner as an excuse for doing harm. *Queen* v. *Gunesh Lushkar and others*, 9 W. R., Cr., 72.

Conviction and sentence set aside (Glover, J., dissenting) as to two of the prisoners on the ground that there was a misdirection to the Jury, because the Judge in summing up omitted to advise the Jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in

law. *Queen* v. *Nawab Jan and others*, 8 W. R., 19.

The Magistrate in his grounds of committal, and the Sessions Judge in his conviction, should specifically note, with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported.

In a preliminary enquiry before a Magistrate, the evidence should be sent in as found, and not kept by the police till they have made it all complete. *Queen* v. *Kodai Kahar*, 5 W. R., Cr., 6.

If a Magistrate enquiring into a case of apparent injustice and oppression brought before him find it to be of a civil nature, he must stop the proceedings, and not attempt to adjudicate the matter. *Queen* v. *Zemindar of Colgong*, 1 W. R., Cr., 12.

Held that, when the Judge convicts on the charge of culpable homicide not amounting to murder, he should record under which of the Exceptions in Section 300 of Indian Penal Code the case falls. *Held* also that this Court was precluded under Section 426, Act XXV of 1861, from altering or reversing the sentence passed by the Sessions Court on account of error of procedure when the prisoner was not substantially prejudiced by such error, and has not been sentenced to a more severe punishment than is awardable for the offence of which he ought properly to have been convicted. *Government* v. *Kalika Misser*, 1 Agra Rep., Cr., 3.

Where the Judge at Sessions sentenced a prisoner to rigorous imprisonment for a crime punishable only with simple imprisonment,—*Held* that this was an error which might be reviewed on the Advocate-General's certificate under the Charter of 1865, Section 26. *R.* v. *Yed Ali Khan*, 1 Ind. Jur., N. S., 424.

The error of a Deputy Magistrate in proceeding by warrant, instead of by summons, furnishes no ground for quashing his proceeding. *Aneef Putney* v. *Ramsooder Chuckerbutty*, 1 W. R., Cr., 16.

A Magistrate is not authorized to dismiss a case because he finds, in course of investigation, that the facts disclose an offence other than, or in addition to, that complained of; but is bound to adjudicate on the original charge. *Degumber Paul* v. *Kallydoss Dutt*, 8 W. R., Cr., 682.

A discharge by the Magistrate under Section 250 of the Code of Criminal Procedure is not final, like an acquittal under Section 255, and the Sessions Judge, under Section 435, may order the accused to be put upon his trial notwithstanding his discharge by the Magistrate. *Shoodun Mundle*, 5 W. R., Cr., 58.

A Magistrate ought not to discharge an accused without taking the evidence of the witnesses for the prosecution named in the petition of complaint. *Dino Nath Gope* v. *Saroda Mookopardhya and others*, 7 W. R., Cr., 47.

The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken, and therefore could not sustain a charge. *The Queen* v. *Rajkissen Mitter*, 1 B. L. R., A. Cr., 37.

A Magistrate has a discretion, under Section 67 of the Criminal Procedure Code, to dismiss a complaint at once, and is under no obligation to go further. *Batool Nashye* v. *Bhugloo Chowkeedar and others*, 10 W. R., Cr., 50.

A Magistrate may dismiss a complaint, under the provisions of Section 67 of the Code of Criminal Procedure, before issuing a summons for the attendance of the accused; but when all the parties are in attendance he is bound to follow the procedure laid down in Sections 265 and 266, and cannot dismiss the complaint without hearing the evidence. *Beelash* v. *Makroo*, 10 W. R., Cr., 61; 2 B. L. R., S. N., 15.

A Magistrate cannot dismiss a complaint without first examining the complainant. An enquiry by the police into complaints falling under Chapter XIV of the Code of Criminal Procedure is not warranted by law. *Queen* v. *Harrakchand Nowlaka and others*, 8 W. R., Cr., 12.

A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled, and the proper procedure is observed. He may recall an order which he finds to be wrong, and substitute any other which he may think right under the law. *Kalidass Bhuttacharjee* v. *Mohendro Chatterjee*, 12 W. R., Cr., 40.

A conviction and sentence by a Magistrate, F.P., under the Railway Act, reversed; there being no complaint made before the Magistrate, as required by the Code of Criminal Procedure. *Reg.* v. *Larkins*, 4 Bom. Rep., Cr., 4.

Where a Civil Court makes over a case to a Magistrate for investigation, the Magistrate ought to examine the complainant and reduce the examination into writing, which should be signed by the Magistrate and the complainant. *Bhugoban Chunder Podder* v. *Mohun Chunder Chuckerbutty*, 12 W. R., Cr., 49.

Where a complaint is preferred before a Magistrate, and the witnesses named by the complainant are summoned and attend, but the complainant is absent, a Magistrate may, if he thinks it unnecessary to carry on the enquiry in the absence of the complainant, discharge the accused. *Queen* v. *Dassoo Manjee*, 11 W. R., Cr., 39.

Where a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused. *Queen* v. *Ram Doss Boistub*, 11 W. R., Cr., 35.

Procedure by Magistrate before declaring a forfeiture of the property of an absconded offender. *Sheodyal Singh* v. *Girban Singh*, 6 W. R., Cr., 79.

Before criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that after being recorded it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate, following a certificate to be given under his own hand. *Queen* v. *Mussamut Neruni and Moniroodeen*, 7 W. R., Cr., 49.

A Sessions Judge should designate accused persons

by name and not by number. *Queen* v. *Bidadhur Biswas and others*, 7 W. R., Cr., 53.

A Deputy Magistrate is bound to examine the accused under Section 266 of the Code of Criminal Procedure, in answer to the charge brought against hm. *Queen* v. *Bissessur Sein*, 9 W. R., Cr., 62.

It is not illegal for a Magistrate to commit an accused person to the Sessions without examining him or his witnesses.

The Magistrate, when he has prepared the charge, is bound to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. The Magistrate cannot refuse to permit an accused person to attend at the Sessions by Mookhtear. *Queen* v. *Hurnath Roy*, 2 W. R., Cr., 50.

An order of fine quashed as made without the answers of the parties fined being taken to the offence charged. *Queen* v. *Poresh Naryan Roy and others*, 2 W. R., Cr., 58.

When an accused person denies the truth of the complaint made against him, the Magistrate ought, under Section 266, Code of Criminal Procedure, to hear the complainant and his witnesses in support of the complaint, and also the accused and his witnesses. *Ahlad Monee Dossee*, 6 W. R., Cr., 75.

When the default of complainant's witnesses was caused by the Deputy Magistrate shifting his Court to a place different from that named in the summons, —*Held* that it was irregular to throw out the case without giving them a second opportunity of appearing. *Luckhim Molloo* v. *Gooroo Doss Mookerjee*, 5 W. R., Cr., 51.

Column 13 of the Calendar is not meant for the Magistrate's opinion as to the value of the evidence for the defence, but for an abstract of the nature of that evidence, whether to prove *alibi*, character, or any other plea. *Queen* v. *Ajail Aheer and others*, 7 W. R., Cr., 24.

Section 186 of the Code of Criminal Procedure refers to cases under Chapter XII, which are triable by the Court of Sessions, and not to cases under Chapter XV, which are triable by a Magistrate. *Boidonath Bania* v. *Bhedoo Doss*, 9 W. R., Cr., 3.

A Sessions Judge must form his opinion on the evidence taken before him, and cannot act on depositions recorded before his predecessor. If the Judge who recorded some of the depositions of the witnesses on a Sessions trial is obliged to leave the district before he can conclude the trial, his successor must recommence the trial *de novo*. *Queen* v. *Charroo*, W. R., 1864, Cr., 32.

A Magistrate cannot decide the case of a prosecutor without examining his witnesses. If, upon such trial, he finds that the prosecutor has no right to bring a criminal charge, he should acquit the prisoner on that ground. *Queen* v. *Sreenath Mookhopadhya and others*, 7 W. R., Cr., 45.

When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the Calendar. *Reg.* v. *Arjoon*, 1 Bom. Rep., 87.

Session Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. 5 Mad. Rep., Rul. XII.

A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused, charged with committing theft, of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. *Queen* v. *Kali Charan Misser*, 7 B. L. R., Ap., 55.

A Magistrate should himself state distinctly what charge an accused person has to meet, and ought not to leave that to his amlah. A person who is called as a witness by the Court cannot be convicted and fined under Section 283 of the Penal Code. *Queen* v. *Jehangeer Buksh Khan*, 16 S. W. R., Cr. R., 43.

Per Glover, J.—Where the Criminal Procedure Code makes it necessary for a Magistrate before dismissing a charge to examine both the complainant and his witnesses, it supposes that there has been already a *primâ-facie* case made out; and where the complainant makes out such a *primâ-facie* case the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but in a case where there is clearly no *primâ-facie* case established the Magistrate is justified in acting under Section 67 of the Code of Criminal Procedure, and in dismissing the case at once. *Isser Chunder Ghose* v. *Peari Mohim Paulit*, 16 S. W. R., Cr. R., 39.

Where a charge of theft was reported by the police to be false,—*Held* that the Magistrate ought first to have enquired into the charge of theft, and passed some orders upon it before proceeding under Section 211 of the Penal Code to enquire into the offence of false charge. *Bishoo Burik*, 16 S. W. R., Cr. R., 77.

Where a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground. *Kopil Nath Sahi* v. *Koneeram*, 14 S. W. R., Cr. R., 3.

The Queen *v.* Chunder Secker Roy—ruling that a Court before which an offence is committed under Chapter X of the Penal Code cannot try the case itself—followed, notwithstanding the argument of the Sessions Judge in this case that that ruling should apply only to certain cases under Chapter X. *Chutoorthooj Bharthee* v. *Macnaughten*, 15 S. W. R., Cr. R., 2.

Section 207 gives no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list, under Section 227, when the prisoners reserve their defence for the Court of Sessions; but under Section 228 he is bound to summon them to give evidence before the Court of Session.

The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon. *In the matter of Mahesh Chunder Bonnerjee; Queen* v. *Purna Chundra Banerjee; Queen* v. *Kali Sirkar*, 4 B. L. R., Ap., 1; 13 S. W. R., Cr. R., 1.

When a Magistrate, under Section 308, Criminal Procedure Code, has ordered the suppression of a trade or occupation as a nuisance and injurious to the health of the community, the High Court will not interfere, unless they find either that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or that the cause shown was such

as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper. The Court take the findings of fact by the Magistrate to be correct, unless they see that there is not on the record any evidence to warrant such findings. *Municipal Commissioners for the Suburbs of Calcutta* v. *Amanut Ali*, 7 B. L. R., 516.

Where a Deputy Magistrate, without taking evidence, made an order under Section 62 of the Code of Criminal Procedure, changing a day on which a hât used to be held, and subsequently, on taking evidence, found that his first order was wrong and passed without jurisdiction, he was held to have acted properly in recalling his first order. *Mohun Sirdar* v. *Alhaj Churn Mookopydha*, 13 S. W. R., Cr. R., 72.

The order of the High Court regulating the procedure to be followed by Magistrates in the submission of records to the Appellate Court amended by substituting for the last part of it the words: "When the order is made by a Sub-Magistrate the copy submitted must be forwarded by the Magistrate of the Division, if any, appointed to hear appeals from such Sub-Magistrate, without more delay than is necessary for the purpose of revision to the Magistrate of the District, who will, after perusal, return the same to the Magistrate of the Division." 6 Mad. Rep., Rul. XXXV.

When a Civil or Criminal Court sends a case for investigation to a Magistrate, under Section 171 of the Code of Criminal Procedure, the Magistrate to whom the case is sent must himself hold the investigation. 6 Mad. Rep., Rul. II.

If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant.

The law vests him with a discretion, which discretion it is incumbent on him to exercise.

At the same time the Magistrate should always take the examination of the complainant. *Ramchurn and another*, 3 N. W. R., 272.

Where a case was referred by a second-class Subordinate Magistrate to the Divisional Officer, under Section 277 of the Code of Criminal Procedure, the High Court were of opinion that the Divisional Officer was bound to form his own judgment and pass sentence on the case. 5 Mad. Rep., Rul. XIII.

A Magistrate is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss the complaint, which is given to him by Section 67 of the Code of Criminal Procedure. *Rangaswanie Gounden* v. *Sabopathy Goundon*, 4 Mad. Rep., 162.

10.—Liability of Criminal Judges.

Held that neither Act XVIII of 1850, nor Sections 68 and 212 of the Code of Criminal Procedure, protect a Magistrate who has failed to act reasonably, carefully, and circumspectly in the discharge of his duties. *Vinayak Divokar* v. *Bait Itcha*, 3 Bom. Rep., A. C., 36.

Act XVIII of 1850 does not protect judicial officers from being sued in a Civil Court, except in respect of acts done by them in good faith in the discharge of their judicial functions. When a plaint is presented to a Judge against such an officer, which complains of a wrongful act on the part of that officer, the Judge is bound to receive the plaint, and to leave it to the defendant to plead Act XVIII of 1850. *Venkat Shrinivas* v. *Armstrong*, 3 Bom. Rep., A. C., 47.

A Magistrate who makes an illegal order, which purports to be made under Section 308 of Act XXV of 1861, but is not made in accordance with the provisions of that section, is liable to be sued in the Civil Court in respect of such order, and to be restrained by injunction from carrying it into effect. *Ashburner* v. *Keshaevalad Yaku Patil et al.*, 4 Bom. Rep., A. C. J., 150.

The High Court cannot interfere under Section 434 of the Code of Criminal Procedure (*Query*, can it interfere under Section 404 of that Code?) in the case of a conviction before a Justice of the Peace under the 53 Geo. III., c. 155, s. 105. Such a case falls under Section 410 of the Code of Criminal Procedure. *Oriental Gas Co.* v. *O. A. Guise*, 14 S. W. R., Cr. R., 79.

The plaintiff sued a Magistrate for damage occasioned to him by the cutting of his bund at the Magistrate's order. The Magistrate raised the defence that he was protected by Act XVIII of 1850 for all acts done by him *bonâ fide* in his magisterial capacity.

Held, on the facts, that the Magistrate was liable. Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of unless he in arriving at that belief acted reasonably, circumspectly, and carefully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misrepresentation were an which might have been put upon the law by a reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. Neither Section 62 nor Chapter XX of the Criminal Procedure Code authorizes a Magistrate to dispose of the property of others at his mere will and pleasure, or without his having distinct and legal grounds for the course he takes. When a Magistrate violates the plain language of the law, and the very first principles of judicial enquiry, his proceedings presumably are characterized by want of care. *Turaknath Mookhopadhya* v. *The Collector of Hoogly*, 4 B. L. R., A. C., 37; 13 S. W. R., C. R., 13.

The plaintiff sued a Magistrate for damages occasioned to him by the cutting of his bund at the Magistrate's order. The lower Appellate Court found as a fact that the Magistrate proceeded under Chapter XX of the Criminal Procedure Code; that he called on the plaintiff to show cause, and did hold an enquiry through the police. The High Court, in special appeal, accepting the fact as found by the lower Court,—*Held* that the Magistrate was acting judicially and with jurisdiction (though under the circumstances disclosed carelessly and irregularly), and was therefore protected from action for damages.

A proceeding under Chapter XX of the Criminal

Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it if he does not first call on the person with whose property he proposes to interfere to appear and show cause. *Collector of Hooghly and Iswur Chundra Mitter* v. *Tarak Nath Mukhopadhya*, 7 B. L. R., 449; and 16 S. W. R., C. R., 63.

Suit to recover damages from defendant, Deputy Magistrate of the Zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under Section 311 of the Criminal Procedure Code, directing the demolition of the plaintiff's house, as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with Sections 308, 310, and 311 of the Criminal Procedure Code, and that having acted in good faith in discharge of his duties as a Magistrate he was protected by Act XVIII of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within Section 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held upon the first issue that the defendant had no jurisdiction to order the removal of the house; upon the second issue that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was therefore not protected by Act XVIII of 1850; upon the third issue he assessed the damages at Rs. 500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that even if he had acted without jurisdiction, he acted, believing at the time, with good faith that he had jurisdiction, and was therefore entitled to the protection given by Act XVIII of 1850. *Held*, upon the first point, that an entire absence of jurisdiction to make the order had been shown; upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must therefore be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of. That, however, these provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifications, and consequently that the suit should be dismissed. *R. Ragunáda Ran* v. *Nathumani Thathamáyyangár*, 6 Mad. Rep., 423.

The first defendant, acting as a Magistrate, ordered the removal of the plaintiff's house under Section 308 of the Criminal Procedure Code, upon the ground that it was a nuisance and obstructive to the public thoroughfare. *Held*, that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal, but the first defendant having acted in his judicial capacity, and in good faith, believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him. *Seshayiyangar* v. *Rughunatha Ran*, 5 Mad. Rep., 345.

II.—Review and Revision.

The High Court cannot entertain an application to review a judgment passed by it on appeal in a criminal case. No subordinate Criminal Court has the power to review its own judgment. *Queen* v. *Godai Raout*, 5 W. R., Cr., 61.

Several important distinctions pointed out between murder and culpable homicide. Sections 407 and 419 of the Code of Criminal Procedure are not applicable to a case which the High Court, as a Court of Revision, thinks it right to take up.

An appeal is a matter of right in all cases in which an appeal is given, but a revision is in the discretion of the Court. An appeal is for matter of fact as well as for matter of law. A revision is only on matter of law.

The High Court as a Court of Revision can interfere with a judgment of acquittal or conviction, and can also enhance punishment. The High Court can act as a Court of Revision after it has acted as a Court of Appeal, in order to correct an error in law which could not be set right on appeal. The High Court, as a Court of Revision, cannot reverse the finding of a Jury.

When several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others are not involved in the guilt, unless the act done was in some manner in furtherance of the common intention. *Queen* v. *Gora Chand Gossee*, 5 W. R., Cr., 45.

Held that the High Court cannot interfere, under Section 434 of the Code of Criminal Procedure, in a case in which a Magistrate dismisses a complaint under Section 67 of that Code. *Fokto Shah, prisoner*, 10 W. R., Cr., 49.

A re-trial in the absence of the accused is a nullity. *Queen* v. *Madaree, chowkeedar*, 3 W. R., Cr., 4.

A formal trial set aside on the ground of want of jurisdiction and illegality is in fact no trial at all, and the result cannot be pleaded as *autrefois acquit*. *Queen* v. *Muthoorapershad Panday*, 2 W. R., Cr., 10,

In a case referred by a District Magistrate under Section 427 of the Criminal Procedure Code, on the ground that the charge should have been under Section 324 of the Penal Code—an offence not within the cognizance of a Second Class Subordinate Magistrate, and not under Section 323,—the Court passed no order, and remarked that the case should not have been referred under Section 427, which applies only to the Court of Session acting in appeal from a Court subordinate to it. *Reg.* v. *Nabaji Valad Vithoji*, 4 Bom. Rep., Cr., 2.

On a reference by a District Magistrate under Section 434 of the Criminal Procedure Code, where the conviction by a Subordinate Magistrate was for cheating when it should have been for criminal breach of trust, for which the punishment awarded was a legal one,—*Held* that there was no occasion for the Court to interfere with the conviction or

sentence. *Reg.* v. *Babaji bin Bhâhotal*, 4 Bom. Rep., Cr., 16.

On reference by a Sessions Judge in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information for which the punishment awarded was legal,—*Held* that the Court, under Section 426 of the Criminal Procedure Code, ought not to interfere with the conviction of sentence. *Reg.* v. *Roghoji bin Kanoji*, 3 Bom. Rep., C. A., 42.

The Court can only interfere under Section 434, Code of Criminal Procedure, when there is some illegality in the proceedings of a lower Court. *Queen* v. *Joy Kishen Lall*, 12 W. R., Cr., 46.

Section 434 of the Code of Criminal Procedure contemplates cases where the sentence or order is contrary to law. *Queen* v. *Bindu and others*, 8 W. R., Cr., 60.

A Sessions Judge, in referring a case under Section 434 of the Code of Criminal Procedure, should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor. *Batool Nushye* v. *Bhugloo Chowkeedar and others*, 10 W. R., Cr., 50.

Held that a Subordinate Magistrate acted correctly, under Section 277 of the Code of Criminal Procedure, in referring a case, not to the Magistrate of the District, but to the Assistant Magistrate in charge of the subdivision to which he was attached. *Case of Nidree Telhinee*, 11 W. R., Cr., 7.

The High Court has no power to set aside an order of a Magistrate acquitting an accused, nor can a Sessions Judge order the Magistrate to commit an accused whom the Magistrate has acquitted on a charge which is triable by the Magistrate, such as grievous hurt (Act VIII of 1866). *Queen* v. *Joyram Aheer*, 11 W. R., Cr., 14.

The High Court refused to interfere with an order of a Magistrate, by which he dismissed a complaint of theft, because it appeared to him, after making enquiries from the police before whom the complaint was in the first instance brought, that the complaint was not one that the Criminal Court should entertain, but in respect to which a suit in the Civil Court should be brought. *Queen* v. *Russeek Monee*, 11 W. R., Cr., 54.

In a referred case, and not an appeal, if the High Court considers a conviction wrong, the only course open to it is to annul the conviction, and order a new trial. *Queen* v. *Sheikh Solim*, 5 W. R., Cr., 41.

The Code of Criminal Procedure contains no provision for a review of an order passed in a criminal case. *Reg.* v. *Mehtarji Gopâlji et al.*, 7 Bom. Rep., Cr., 67.

The Court has no power to review its judgment in criminal cases, as ruled in Full Bench Judgment, 5 W. R., Cr., Rul. p. 61. *Khrishno Churn and Moheram of Assam*, 17 S. W. R., Cr. R., 2.

On reference by a District Magistrate, a sentence passed by a Magistrate, F. P., in a case submitted to him by a Second Class Subordinate Magistrate, under Section 277 of the Criminal Procedure Code, annulled, as the Magistrate of the district alone had power to dispose of cases under that section. *Reg.* v. *Kuberio Ratno*, 4 Bom. Rep., Cr., 8.

In a case referred by a District Magistrate under Section 434 of Criminal Procedure Code, on the ground that the sentence was illegal, because the charge should have been under Section 324 of the Penal Code, for causing hurt by means of a heated substance, an offence which the 2nd Class Subordinate Magistrate had no jurisdiction to try; and not under Section 323, for causing hurt, of which offence the accused had been convicted, the Court passed no order, as it did not think it right, under the circumstances of the case, to direct the re-trial of the accused on the proper charge. *Reg.* v. *Ambakon Girsoji*, 4 Bom. Rep., Cr., 1.

In a case referred by a District Magistrate, on the ground that the accused had been convicted, under Section 403 of the Penal Code, of dishonest misappropriation of property; whereas the charge should have been, under Section 406, of criminal breach of trust, an offence not within the cognizance of the 2nd Class Subordinate Magistrate who passed the sentence, the Court annulled the conviction and sentence, and directed the case to be tried before a proper Court. *Reg.* v. *Ganu Valad Ramchandra*, 4 Bom. Rep., Cr., 3.

12.—Record.

In a case falling under Chapter XV., Code of Criminal Procedure, the statement of the complainant, the evidence of the witnesses, and the reply of the accused should be recorded. *Queen* v. *Nijanund*, 3 W. R., Cr., 60.

The High Court will not order a copy of the Judge's notes of the evidence and proceedings upon conviction in a criminal case to be furnished to the prisoner, on the ground of alleged probable hardship. A fair *primâ-facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear before the Court will call for or direct a return of the record of the proceedings. *Queen* v. *Subbayya Gaundan*, 1 Mad. Rep., 138.

Documents which form the basis of a charge against a prisoner should not be buried among a mass of papers in the nuthee, but should be put either in the calendar or by themselves in an envelope or in some conspicuous part of the record where they would be seen at once. *Queen* v. *Ruttion Meah*, 8 W. R., Cr., 57.

The deposition of a person murdered, taken before a Magistrate, and the medical evidence, should be annexed to the Sessions record *Chintamonee Nye, petitioner*, 11 W. R., Cr., 2.

In all forgery cases sent up in appeal the particular paper or papers said to have been tampered with should be readily accessible, and should be put with the Sessions record, instead of being buried in the record of the committing officer. *Queen* v. *Broond Shahoo*, alias *Chundra Chatterjee*, 7 W. R., Cr., 112.

The power granted to the Civil Courts of calling for and inspecting the records of a previous trial is one that ought to be exercised with the greatest caution, and does not extend to criminal proceedings. *Queen* v. *Jumdun Singh*, 12 W. R., Cr., 73.

The principal documents in a Sessions case should be put in a prominent place on the record,

and not buried in a mass of papers. *Queen* v. *Sheikh Bheekun*, 8 W. R., Cr., 30.

In a case of false evidence the record of the case in which the evidence was given should always be sent up. *Queen* v. *Unno Patoonee*, 3 W. R., Cr., 15.

On a reference by a Sessions Judge, conviction and sentence by a Magistrate, F. P., reversed, as the record of the case did not disclose that the accused had committed any offence. *Reg.* v. *Ganu Bin Krishna Guran*, 4 Bom. Rep., Cr., 25.

A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are convicted for trial. *Queen* v. *Mahomed Ali*, 13 S. W. R., Cr. R., 50.

A Sessions nuthee should contain the record of the defence set up by the prisoners in the Sessions Court. Points out how such record is to be made up with reference to Sections 372, 373, and 374 of the Code of Criminal Procedure. *Queen* v. *Gopal Hujjam*, 15 S. W. R., Cr. R., 16.

The Magistrate's record of the proceedings prior to commitment should always be forwarded to the High Court. *Queen* v. *Kalim Ali*, 15 S. W. R., Cr. R., 67.

There ought to be only one Sessions record, which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused. *Queen* v. *Bilast Mosulmany*, 14 S. W. R., Cr. R., 46.

Where a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. *Queen* v. *Poorno Chunder Doss*, 8 W. R., Cr., 59.

A Magistrate is bound to file with the record any explanation that a prisoner wishes to make. *Queen* v. *Kisto Chunder Ghose*, 2 W. R., Cr., 58.

13.—Jury.

Held that it was not necessary in a trial by Jury before a Court of Session under the provisions of the Code of Criminal Procedure that the jurors should be sworn. *Reg.* v. *Lakshumon Ram Chundra and others*, 3 Bom. Rep., C. A., 56.

The drawing up of the list of Special Jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere. *In the matter of Shamchund Mitter*, 1 Ind. Jur., N. S., 106.

Whether or not a child was competent to give evidence within the meaning of Section 14, Act II of 1855, was a question for the Judge to decide, and not for the Jury, the amount of credit to be given to the statement being all that fell within the province of the Jury. *Queen* v. *Hosseinee*, 8 W. R., Cr., 60.

Section 314 of the Code of Criminal Procedure authorizes the Magistrate to take immediate measures to prevent imminent danger pending the enquiry of a Jury, but not where no Jury has been appointed, and after the danger has passed away. *Queen* v. *Rajah Indoobhooshun Deb Roy*, 1 W. R., Cr., 8.

If a Sessions Judge thinks that a Jury is wrong in convicting a prisoner of culpable homicide, and not of murder, though he cannot interfere with the finding, he may sentence the prisoner to transportation for life instead of to ten years' transportation. *Munceram Chung, appellant*, 1 W. R., Cr., 19.

In a case tried by Jury, unless the parties who appeal point out in what respect the law has been contravened the appeal should be rejected. *Queen* v. *Gopaul Bhereewalla*, 1 W. R., Cr., 21.

Prisoner convicted of offering a bribe to a Juryman and fined Rs. 1000, or in default of payment, sentenced to two months' rigorous imprisonment. Appeal rejected. *Queen* v. *Banool Chunder Biswas*, 1 W. R., Cr., 36.

When a Jury is not unanimous, the Judge is not bound to summon a new Jury. *Queen* v. *Urjoon Biswas*, 1 W. R., Cr., 41.

The finding of a Jury that although the accused killed the deceased the crime was not murder because the accused had no object in killing him, is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder. *Queen* v. *Uckoor Ghose*, 1 W. R., Cr., 50.

In a trial for robbery it is competent to the Jury, if they disbelieve the evidence as to the assault, to bring in a verdict of guilty of theft. *Queen* v. *Sakhaut Sheikh*, 2 W. R., Cr., 13.

An offence under Section 91 of the Registration Act ought not to be tried with the assistance of a Jury. Where, however, such offence was tried with the assistance of a Jury, and the verdict of the Jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. *Queen* v. *Abdool Kurrum*, 14 S. W. R., Cr. R., 32.

By the practice of the Supreme Court at Bombay, before the Indian Penal Code came into operation, on a trial for treason or felony, the Jury (as in England) was kept together during the night under the charge of officers of the Court; but on a trial for misdemeanour it was in the discretion of the Judge whether they should be kept together or allowed to return to their homes for the night, the latter being generally done; and after the Code came into operation the practice continued the same, as well in the Supreme Court as subsequently in the High Court, the Judges applying the rule by determining whether the offence under trial would by the old law have been felony or a misdemeanour.

Where the Judge, on a charge under Section 467 of the Indian Penal Code, permitted the Jury to separate on the first day of the trial and before verdict,—*Held* that the exercise of his discretion was not a matter to be reviewed by the High Court under Section 26 of the Letters Patent 1865, there being no error in any point of law, as the offence charged was only a misdemeanour under the law in force before the Indian Penal Code took effect. *Reg.* v. *Dyal Jairaj and others*, 3 Bom. Rep., C. A. ,20.

It is in the province of a Jury to weigh the evidence, whether it is true or false, and to judge of the intention. *Queen* v. *Rookni Kant Mojoomdar*, 3 W. R., Cr., 58.

Privileges given by law to strangers and foreigners with regard to trial by Jury. *Queen* v. *John Londley*, 3 W. R., Cr., 14.

Trial by Jury ceases in a district when the district ceases to belong to a division to which trial by Jury has been extended. *Queen* v. *Khoodeeram*, 8 W. R., Cr., 39.

The Commissioner of Cooch Behar has no power

to hold trial by Jury in the Gowalpara district. *Queen* v. *Bhagidhone Katchari and others*, 8 W. R., Cr., 53.

A Magistrate cannot receive and enforce the award of a Jury under Section 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. A Jury appointed under Section 310 is not properly constituted when only the foreman is appointed by the Magistrate, and the rest of the members by the parties. *Queen* v. *Hargobind Pal*, 7 B. L. R., Ap., 57. And see *Dinonauth Chuckerbutty* v. *Hur Gobind Pal*, 16 S. W. R., Cr. R., 23.

The prisoners were tried under Section 330 of the Penal Code (for voluntarily causing hurt to a girl), and under Section 348 (for wrongfully confining her). Circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well, and of pricking her with thorns. The Jury in their verdict stated that they disbelieved these allegations, and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the Jury whether they convicted on either, and if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and that they convicted them under Section 330. *Held* that the question put by the Judge to the Jury was a proper one, and not one of law. The conviction upheld. Such a case is not governed by the rule of English law as to special verdicts. *The Queen* v. *Hari Prosad Gangooly and others*, 8 B. L. R., 557.

A Jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the Jury at all, as a verdict of guilty cannot under such circumstances be sustained. *Queen* v. *Ruttun Dass and Doorga Dass*, 16 S. W. R., Cr. R., 19.

The allowing of an objection to a Juror coming within the third clause of Section 344 of the Code of Criminal Procedure is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. *Queen* v. *Krisno Churn*, 16 S. W. R., Cr. R., 66.

When the proceedings upon a trial by Jury in the mofussil are consistent with a reasonable construction of that part of the Procedure Code (Chapters XXIII and XXV) where such trial is provided for, the proceedings are good in the absence of any distinct ruling to the contrary, and ought not to be examined by the light of English rules of procedure. The law does not prescribe any specific form in which the Jury are to return their finding, and they are at liberty to deliver it in any form in which they think fit. If that finding is not exhaustive as to the facts in issue which go to make up the charge or charges, it is competent to the Judge, and is indeed his duty, to put such questions to them as shall elicit a complete finding. *Queen* v. *Hurry Prosad Gangooly*, 14 S. W. R., Cr. R., 59.

14.—Direction to Jury.

In charging a Jury in a case of culpable homicide not amounting to murder, a Judge should call upon the Jury to state which description of culpable homicide they consider the accused to have committed; Section 304 of the Penal Code prescribing different punishments for that offence. Where the Judge omitted to require the Jury to do this the High Court held that the conviction was for the lighter description of the offence. *Queen* v. *Ameer Khan*, 12 W. R., Cr., 35.

In reviewing the charge of a Judge to a Jury in the mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole, has given a correct or incorrect direction to the mind of the Jury, and it is not correct to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England. *Queen* v. *Gogaloo and others*, 12 W. R., Cr., 80.

The omission of the Judge in his charge to enter into details regarding the identification of stolen property does not amount to a misdirection to the Jury. *Queen* v. *Madhab Paul and others*, 1 W. R., Cr., 22.

A Judge may give the Jury his opinion of the guilt or innocence of the prisoner, if he shows them clearly that the decision rests with them. *Queen* v. *Abdool Juleel*, W. R., 1864, Cr., 5.

In a case of dacoity the Judge should direct the Jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor. *Queen* v. *Bonomally Ghose*, W. R., 1864, Cr., 8.

When different trials are held at different times and against different prisoners in respect of the same crime, a new charge specifying the particulars required by Circular Order No. 5, dated February 6th, 1863, should be delivered in each case. *Queen* v. *Mahadeo*, W. R., 1864, Cr., 15.

Where O. deposed that he and R. were four days in company at M., and the Judge charged the Jury that if they found that R. was not in company with O. during those four days at M., but was at S., it did not matter where O. was, because it was clear that he could not have been in company with R. at M., and must therefore have given false evidence when he said that he was during those four days in such company at M,—*Held* by the majority of the Court (Seton-Karr, J., dissenting) that there had been no misdirection. *Queen* v. *Ram Monee Sein and another*, 7 W. R., Cr., 105.

A summing up to the Jury in which the Sessions Judge gave no aid to the Jury in the arrangement of the facts which were spoken to by the witnesses, and himself found facts which he should have put to the Jury, was pronounced defective, and a verdict founded thereon was set aside and the prisoner ordered to be released. *Queen* v. *Ram Gopal Dhur*, 10 W. R., Cr., 7.

In a case in which the principal evidence against an accused is the evidence of an approver, a Sessions Judge should carefully warn the Jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon.

Evidence of character and previous conduct of a prisoner being matters of prejudice and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the Jury. *Queen* v. *Bycant Nath Banerjee*, 10 W. R., Cr., 17.

It is the duty of a Judge to state to the Jury

what are the principal points in the evidence, and how they bear for or against the prisoner; in short, to render the Jury every assistance in his power towards coming to a right conclusion. *Queen* v. *Bolakee Koormee*, 6 W. R., Cr., 72.

In charging a Jury, a Sessions Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted. *Queen* v. *Kubun Sheikh and others*, 10 W. R., Cr., 39.

The evidence of a person stating before the Jury upon oath facts which he does not know of his own observation, facts which constitute the substance of the charge against a prisoner, and which the Jury themselves have to enquire into and arrive at as their verdict, ought not to be allowed to go to the Jury, and still less so when the person does not orally depose before the Jury, but his evidence is presented to them in the form of a written deposition. *Queen* v. *Ramgopal Dhur*, 10 W. R., 57.

A Judge is not bound to try a Native Christian with the aid of a Christian jury.

A Judge in directing a Jury should confine himself to a general commentary on the evidence and a statement of the legal offence proved, should such evidence be credited. He should not give a positive opinion as to the guilt or innocence of the accused person. *Bharut Chunder Christian, appellant*, 1 W. R., Cr., 2; *Queen* v. *Gunga Bishen*, 1 W. R., Cr., 26 and 29.

In giving a warning to a Jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the Jury. *Queen* v. *Bustee Khan*, 1 W. R., Cr., 17.

There is no misdirection, in a case of false evidence, in a Judge pointing out to the Jury the contrast between the evidence for the prosecution and the course followed by the prisoner (namely, a simple denial of the charge, coupled with a refusal to examine the witnesses in attendance), so long as the Judge leaves it to the Jury to decide between the opposing statements, and to credit whichever they thought most worthy of belief. *Queen* v. *Seetanath Ghosal*, 2 W. R., Cr., 60.

Though the Sessions Judge ought not to have made any remarks as to what the witnesses for the defence stated themselves to have heard, this slight error was held not to amount to misdirection of the Jury. *Queen* v. *Sheikh Magon*, 5 W. R., Cr., 1.

It is no misdirection for a Judge to tell the Jury that if the prisoner could not prove how he became possessed of certain articles it was their duty to convict him, for the presumption in such a case was legally valid that he knew the property had been unlawfully acquired. *Queen* v. *Narain Bagdee*, 5 W. R., Cr., 3.

The omission of a Judge to point out to the Jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a positive misdirection. In a case where there was some evidence to go to the Jury, and no error in law was committed, the Court cannot interfere. Appeal dismissed. *Queen* v. *Choonee*, 5 W. R., Cr., 13.

The verdict of the Jury was reversed, on the ground of misdirection by the Judicial Commissioner in not having left the cause of death and the prisoner's connection with certain attempts at bribery as questions for the consideration of the Jury. *Queen* v. *Kally Churn Gangooly*, 7 W. R., Cr., 2.

Where a Sessions Judge left the Jury to decide upon the age of a girl who had been kidnapped, merely aiding them with his own opinion in which they expressed their concurrence,—*Held* that there was no misdirection to the Jury. *Queen* v. *Shama Khankee and others*, 7 W. R., Cr., 22.

Where there is no evidence against a prisoner the Judge ought to charge the Jury for an acquittal, and not leave the Jury to say whether the prisoner is guilty or not. *Queen* v. *Greedhary Manjee*, 7 W. R., Cr., 39.

The prisoner retracted his statement when read over to him, and said that he was compelled to make it. The Judge should have charged the Jury not to accept such a statement as a confession. *Queen* v. *Gonesh Koormee*, 4 W. R., Cr., 1.

A conviction founded upon the uncorroborated evidence of one or more accomplices is valid in law. Improper advice given by the Judge to the Jury upon a question of facts, or the omission of the Judge to give that advice which a Judge in the exercise of a sound judicial discretion ought to give the Jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court on appeal or revision in setting aside a verdict of guilty.

The power of setting aside convictions, and ordering new trials for any error or defect in the summing up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. *Elahee Buksh, appellant*, 5 W. R., Cr., 80.

A verdict of guilty of dacoity against certain of the prisoners set aside on the ground of misdirection, the Judge having omitted to point out to the Jury the danger of relying upon the uncorroborated testimony of accomplices. *Queen* v. *Kootub Sheikh and others*, 6 W. R., Cr., 17.

In his charge to the Jury the Judge should draw a distinction between the two classes of culpable homicide mentioned in Section 304 of the Penal Code; and direct them to find specially under which, if either, the prisoner was guilty. *Queen* v. *Kalicharam Dass*, 6 B. L. R., Ap., 86; and 15 S. W. R., Cr. R., 17.

Where a summing up of a Judge to a Jury points out to the Jury the principal features of the evidence as regards both the case of the Crown and the defence of the prisoners, it complies with the requisition of the Code of Criminal Procedure. *Queen* v. *Sheppard*, 13 S. W. R., Cr. R., 23.

A Sessions Judge in summing up is bound to advise a Jury on questions of fact, and may tell the Jury the impression which the evidence has made upon his own mind. *Queen* v. *Dwarkanath Sen*, 13 S. W. R., Cr. R., 34.

On a trial by Jury a Sessions Judge in summing up should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the Jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced, amounts to

such an error in law as would justify a Court of Appeal in setting aside the verdict.

No general rule can be laid down as to when a prisoner is prejudiced by a defective summing up, but in general, if the finding of the Jury in such a case is one that an Appeal Court would set aside if the trial had taken place with the aid of Assessors, the Court will interfere and set the verdict aside.

In capital cases and all cases of a serious or complicated nature, the Judge ought to read over the evidence *in extenso* to the Jury.

The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the committing Magistrate, but whose evidence is dispensed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law.

Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon,—*Held* that the evidence did not require corroboration.

Where a person gave information to a Magistrate and the police of murder having been committed, and subsequently, on the charge having been dismissed, petitioned the Sessions Judge to have the matter reinvestigated,—*Held*, that was not a complaint within the meaning of Section 360 of the Criminal Procedure Code. *Reg.* v. *Faltechand Vastachand*, 5 Bom. Rep., Cr. C., 85.

Held that it was no misdirection on the part of the Judge in not calling the attention of the Jury to Clauses 1 and 2 of Section 100 of the Penal Code, when he particularly called their attention to Clause 6 of that section. *Queen* v. *Mookhtaram Mundle*, 17 S. W. R., Cr. R., 45.

A Judge has every right to draw the attention of the Jury to anything which appears to be a palpable alteration or blot on the face of a document alleged to be forged. *Queen* v. *Kissoree Mohun Dutt*, 17 S. W. R., Cr. R., 58.

A Judge ought not to introduce into his direction to the Jury any question as to recommending a prisoner to mercy, but should leave that entirely to the Jury. *Queen* v. *Dassee Mosulmany*, 14 S. W. R., Cr. R., 46.

Under Section 379 of the Code of Criminal Procedure a Judge should sum up the evidence on both sides before requiring the Jury to deliver their verdict. Under Section 439, however, the High Court thought it unnecessary to set aside a conviction in a case in which this was not done. *Queen* v. *Sitwa*, 14 S. W. R., Cr. R., 66.

Held (Warden, J., *dissentiente*), that the omission of the Sessions Judge to tell the Jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error, and one fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. *Reg.* v. *Shek Miya Salad Dand*, 6 Bom. Rep., Cr. Ca., 10.

15.—Assessors.

Although the Criminal Procedure does not expressly provide for summing up of the evidence in a trial with the aid of Assessors, there is nothing in the Code to prevent a Judge from summing up the evidence to the Assessors. Where one of the two Assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other Assessor concurs with him, it cannot be said that the Assessors have given no reason for their opinion. The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the Queen, under Section 121 of the Indian Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason ; and therefore the provisions of the Statute 7 Will. III., c. 3, s. 5 (1), are not applicable. The *Gazette of India*, or *Calcutta Gazette*, containing official letters on the subject of hostilities between the British Crown and Mahometan fanatics on the frontier, were rightly admitted in evidence under Sections 6 and 8 of Act II of 1855, as proof of the commencement, continuation, and determination of hostilities. Similarly, under Section 6, a printed letter from the Secretary to the Government of the Punjab to the Secretary to the Government of India was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. *Queen* v. *Amiruddin*, 7 B. L. R., 63, and 15 S. W. R., Cr. R., 25.

In a trial conducted with the aid of Assessors, the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction. *Reg.* v. *Kálá Karsan et al.*, 6 Bom. Rep., Cr. Ca., 55.

When a judgment of acquittal is recorded it is not necessary to record the opinions of the Assessors. *Reg.* v. *Párbat*, 7 Bom. Rep., Cr. Ca., 82.

In a trial before a Sessions Judge with Assessors, when the prisoner pleads not guilty and the public prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the Assessors that they are bound to find the prisoner not guilty. 4 Mad. Rep., Rul. XXXIX.

The grounds of each Assessor's opinion should be distinctly recorded by the Judge. *Queen* v. *Mussamut Mina Nuggerbhatin*, 3 W. R., Cr., 6.

Assessors ought to give the grounds of their opinions, particularly when they differ in opinion from the Judge. *Queen* v. *Bushmo Anent*, 3 W. R., Cr., 21.

In case of a view of the scene of an alleged offence, it is the duty of the officer conducting the Jury or Assessors to the spot not to suffer any other persons to speak to or hold any communication with any of the Jury or Assessors. The Judge therefore cannot delegate to the Assessor his owu function of examining witnesses on the spot. *Queen* v. *Chutterdharee Singh*, 5 W. R., Cr., 59.

A summing up of the evidence is not required in a case tried by Assessors. *Queen* v. *Joga Poly*, 11 W. R., Cr., 39.

16.—Police.

A Magistrate has no power to realize the cost of a police constable from an individual. *Queen* v. *Rohimkant Ghose*, 1 W. R., Cr., 15.

The appellant charged the prosecutor with theft, and he was handed over to the police. *Held* that the police, and not the appellant, are responsible for any oppression or extortion practised by the

police on the prosecutor while in confinement. *Queen* v. *Shumhboonath Pandey*, 1 W. R., Cr., 26.

The wounding of a thief by a chowkeedar to secure his capture held under the circumstances to be justifiable. *Queen* v. *Protab, chowkeedar*, 2 W. R., Cr., 9.

Discussion as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion. *Queen* v. *Nagena Owrut*, 3 W. R., Cr., 6.

A chowkeedar who extorts money either by fraud or threats is guilty of cheating (Section 417, Penal Code), or of extortion (Sections 383 and 384, Penal Code), but not of criminal misappropriation of public money entrusted to him as a public servant. *Queen* v. *Ramnarain, chowkeedar*, 3 W. R., Cr., 32.

Where a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court. *Queen* v. *Damoo Singh*, 8 W. R., Cr., 36.

The police may, without any formal complaint, apprehend any person found with stolen property. *Queen* v. *Gowree Singh*, 8 W. R., Cr., 28.

The police are not at liberty to bind a witness over to appear a month after date. Remarks on the insufficiency of the evidence in this case to warrant a conviction. *Queen* v. *Bheen Manjee and another*, 6 W. R., Cr., 52.

A constable who dishonestly misappropriates to his own use the pay of his thanna police entrusted to him is guilty of criminal breach of trust. *Queen* v. *Subdar Meeah*, 3 W. R., Cr., 44.

That the facts proved would also constitute an offence under a section of the Penal Code, seems to be no reason for quashing a conviction under the special law, Act V of 1861. *Queen* v. *Kassimuddin*, 8 W. R., Cr., 55.

Admissions made by prisoners to police officers while in their custody are not admissible in evidence, especially when no witnesses are called to prove such admissions. *Queen* v. *Bushmo Anent*, 3 W. R., Cr., 21.

A police officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible. *Queen* v. *Dhurun Dutt Ojha and others*, 8 W. R., Cr., 13.

The general exception provided by Section 79 of the Penal Code, and the power conferred by Clause 5, Section 100 of the Code of Criminal Procedure, was held not to protect a police officer who did not act in good faith, that is, with due care and intention. Clause 5, Section 100, Code of Criminal Procedure, refers to property which is proved to have been stolen, and not to anything which a police officer may choose to imagine has been stolen. Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under Section 339 of the Penal Code. *Sheo Shurn Sahaye* v. *Mahomed Fazil Khan*, 10 W. R., Cr., 20.

Held by Loch, J., that a Magistrate has no authority to order a police enquiry in a case under Chapter XIV of the Code of Criminal Procedure.

Held by Glover, J. (dissenting), that a Magistrate may order a police enquiry into any offence punishable under the Penal Code. *In re Faeto Shah*, 10 W. R., Cr., 49.

The report of a police officer is "credible information" within Section 282 of the Code of Criminal Procedure. *In the case of Brindabun Shaha*, 10 W. R., Cr., 41.

Section 211 of the Penal Code applies not only to a private individual, but also to a police officer who brings a false charge of an offence with intent to injure. *Nubodeep Chunder Sirkar, petitioner*, 11 W. R., Cr., 2.

Section 140 of the Code of Criminal Procedure does not apply to a case of arrest for dacoity made without warrant by a subordinate police officer in the presence of a head constable, who authorized him to make the arrest. *Queen* v. *Sheikh Emoo*, 11 W. R., Cr., 20.

A report of an Inspector of Police and the evidence given by the same Inspector are not sufficient to justify an order binding a person to keep the peace. *In the matter of Rajendro Kishore Chowdry*, 10 W. R., Cr., 55.

The karnam of a village is not bound to report the commission of offences other than those specified in Section 138 of the Criminal Procedure Code. 3 Mad. Rep., A. J., 31.

J. M., a clerk in the Police Magistrate's office, having been convicted, under Section 2 of Act XLVIII of 1860, as a person employed in a police office, a rule for quashing the conviction was made absolute,—*Held* that the words "Police Office" in Section 2, Act XLVIII of 1860, do not apply to a Police Magistrate. *In re Judoo Nath Mookerjee*, Bourke's Rep., O. C., 186.

A police officer negligently or improperly submitting an incorrect report of a local investigation, may be punished under Section 29 of Act V of 1861, in cases where the proof is insufficient to bring the case under Section 218 of the Penal Code. *Queen* v. *Burroda Kant Moskeyn*, 15 S. W. R., Cr. R., 17.

Where a police officer duly appointed under Act V of 1861 was engaged in the discharge of his duty as such police officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of Section 225 of the Penal Code. *Queen* v. *Assan Shurreeff*, 13 S. W. R., Cr. R., 75.

A police constable was tried and convicted by the Assistant Agent of Vizigapatam under Section 44 of Act XXIV of 1859, and sentenced to fine and imprisonment. On appeal, the Agent reversed the conviction and sentence, on the ground that there had been irregularity of procedure on the part of his assistant in not recording evidence for the prosecution, and in only taking down the substance of the prisoner's statement, and not the full statement as made. *Held*, that the question was, whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice. That

if not, the order reversing the conviction was rendered bad in law by Sections 426 and 439 of the Criminal Procedure Code. That the accused did not appear to have been prejudiced; consequently, the order of the Appellate Court was set aside, and a re-hearing directed. 6 Mad. Rep., Rul. XLV.

Accused, a police constable, was convicted under Section 44 of Act XXIV of 1859 of ceasing to perform the duties of his office. The evidence showed that he had gone to sleep while posted as a sentry over the jail. *Held* that the accused was not guilty of the particular species of offence of which he was convicted; he was, however, guilty *prima-facie* under the section.

Going to sleep while on guard is an offence punishable under Section 10. 6 Mad. Rep., Rul. XXXI.

In a prosecution under the Indian Police Act V of 1861, the Magistrate is bound to take into consideration and determine the prisoner's plea that he is a European British subject.

Section 29 of Act V of 1861 does not give to the Magistrate jurisdiction over European British subjects. *Queen* v. *Hearn*, 3 N. W. R., 128.

Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing,—*Held*, a good conviction. 5 Mad. Rep., Rul. XXIV.

The plaintiff, a head constable of police, sued the defendant, an inspector of police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff, but failed to give it to the plaintiff. The defendant pleaded that the suit was barred by Section 53 of the Police Act (Act XXIV of 1859), and that the plaintiff was estopped from denying that the section applied by reason of an admission made by him. *Held* that the plaintiff was entitled to recover the amount sued for. *Gundam Vankatasami* v. *Chinnam Purushottama*, 5 Mad. Rep., 466.

17.—Pleas.

Voluntary intoxication is not a valid plea in extenuation of an offence (Section 85, Indian Penal Code). *Queen* v. *Bodhee Khan*, 5 W. R., Cr., 79.

The rejection of a defendant's special plea does not preclude him from obtaining the Court's assistance on other pleas. *Gora Chand Koloo Sadookhan* v. *Doya Moyee Dossee*, 3 W. R., Act X R., 151.

In a case of causing grievous hurt to B., the prisoner on having the charge read to him stated that he had had a quarrel with B., and struck him twice with a stick in anger. *Held* that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial. *Queen* v. *Joypal Koiree*, 11 W. R., Cr., 6.

When a prisoner pleads guilty, but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty. *Queen* v. *Mittun Chowdhry*, 11 W. R., Cr., 53.

A Court cannot refuse to enquire into a plea set up by a plaintiff's pleaders in reply to questions put them by the Court, although such plea was not advanced in the original plaint. Section 139, Code of Civil Procedure, authorizes a Court to frame issues on allegations collected from the oral examination of parties or their pleaders, notwithstanding discrepancy between these allegations and the written pleadings. *Kobeeroodden Ahmed* v. *Nyan Bibee and others*, 8 W. R., 354.

In an indictment for cheating under the Penal Code, it is necessary to state that the property was the property of the party defrauded. The indictment may be amended, however, at any stage of the trial. *The Queen* v. *William Russel William*, 1 Ind. Jur., O. S., 94.

An indictment for cheating, under Sections 415 and 420 of the Penal Code, which omits to state that the property obtained was the property of the person defrauded, is defective for uncertainty, and must be objected to, if at all, before the Jury is sworn. *Queen* v. *Willans*, 1 Mad. Rep., 31.

The mere absence of any formal charge of using insulting language, in addition to the charge of criminal trespass, is no such irregularity as to vitiate a trial, the said language having been complained of by the complainant at the first. *Queen* v. *Raj Koomar Moitro*, 3 W. R., Cr., 28.

The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate, F. P., who, without a complaint being made to him, convicted and sentenced the prisoner.

The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate, F. P., had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. *Reg.* v. *Vishvanath Daulatrav*, 4 Bom. Rep., Cr., 33.

Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. *Queen* v. *Hossein Ali*, 8 B. L. R., Ap., 25.

18.—Criminal Evidence.

(*a*) *Witnesses.*

Where the evidence was taken down by the Magistrate in English, and no memorandum was attached to it (as required by Section 199, Code of Criminal Procedure), stating that the evidence was read over to the witness in a language which he understood, it was held that there had been an error in law by which the accused was materially prejudiced. *Queen* v. *Issur Raut and others*, W. R., 1864, Cr., 63.

In a case tried under the provisions of Chapter XIV of the Code of Criminal Procedure, the accused are entitled to have their witnesses summoned, and a Magistrate has no power to refuse to summon them. *Queen* v. *Doorgagutty and others*, 11 W. R., Cr., 55.

Magistrates are not incapacitated to give evidence of matters which have come before them in the course of preliminary enquiry into a criminal charge. *Held* that, in a suit for a malicious prosecution, the

defendant had a right to the evidence of the Subordinate Magistrate who held a preliminary enquiry into a charge of forgery preferred by the defendant against plaintiff. *Ramasamy Ayyan* v. *Ramu Mupan*, 3 Mad. Rep., A. C., 372.

A mere written certificate of a medical officer that a prisoner is of unsound mind, and incapable of making his defence, is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness, and be personally and carefully examined. *Queen* v. *Ram Rutton Doss*, 9 W. R., Cr., 23.

A false statement by a witness as to his position or character ought not to be punished as severely as a false charge or a false claim. *Queen* v. *Rewhah Goallah*, 5 W. R., Cr., 95.

Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence. *Queen* v. *Bakhoree Chowbey*, 5 W. R., Cr., 98.

In a case of dacoity resting upon the evidence of witnesses who say they saw it, it should be made clear exactly when and under what circumstances the prosecutor and witnesses denounced the persons whom they swear to have recognized; how, when, and under what circumstances the prisoners were arrested; and generally what was done in the case from the time of the commission of the crime till it was sent in to the Magistrate. *Queen* v. *Modhoo Manjee*, 5 W. R., Cr., 51.

A Judge should compare the statements of the witnesses recorded by the Magistrate at the preliminary investigation with the evidence of the same witnesses at the Sessions. *Queen* v. *Bindabun Cowree*, 5 W. R., Cr., 54.

It is the duty of a Judge to bring to the notice of Assessors discrepancies and contradictory statements made by witnesses. *Queen* v. *Burjo Barick*, 5 W. R., Cr., 70.

The evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury. *Queen* v. *Lall Chand Kowrah, chowkeedar*, 5 W. R., Cr., 23.

Objections to the sufficiency of evidence are not a ground of appeal. The deposition of a single credible witness is sufficient in law. *Queen* v. *Muddun Sirdar*, 2 W. R., Cr., 3.

If a person is before the Court as a witness his evidence must be recorded as the law directs; if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement. *Queen* v. *Phoolchand, alias Phooleel Ahir, and Sheosurrun*, 8 W. R., Cr., 11.

Where it was not shown that there were any witnesses forthcoming for examination other than those whom the Sessions Judge did examine, the Court refused, with reference to Section 363, Code of Criminal Procedure, to interfere with the Sessions Judge's proceedings. *Queen* v. *Jamdam Singh*, 12 W. R., Cr., 73.

Recognition of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things. *Queen* v. *Mussamut Joomnee and others*, 8 W. R., Cr., 16.

An admission by a husband in the presence of several witnesses that he had kicked his wife, and that she died after receiving the kick, was held to be direct evidence against him. *Queen* v. *Bysagoo Noshyo*, 8 W. R., Cr., 29.

The evidence of one witness, if credible, is legally sufficient proof of any but certain exempted offences. *Queen* v. *Bindu and others*, 8 W. R., Cr., 60.

Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants. *Queen* v. *Ashruff Singh*, 6 W. R., Cr., 91.

A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. A person is not, by reason of being an accomplice, disqualified from giving evidence either for or against a prisoner. *Sheikh Bechoo*, 6 W. R., Cr., 92

When the accused has been arrested, the evidence of a witness for the prosecution ought, under Section 174 of the Code of Criminal Procedure, to be taken in the presence of the accused. *Queen* v. *Syud Hossein Ali Chowdhry*, 8 W. R., Cr., 74.

The former deposition of a witness should not be read until after his examination in Court. *Queen* v. *Radhay Dharee*, 1 W. R., Cr., 14.

There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution. *Queen* v. *Behary Lall Bose*, 7 W. R., Cr., 44.

In a case of forcibly rescuing cattle under Section 13, Act III of 1857, in which the accused did not summon any witness, it was held that even if the accused wanted them summoned the Magistrate, under Section 262 of the Code of Criminal Procedure, need not have summoned them, unless persuaded that they were likely to give material evidence and that they would not attend voluntarily. *Akbar Tuguzdeer* v. *Ponchoo Biswas and others*, 10 W. R., Cr., 42.

Section 266, and not Section 252, of the Code of Criminal Procedure is applicable to a case under Chapter XV of that Code; and under the former section a Magistrate is not bound to summon the witnesses for the defence. *Bhika Roy* v. *Dhotun Roy*, 10 W. R., Cr., 36.

When a prisoner makes a distinct defence, and calls witnesses to prove it, instead of dismissing the witnesses at once on their saying they know nothing in the prisoner's favour, a Judge should put a few questions to them in detail to see if there is any truth in the prisoner's statement or any part of it. *Queen* v. *Bhugnur Putwa and others*, 11 W. R., Cr., 9.

In a case under Chapter XV of the Code of Criminal Procedure, it is expected that parties will bring their own witnesses with them. If they require the attendance of any witness they should apply to the Magistrate to cause his attendance; and where they do not so apply it is sufficient if the Magistrate record in his judgment the substance of the defendant's answer. *Bagdee Manjee* v. *Mohindro Narain and others*, 10 W. R., Cr., 16.

Where the accused has not his witnesses in attendance, and does not apply to the Magistrate to summon them (Sections 352 and 253, Code of Criminal Procedure), the omission of the Magistrate to require him to produce his witnesses does not

prejudice the accused, or amount to an error or defect calling for interference within Section 426 of the Code of Criminal Procedure. *Queen* v. *Totaram*, 11 W. R., Cr., 15.

Where the evidence of a prosecutor and his witnesses is taken in the presence of the accused, and the case is postponed by the Court for the evidence of witnesses for the defence, the case ought not to be dismissed for default of prosecution if, on the day to which it has been postponed, the prosecutor is not present. *The Queen* v. *Bedoor Ghose*, 12 W. R., Cr., 27.

A complainant's deposition must show some grounds for proceeding before a Magistrate can legally issue a summons. *Huronath Roy, petitioner*, W. R., 1864, Cr., 33.

The Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant. *Rujub Mundle* v. *Lochun Mundle*, W. R., 1864, Cr., 37.

In the case of a charge of an offence triable by the Court of Sessions alone, the Magistrate is bound, under Section 186 of the Criminal Procedure Code, to summon the complainant's witnesses. *Queen* v. *Meer Zakir Ally*, 8 W. R., Cr., 4.

A Magistrate is not bound, under Section 191 of the Code of Criminal Procedure, to enforce the attendance of witnesses by warrant except upon proof of due service of summons. *Abdoor Ruham, petitioner*, 7 W. R., Cr., 37.

Conviction quashed, the prisoner's witnesses not having been summoned. *Queen* v. *Kalee Thakoor*, 5 W. R., Cr., 65.

When a Judge gives evidence, he should be sworn like other witnesses. *Kishore Singh* v. *Gonesh Mookerjee*, 9 W. R., 252.

A Judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence, of which his own forms a part. *Queen* v. *Mukta Sing*, 4 B. L. R. A. Cr., 15; 13 S. W. R., Cr. R., 60.

A person apprehended by the police and brought before the Magistrate with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not charged along with the accused.

Conviction of keeping a common gaming-house upheld where portion of the evidence against the accused consisted of instruments of gaming found in such a house, which had been entered in pursuance of a search-warrant illegally issued; there being sufficient *aliunde* to justify the conviction. *Reg.* v. *Náráyan Sundur*, 5 Bom. Rep., Cr., 1.

Held by Bayley, J., (Markby, J. *dubitante*,) that a Magistrate has a discretion under Section 262 of the Code of Criminal Procedure to summon a witness when he is likely to give material evidence on behalf of the accused. *Ameer Chund Nohattee*, 13 S. W. R., Cr. R., 63.

Section 253 of the Criminal Procedure Code does not apply to cases triable under Chapter XV of that Code; and Sections 262 and 263 are applicable when the offence is not punishable with more than six months' imprisonment; and it is in the discretion of the Magistrate to summon the witnesses for the defence, if he considers their evidence essential to the just decision of the case, and incumbent on him to summon them only if it appears to him that they are likely to give material evidence on behalf of either party, and that they will not voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint. *Queen* v. *Mohuree and others*, 2 N. W. R., 393.

A belief founded on private and anonymous information is not "knowledge" within the meaning of Section 68 of the Criminal Procedure Code. *In the matter of Moheschunder Bonnerjea; Queen* v. *Purna Chunder Bonnerjea; Queen* v. *Kali Sirkar*, 4 B. L. R., Ap., 1; 13 S. W. R., Cr., 1.

An enquiry should be made into the excuse given by a person for his non-attendance as a witness before enforcing a fine for such non-attendance; in order that the Sessions Judge, or other authority, may fairly exercise the discretion given him by Section 221 of the Criminal Procedure Code. *Queen* v. *Ameer Khan*, 2 N. W. R., 113.

Accused was summoned as a witness in a case to be heard on 27th May. The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by public proclamation until June 5th. On this latter date accused failed to attend. For this he was convicted of an offence under Section 174 of the Penal Code. There was no evidence that the summons had been brought to the knowledge of the accused so as to require him to attend on the first occasion. *Held*, that on the ground of there being no evidence of the commission of an offence the conviction must be quashed. 6 Mad. Rep., Rul. XXIX.

Prisoners should name their witnesses at the commitment. *Queen* v. *Kissoree Mohun Dutt*, 17 S. W. R., Cr. R., 58.

A prisoner who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses the prisoner declined to state his reason.

Held, that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited.

The High Court called for the record for the purpose of seeing whether any of the persons named in the list were likely to be able to give material evidence. *Subharáya Mudali, prisoner*, 4 Mad. Rep., 81.

Section 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. *In the matter of Moheshchunder Bonnerjea; Queen* v. *Purna Chunder Bonnerjea; Queen* v. *Kali Sirka*, 4 B. L. R., Ap., 1; 13 S. W. R., Cr., 1.

In a case under Chapter XV., Code of Criminal Procedure, it is incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who is not likely to appear without a summons; nor is it necessary in such cases to record the examination of the accused with the same formalities as in cases under Chapters XII and XIV. *Queen* v. *Chedee Koonjra*, 14 S. W. R., Cr. R., 76.

In a case of an offence (such as hurt, under Section 323, Penal Code) punishable with imprisonment exceeding six months, and therefore falling under Chapter XIV of the Code of Criminal Procedure, a Magistrate is bound to summon all the witnesses required by the accused. *Queen* v. *Boolaker*, 14 S. W. R., Cr. R., 81.

A Magistrate cannot issue a warrant of arrest against a witness under Section 260 of the Code of Criminal Procedure, unless he is first satisfied that the witness has disobeyed a summons which was served on him.

In order to make a person summoned as a witness liable under Section 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart.

A Magistrate is not justified by Section 206 of the Code of Criminal Procedure in taking a person, without any previous notice or summons, from among the audience or attendant witnesses in open Court, and placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners, and on which evidence has already been given. That section applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. *Queen* v. *Sutherland; Queen* v. *Narain Singh*, 14 S. W. R., Cr. R., 20.

Where a prisoner, under Section 227, Code of Criminal Procedure, gives in a list of the witnesses he wishes to summon, after his case has been committed, the Magistrate is bound to exercise his discretion upon the point, and to state whether he will summon the witnesses or not, and he ought to state his reasons for not doing so. If he thinks the witnesses were included in the list for the purpose of delay, he should proceed under Section 228 of the Code. *Queen* v. *Rajcoomer Mookerjee*, 16 S. W. R., Cr. R., 14.

In a trial held under Chapter XV of the Criminal Procedure Code, it is not an irregularity to adjourn the trial, under Section 269, for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial. *Queen* v. *Dinoo Roy*, 16 S. W. R., Cr. R., 21.

Refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge, vitiates the trial and conviction. *Ram Shuhui Chowdry* v. *Sanker Bahadur*, 6 B. L. R., Ap., 65.

In a trial under Chapter XIV of the Criminal Procedure Code, the Magistrate is not bound, under Section 253, to summon any witness whom the accused may require. It is only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for.

Per Paul, J. (differing),—The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right is not taken away, but affirmed by Section 253; the Magistrate is bound to summon the witnesses, though it is discretionary with him to adjourn the trial. In the present case, treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required. *Queen* v. *Bholanauth Mookerjee*, 7 B. L. R., 564, and 16 S. W. R., Cr. R., 28.

It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence. *Mahima Chundra Shah, in the matter of the petition of*, 6 B. L. R., Ap., 78, and 15 S. W. R., Cr. R., 15.

(*b*) *Evidence of Accomplices.*

When evidence is given by an approver it is not important to consider whether a story told by the accused to him tallies with that made to another person. *Queen* v. *Nytaram Mytee and Sheikh Burramooddeen*, 1 Ind. Jur., N. S., 171.

A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him. *Queen* v. *Nunhoo and four others*, 9 W. R., Cr., 28.

Case of murder, where those prisoners whose conviction depended on the uncorroborated evidence of accomplices and of an accessory after the fact were acquitted. *Queen* v. *Chutterdharee Singh*, 5 W. R., Cr., 59.

A Jury may convict upon the evidence of an accomplice, though not corroborated so as to show the prisoner's actual participation in the offence. Section 28, Act II of 1855, applied only to the old Supreme Courts, and the rules and practice prevailing in them; and does not show that in the Courts of the mofussil corroborative evidence is legally requisite to support the testimony of an accomplice. *Queen* v. *Godai Raout*, 5 W. R., Cr., 11.

The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. *Queen* v. *Dwarka*, 5 W. R., Cr., 18, and 1 Ind. Jur., N. S., 100.

The uncorroborated evidence of an approver is not sufficient as proof against other persons. *Queen* v. *Issen Mundle*, 3 W. R., Cr., 8; and *Queen* v. *Tulsi Dosad*, 3 B. L. R. A., Cr., 66.

A Sessions Judge should not permit the evidence of an approver who was examined as a witness before the Committing Magistrate to be laid before the Jury by whom the prisoners were tried. 4 Mad. Rep., Rul. XXII.

There is no rule of law that the uncorroborated evidence of an accomplice is sufficient for a conviction.

The proper form of the charge to the assessors in such cases stated. 4 Mad. Rep., Rul. VII.

Held, that where the evidence of an accomplice is uncorroborated, the correct practice requires Sessions Judges not merely to tell the Jury that it is unusual to convict on such evidence, but that he should also tell them that it is unsafe, and contrary both to prudence and practice, to do so; yet that his omission to state this does not amount to an error in law. *Reg.* v. *Inam* (3 Bom. A. C. Rep., Cr. Ca., 57), commented on; *Reg.* v. *Ganu bin Dharoji et al.*, 6 Bom. Rep., Cr. Ca., 57.

The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices. *Queen* v. *Dina Sheikh and others*, 3 B. L. R., A. Cr., 15; S. C., 10 W. R., Cr., 63.

The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be a matter directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. *Queen* v. *Dwarka*, 5 W. R., Cr., 18.

The English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks to two or more persons as having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted. *Reg. and Imam* v. *Alad Baher and others*, 3 Bom. Rep., Cr., 57.

The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. *Queen* v. *Bycunt Nath Banerjee*, 10 W. R., Cr., 17.

The unsupported evidence of an approver (especially if in itself unsatisfactory) is not sufficient to support a conviction. *Queen* v. *Chirag Ali*, 12 W. R., Cr., 5.

(*c*) *Evidence of Husband and Wife.*

Held by the majority of the Court (Norman, J., dissenting) that, upon trials in the mofussil, a wife is competent to give evidence for or against her husband, or for or against any person tried jointly with her husband. *Queen* v. *Khoyroollah and others*, 6 W. R., Cr., 21.

A conviction founded upon the uncorroborated evidence of one or more accomplices is valid in law. *Elahee Buksh, appellant*, 5 W. R., Cr., 80.

The evidence of a wife against her husband should not be recorded, even when it is in corroboration of other evidence. *Queen* v. *Gour Chund Polie and Dwarkie Polie*, 1 W. R., Cr., 17.

(*d*) *Examination and Cross-examination.*

Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts,—*Held* that the proceeding was irregular and prejudicial to the prisoner; that such witnesses should have been subjected to a fresh oral examination; and that then the former depositions might have been put in, not to add to their testimony, but to corroborate it. A new trial was ordered. *Queen* v. *Bishonath Pal*, 3 B. L. R., A. Cr., 20; 12 W. R., Cr., 3.

It is improper to allow witnesses for the prosecution to state that the accused is not of good character. *Reg.* v. *Timun*, 2 Bom. Rep., 131.

Whenever a prisoner is put upon his trial he is entitled to have the witnesses examined *de novo* if they have previously given evidence on the trial of another prisoner in the same case; and it is not sufficient to require the witnesses to identify the prisoner, and to read over to them their former examination and require them to attest it. *Queen* v. *Kanye Sheikh*, W. R., 1864, Cr., 38.

It is not imperative on a lower Appellate Court to examine any number of witnesses a suitor may ask to have examined, and the refusal of the Court to do so is not a ground for special appeal. *Ram Dhun Singh* v. *Rung Lal Singh*, W. R., 1864, 249.

In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before. To read to a witness his deposition on a former trial is not an examination of the witness in the presence of the accused. *Queen* v. *Sheikh Kyamut*, W. R., 1864, Cr., 1.

It matters not how often the same offence is the subject of a Sessions trial, every accused person has a right to have the whole of the evidence given and recorded in his presence just as if the witness had never before given his testimony on the charge. *Queen* v. *Affazuddeen*, W. R., 1864, Cr., 13.

A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of Section 195, Code of Criminal Procedure. *Queen* v. *Muttee Nushyo*, W. R., 1864, Cr., 18.

A prisoner on trial is entitled to have his witnesses examined. *Queen* v. *Bhoobun Isher Gossamee*, 2 W. R., Cr., 6.

An accused person is entitled to have the witnesses examined who are named in his defence. *Queen* v. *Abdool Setar*, 3 W. R., Cr., 35.

An accused person has a right to cross-examine witnesses. *Queen* v. *Nobocoomar Banerjee*, 3 W. R., Cr., 21.

Where witnesses are not examined in the presence of the accused, the conviction will be quashed. *Queen* v. *Lalla Chowbey*, 2 N. W. R., 49.

The right of an accused party to cross-examine witnesses for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given, by a witness called for another of the parties accused, he must call him as his own witness. *Queen* v. *Suroopchunder Paul and Heeralall Paul*, 12 W. R., Cr., 75.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to Section 439 of the Code of Criminal Procedure. *Queen* v. *Shaw Kissore Halder*, 13 S. W. R., Cr. R., 36.

A witness when under examination in chief before the Court of Sessions should not have his attention directed to his deposition before the Magistrate. He may, under Section 23, Act II of 1835, be cross-examined as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him. *Queen* v. *Ramchunder Sircar and another*, 13 S. W. R., Cr. R., 18.

A Magistrate is bound, under Section 266 of the Code of Criminal Procedure, to examine all the witnesses whom an accused person may produce for his defence. *Ameer Chund Nohattee*, 13 S. W. R., Cr. 63.

A Magistrate cannot refuse to allow witnesses whom he allowed to be cross-examined by the accused previous to the preparation of a charge to be recalled and cross-examined after the accused has been put upon his defence, under Section 252 of the Code of Criminal Procedure, treating them as witnesses for the prosecution. *Thakoor Dyal Sen*, 17 S. W. R., Cr. R., 51.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner.

It is also an irregularity to prepare the charge against a prisoner after his defence has been recorded. *Queen* v. *Chotey Lal and another*, 3 N. W. R., 271.

In an enquiry under Chapter XIX of the Criminal Procedure Code the defendant should have an opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses on his own behalf. 4 Mad. Rep., Rul. XXIII.

Section 206 of the Code of Criminal Procedure only requires the Magistrate to hear such witnesses as the accused shall produce in his defence. 4 Mad. Rep., Rul. XXIX.

The complainant's pleader was at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the joint Magistrate, and he might do so as regards previous statements which were reduced to writing, without showing the writing. Section 34, Act XI of 1855, explained. *Tukheya Rui* v. *Tupsee Koer*, 15 S. W. R., Cr. R., 23.

A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that he produced only two witnesses, who were examined. *Held* that, as the complainant did not apply to the Magistrate to issue summonses on the other witnesses, or ask him to proceed under Section 262, Code of Criminal Procedure, the Magistrate was not wrong in law in deciding the case on the evidence which was before him. *Queen* v. *Notobur Beru*, 15 S. W. R., Cr. R., 87.

No conviction can be had under Section 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court. *Queen* v. *Hurry Porumanick Jatee*, 15 S. W. R., Cr. R., 5.

Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate. *Queen* v. *Mudhoosoodun Roy*, 16 S. W. R., Cr. R., 49.

Conviction set aside on the ground of the Magistrate's irregularity in refusing, in a trial before him, under Chapter XV of the Criminal Procedure Code, to allow the examination of a witness who had been tendered on behalf of the accused. *Queen* v. *Mahima Chundra Chuckerbutty*, 4 B. L. R., Ap., 77, and 12 S. W. R., Cr. R., 77.

Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, with reference to Sections 426 and 439, Code of Criminal Procedure, as the irregularity of procedure was one by which the prisoners were not prejudiced. *Purmessur Sing* v. *Soroop Audhi Kuree*, 13 S. W. R., Cr. R., 40.

Where a witness makes a statement before the Court of Sessions which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under Section 172, Act XXV of 1861, be said that an offence has been committed under the cognizance of the Court of Sessions.

A Judge's duty in dealing with the contradictory statements of a witness discussed. *Queen* v. *Nomal*, 4 B. L. R., A. Cr., 9; 12 S. W. R., Cr. R., 69.

(*e*) *Admissibility.*

A prisoner applied for copies of certain documents filed in Court, for the purpose of his defence. *Held*, the Magistrate had erred in refusing his application.

Per Loch, J.—A prisoner is entitled to have copies of all documents for which he asks, and which he thinks necessary for his defence, and it is for the officer trying the case, whether Magistrate or Judge, to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence. *Shib Prasad Panda, in the matter of the petition of*, 6 B. L. R., Ap., 59, and 14 S. W. R., Cr. R., 77.

Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. Intoxication wrongly treated as an aggravation of offence. *Queen* v. *Lulfukur Khan*, 16 S. W. R., Cr. R., 36, and 8 B. L. R., Ap., 21.

Under Section 154, Code of Criminal Procedure, police diaries cannot be admitted as corroborative evidence. *Queen* v. *Thakoor Chund Surma*, 13 S. W. R., Cr. R., 22.

The memorandum required by Section 199 of the Code of Criminal Procedure should always be appended to the depositions. *Queen* v. *Hossein Sirdar*, 13 S. W. R., Cr. R., 17.

In a proceeding under Section 318 of the Criminal Procedure Code, to determine the right of actual possession, it is necessary that evidence should be taken upon oath. *Queen* v. *Kalichundra Shah*, 7 B. L. R., 322, and 16 S. W. R., Cr. R., 13.

Criminal Procedure Code (Act XXV of 1861), S. 370—Report of Chemical Examiner. *Queen* v. *Biswambhar Das*, 6 B. L. R., Ap., 122, and 15 S. W. R., Cr. R., 6.

In a charge under Section 498 of the Penal Code, the proof that the woman and a man, other than the accused, were living together, is

sufficient to throw the burthen of proof on the accused that they were not man and wife.

Evidence taken before the Magistrate, but not used at the trial, cannot be referred to on appeal. *Queen* v. *Waziru*, 17 S. W. R., Cr. R., 5; 8 B. L. R., Ap., 63.

The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate. *Queen* v. *Sookmoy Ghose*, 10 W. R., Cr., 23.

The substance of a report from a subordinate medical officer, with an expression of concurrence by his superior, cannot be read in evidence under Section 368 of the Code of Criminal Procedure. *Chintamonee Nye, petitioner*, 11 W. R., Cr., 2.

The notes of an enquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion. *Queen* v. *Purmanund Barik*, 11 W. R., Cr., 13.

The practice of not examining a police officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge, under Section 31, Act II of 1855. *Queen* v. *Ahmed Ally and others*, 11 W. R., Cr., 25.

To make the confession of a prisoner not uttered in presence of a Magistrate admissible in evidence, the fact discovered must be one which of its own force, independently of the confession, would be admissible in evidence. *Reg.* v. *Chada Atchenah*, 3 Mad. Rep., A. C., 318.

A conviction under Section 389 of the Penal Code quashed, inasmuch as the evidence did not allude to the negligence of which the accused has been found guilty, and because the evidence was not taken in the presence of the accused. *Queen* v. *Brojonarain Pubraj*, 2 W. R., Cr., 51.

Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence. *Queen* v. *Kartick Chunder Haldar and others*, 9 W. R., Cr., 58.

The statement of a prisoner before a Magistrate, whether taken as a confession or an examination, may be received as evidence. *Queen* v. *Suneechur*, 5 W. R., Cr., 1.

Admissions made by prisoners to police officers while in their custody, without witnesses, are not admissible in evidence. *Queen* v. *Bushmo Anent*, 3 W. R., Cr., 21.

The admissions of prisoners in their statements before the Magistrate ought to be given in evidence at the trial. A Sessions Judge's notes of the evidence should be sent up in a legible form. *Queen* v. *Bhugwan Dosadh*, 4 W. R., Cr., 18.

When a deposition is received in evidence under Section 369, Code of Criminal Procedure, at a trial before a Sessions Judge, there ought to be on the record distinct proof of the existence of such a state of things as makes the deposition legal evidence. *Queen* v. *Bheekun Doss*, 7 W. R., Cr., 114.

The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity, and uninfluenced by it, is not legally inadmissible. *Queen* v. *Sageena and another*, 7 W. R., Cr., 56.

Bare statements of prisoners are not admissible in, and ought not to be alluded to by the Judge as, evidence; nor is evidence taken before the Magistrate, unless contradictory of the evidence of the same witnesses as given before the Sessions Court, evidence in the trial, or proper to be put to the Jury. *Queen* v. *Bheko Singh and others*, 7 W. R., Cr., 108.

The admission of hearsay evidence prohibited. *Queen* v. *Kally Churn Gangooly*, 7 W. R., Cr., 2.

The moment a witness commences giving evidence which is inadmissible—*e.g.*, hearsay evidence—he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the Jury to reject the hearsay evidence, and to decide on the legal evidence alone. *Queen* v. *Pitambur Sirdar and others*, 7 W. R., Cr., 25.

Previous convictions are not admissible in evidence. *Queen* v. *Thakoor Doss Chootur and others*, 7 W. R., Cr., 7.

Evidence of bad character is not admissible. Misreception of evidence is a defect or irregularity within the meaning of Sections 426 and 439, Code of Criminal Procedure. *Queen* v. *Beharee Dosadh and others*, 7 W. R., Cr., 7.

Previous statements of witnesses on oath are not available as evidence in a subsequent trial. *Queen* v. *Kisto Mundul and others*, 7 W. R., Cr., 8.

It is not competent to a Court of Sessions to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Court, and officers specified in Section 31, Act II of 1855, may be given in corroboration of testimony; but such statements must be regularly proved by the person who received them, or by some one who heard them given. *Queen* v. *Bissen Nath and another*, 7 W. R., Cr., 31.

The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him.

Where certain portions of a police officer's diary are used as evidence against him, Section 154 of the Code of Criminal Procedure does not bar the admission of other portions of the diary as explaining the portions so used. *Queen* v. *Nobokisto Ghose*, 8 W. R., Cr., 87.

Police diaries cannot be legally used as substantive evidence, or read to the Jury. *Queen* v. *Hurdut Surma*, 8 W. R., Cr., 68.

Police reports are not evidence, except against the reporting police officer. *Government* v. *Mudun Dass*, 6 W. R., Cr., 52.

Remarks on the improper admission, at a Sessions trial, with the aid of Assessors, of a chowkeedar's statement as to the previous bad character of the accused. *Queen* v. *Gopal Thakoor*, 6 W. R., Cr., 72.

The dying declaration of a deceased person is admissible in evidence on a charge of rape. *Queen* v. *Bissorunjun Mookerjee*, 6 W. R., Cr., 75.

The confession of a prisoner before a Magistrate, though retracted before the Judge, is admissible in evidence against the prisoner, provided the Judge be satisfied that it was voluntarily made. *Queen* v. *Sreemutty Mongola*, 6 W. R., Cr., 81.

Where a committing officer in his grounds of commitment makes statements tending to criminate the prisoners, they cannot be used as evidence against the prisoners, if they were not reduced to

writing, and without the examination on oath of the committing officer in the presence of the prisoners. *Queen* v. *Hurry Pershad and others*, 6 W. R., Cr., 85.

G. D. presented a Government promissory note at the Bank of Bengal bearing a forged endorsement, and was arrested. A police constable asked N. if he knew G. D. N. replied that he knew him as a common man. The police constable then asked N. if he knew anything about the note. N. replied that he did not. No threat or inducement was held out, nor was any caution administered to N. *Held* that the statements made by N. in answer to the questions of the police constable were admissible. N. was afterwards brought before R., the Deputy Magistrate of Serampore, who told him before any depositions were taken that he (N.) was charged with having received a stolen promissory note, and R. asked him if he wished to say anything. N. replying in the affirmative, R., without administering any caution to him, asked him how or where he had obtained the note, and other questions, the answers to which were taken down. N. was again brought up before R., and was asked whether a promissory note then produced was the one he had delivered to G. D. to take to the bank. R. told N. that he was not bound to answer the question, but if he did the answer would be taken down, and that if he objected to answer, that would also be noted. R. committed N. to take his trial before the High Court. *Held* that, on the trial, the answer of N. to the questions of R., whether R. acted as a Justice of the Peace for Bengal or as a Magistrate, were admissible. *Queen* v. *Nabadwip Goswami*, 1 B. L. R., O. Cr., 15.

When a Civil Court authorizing a criminal prosecution in cases of offences against public justice, instead of completing the investigation itself, and committing the parties for trial before the Court of Session, simply refers the proceedings and leaves it to the Magistrate to commit or not, as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under Section 369, Code of Criminal Procedure. But by Section 57, Act II of 1855, the improper admission of such evidence is not of itself ground for the reversal of the Sessions Judge's sentence, when, independently of that evidence, there is sufficient evidence to justify the decision. *Queen* v. *Nujum Ali*, 6 W. R., Cr., 41.

Written reports of depositions are not evidence, except in the case provided for by Section 369 of the Code of Criminal Procedure. *Queen* v. *Kally Churn Gangooly*, 6 W. R., Cr., 92.

A letter of a Medical Officer expressing an opinion is not evidence under Sections 368 and 370 of the Code of Criminal Procedure. *The Queen* v. *Kaminee Dossee*, 12 W. R., Cr., 25.

The certificate required under Section 205, Code of Criminal Procedure, need not be in the handwriting of the presiding officer, but may be under his hand only, *i.e.*, signed by him. Where a Jury is satisfied as to the genuineness of an attestation by a Magistrate, it is unnecessary to call the Magistrate to swear to his signature. *Queen* v. *Rezza Hossein and others*, 8 W. R., Cr., 55.

The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *primâ-facie* proof of the fact, and may be laid before a Jury. *Queen* v. *Rasookoollah*, 12 W. R., Cr., 51.

Upon a plea of *alibi* by the prisoners that they had left the place on the 12th of April 1869, and reached Port Canning on the 20th of the same month, and were not at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper; one bearing the endorsement of the stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the Jurors to this document, and adverted to it in these terms—"If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was bought, *i.e.*, the 18th."

Held that the document should not have been received in evidence; and that there was a misdirection which contributed materially towards the Jury finding the prisoners guilty. *The Queen* v. *Gajraj*, 3 B. L. R., A. Cr., 43.

An admission obtained from a prisoner by persuasion and promises of immunity by the police ought not to be received in evidence, as being in direct contravention of Section 146, Code of Criminal Procedure.

The deposition of the police officer, moreover, should be taken before the admission can at all be used against the prisoner, under Section 150, Code of Criminal Procedure. *Bishoo Manjee, appellant*, 9 W. R., 16.

The report of the Chemical Examiner to Government may be acted upon as evidence by all Criminal Courts, by virtue of Section 380 A of the amended Code of Criminal Procedure. 6 Mad. Rep., Rul. XI.

The rule of evidence that letters found in the house of a person after his arrest and whilst in custody cannot be used in evidence, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive evidence. *Queen* v. *Ameer Khan and others*, 17 S. W. R., Cr. R., 15.

Admissions made by a prisoner's vakeel cannot be used against the prisoner. *Queen* v. *Kazim Mundle*, 17 S. W. R., Cr. R., 49.

Per Mitter, J.—An Appellate Court is bound precisely in the same way as the Court of first instance to test evidence extrinsically as well as intrinsically. *Goomanee and others*, 17 S. W. R., Cr. R., 59.

Where a person is adjudicated to be a person of notorious bad character, under Section 276, Code of Criminal Procedure, after having been tried for dacoity, the evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under Section 296, which evidence should be taken immediately. *In the matter of Rojoni Kent Poramanick*, 13 S. W. R., Cr. R., 24.

The confession of one prisoner cannot be used as corroborative evidence against another person.

Corroboration as to the details of the crime, without corroboration as to the person of the

accused, is worthless. *Queen* v. *Durbaroo Dup Sirdar*, 13 S. W. R., Cr. R., 14.

The prisoners were convicted, under Section 154 of the Indian Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. *Betts G. D., and Mahomed Ismail Chowdry*, 6 B. L. R., Ap., 83, and 15 S. W. R., Cr. R., 6.

There is no rule of law which prevents the admission without corroboration of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused. *In the matter of Rojoni Kent Poramanick*, 13 S. W. R., Cr. R., 24.

When it is proposed to read the deposition of a witness alleged to be dead, the death of the witness should first be strictly proved, unless it is admitted on the other side, and the reading of the deposition not objected to.

Procedure as to tendering a pardon to a prisoner before examining him as a witness discussed. *Queen* v. *Gagalu Moyalu*, 4 B. L. R., Ap., 50, and 12 S. W. R., Cr. R., 80.

The evidence of a wife is admissible against her husband in a criminal case in the Mofussil. *Reg.* v. *Khyroollah*, 7 Bom. Rep., Cr., 50.

Before depositions of witnesses taken before a Magistrate can be used in appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses. *Queen* v. *Parbutty Churn Chuckerbutty*, 14 S. W. R., Cr. R., 13.

Evidence of Accomplices—Judge's Summing-up—Evidence of Accused's Bad Character—Improper Admission of Evidence—Discharge of Prisoner on Appeal—Recording Depositions. *Queen* v. *Mahima Chundra Das*, 6 B. L. R., Ap., 108, and 15 S. W. R., Cr. R., 37.

The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind. *Queen* v. *Zahir and Julleed Mollah*, 10 W. R., Cr., 11.

Where a statement made by an accused before the Magistrate bears the Magistrate's attestation, proof of the statement having been made is not necessary, but the proceedings must be presumed to be regular until the contrary is shown. *Queen* v. *Joga Poly*, 11 W. R., Cr., 39.

Prisoner was charged, under Section 201 of the Penal Code, for that he, knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false.

Held that the proper order of proof on the part of the prosecution in the present case, was to prove (1) that A. N. was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer.

Held also that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further enquiry directed under Section 422, Criminal Procedure Code. *Queen* v. *Subberamanya Pillai*, 3 Mad. Rep., A. C., 251.

A conviction based upon evidence taken in the absence of the accused is illegal. *Anonymous*, 3 Mad. Rep., Ap., 34.

Where a party makes a false statement when legally bound by a solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence. *Anonymous*, 3 Mad. Rep., Ap., 30.

In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness, unsupported by corroborative evidence, is insufficient for a conviction. *Queen* v. *Mohima Chunder Chuckerbutty*, 5 W. R., Cr., 77.

Oral evidence is the principal matter upon which Magistrates can proceed in determining a question of possession under the Code of Criminal Procedure. *Maharajah Gobind Nauth Rai* v. *Rajah Anund Nauth Rai*, 5 W. R., Cr., 79.

The guilt of a prisoner must be clearly proved before he can be convicted, and a weak case cannot be strengthened by the fact that the police have had many difficulties thrown in their way.

Absconding is a very small item in the evidence of guilt. Convictions must be based on substantial and sufficient evidence, and not merely on "moral convictions." *Queen* v. *Sorob Roy*, 5 W. R., Cr., 28.

A Magistrate should take evidence as to the general character of a person charged with bad livelihood, and not convict him on the report of a police officer, which is not evidence, except against the officer making it. *Queen* v. *Alum Sheikh*, 5 W. R., Cr., 2.

To decide a case on the unsupported statements of prosecutor and prisoner, without recording the evidence offered on either side, is illegal. *Queen* v. *Sheikh Edoo*, 2 W. R., Cr., 47.

Every trial must be complete in itself. In deciding on the guilt of a prisoner, the proceedings in other trials ought not to be relied on. *Queen* v. *Kishen Dyal Aheer and others*, 6 W. R., Cr., 7.

A Judge cannot properly weigh evidence which starts with an assumption of the general bad character of the prisoners. *Queen* v. *Kalee Mal and others*, 7 W. R., Cr., 103.

A conviction on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder may be good, though there be no proof of who committed the culpable homicide. *Queen* v. *Muddun Mohun Bose and others*, 7 W. R., Cr., 22.

The admission of an accused cannot be taken to be corroborative evidence, or any evidence at all, against anybody other than himself.

Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test evidence. *Queen* v. *Bussiruddi and others*, 8 W. R., Cr., 35.

A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it, under Section 366 of the Code of Criminal Procedure. *Queen* v. *Mussamut Jema*, 8 W. R., Cr., 40.

A statement made under promise of pardon is no

evidence against a prisoner. *Queen* v. *Radhanath Dosadh*, 8 W. R., Cr., 53.

Section 48, Act II of 1855, is applicable to criminal trials. The test or comparison of native seals is at least but a fallible one, and must always be received with extreme caution. *Queen* v. *Amanoollah Mollah*, 6 W. R., Cr., 5.

The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a Court of law. *Queen* v. *Reaj Ali, alias Dulloo Khan*, 6 W. R., Cr., 77.

It is the duty of a Sessions Judge to give a summing up of the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty. *Queen* v. *Nawab Khan*, 7 W. R., Cr., 25.

In a case of defamation, proof of despatch by post to a certain district of the paper containing the defamatory matter is tantamount to proof of publication thereof in that district. *Queen* v. *Kally Doss Mitter*, 5 W. R., Cr., 44.

Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. *Queen* v. *Nobokisto Ghose*, 8 W. R., Cr., 87.

The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. *Queen* v. *Issur Chunder Ghose*, 14 S. W. R., Cr. R., 53.

A Raifut, or report from the record office that A. had been convicted of a crime, is no evidence of a previous conviction. *Queen* v. *Shaikh Ram Zur.*, 6 B. L. R., Ap., 15, and 15 S. W. R., Cr. R., 53.

The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made,—*Held* that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence.

Held that neither the Judge nor Jury had any right to assume that an explanation could not have been given consistent with both the statements. *Queen* v. *Kola*, 4. B. L. R., A. Cr., 4, and 12 S. W. R., Cr. R., 65.

Where the Judge of first instance doubted the authority of a deed, it being written on two pieces of stamped paper of different dates,—*Held*, under the circumstances, not to be a proper deduction.

Where evidence could have been adduced, and was not, as to a handwriting being forged, and the Judge by comparison with other handwriting held it to be a forgery, such finding was disapproved of. *Kurati Prasad Misser* v. *Anantaram Hajra*, 8 B. L. R., 490.

(*f*) *Dying Declaration.*

In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under Section 371, Code of Criminal Procedure, a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their own personal knowledge to such declaration should not be admitted; and in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to enquiring into the facts which occurred on the day of the murder. *Queen* v. *Tahir and Jullud Mollah*, 10 W. R., Cr., 11.

The dying declaration of a deceased should form part of the Sessions record. *Queen* v. *Soyumber Singh and others*, 9 W. R., Cr., 2.

Before a dying declaration can be received in evidence it must be distinctly found that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die.

Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should call for that evidence. A Magistrate should, in all cases in which dying declarations are made, examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. *Sheik Tanoo*, 15 S. W. R., Cr. R., 11.

A dying declaration is admissible in evidence in all criminal cases, provided the conditions attaching to its admission have been fulfilled, and is not confined to cases in which the death of the injured party is the sole object of enquiry.

There must be evidence of the state of the deceased person at the time of making the declaration.

The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death. *Queen* v. *Ujrail*, 3 N. W. R., 212.

19.—Confession.

The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements. *Virabuddra Gaud ex-parte*, 1 Mad. Rep., A. C., 199.

A Magistrate acts without due discretion when, as a prosecutor, he holds out promises to prisoners as an inducement to them to confess. *Queen* v. *Ramdhun Singh*, 1 W. R., Cr., 24.

A Deputy Magistrate should not act as Magistrate in a case in which he is himself the prosecutor, and take confessions of prisoners before himself. *Queen* v. *Boidnath Singh and others*, 3 W. R., Cr., 29.

A confession of crime when fairly made after due warning is not inadmissible, simply because, at the time it was made, no formal accusation had been made against the party making it. *Queen* v. *Ramchurn Chamar and others*, 4 W. R., Cr., 10.

To give weight to confessions of prisoners recorded under Section 149, Code of Criminal Procedure, there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were free agents. *Queen* v. *Kodai Kahar*, 5 W. R., Cr., 6.

The whole and not part only of a prisoner's confession must be taken in order to his conviction. *Queen* v. *Chokoo Khan*, 5 W. R., Cr., 70.

A prisoner's confession must be taken in its entirety. *Queen* v. *Sheikh Boodhoo*, 8 W. R., Cr., 38.

Section 109 of the Code of Criminal Procedure refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation, and not to the police. It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient. *Queen* v. *Dohum Kahar and others*, 11 W. R., Cr., 82.

A prisoner may be convicted on his own uncorroborated confession. *Queen* v. *Runjeet Sontal*, 6 W. R., Cr., 73.

The confession of an accused person is only evidence against himself. *Queen* v. *Cally Churn Lohar and others*, 6 W. R., Cr., 84.

The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent denial before the Sessions Court. *The Queen* v. *Bhuttun Bujwan*, 12 W. R., Cr., 49.

An admission by A. and B. that the crime charged against them was committed by C. and D., and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. *Queen* v. *Kisto Mundul and others*, 7 W. R., Cr., 8.

A voluntary and genuine confession is legal and sufficient proof of guilt. *Queen* v. *Jhurree and another*, 7 W. R., Cr., 41.

The confessions of a prisoner in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath, either by the person who took them down, or by some one else who heard them. *In re Munger Bhooyau*, 10 W. R., Cr., 56.

To make the confession of a prisoner, not uttered in the presence of a Magistrate, admissible in evidence, the fact disclosed must be one which, of its own force, independently of the confession, would be admissible in evidence. *Choda Atchenah, 1st prisoner*, 3 Mad. Rep., A. C., 318.

The importance of properly recording and attesting the confessions of prisoners, under Section 205 of the Code of Criminal Procedure, pointed out. *Queen* v. *Bhikuree*, 14 S. W. R., Cr., R., 63.

Before the examination of a prisoner in the presence of the committing officer can be used as evidence against him under Section 366, Criminal Procedure Code, the provisions of Section 205 of that Code must have been complied with, and the committing officer's attestation affixed in full to the examination. *Queen* v. *Chupput Khyrwan*, 15 S. W. R., Cr. R., 83.

The words "a Magistrate," in Section 149 of the Code of Criminal Procedure, mean "any Magistrate," and not merely "the Magistrate having jurisdiction."

The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved. *Reg.* v. *Váhálá Jethá*, 7 Bom. Rep., Cr., 56.

Under Section 205 of the Code of Criminal Procedure, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted, to prove the regularity of the proceedings. *Queen* v. *Goshto Lul Dutt*, 7 B. L. R., Ap., 62, and 15 S. W. R., Cr. R., 68.

Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out. *Queen* v. *Shahubut Sheikh*, 13 S. W. R., Cr. R., 42.

A confession made to a joint Magistrate of a district in charge of the Sudder Sub-division is receivable in evidence, although the joint Magistrate may not have been specially empowered, under Act VIII of 1869, to receive the confessions of prisoners.

A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. *Queen* v. *Gopeenath Kellee*, 13 S. W. R., Cr. R., 69.

Statements made by a prisoner for the purposes of his defence cannot be held to be "information given to a public servant" within the meaning of Section 182 of the Indian Penal Code. *Queen* v. *Daria Khan*, 2 N. W. R., 128.

Statements of accused can only be used in evidence as against the parties making them, and cannot be used as corroborative evidence against others. *Queen* v. *Hurgobind*, 2 N. W. R., 336.

A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate. *Queen* v. *Hursookh*, 2 N. W. R., 479.

If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out. 5 Mad. Rep., Rul. IV.

It is not necessary for a Magistrate to caution a prisoner before receiving his or her statement. 5 Mad. Rep., Rul. XI.

It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *primâ-facie* proof of the circumstances. *Queen* v. *Misser Sheikh*, 14 S. W. R., Cr. R., 9.

Under Section 366 of the Code of Criminal Procedure, the examination of the accused before the Magistrate must be given in evidence at the Sessions trial, whether it tells for or against the prisoner; and it is not in the discretion of the prosecution to put in that examination or not. *Queen* v. *Sheikh Meher Chund*, 13 S. W. R., Cr. R., 63.

In warning an accused person before taking down his statements, a Magistrate should state how the accused was warned. *Queen* v. *Dedar Nushyo*, 14 S. W. R., Cr., 81.

20.—SANCTION OF THE COURT TO PROSECUTE.

Section 170, Code of Criminal Procedure, refers only to cases where a forged document has been put in evidence in a Civil or Criminal Court; in other cases, a Magistrate is competent *proprio motu* to enquire into allegations of forgery, and no sanction under Section 170, Code of Criminal Procedure, is necessary. *Queen* v. *Ramdharee Singh and others*, 10 W. R., Cr., 5.

The Civil Court, in giving permission to prosecute under Sections 169 and 170, Code of Criminal Procedure, should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified. *In re Gobind Chundra Ghose and others*, 10 W. R., Cr., 41.

It is not necessary that the preliminary enquiry contemplated by Section 171 of the Code of Criminal Procedure should be conducted in the presence of the accused. All the Court (Revenue in this case) making the enquiry has to do, is to satisfy itself that there are *primâ-facie* grounds for sending the case for investigation to a Magistrate; and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant under Section 147, Act X of 1859, but it is discretionary with him to proceed under Section 171 of the Code of Criminal Procedure. 9 W. R., Cr., 3.

Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the Sessions has been made. *In re Queen* v. *Golab Singh*, 3 B. L. R., A. Cr., 10.

The prosecutor applied to a Civil Court for leave to prosecute, under Section 170 of the Criminal Procedure Code, a witness who had appeared before the Court. The Court granted the permission as applied for.

The prisoner was tried for and convicted of an offence coming under the provisions of Section 169 of the Criminal Procedure Code.

Held that the mention of Section 170 in the permission to prosecute granted by the Civil Court might be treated as surplusage, and that the prisoner was rightly convicted.

Held also that the copy of a lease is not "a valuable security" within the meaning of Section 30 of the Indian Penal Code. *Reg.* v. *Khushul Heramar and Indrajir*, 4 Bom. Rep., Cr., 28.

Held that, in a case under Section 171, Code of Criminal Procedure, the initiative is taken by the party interested, and the Court takes no part in the matter, except in the way of giving or refusing its sanction. Section 170 contemplates cases in which the Court itself takes the initiative; but it was not intended that the Court should proceed in the manner there described, except where the propriety or necessity of doing so was unmistakeable. *In the matter of Koongh Beharee Ghur*, 11 W. R., 171.

An application was made to a Collector, under Section 50, Clause 2 of Act X of 1862, to replace a damaged stamp by a new one. As it appeared the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. *Held* that the document not being given in evidence in any proceeding in Court, the Collector was not bound to proceed under Sections 169 and 171 of the Criminal Procedure Code. *In re The Queen* v. *Gour Mohun Sen*, 3 B. L. R., A. Cr., 6; 11 W. R., Cr., 48.

Where the sanction to the prosecution accorded under Section 169, Code of Criminal Procedure, extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply. *Queen* v. *Woodernull Singh and Gungoo Singh*, 10 W. R., Cr., 24.

A former decision in a civil suit in which the issue was the genuineness or otherwise of a kubuleut, and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah. *Juggut Misser* v. *Baboo Lal*, 5 W. R., Cr., 50.

Under Section 170 of the Code of Criminal Procedure, any Civil Court which has the power of calling before it the proceedings and evidence of a suit in which forgery is alleged to have been committed, may, if satisfied after a preliminary enquiry that the charge is proper for investigation, give its sanction to the charge being entertained and investigated by the Magistrate, notwithstanding that the Subordinate Court by whom the suit was being tried refused its sanction to the prosecution. *Dinobundo Chuckerbutty, petitioner*, 5 W. R., Mis., 6.

The sanction accorded by a Civil Court, under Section 169 of the Code of Criminal Procedure, in a case under Section 193, Penal Code, need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given. *Queen* v. *Kadir Buksh*, 11 W. R., Cr., 17.

The Appellate Court to which it is subordinate may sanction the prosecution of an offence against a Court of first instance, even if the offence is abetment. *Ishan Chunder Ghose, in the matter of*, 15 S. W. R., C. R., 352.

A Sub-Registrar, under Act XX of 1866, has no power to investigate regarding the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed, under Section 66 of the Code of Criminal Procedure, before the Magistrate, or before an officer authorized to receive such complaint. The sanction of the Registrar, under Section 95, Act XX of 1866, relates to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. *Queen* v. *Haridus Kundee*, 4 B. L. R., Ap., 69; 13 S. W. R., Cr. R., 21.

Where an offence is committed against a Court of first instance, the Appellate Court to which it is subordinate is competent to sanction a prosecution under Chapter XI of the Code of Criminal Procedure.

Sanction to such a prosecution may be given even if the offence is abetment. *In the matter of Ishan Chunder Ghose*, 15 S. W. R., C. R., 352.

Where sanction to prosecute on a criminal charge, under Section 169 of the Code of Criminal Procedure, was given in the case of only one out of two prisoners who were tried together, the High Court directed the release of the prisoner

in regard to whom such sanction was not given. *Queen* v. *Raj Kishore Roy*, 15 S. W. R., Cr. R., 55.

The sanction for the prosecution of a Kulkarni for making a false report as a public servant, required by Section 167 of the Code of Criminal Procedure, may be given by the Mamlatdar or by the Patil to whom such Kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose.

A Kulkarni who makes a false report with reference to an offence committed in his village, with, &c., is punishable under Section 218 of the Indian Penal Code. *Reg.* v. *Malhár Rám Chundra*, 7 Bom. Rep., Cr., 64.

Section 167 of the Code of Criminal Procedure requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced; and, until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad.

Where a complaint charged a person who was one of the public servants mentioned in Section 167 of the Criminal Procedure Code with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution. *Reg.* v. *Parshrám Keshav*, 7 Bom. Rep., Cr., 61.

Where the Magistrate before whom a witness gives false evidence himself commits such a witness for trial, his sanction of the prosecution, under Section 169 of the Criminal Procedure Code, will be implied. *Reg.* v. *Muhammad Khan Valad Imam Khan*, 6 Bom. Rep., Cr. Ca., 57.

The words of Section 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true.

The object of the sanction required by Section 169, Code of Criminal Procedure, is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court is subordinate.

When a Magistrate perused the paper of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction, under Section 169, on the part of the Magistrate. *Queen* v. *Mahomed Hossein*, 16 S. W. R., Cr. R., 37.

A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint, so as to authorize the issuing of a summons. *Reg.* v. *Beer Divale*, 5 B. R., Cr. R., 48.

In a suit by A. for arrears of rent above Rs. 100 a decree was passed against B., C., and D., wherein certain documents filed by them were held to be forgeries, A. applied for and obtained an order from the Deputy Collector who tried the suit, for leave to prosecute B. and C. in the Criminal Court. A. afterwards applied to the Collector for leave to prosecute B., C., and D., whereupon the Collector passed the following order:—"Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time, as the petitioner desires it." D. was convicted by the Sessions Judge on a charge under Section 471 of the Penal Code. On appeal by D.,—*Held* that no proper leave had been obtained to prosecute D., and this defect was not cured by the subsequent proceedings, and the conviction must be quashed. *Queen* v. *Mohima Chundra Chuckerbutty*, 7 B. L. R., 26, and 15 S. W. R., Cr. R., 45.

When a Civil Court gives sanction to a prosecution under Sections 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. *Queen* v. *Ooma Moye Debea*, 13 S. W. R., Cr. R., 25.

Prosecution for non-attendance in obedience to a summons was entertained without the sanction required by Section 168 of the Criminal Procedure Code. *Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt. *Reg.* v. *Gana bin Tatia Selar*, 5 Bom. Rep., Cr., 38.

The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, is no sufficient sanction under Section 198 of the C. C. I. *Queen* v. *Ootum Chund*, 2 N. W. R., 287.

The law does not require the sanction to a prosecution to be given in any particular form of words, and it permits such sanction to be given at any time. When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. *Queen* v. *Lekhroy*, 2 N. W. R., 132.

It would be undesirable for the High Court, except under very peculiar circumstances, to entertain in the first instance an application to authorize a prosecution for perjury. *Skeeb Persaud Chuckerbutty*, 17 S. W. R., Cr. R., 46.

Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the Chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Moonsiff of Debrooghur, before or against which the offence was committed, was subordinate,—*Held* that the sanction required, by Section 169, Code of Criminal Procedure, had been given. *Bapooram Aheem* v. *Gungaram Kuchurn*, 17 S. W. R., Cr. R., 55.

A Civil Court has no power to make an order, under Section 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex-parte Mahalingaiyein*, 6 Mad. Rep., 191.

The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as Judge. Construction of Section 167 of the Criminal Procedure Code, 6 Mad. Rep., Rul. XXII.

An application under Section 169 of the Criminal Procedure Code, praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed. *The Rajah of Venkatugeri*, 6 Mad. Rep., 92.

Sanction was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held* that the Magistrate had power to dismiss the complaint. 6 Mad. Rep., Rul. XV.

The proceedings of a Magistrate who tries prisoners charged with having committed offences under Sections 93 and 95 of the Registration Act XX of 1866, are not illegal and without jurisdiction or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his official capacity of sub-Registrar. *The Government of Bengal* v. *Hura Lall Dass*, 17 S. W. R., Cr., R., 39.

21.—Warrant of Arrest.

A warrant, which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed. *Srimuti Bidheemukhi Debi*, 6 B. L. R., Ap., 129, and 15 S. W. R., Cr. R., 4.

Section 68 of the Code of Criminal Procedure gives a Magistrate jurisdiction on proper evidence to issue a warrant for the arrest of persons in a pending case. *Sideshurry Chowdrain*, 16 S. W. R., Cr. R., 50.

A person complaining of irregularity of process issued for his arrest and for the attachment of his property, before applying to the High Court under Section 404 of the Criminal Procedure Code, should make application to the Magistrate issuing such process for his discharge and the release of his property, on the ground of the informality of the warrants. *Queen* v. *Bisheshur Pershad*, 2 N. W. R., 441.

Section 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute; and even in such cases the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed, and that knowledge must be either personal or derived from testimony legally given. The report of the police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant.

Under Section 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers, and unless the urgency is imminent.

The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds; and in the absence of evidence, there can be no grounds.

In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the High Court refused to quash the Magistrate's order directing the prisoners to be put upon their defence, on the ground that the order had been made by a competent officer after hearing evidence which was judicially received and recorded. *Queen* v. *Surendra Nath Roy*, 5 B. L. R., 274; S. C. 13 S. W. R., Cr. R., 27.

The issue of a warrant under Section 316 of the Code of Criminal Procedure is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his liability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would alone be awardable in default. 6 Mad. Rep., Rul. XXIII.

A warrant issued under Section 68, which is a warrant of arrest as described under Section 76 (Form B), is only for the purpose of bringing an accused person before the Magistrate. It is not a warrant for commitment, and does not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warran under Section 222, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. *In the matter of Mohes Behunder Bannerjea; Queen* v. *Poorna Chunder Bannerjea; Queen* v. *Kali Sirkar*, 4 B. L. R., Ap., 1; 13 S. W. R., Cr., 1.

Held that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal. At the expiration of twenty-four hours from the time of arrest, the accused must be brought before a Magistrate, who can then remand for a period not exceeding fifteen days, under Section 224 of the Criminal Procedure Code.

No remand without a hearing can last for a longer period. *Reg.* v. *Surkya Salad Dhákee*, 5 Bom. Rep., Cr., 31.

The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate. *Muthoora Nauth Chuckerbutty* v. *Heera Lall Dass*, 17 S. W. R., Cr. R., 55.

Where an accused person was arrested as an absconded offender, and without evidence being gone into on that charge, an enquiry was made into his mode of livelihood, without any summons being issued under Section 306 of the Criminal Procedure Code, such proceedings were held to be irregular. *Queen* v. *Huttoon*, 3 N. W. R., 2.

A Magistrate has no authority to issue simultaneously a summons and a warrant under Section 188 of the Code of Criminal Procedure, unless he

has reason to believe that the witness will not attend in obedience to a summons. *Queen* v. *Chunder Shekur Roy*, 12 W. R., Cr., 18.

A Magistrate or Municipal Commissioner has no power under Act III of 1864, Bengal Council, to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge, under Section 27 of that enactment, for using premises as a straw or wood depôt without a license. *Per* Loch, J.—The provisions of Chapter XV of the Code of Criminal Procedure are not applicable to offences under Act III of 1864, B. C. *Bissessur Chatterjee*, 16 S. W. R., Cr. R., 1.

22.—Search Warrant.

It is essential to the legality of a search-warrant, under Section 114 of the Code of Criminal Procedure, that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary; and that a specified house or place only is to be searched. The warrant must, under Section 115 of that Code, be directed to some other person only when a police officer is not forthcoming. *Queen* v. *Syud Hossein Ali Chowdhry*, 8 W. R., Cr., 74.

An officer, subordinate to an officer in charge of a police station, who was deputed by the latter to make an enquiry under Section 135 of the Code of Criminal Procedure, attempted without a search-warrant to enter a house in search of property alleged to have been stolen, and was obstructed and resisted.

Held (applying Section 99 of the Indian Penal Code) that, even though the police officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, and it was not shown that that officer was acting otherwise than in good faith and without malice.

A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case. *Reg.* v. *Vyankatráv Shrinivás*, 7 Bom. Rep., Cr., 50.

23.—Preliminary Enquiry.

An accused should be allowed, at preliminary enquiries before a Magistrate, to cross-examine the witnesses; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate, is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. *Queen* v. *Shama Sunkur Biswas and Shama Churn Bose*, 10 W. R., Cr., 25.

It is necessary to a proper preliminary enquiry that the accused (or, under certain circumstances, his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross-examining them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness, and his position was changed to that of the accused. *Queen* v. *Kalichurn Lahooree*, 9 W. R., Cr., 54.

A Magistrate holding a preliminary investigation under Chapter XII of the Code of Criminal Procedure, or a Magistrate holding a trial of an offence within his jurisdiction under Chapter XIV of the Code, has power, under Sections 202 and 250, to put questions to the accused, and to examine him as he may consider necessary; and the Court of Session has similar power in regard to persons on trial before that Court, but the Procedure Code makes no such provisions in respect of parties under trial under Chapter XV. *Nursing Chunder Mitter, petitioner*, 12 W. R., Cr., 77.

Where an accused person was discharged by a Deputy Magistrate under Section 225 of the Code of Criminal Procedure, after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under Section 68 of the Criminal Procedure Code.

Per Markby, J.—Section 435 (Act VIII of 1869) provides for the revision of proceedings which have already been commenced: Section 68 (Act XXV of 1861) provides for the institution of proceedings *de novo*. *Ramjai Muzumdar, in the matter of the petition of*, 6 B. L. R., Ap., 67, and 14 S. W. R., Cr. R., 65.

The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them, and to adduce evidence specially upon those items. *Queen* v. *Chetter, C. A.*, 15 S. W. R., Cr. R., 5.

The necessity of making proper enquiries before committing to the Sessions pointed out. It is the duty of the police and the Magistrate not only to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. *Queen* v. *Kishto Doba*, 14 S. W. R., Cr. R., 16.

A Magistrate is competent, under Section 133 of the Code of Criminal Procedure, to direct an enquiry to be made by a police officer into an offence punishable under a Local Act, such as the Police Act.

Held that where a Magistrate professes to act under one section of the Criminal Procedure Code, under which he has no jurisdiction, but it is found that he has jurisdiction under some other section of the Code, the mistake is one which does not justify interference with the Magistrate's order, if otherwise good, and if the accused has not been prejudiced thereby. *Queen* v. *Prankisto Palo*, 14 S. W. R., Cr. R., 41.

A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the police in the first instance, but is bound, under Section 60 of the Code of Criminal Procedure, to examine the complainant on oath, and pass orders in the case. *Ameer Mahomed* v. *G. Brass*, 14 S. W. R., Cr. R., 36.

A Magistrate is bound, with reference to Section 20 of the Code of Criminal Procedure, to proceed in the investigation of cases arising under a special

law (such as the Salt Law), according to all the provisions of the Code of Criminal Procedure.

Section 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months. *Queen* v. *Abdool Azeez Khan*, 14 S. W. R., Cr. R., 36.

A Subordinate Judge, finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the district, who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should, under Section 173 of the Code of Criminal Procedure, have committed it.

Held that the Magistrate of the district was bound to proceed with the investigation of the case, according to Section 16 of Act XXIII of 1861. *Reg.* v. *Amentá Nathee*, 7 Bom. Rep., Cr., 29.

The proceedings before a Magistrate preliminary to commitment are not impeachable for irregularity because some of the depositions were taken before the accused persons were brought before him. *Queen* v. *Ameer Khan and others*, 17 S. W. R., Cr. R., 15.

The Court declined to set aside the preliminary proceedings before the Magistrate, because, though there might have been some irregularity in them, they had not been objected to by the parties, notwithstanding that they had full opportunity of doing so.

The decision in 12 W. R., 49, does not apply to a case where a regular charge was subsequently drawn up, giving the prisoner full information of the offence which it was intended to prove; still less to an ordinary Sessions case, where the regularity of the preliminary proceeding is not in question under the plea of not guilty. *Government* v. *Mohesh Chunder Bannerjee*, 17 S. W. R., Cr. R., 35.

24.—Charge.

In framing a charge for giving false evidence, under Section 193 of the Penal Code, the charge should be precise; and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge.

Amendments in a charge ought to be made formally, and should appear on the face of the record. *Queen* v. *Feojdar Roy*, 9 W. R., Cr., 14.

A Sessions Judge has no power to try a prisoner who has been committed for trial on no specific charge. *Queen* v. *Ram Ruttun Doss*, 6 W. R., Cr., 23.

Where a Deputy Magistrate did not draw up a charge in accordance with Section 250 of the Code of Criminal Procedure, but gave the accused clearly to understand the nature of the charges made against them, the irregularity was held to fall within Section 403 of that Code. *Bhugwan and others* v. *Doyal Gope*, 10 W. R., Cr., 7.

Where no formal charge has been drawn up by the Magistrate, under Section 250 of Act XXV of 1861, and the accused has not been called upon, under Section 251, to plead thereto, and was not tried thereunder, a release by the Magistrate of the accused does not amount to an acquittal under Section 255, but simply to a discharge under Section 250. Under such circumstances, Section 435, Act VIII of 1859, empowers a Sessions Judge to direct the committal of the accused to take their trial. *In re Jagabandhu Myti* v. *Goberdhan Bera*, 4 B. L. R., A. Cr., 1; S. C., 12 W. R., Cr., 65.

A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by Sections 234 and 237 of the Code of Criminal Procedure. *Queen* v. *Durzoolla and others*, 9 W. R., Cr., 33.

Charges of perjury should contain a distinct assertion with regard to each statement intended to be characterized as perjury: that it was made; that it is untrue in fact; that the accused knew it to be so when he made it; and the investigation of the Court should be directed to each of those points singly. *Queen* v. *Kalichurn Lahoree*, 9 W. R., Cr., 54.

A person accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and the Court of Sessions must find judicially whether all, or if not all, which, of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. A conviction for perjury, moreover, should not be sustained on the bare testimony of one witness. *Queen* v. *Khoab Lall*, 9 W. R., Cr., 66.

A charge under Section 302 of the Penal Code need not set out at length all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in Section 300, which defines the crime of murder.

Technical objections to criminal charges, particularly on the ground of the want of a sufficient specification of details, should be taken before the conclusion of the trial, when the Judge may, if necessary, amend the charge, and not afterwards, unless it appear that some failure of justice has been caused by the irregularity complained of. *Government* v. *Ramasawmy*, 5 W. R., Recorder's Ref., 1.

Where several offences are charged under the same section, the Committing Magistrate should frame the charge so as to contain a separate head for each offence. The omission of the Magistrate to do this may be remedied by the Sessions Judge exercising the powers of amendment contained in Section 244 of the Code of Criminal Procedure. *Kalaram Singh and others*, 7 W. R., Cr., 8.

A charge, under Section 411 of the Penal Code, of dishonestly receiving stolen property, should state the articles found in possession of the accused were the property of A. B., the owner thereof. *Reg.* v. *Sidoo Bin Balnath*, 1 Bom. Rep., 95.

In a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling. *Queen* v. *Durbarro Polie*, 8 W. R., 30.

A Magistrate, when he has prepared his charge, is bound to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. *Queen* v. *Hurnath Roy*, 2 W. R., Cr., 50.

One count charging each specific offence, and describing it with a reasonable degree of certainty,

is sufficient. *Queen* v. *Baboolun Hijrah*, 5 W. R., Cr., 7.

A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false; and it should appear precisely what his duty was in the matter. *Queen* v. *Moosubroo and others*, 8 W. R., Cr., 37.

After the finding and discharge of the Assessors in a case of murder, the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. *Held* that the conviction was illegal. *Queen* v. *Dyee Bhola*, 1 W. R., Cr., 40.

The prisoner, who was charged with culpable homicide not amounting to murder, was tried for that offence, and there being no sufficient proof to convict on that charge, was tried by the Sessions Judge for not having used lawful means in preventing the riot (Section 154), and was punished for that offence. *Held* that the Sessions Judge was competent to change the charge, and to try the prisoner for any offence coming under any one of the sections of the Code. *Government* v. *Thacoor Doss*, 1 Agra Rep., Cr., 13.

An indictment will not be invalidated in consequence of the charge not notifying the specific Section 161: it is necessary to show that the offence the instigation of which is the subject of the charge, has been committed. *The Queen* v. *Notabur Nundy*, 1 Ind. Jur., N. S., 43.

The materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding, and an indictment under Sections 191, 193, of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence. *The Queen* v. *Aidrus Sahib*, 1 Mad. Rep., 38.

The splitting up of one aggravated offence into separate minor offences (*i.e.*, a conviction for lurking house-trespass and theft under Sections 456 and 380 of the Penal Code, instead of for lurking house-trespass in order to commit theft, under Section 457) prohibited.

Where a Magistrate convicted under Sections 456 and 380, it was held that the Judge, on appeal, instead of setting aside the conviction, and sending the case back to the Magistrate for re-trial under Sections 457 and 380, ought only to have set aside the conviction under Section 380, and allowed the conviction under Section 456 to stand (Norman, J., *dubitante*). *Queen* v. *Ram Churn Kairee*, 6 W. R., Cr., 39.

An indictment for cheating, under Sections 415 and 420 of the Penal Code, should state that the property obtained was the property of the person defrauded. An indictment defective in this respect is defective for uncertainty, and must be objected to, if at all, before the Jury is sworn.

Semble,—The latter part of Section 41 of Act XVIII of 1862 only gives power to amend where the defect is formal. *Queen* v. *Williams*, 1 Mad. Rep., 31.

Section 242, Act XXV of 1861, points out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false. *The Queen* v *Kala Khan*, 12 W. R., Cr., 23

Where certain charges did not set out the exact statements made by witnesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere under Section 426 of the Code of Criminal Procedure, but warned the Magistrate to be careful for the future. *Queen* v. *Adhya Thakoor*, 17 S. W. R., Cr. R., 33.

Where a policeman in whose sight a theft was committed arrested the thief, and, being himself unable to take or send the accused to a Magistrate, sent a report, on which the Magistrate issued a warrant,—*Held* that, under these circumstances, the accused was legally brought before the Magistrate. *Reg.* v. *Mahipya Valad Bomya Mahar*, 5 Bom. Rep., Cr. C., 99.

Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant (Sections 66 and 43, Criminal Procedure Code), becomes immaterial.

Semble,—A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially, but judicially.

Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered, and cases bearing on the question reviewed and explained. *Reg.* v. *Sadá Shivâppa Pandurem Guppa*, 5 Bom. Rep., Cr., 29.

Where a complaint laid before a Magistrate F. P., by certain Government employés, accused the prisoner of criminal breach of trust of their wages, but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money, it was held that the Magistrate, F. P., had power to frame a charge against and convict the prisoner of the latter offence without a fresh complaint being made to him. *Reg.* v. *Dhandee Ram Chundra*, 5 Bom. Rep., Cr. C., 100.

A charge under Section 451 must charge the accused with committing house trespass with intent to commit some specific offence punishable with imprisonment. *Queen* v. *Mohur Dowalia*, 16 S. W. R., Cr. R., 63.

On a trial by Jury, the Sessions Judge has no power to alter the charge after the delivery of the verdict. *Reg.* v. *Shek Ali Valad Faker Muhammad*, 5 Bom. Rep., 9.

The form of an accusation by a District Superintendent of Police, under Section 193 of the Penal Code, does not preclude a Magistrate from framing the charge under Section 177; the sanction of the District Superintendent required under Section 168, Code of Criminal Procedure, to give the Magistrate jurisdiction, need not be express, but may be implied. *In the case of Ashruff Hossein*, 16 S. W. R., Cr. R., 67.

A Subordinate Magistrate (second class), who is not specially vested with powers under Section 66A. of the amended Code of Criminal Procedure, has no jurisdiction to try a case on the report of a police officer, or on a complaint directly preferred to him.

The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate. *Reg.* v. *Shankur Abaji Hoshing*, 6. Bom. Rep., Cr. C., 69.

A statement by a private person, not upon oath or solemn affirmation, is not credible information upon which alone a Magistrate should issue a summons under Section 282 of the Code of Criminal Procedure.

Semble,—A report by a Subordinate Magistrate of facts within his knowledge would be credible information upon which such summons might issue, but would not be sufficient ground for a final adjudication under Section 288.

In order to warrant an adjudication under Section 288, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded. *Reg.* v. *Jivangi Limji*, 6 Bom. Rep., Cr. Ca., 1.

Proper course laid down for a Judge to adopt when the facts proved do not support the charge as laid. *Reg.* v. *Pàpee Parbut*, 7 Bom. Rep., Cr. Ca., 81.

The Court, under Section 1 of the Criminal Law Amendment Act (XVIII of 1862), has power to order the amendment of a charge involving a charge in the ownership of stolen property, provided such amendment does not prejudice the accused in his defence upon the merits.

Where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made.

Where the accused was charged with receiving stolen goods from the wife of the prosecutor, the property in the goods being laid in the prosecutor, and the charges were amended by laying the property in the prosecutor jointly with his mother, it was held that such amendment ought not to have been made. *Reg.* v. *Govindás Haridás*, 6 Bom. Rep., Cr. Ca., 76.

In a case in which the accused is charged with having dishonestly appropriated property under Section 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it and disposes of it. *Queen* v. *Parbutty Churn Chuckerbutty*, 14 S. W. R., Cr. R., 13.

Procedure before framing a charge under Section 211 of the Penal Code. *In the matter of the petition of Gour Mohan Singh*, 8 B. L. R., Ap., 11, and 16 S. W. R., Cr. R., 44.

Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge, which is not even cognate to the charge on which an accused person has been committed for trial. *Queen* v. *Waris Ali*, 3 N. W. R., 337.

A charge alleging a previous conviction need not show the extent of the former punishment. Revised form of charge. 4 Mad. Rep., Rul. XI.

When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence in the record. Upon a charge of murder the accused pleaded "guilty;" the Sessions Judge, taking into consideration the circumstances of the case, reduced the charge to homicide not amounting to murder. *Held* that the proceeding was illegal. *Queen* v. *Goburdhan Bhuyan*, 4 B. L. R., Ap., 101; 13 S. W. R., Cr. R., 55.

A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint.

The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Chapter XI of the Code of Criminal Procedure is alleged to have been committed, is a sufficient warrant for commencement of criminal proceedings. *The Queen* v. *Mahim Chundra Chuckerbutty overruled; Queen* v. *Narayan Naik*, 5 B. L. R., 660, and 14 S. W. R., Cr. R., 34.

Six persons were charged in the same charge as follows:—"That you, on or about the —— day of June —— at Tajpur, committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, and that you have thereby committed an offence under Section 193 of the Penal Code."

Held, the charge was bad and defective: first, as it charged a number of persons jointly with giving false evidence; second, as it did not show what statement the accused persons made; third, as it did not mention the day and year when the offence was committed; fourth, as it did not indicate the Court or officer before whom the false evidence was given.

To support a charge of giving false evidence under Section 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. *Queen* v. *Maharaj Misser*, 7 B. L. R., Ap., 66, and 16 S. W. R., Cr. R., 47.

In a case in which a false charge was brought, a Magistrate gave the accused (A.) permission under Section 169, Code of Criminal Procedure, to prosecute the complainant (B.) of an offence under Section 211, Penal Code. The Magistrate tried the complaint of A. as a complaint under Section 211, but he subsequently framed a charge against B. under Section 182, Penal Code, and punished him under that section.

Held, with reference to Section 168, Code of Criminal Procedure, that the offences under Sections 182 and 211, Penal Code, being offences under Chapter XIV of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under Section 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B. *Raj Coomar* v. *Kirthee Ojhee*, 13 S. W. R., Cr. R., 67.

Held that the omission to prepare a charge did not vitiate the proceedings; and conviction upheld. *Reg.* v. *Kabhai Ravá Bhái et al.*, 5 Bom. Rep., Cr., 40.

On a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury. *Queen* v. *Ruitee Ram*, 2 N. W. R., 21.

The charge and finding in a case of causing hurt, under Section 324 of the Indian Penal Code, need not contain a negation that the hurt was caused on grave and sudden provocation. 4 Mad. Rep., Rul. V.

Where a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has

been obtained, under Section 169 of the Code of Criminal Procedure, is strictly legal. *Queen* v. *Oottur Narain Singh*, 8 W. R., Cr., 79.

A Justice of the Peace or Magistrate committing a prisoner for trial before the High Court is bound, under Section 3 of Act XIII of 1865, to frame and send up with the depositions a specific charge against the prisoner. *Reg.* v. *Jeetaram Shaw*, 1 Ind. Jur., N. S., 404.

Semble,—The latter part of Act XVIII of 1862, Section 41, only gives power to amend an indictment where the defect is formal. *The Queen* v. *Willans*, 1 Mad. Rep., 31.

25.—Discharge.

Evidence in support of a complaint must be taken and considered before a Magistrate can dismiss the complaint. A mere plea by an accused, that the property of the theft of which he is charged is his own property, unsupported by proof, or by some circumstances which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged. *Runnoo Singh* v. *Kali Churm Misser*, 16 S. W. R., Cr. R., 18.

The discharge by a Deputy Magistrate of a person charged with an offence liable only by a Court of Sessions, is no bar to the Sessions Judge ordering the committal of such person to the Sessions under Section 435, Act VIII of 1859. *Queen* v. *Sreenauth Dey*, 15 S. W. R., Cr. R., 61.

Where the Sub-Magistrate dismissed a charge of theft without enquiry,—*Held* that the District Magistrate might institute a fresh enquiry into the complaint. 5 Mad. Rep., Rul. XXXI.

A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, and no formal warrant is necessary. 5 Mad. Rep., Rul. XI.

The words "dismissed without enquiry" in Section 435 of the Code of Criminal Procedure refer to a complaint which a Magistrate, under Section 67 of that Code, has dismissed without making the enquiry he is empowered to make under Section 180. *Re Moolchund*, 3 N. W. R., 261.

Where, under Section 171 of the Criminal Procedure Code, a case is sent up for investigation by a Magistrate, it is competent for such Magistrate to discharge the accused under Section 225, if, in his opinion, the evidence against the accused is not sufficient to warrant their committal to the Sessions Court. *Reg.* v. *Paúdurang Maijral and Ram Krishna Hari*, 5 B. R., Cr. R., 41.

A Deputy Magistrate was held to have acted irregularly in dismissing a complaint, and directing the trial of the complainant under Section 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present. *Queen* v. *Heera Lall Ghose*, 13 S. W. R., Cr. R., 37.

Dismissal of a complaint under Section 269 of the Criminal Procedure Code, in consequence of non-attendance of the complainant, the order of dismissal having been passed before the trial commenced, amounts to a discharge without trial, and does not bar the complaint from being again preferred. 4 Mad. Rep., Rul. VIII.

In answer to a reference from a Sessions Judge, the Court were of opinion that, in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under Section 224, Code of Criminal Procedure, the accused person ought to be discharged; but also held that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. *Taki Mahomed Mandal* v. *Krishna Nath Rai*, 7 B. L. R., 7, and 15 S. W. R., Cr. R., 7.

26.—Commitment.

A Judicial Commissioner has no power, under Section 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner.

The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed.

Per Norman, J.,—*Quære*, notwithstanding the decision of the Full Bench, as to the correctness of conviction for perjury upon alternative statements. *Queen* v. *Mati Khowa*, 3 B. L. R., A. Cr., 36; S. C., 12 W. R., Cr., 31.

Legally, and for the purposes of a commitment, a Magistrate and Joint-Magistrate have equal powers, and the Joint-Magistrate is not bound to act upon the instructions of the Magistrate in a judicial proceeding, such as the commencement of a preliminary enquiry. *Queen* v. *Tilkoo Goala*, 8 W. R., Cr., 61.

A Court of Session cannot treat as a nullity the commitment of a Magistrate, F. P., on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course. *Reg.* v. *Ranchoddás Nathubhai*, 4 Bom. Rep., Cr., 35.

There had been a riot and fight between two factories, and some members of one party (A.) were charged with the murder of the leader of the other party (B.), and some members of the other party (B.) were charged with causing grievous hurt to the leader of A. *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A.) and of party (B.) for trial all together upon joint charges, as if they had had one common object. *Queen* v. *Sheik Basu and others*, 8 W. R., Cr., 47.

A Small Cause Court Judge, if it is his intention to proceed under Section 173 of the Code of Criminal Procedure, should complete the investigation, and either commit or hold to bail the accused persons to take their trial before the Court of Session. *Resolution on a Letter*, 1 W. R., Cr., 5.

The Sessions Judge wished to cancel a committal, on the ground of the evidence being insufficient. As the committal was not illegal, he was ordered to try the case ; Circular Order No. 7 having reference only to commitments altogether illegal. *Resolution on a Letter*, 1 W. R., Cr., 8.

A Collector, trying a suit under Act X of 1859, has authority to commit to the Sessions Judge. *Queen* v. *Bunsee Singh*, 1 W. R., Cr., 47.

It is not illegal for a Magistrate to commit an accused to the Sessions without examining him or his witnesses. *Queen* v. *Hurnath Roy*, 2 W. R., Cr., 50.

A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise. *Queen* v. *Salim Sheik*, 2 W. R., Cr., 57.

A Magistrate making an enquiry, with a view to commit, is bound to record specially the evidence on which the committal is made. *Queen* v. *R. Anderson*, 2 W. R., Cr., 65.

A Sessions Judge has no authority to interfere and direct a committal in the case of a conviction for assault under Section 352, or of hurt under Section 323 of the Penal Code, both of them being offences triable by the Subordinate Court. *Queen* v. *Ramtohul Singh*, 5 W. R., Cr., 12.

A Magistrate should state in the grounds of committal the particulars of the case. *Queen* v. *Ishur Manjee*, 5 W. R., Cr., 17.

A Sessions Judge may, under Section 435 of the Code of Criminal Procedure, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions. *Moochee Mean, petitioner*, 7 W. R., Cr., 38.

Where a Magistrate used the words "acquittal and release," when he intended only to discharge a person accused of an offence not triable by him, —*Held* that the Court of Session was competent, under Section 435, Code of Criminal Procedure, to order a commitment of such accused person. *Queen* v. *Neetie Dulal*, 8 W. R., Cr., 41.

The discharge of a person accused of an offence triable by the Court of Session, is no bar to his being again brought, with a view to commitment, before a Magistrate who may proceed in such a case without an order from the Judge. Section 435, Code of Criminal Procedure, applies where a Magistrate has not thought fit to commit. *Queen* v. *Tilkoo Goala*, 8 W. R., Cr., 61.

The power of commitment given to a Court of Session by Section 435, Code of Criminal Procedure, must be exercised judicially upon the evidence before the Court, and such Court ought not to order a commitment, unless the evidence appear to it sufficient for a conviction within the terms of Section 226.

Where such discretion has been exercised, the High Court cannot enquire into the evidence, to see if it justifies the exercise of the discretion. *Queen* v. *Shama Sunker Biswas and Sham Churn Bose*, 10 W. R., Cr., 25.

A Sessions Judge cannot alter a commitment in a case which falls within the cognizance of a Magistrate, even though the Sessions Judge thinks the evidence proves that the accused was guilty of an offence beyond the Magistrate's cognizance. The High Court refused to interfere under Section 434, Code of Criminal Procedure, on a reference in which the Sessions Judge ordered a commitment in such a case, although they considered that there was evidence to prove that the offence was one triable by the Court of Session. *In re Hakim Sirdar and another*, 10 W. R., Cr., 35.

Where there is riot and fight between two factions, the members of each party should be committed for trial separately, and not all together. *Queen* v. *Durzoolla and others*, 9 W. R., Cr., 33.

Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate (first class) of voluntarily causing hurt by means of an instrument for stabbing, cutting, &c., under Section 324 of the Indian Penal Code (an offence cognizable by the Subordinate Magistrate), and directed the Subordinate Magistrate to commit the accused to the Court of Session for trial on the charge of voluntarily causing grievous hurt by means, &c. (a charge cognizable by the Court of Session), the High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate. *Reg.* v. *Hamnápá bin Malápá*, 7 Bom. Rep., Cr., 37.

The fact of a commitment being made by a Joint-Magistrate, who is an officer exercising the powers of a Magistrate, is sufficient, under Section 359, Code of Criminal Procedure, to enable the Sessions Judge to proceed with the trial ; and it lies with the party impugning the correctness of the proceedings to show that there was no jurisdiction. *Queen* v. *Komurooddee Sikhdar*, 13 S. W. R., Cr., 17.

A commitment to hajut before evidence is recorded is illegal. *Queen* v. *Surrendro Nath Roy*, 13 S. W. R., Cr. R., 27.

Where a Magistrate of a district who had discharged a prisoner was subsequently directed by the Sessions Judge to commit him for trial, and the commitment was eventually made by the Joint-Magistrate,—*Held*, that such commitment was not illegal.

Although ordinarily the order of the Sessions Judge would be directed to the Magistrate who had discharged the accused person, yet there is nothing in the Criminal Procedure Code to prevent such Sessions Judge from directing a committal by any Magistrate who is authorized to make commitments. *Queen* v. *Lekrey*, 2 N. W. R., 132.

Prisoner, whilst under trial before the Sessions Court, upon a charge framed under Section 436 of the Penal Code (mischief by fire, &c., with intent to destroy a house), was charged under Section 224 with escaping from lawful custody. The Magistrate being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of the former offence, for the latter offence, which was one cognizable by the Magistrate. The commitment was cancelled, and the Magistrate directed to deal with the case himself. *In re Anunto Koyburt*, 17 S. W. R., Cr. R., 14.

A commitment by a Subordinate Magistrate to the Sessions Court with respect to offences not exclusively triable by the Sessions Court is good. 6 Mad. Rep., Rul. XVII.

The duty of a committing officer is to ascertain whether by the evidence for the prosecution a *primâ-facie* case is made out against an accused. *Queen* v. *Maha Singh*, 3 N. W. R., 27.

When an enquiry has been made, and the accused

discharged, the Sessions Court may order the commitment of the accused, but cannot merely direct further enquiry. *Queen* v. *Ghassurum*, 3 N. W. R., 90.

A Small Cause Court Judge sent a case for investigation to the Head Assistant Magistrate under the provisions of Section 171 of the Criminal Procedure Code. The Head Assistant Magistrate transferred the case for investigation to the Sub-Magistrate, who committed the case to the Sessions. *Held* that the order of commitment was bad. 6 Mad. Rep., Rul. XLI.

The commitment and trial together of several persons who are charged with having given false evidence in the same proceedings should be avoided. A Court of Session is competent to try separately prisoners who have been committed together. *Queen* v. *Kureem and another*, 11 W. R., Cr., 16.

The grounds of commitment and the remarks of the committing officer should be entered or copied in the Calendar, which ought to be complete in itself. *Queen* v. *Khooda Sonthal and others*, 6 W. R., Cr., 9.

27.—Sentence.

In a case of interruption to a public servant in a stage of a judicial proceeding, under Section 228, Penal Code, a sentence of imprisonment cannot be passed under Section 163 of the Code of Criminal Procedure. *In the case of Buram Khan*, 10 W. R., Cr., 47.

The insufficiency of the punishment allowed by the law in cases of affray pointed out. *The Queen* v. *Phoollee Misser*, 12 W. R., Cr., 72.

Where a quiet, peaceable man, suddenly, and without the least motive or provocation, runs amuck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. *Queen* v. *Bishonath Bunneea*, 8 W. R., Cr., 53.

The punishment for escape from lawful custody (Section 224) in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence. *Queen* v. *Dhoonda Bhooya*, 8 W. R., Cr., 85.

Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour,—*Held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity. *Queen* v. *Sheikh Boodhoo*, 8 W. R., Cr., 38.

A sentence of three years' imprisonment is not too severe a punishment for a deliberate attempt to pervert justice by fabricating in one office false statements to be designedly and corruptly used in another. *Queen* v. *Kalachand Boidyo and others*, 8 W. R., Cr., 18.

Discussion as to the punishment sufficient for women charged with bringing a false charge of dacoity. *Queen* v. *Nathoo Doss*, 3 W. R., Cr., 12.

To make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. *Queen* v. *Ghasoo Khan*, 5 W. R., Cr., 49.

If a Sessions Judge thinks that a Jury is wrong in convicting a prisoner of culpable homicide, and not of murder, though he cannot interfere with the finding, he may sentence the prisoner to transportation for life, instead of ten years' transportation. *Muneeram Chung, appellant*, 1 W. R., Cr., 19.

Where a Sessions Judge and Assessor acquit in a case of murder, but find the prisoner guilty of a minor charge, the Appellate Court has no power to interfere to enhance the punishment awarded. *In the matter of Toyab Shaikh*, 1 Ind. Jur., N. S., 58.

In an affray respecting land the aggressor was killed, and the other party, had not the affair ended fatally, would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of Section 104 of the Penal Code,—*Held* that one year's rigorous imprisonment was sufficient punishment for the latter. *Queen* v. *Shunker Singh and others*, 1 W. R., Cr., 34.

A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by Sections 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by Section 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately, be suspended. *In the matter of Krishnanand Bhuttacharjee*, 3 B. L. R., A. Cr., 50; 12 W. R., Cr., 47.

The right to a fishery was in dispute between the zemindar of Bally and the zemindar of Moharajpore. The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally zemindar thereupon removed a bamboo bar, which the Moharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Indian Penal Code, and punished by fine.

Held, on reference to the High Court, that the conviction could not stand, as the Moharajpore zemindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bonâ-fide* belief that the Moharajpore zemindar was encroaching on their master's rights. *Bakar Halsana* v. *Dinobandhu Biswas*, 3 B. L. R., Cr., 17; S. C., 12 W. R., Cr., 1.

Although a Sessions Judge cannot release a prisoner on bail pending an appeal, he may suspend the sentence pending the appeal. *Queen* v. *Mugrali Kinlan Mookerjee*, 3 W. R., Cr., 57.

A woman, quick with child, is exempt from capital punishment. *Queen* v. *Tepoo*, 3 W. R., Cr., 15.

Additional imprisonment in default of payment of fine must be rigorous. *Queen* v. *Srimonto Kotal and another*, 7 W. R., Cr., 31.

Simple and not rigorous imprisonment can be inflicted in default of payment of a fine imposed on an offender convicted, under Section 179 of the Penal Code, for refusal to answer a question asked of him by a public servant on a subject on which he was legally bound to state the truth. *Queen* v. *Jogeshur Roy*, 5 W. R., Cr., 76.

To bring Section 59 of the Penal Code into opera-

tion, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. *Queen* v. *Mootkee Kora*, 2 W. R., Cr., 57.

Where a zemindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under Section 62 of the Penal Code, the High Court set aside the sentence under Section 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances. *The Queen* v. *Mahomed Akhir*, 12 W. R., Cr., 17.

Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under Section 74 of the Penal Code, it is to be imposed at intervals. *In the matter of Nyan Suk Mether*, 3 B. L. R., A. Cr., 49.

A prisoner convicted, under Section 380 of the Indian Penal Code, of theft in a building used for the custody of property, was sentenced, under Section 75, to fourteen years' transportation, as he had been previously convicted thirteen times of offences now punishable, under Chapter XVII of the Code, with imprisonment for three years or upwards.

Held that, as all the previous convictions were prior to the passing of the Indian Penal Code, the present offence was not punishable under Section 75. *Reg.* v. *Bushya bin Yesn*, 4 Bom. Rep., Cr., 11.

A direction annexed to a sentence of imprisonment, under Section 448 of the Indian Penal Code, that the convict be brought up at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorized by Section 296 of the Criminal Procedure Code. *Reg.* v. *Krishnaji B. Gankaad*, 3 Bom. Rep., 39.

A sentence of four years' imprisonment by a Magistrate is illegal as beyond his competency. *Jhoomuck Chamar*, 6 W. R., Cr., 90.

The High Court has power to mitigate, on the grounds of its being excessive, a sentence passed by a Magistrate, and confirmed in appeal by the Sessions Judge, or a sentence passed in appeal by the Sessions Judge altering a sentence passed by a Magistrate. *Bissumbhur Shaha, petitioner*, 6 W. R., Cr., 7.

Remarks on the comparatively light sentence passed without any reason in a case where a false charge of murder was preferred and persisted in. *Queen* v. *Peetum Lall Puddhun*, 7 W. R., Cr., 111.

The power to pass judgment in the alternative given by Section 381 of the Code of Criminal Procedure applies to cases in which it is doubtful under which of two sections the offence falls, and not to cases in which both charges are under the same section. *Queen* v. *Bedhoo Noshye and four others*, 11 W. R., Cr., 37.

Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft. *Queen* v. *Sheikh Mooneah*, 11 W. R., Cr., 38.

The High Court cannot enhance a legal sentence. *Muneeram Chung, appellant*, 1 W. R., Cr., 19.

Contemporaneous sentences are not justified by the Penal Code. *Queen* v. *Mohesh Chunder Sircar*, 3 W. R., Cr., 13.

A Sessions Judge should sum up the evidence on both sides and record the ground of his decision, and the sentence when passed should be recorded in a certain specified form. *Queen* v. *Aruj Sheikh*, 4 W. R., Cr., 18.

A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, is not warranted by Section 46 of the Code of Criminal Procedure, that section allowing such sentences only when the penalties consist of imprisonment. *Queen* v. *Kassim Aly*, 11 W. R., Cr., 10.

Held that, where the prisoners were charged under Section 148 of the Penal Code with rioting armed with deadly weapons, and also under Section 324 with voluntarily causing hurt by dangerous weapons, they should have been sentenced only under one or other of these sections; the charges being, properly speaking, only alternative charges. *Queen* v. *Dina Sheikh*, 10 W. R., Cr., 63.

Where a conviction has been had under two Sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. *Queen* v. *Bhoobun Mohun and two others*, 11 W. R., Cr., 39.

When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery. *Queen* v. *Mussamut Ghurbhurnee*, W. R., 1864, Cr., 1.

A Subordinate Magistrate exercising the full powers of a Magistrate has not authority to vary any sentence he may have once passed on a prisoner. *Reg.* v. *Tookia*, 1 Bom. Rep., 3.

A sentence of rigorous imprisonment passed by a Magistrate, F. P., under Section 188 of the Indian Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorized. *Reg.* v. *Rutunrav M. Chavan*, 3 Bom. Rep., Cr., 32.

A sentence of imprisonment passed on a woman who was never put on her defence quashed as illegal. *Bama Boistobee, petitioner*, 6 W. R., Cr., 17.

A sentence of rigorous imprisonment passed in a case of affray with homicide, under Regulation VI of 1828, quashed as illegal, and altered to one of imprisonment with labour. *Queen* v. *Komaruddy Bhooya*, 1 W. R., Cr., 47.

Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence. *Queen* v. *Sib Narain Palodhee and another*, 7 W. R., Cr., 33.

Held on the facts of this case, that a party (A.) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A. was charged with having misappropriated, was guilty of separate offences under Sections 353 and 183 of the Pena'

Code, and the infliction of separate sentences for each offence was not prevented by Section 71 of that Code. *Queen* v. *Joyah Mohun Chunder*, 14 S. W. R., Cr. R., 19.

When the proceedings in a case tried by a Subordinate Magistrate are submitted, under Section 277 of the Code of Criminal Procedure, to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of such sentence before the District Magistrate. *Reg.* v. *Rughá Nárangi et al.*, 7 Bom. Rep., Cr., 31.

Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III of 1857), when the Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence and no injustice had been done. *Mohesh Nath* v. *Hurro Mohun Ghosal*, 16 S. W. R., Cr. R., 12.

A. was charged with the offence of voluntarily causing hurt to C., and B. was charged with the same offence, and also with the offence of abetting A. The Magistrate found A. guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found B. guilty of abetment of the offence of voluntarily causing hurt to C., and sentenced him to one month's rigorous imprisonment and a fine.

On appeal, the Sessions Judge held that there was no evidence to convict A., and he accordingly released the prisoner. The appeal of B., however, was rejected, on the ground that the evidence, though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt, and therefore, under Section 426 of the Code of Criminal Procedure, the sentence could not be reversed. No "error or defect either in the charge or in the proceedings on trial" was alleged.

Held (by Mitter, J.) that Section 426 of the Code of Criminal Procedure did not apply. *Queen* v. *Mahendranuth Chatterjee*, 5 B. L. R., Ap., 39.

Held that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him. *Reg.* v. *Muliyá Ná ná et al.*, 5 Bom. Rep., Cr., 24.

Sentence of transportation for fourteen years under Section 392 of the Indian Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction; and Section 75 had therefore been improperly applied.

Semble,—That a Sessions Judge cannot (under Section 75 of the Indian Penal Code or otherwise) by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. *Reg.* v. *Sakyá Valad Káviji et al.*, 5 Bom. Rep., Cr., 36.

Conviction and sentence by a Magistrate reversed, as the act of which the accused was convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of Section 95 of the Indian Penal Code, and did not therefore amount to an offence. *Reg.* v. *Kásyá bin Ráviji et al.*, 5 Bom. Rep., Cr., 35.

The sentence of imprisonment passed in default of the payment of a fine inflicted under Section 290 of the Indian Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment. *Santubin Lakháppá Kore*, 5 Bom. R., Cr. R., 45.

Where the Sessions Judge directed the committal of defendant for adultery, the defendant having been already convicted by the Magistrate of enticing away,—*Held* that the sentence passed by the Magistrate should have been at once annulled, the requisite intention in the one case being the substantive delicit in the other. 5 Mad. Rep., Rul. XVII.

A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the Appellate authority. 5 Mad. Rep., Rul. XX.

Three prisoners were charged with five distinct offences of housebreaking by night, and were sentenced to two years' rigorous imprisonment in each case. *Held* that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously. 5 Mad. Rep., Rul. XIII.

Certain persons were convicted, under Section 5 of Act XXI of 1860, of manufacturing and selling gunpowder without a license, and sentenced to fine, or in default imprisonment. Section 44 of the Act provides a special procedure for levying the fine by distress. *Held* that the sentence was legal, the Act giving power to imprison or fine upon conviction. 5 Mad. Rep., Rul. XXIV.

Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first, and so on. 4 Mad Rep., Rul. XXVII.

A sentence duly passed and recorded cannot be revised by the Judge. 4 Mad. Rep., Rul. XIX.

A Sessions Judge has no authority to suspend his own sentence. 4 Mad. Rep., Rul. II.

A prisoner convicted under the 2nd Clause of Section 211 of the Indian Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone. *Reg.* v. *Bama bin Rumbhajee*, 1 Bom. Rep., 34.

Fine alone is not a legal sentence for a prisoner convicted under Section 344 of the Indian Penal Code. *Reg.* v. *Buheerjee bin Krishnajee*, 1 Bom. Rep., 39.

28.—Separate and Cumulative Sentences.

Two prisoners having been convicted by an Assistant Judge of forgery and other offences, were sentenced each to an aggregate amount of punishment which the Court was competent to inflict, but without specifying the several penalties awarded for each offence.

On a reference by the Sessions Judge, under Section 434 of the Criminal Procedure Code,—*Held* that it was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of the charge, but that it was not an error or defect in consequence of which the High Court could reverse

or alter the sentence under Section 426 of the Code. *Reg.* v. *Vinayak Trimbak et al.*, 2 Bom. Rep., 414.

Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (Section 369), and theft after preparation to cause death, &c. (Section 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, &c., within the meaning of that section. *Queen* v. *Kashee Nath Chungo*, 8 W. R., Cr., 84.

Where a prisoner convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under Section 457 of the Indian Penal Code, and on the second head of charge to receive twenty stripes, under Section 2 of the Whipping Act (VI of 1864), the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act. *Reg.* v. *Giná bin Aká*, 5 Bom. Rep., Cr. R., 83.

Separate convictions and sentences under Sections 429 and 379, and under Sections 457 and 380 of the Penal Code were set aside; and the convictions under Section 429 in the former case, and under Section 457 in the latter, allowed to stand. *Queen* v. *Sahrae and others*, 1 W. R., Cr., 31.

A. was convicted of offences under Sections 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. *Held* that, under Section 411 of Act XXV of 1861, there was no appeal. The separate sentences could not be taken together and combined into one sentence, so as to give a right of appeal. *The Queen* v. *Nagardi Paramanick*, 1 B. L. R., A. C., 3; 10 W. R., Cr., 3.

An accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was *held* that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. *In the case of Goolzar Khan*, 9 W. R., Cr., 30.

Sentences of imprisonment may be accumulated beyond the period of 14 years, notwithstanding Section 46 of that Code, which limit has reference only to sentences passed simultaneously, or passed upon charges tried sumultaneously. *Queen* v. *Puban*, 7 W. R., Cr., 1.

Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence, and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. *Queen* v. *Durzoolla and others*, 9 W. R., Cr., 33.

The conviction of prisoners for two offences, when the one offence formed an integral portion of the other, held to be in effect punishing twice for the same offence, and therefore illegal. *Government* v. *Lalawan Singh*, 1 Agra Rep., Cr., 31.

Where substantially but one offence has been committed, and the acts which are the basis of one charge are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed.

When prisoners were convicted under Sections 224 for escape, 223 for rescuing from lawful custody, and under Section 353 for using criminal force in so doing, and sentenced to separate punishments under each section,—*Held* that the prisoners had only done one act, and were guilty of only one offence, and should have been found guilty under Sections 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly. *The Queen* v. *Kalisankar Sandyal*, 3 B. L. R., A. Cr., 14; and *Queen* v. *Rathakant Paul*, 9 W. R., Cr. 12.

A cumulative sentence under Section 143 of the Penal Code (being a member of an unlawful assembly), and under Section 253 (using criminal force against a public servant), was upheld by the High Court in this case. *Gobind Chunder Roy*, 16 S. W. R., Cr. R., 70.

29.—Transportation.

Under Section 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for seven years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed. *Queen* v. *Prem Chund Ousawal*, W. R., 1864, Cr., 35.

A sentence of transportation under Sections 412 and 59 of the Penal Code cannot exceed ten years. *Queen* v. *Mahanundo Bhundary*, 5 W. R., Cr., 16.

A sentence of transportation cannot be less than seven years to bring Section 59 of the Penal Code into operation; the punishment awarded in each offence alone must be not less than seven years' imprisonment; a general sentence of transportation for two or more offences, when only one of the punishments awarded is seven years' imprisonment, is illegal. *Queen* v. *Shonaullah and Adoo*, 5 W. R., Cr., 44.

Transportation can only be substituted for imprisonment in a case in which the offender has been sentenced to at least seven years' imprisonment for one offence. *Queen* v. *Tonooram Malee*, 3 W. R., Cr., 44.

To bring Section 59 of the Penal Code into operation the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. *Queen* v. *Mootkee Kora*, 2 W. R., Cr., 1.

Neither under Section 307 nor under Section 394 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for ten

years, with fine. *Queen* v. *Bhamaur Doosadh*, 7 W. R., Cr., 41.

Under Section 59 of the Penal Code no sentence of transportation for a shorter period than seven years can be passed on any charge.

Therefore where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding, under Section 193, and of forgery under Section 467, and sentenced to seven years' transportation for the first offence, and further period of transportation for three years for the second offence, the second sentence was quashed as illegal. *Queen* v. *Gour Chunder Roy*, 8 W. R., Cr., 2.

30.—WHIPPING.

Act XIII of 1856, Section 27, gives a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gives both is illegal. *The Queen* v. *Shaik Fyze*, Bourke's Rep., O. C., 269.

Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment. *Queen* v. *Kantiram and Mecken*, 1 W. R., Cr., 24; *Queen* v. *Tonaokoch*, 2 W. R., Cr., 63; *Queen* v. *Amarut Sheikh*, 4 W. R., Cr., 20.

A sentence of whipping under Section 4, Act VI of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Indian Penal Code. *Queen* v. *Uday Patnaick*, 12 W. R., Cr., 68.

In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first offence or otherwise, whipping can only be in lieu of any other punishment. *Queen* v. *Abdool Khitmutgar*, W. R., 1864, Cr., 38.

Held by the majority, that when a person who has not been "previously convicted" (*vide* Section 4, Act VI of 1864), is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishment.

Held further, that when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only one whipping, in addition to any other punishment to which, under Section 46 of the Code of Criminal Procedure, he may be liable. *Nasser* v. *Chunder and others*, 9 W. R., Cr., 41.

In the case of conviction of attempting to commit house-breaking by night, with intent to commit theft, a sentence of whipping was annulled as being illegal. *Reg.* v. *Yella Valad Parshia*, 4 Bom. Rep., Cr., 38.

On a reference by a Sessions Judge, under Section 438 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in Section 4 of Act VI of 1864, was annulled, as the prisoner had not been previously convicted of the same offence. *Reg.* v. *Báleji and Alad Bápu*, 4 Bom. Rep., Cr., 5.

A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI of 1864, Section 3. *Reg.* v. *Chângia Shumia*, 7 Bom. Rep., Cr., 68.

Section 3 of Act VI of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders.

That Section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction. *Reg.* v. *Kusá Valad Lakshman*. 7 Bom. Rep., Cr., 70.

The Magistrate convicted the accused under Section 380 of the Penal Code, and a previous conviction having been proved under Section 379 of the Penal Code, sentence of imprisonment and whipping was passed. *Held* that in order to justify the sentence of whipping the previous conviction should have been in respect of the same specific offence. 5 Mad. Rep., Rul. XXXIX.

Follows the full Bench decision ruling that when a person who has been previously convicted (Section 4 Act VI of 1864) is a second time convicted at one time of two or more offences, he may be punished with only one whipping in addition to any other punishment to which, under Section 46 of the Code of Criminal Procedure, he may be liable. *Ruttun Bewa* v. *Buhur; Jhotola* v. *Buhur*, 14 S. W. R., Cr., 7.

When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment, and in the other case to whipping, under Act VI of 1864. 5 Mad. Rep., Rul. XIX.

A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal. 5 Mad. Rep., Rul. I.

Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under Section 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under Section 325, and to whipping with twenty stripes for the offence of theft, under Section 378, of the Indian Penal Code, it was held (Kemp and Phear, JJ., dissenting) that the sentence was legal.

Where a person is convicted at the same time of two or more offences punishable under the Indian Penal Code, held (Kemp and Phear, JJ., dissenting) that it is lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping. *Nassir* v. *Chunder not followed; Mamruddon* v. *Gaur Chundra Shamudur*, 7 B. L. R., 165.

As a rule, before flogging is given as an additional punishment there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way, a mere kyfeut is no evidence whatever. *Queen* v. *Nuzeen Nushye*, 15 S. W. R., Cr., R., 52.

Held (Kemp and Phear, JJ., dissenting) that notwithstanding Section 46 of the Code of Criminal Procedure, a person convicted at the same time of two or more offences punishable under the Penal

Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and Section 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form. *Moniruddeen Shumadar* v. *Gour Chunder Shumadar*, 15 S. W. R., Cr. R., 89.

31.—FINES.

The provisions of Section 61, Code of Criminal Procedure, as amended by Act VIII of 1869, are not applicable to fines and forfeitures under Act XXI of 1856, so as to allow of imprisonment and distress going on simultaneously. *Government* v. *Junglu Beldar*, 17 S. W. R., Cr. R., 7.

A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter, to a further time of imprisonment.

He paid a portion of the fine, but that fact not having been communicated to the jailer, underwent the entire further term of imprisonment.

Held that, under these circumstances, the Court had no power to order the fine to be refunded. *Reg.* v. *Nàtha Mulà*, 4 Bom. Rep., Cr., 37.

In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor; but the Court which levies the fine must be the same as the Court which imposed it. *Chunder Coomar Mitter* v. *Modhoosoodun Roy*, 9 W. R., Cr., 50.

A Deputy Magistrate has no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him. *Queen* v. *Brojo Kishore Dutt*, 8 W. R., Cr., 17.

The High Court refused to interfere with the order of a Magistrate fining complainants under Section 270 of the Code of Criminal Procedure, when it appeared, after due enquiry by the Magistrate, that the complainants laid claim to large jummas in a chur, without possessing any documents to prove their rights. *Case of Mothoor Ghose and others*, 11 W. R., Cr., 10.

A Magistrate may impose a fine exceeding Rs. 1,000 under the Excise Act XXI of 1856; Section 22 of the Code of Criminal Procedure notwithstanding. *Queen* v. *Suroop Chundra Dutt*, 7 W. R., Cr., 29.

The description of fine which it was the object of Section 63 of the same Code to prohibit was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence.

Quære,—Whether Section 63 has any application to fines inflicted by a Magistrate. *Abdoor Ruham, petitioner*, 7 W. R., Cr., 37.

A fine cannot be awarded as compensation in a case falling under Chapter 14, Code of Criminal Procedure. *Queen* v. *Nijanund*, 3 W. R., Cr., 60.

An offender who has undergone the full terms of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not (*dissentiente*, Seton-Karr, J.) *Queen* v. *Modoosoodun Dey*, 3 W. R., Cr., 61.

A fine is not awardable as compensation for a false charge of theft. *Juhoorun* v. *Girdharee Ram*, 3 W. R., Cr., 70.

An order directing the payment to a witness of a portion of the amount of fine levied on an accused, held to be illegal in the absence of proof that the witness suffered any loss owing to the conduct of the accused. *Queen* v. *Kartick Chunder Haldar*, 9 W. R., Cr., 58.

Under Section 15, Act XXIX of 1867, the fine to be imposed for non-payment of the tax cannot be less than the amount stated in the notice. *Queen* v. *Bissessur Sein*, 9 W. R., Cr., 62.

Under Section 3, Act XXIX of 1867, a person once fined for not taking out a license is not liable to a second fine, or to any further demand for the tax. *Re Doorga Churn Giree*, 9 W. R., Cr., 64.

Held that a Subordinate Magistrate of the 1st Class has power to deal with the case of an offence provided for by a special law (in this case Act III of 1863, B. C.) when the punishment awardable is six months' fine, and fine only, Section 67, and not Section 65, of the Penal Code being applicable to such a case. *Chunder Prosand Singh*, 10 W. R., Cr., 30.

Held that, where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chapter 15 of the Code of Criminal Procedure, although the charge, as originally laid, fell under Chapter 14, he has a discretion to inflict a fine under Section 270 of that Code. *Hathoor Laloong* v. *Hindoo Singh Mowez and another*, 10 W. R., Cr., 49.

The High Court has power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. *Reg.* v. *Hossein Jan and others*, 2 Ind. Jur., N. S., 190.

Sagur Dutt was convicted before a Justice of the Peace for using a warehouse, &c., in the town of Calcutta for the keeping and storing of jute, other than jute screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 52 for every day after the conviction in which the offence was continued. *Held* that the conviction was bad. *In the matter of Sagur Dutt; The Queen* v. *The Justices of the Peace*, 1 B. L. R., O. Cr., 41.

The Court has no power to dispose of fines inflicted upon prisoners; such power exists in Government alone. *Reg.* v. *Goluck Dass*, 1 Hyde's Rep., 282.

The Joint Magistrate was held not competent to direct, under Section 44 of the Code of Criminal Procedure, that a portion of a fine inflicted, under Section 434 of the Penal Code, be paid to an Ameen for the purpose of paying the expense of his deputation to restore the land-marks which had been destroyed by the opposite party. *Queen* v. *Moorut Lall and others*, 6 W. R., Cr., 93.

A sentence must impose a specific fine on each prisoner. 5 Mad. Rep., Rul. V.

When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. 5 Mad. Rep., Rul. XLIV.

Upon the conviction of certain persons under Section 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that upon the realization thereof one-half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with Section 30 (for reasons set forth in his order) to the person who gave the information.

On a reference by the Sessions Judge to the High Court,—*Held*, the High Court could not interfere under Section 404 of the Code of Criminal Procedure. The distribution of the fine under Section 30, Act XIII of 1867, forms no part of the Magistrate's judgment. *Queen* v. *Ramdyal Singh*, 8 B. L. R., Ap., 7.

Where a Magistrate dismissed a complaint in default, under Section 259, Code of Criminal Procedure, and fined the complainant under Section 270, the fine was remitted and ordered to be refunded. *Ram Churn Dey* v. *Sheikh Janun*, 17 S. W. R., Cr., R., 6.

Section 115 of the Criminal Procedure Code makes applicable the provisions of Section 65 of the Indian Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under Section 21 of the Criminal Procedure Code.

Imprisonment for one month awarded in default of payment of a fine under Section 3 of the Salt Revenue Act (XXXI of 1850) was accordingly reduced to three weeks' simple imprisonment. *Reg.* *Bhithoba bin Soma*, 5 B. R., Cr. R., 61.

On a reference as to whether the restriction for the recovery of fines to moveable property (Criminal Procedure Code, Section 61) applied only during the lifetime of the offender, and whether the fine could after his death be recovered, under Section 70 of the Indian Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of the moveable property, and that there was no way in which immoveable property could be made liable. *Reg.* v. *Lallu Kárwár*, 5 Bom. Rep., Cr. R., 63.

32.—Forfeiture.

Section 62 of the Penal Code, which provides for forfeitures, limits them to cases when the parties shall have been transported or sentenced to imprisonment for at least seven years. *Queen* v. *Kripamoyee Chassanee and others*, 8 W. R., Cr., 35.

Where a forfeiture under Regulation XI of 1796 was declared against three or four brothers constituting a joint undivided Hindu family,—*Held* that the forfeiture did not enure for the benefit of the fourth brother, nor did it affect the rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance. *Mussamut Golab Koonwar and others* v. *The Collector of Benares*, 7 W. R., P. C., 47.

An order of forfeiture under Section 184, Code of Criminal Procedure, if substantially legal, cannot be disturbed for an immaterial error of procedure. *Queen* v. *Gugun Misser*, 8 W. R., Cr., 61.

Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation. *Queen* v. *Muddun Mohun Podar*, 3 W. R., Cr., 34.

The forfeiture of the property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular enquiry into the causes of the offender's absence. *Bishonath Sircar*, 3 W. R., Cr., 63.

Before the passing of an order declaring the property of an accused person, who cannot be found, to be at the disposal of the Government, there must be a proclamation under Section 183, Code of Criminal Procedure, specifying a time within which such person is required to appear. But before a Magistrate can issue such a proclamation he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant. *Sheodyal Singh* v. *Girban Singh*, 6 W. R., Cr., 73.

The property of a judgment-debtor convicted of an offence under Act XI of 1857, which has been attached intermediately between the time of commission of the offence and the time of conviction, is property forfeited to the Crown under Section 3, Act XXV of 1857. The forfeiture relates back to the time of commission of the offence. *Gunneshtell* v. *Ameer Khan*, 17 S. W. R., Cr. R., 80.

In execution of a decree against the defendant, the plaintiff, on 17th July, 1871, attached certain property in Calcutta belonging to the defendant. On 26th July, 1871, the defendant was convicted under Section 1 of Act XI of 1857, and also under Section 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and forfeiture of all his property. The offence for which he was convicted was committed in September, 1861. *Held* that the forfeiture took effect from the date of the commission of the offence, and therefore any attachment subsequently made was invalid.

The words in Section 3, Act XXV of 1857, "such an offence as aforesaid," refer to the offences mentioned in Section 2, as well as to the offence of mutiny mentioned in Section 1. *Ganeshlal* v. *Amir Khan*, 8 B. L. R., 83.

33.—Confiscation

The procedure prescribed in Sections 131 and 132 of Act XXV of 1861 must be followed before an order confiscating property is made. *Behary Shaha* v. *Nubby Khan and others*, 9 W. R., Cr., 13.

A Joint Magistrate's order of confiscation set aside—(1) because made without permitting the accused to show cause against the confiscation of his goods; (2) because the confiscation ought not to be carried out when the accused has been apprehended and brought to trial before the passing of the order; and (3) because the Joint Magistrate acted in contravention of the order of the Magistrate releasing the property from attachment. *Jhundoo Singh and others, petitioners*, 5 W. R., Cr., 8.

The property of certain rebels was confiscated, and a list made of such property, which list did not specify the land in suit. *Held*, nevertheless, that if the land in suit was actually attached as the property of the rebels the plaintiff's suit could be barred by the special Limitation Law of Act IX of 1859. *Hafiz Ameer Ahmed* v. *Hafiz Nuzal Ali*, 1 Agra Rep., A. C., 46.

Confiscation of the zemindar's rights, under Act XXV of 1857, will not operate to interrupt the growth of a right of occupancy claimed by a tenant. *Sheoraj Singh* v. *W. F. Legge*, 3 Agra Rep., 293.

The confiscation of a village under Act X of 1858 cancels the rights of the tenants, and the fact that they were permitted to retain their holding on rent and enjoy the produce of the trees for some years subsequent to the confiscation, does not revive the rights which are absolutely avoided by the confiscation. *Teekum Singh* v. *Mussamut Dullo*, 2 Agra Rep., 324.

In cases of confiscation limitation runs, not from the date on which confiscation is sanctioned by the Government, but rather from the date on which the property is actually attached on the part of the Government.

An order of confiscation, or an order sanctioning confiscation, is not equivalent to an actual confiscation by way of attachment or seizure.

A list of confiscated houses is not by itself proof of actual attachment. *Deo Karun* v. *Nawab Syud Mohamed Ali Shah and another*, 3 N. W. R., 328.

When a person has been tried and convicted in the Court of a Special Commissioner, an order of confiscation of his property should be made at the time of the trial, and not subsequently. *Musst. Izzuttoolunissa Beebee* v. *Musst. Hunsa Koour*, 1. 5. N. W. R., 101.

34.—Acquittal.

Where the accused was once acquitted of the offence, he was not liable to be tried again for the same offence, and the second conviction was therefore, under Section 55, Act XXV of 1861, illegal. *Government* v. *Doulat*, 2 Agra Rep., Cr., 3.

When a prisoner is acquitted of the offence charged, the Court ought not to order the property in respect of which the offence was charged to be given to the prosecutor. *Haree Bundhoo Santra, petitioner*, 5 W. R., Cr., 55.

The High Court, sitting as a Court of Revision, cannot interfere to set aside a verdict of acquittal by a jury on the ground of misdirection by the Judge. *Queen* v. *Chandrakant Chuckerbutty*, 1 B. L. R., A. C., 8.

An express finding by the Sessions Judge that the case does not fall under any of the clauses of Section 300 is tantamount to an acquittal of murder; and after such an acquittal, the High Court cannot, either as a Court of Appeal or a Court of Revision, look at the evidence for the purpose of reversing the acquittal, and of convicting the prisoner of murder. *Queen* v. *Sheikh Bazu and others*, 8 W. R., Cr., 47.

Prisoner acquitted of attempt to murder, but directed to be proceeded with by the Magistrate under Section 297, Code of Criminal Procedure, with a view to security being taken for his future peaceable behaviour. *Queen* v. *Beharee, alias Kurreem Bux*, 3 W. R., Cr., 23.

Where there is no *primâ facie* case against an accused, and he has not been put on his defence, nor any charge preferred against him, he should be discharged, and not acquitted. *Queen* v. *Bipro Doss*, 8 W. R., Cr., 45.

Where no charge in writing has been drawn up, and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge and not acquit the prisoner. Nor can the Magistrate acquit a prisoner whom he has no jurisdiction to try. *Queen* v. *Robert Sheriff*, 6 W. R., Cr., 13.

A person who is tried and discharged for the offence of assault under Section 352, Penal Code, cannot again, upon the same complaint, be tried for "causing hurt." *Kuptan* v. *G. M. Smith*, 7 B. L. R., Ap., 25; and 16 S. W. R., Cr. R., 3.

Two persons were committed for trial, the first prisoner for adultery, enticing away a married woman, and theft, and the second prisoner for abetment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner, and that previous to her departure she, by means of false keys supplied to her by the second prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the second prisoner for safe custody. Part of the money was handed to the first prisoner. *Held* that notwithstanding the acquittal the prisoners were not entitled to be discharged without trial on the charge of theft. 5 Mad. Rep., Rul. XXIII.

Where a prisoner is released by the Court of Sessions on the ground that the proceedings had in his case were illegal and irregular, there is no bar under Section 55 of the Code of Criminal Procedure to his being subsequently tried and convicted of the same offence. *Queen* v. *Wahed Ali*, 13 S. W. R., Cr. R., 42.

35.—Bail.

A single Judge of the High Court may order the release of a prisoner on bail, pending the hearing of an appeal. *Queen* v. *Jaloo Sirdar*, W. R., 1864, Cr., 19.

Bail under Section 212 of the Criminal Procedure Code can be demanded only in cases where further enquiry is pending and the accused have not been discharged. *Ramlall Tewaree* v. *Soofaram*, 10 W. R., Cr., 34.

The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty, without malice, will not be sufficient to sustain an action. *Parankissan Narasay* v. *Capt. R. A. C. Stuart*, 2 Mad. Rep., 396.

In a case of contempt, the Court before which the offence is committed is bound, under Section 163 of the Code of Criminal Procedure, to accept bail, if sufficient bail is tendered. *The Queen* v. *Chunder Shekur Roy*, 12 W. R., Cr., 18.

A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under Section 411 of Act XXV of 1861, is not an accused person within the mean-

ing of Section 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under Section 434 of the same Act. *The Queen* v. *Mahendranarayan Bangabhusun*, 1 B. L. R., A. Cr., 7.

36.—TENDER OF PARDON.

A Sessions Judge is not competent before a trial to instruct a Magistrate to tender a pardon under Section 210 of the Penal Code. *In the matter of Nistarinee Debia, petitioner*, 7 W. R., Cr., 114.

A Magistrate is competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under Section 209 of the Code of Criminal Procedure. *Queen* v. *Chundee Churn Banerjee*, 6 W. R., Cr., 94.

On a reference by a Sessions Judge, where certain persons were found guilty of gaming by a Full Power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned,—*Held* that the Magistrate had no power to tender a pardon in a case which he tries himself; but only under Section 209 of the Criminal Procedure Code, in the case of an offence triable by the Court of Session. *Reg.* v. *Remediosa and others*, 3 Bom. Rep., A. C., 59.

The provisions of Section 209, Criminal Procedure Code, apply to cases triable by the Magistracy concurrently with the Court of Session. *Anonymous*, 3 Mad. Rep., Cr., 2.

The procedure to be observed under Sections 209, 210, and 211 of the Code of Criminal Procedure, when a tender of conditional pardon is made, pointed out. *Queen* v. *Gogalao Doss*, 12 W. R., Cr., 80.

The power given to a Magistrate by Section 209 of the Criminal Procedure Code cannot properly be exercised, except with a view to the committal of a case for trial before a Court of Session. *Anonymous*, 3 Mad. Rep., Cr., 4.

Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given him by Section 211 of the Code of Criminal Procedure, ought not to try him along with the prisoners in whose case he has already given testimony.

Where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by Section 205 of the Code of Criminal Procedure, it does not of itself constitute *primâ-facie* evidence of the examination within the meaning of Section 366 of that Code; and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the Sessions. *Queen* v. *Petumbur Dhoobee*, 14 S.W. R., Cr. R., 10.

37.—COMPENSATION.

Section 270, Code of Criminal Procedure (authorizing the award by a Magistrate of amends in cases of false complaints), applies only to complaints made and cases tried under Chapter XV of the Code, and is limited to cases punishable under the Penal Code with imprisonment for a period not exceeding six months.

Rs. 50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons. *Queen* v. *Lalloo Singh and others*, 8 W. R., Cr., 54.

Amends cannot be awarded in a case of wrongful confinement. *Jharu* v. *Bahar Ally and others*, 7 W. R., Cr., 11; nor in a case of housebreaking by night or theft. *Dhurai Noshyo* v. *Hubee Noshyo*, 7 W. R., Cr., 12; nor in a case of theft. *Chootoo Dhoon Bharbhonia* v. *Abdool Meah and others*, W. R., 1864, Cr., 40.

Although Section 270 of the Code of Criminal Procedure forbids compensation to a person falsely and vexatiously charged with theft, yet the law does not prevent a Magistrate from fining an unjust accuser. *Chide Chowbee* v. *Bhowany and Jhaw*, 1 W. R., Cr., 1.

A conviction for defamation cannot be sustained when the complainant admits the more serious charges. No compensation can be awarded in such cases. *Assuruddee Khan* v. *Baboo Khan*, 1 W. R., Cr., 6.

Amends cannot be awarded in a case under Section 374 of the Penal Code (unlawful compulsory labour) which comes under Chapter XIV of the Code of Criminal Procedure. *Ratuah* v. *Pho Konder*, 5 W. R., Cr., 1.

Subordinate Magistrates of the 2nd Class have no power to award fines to accused as compensation for frivolous and vexatious prosecutions. Sections 270 and 434 of the Criminal Procedure Code. *Reg.* v. *Jellapa bin Mudakappa*, 1 Bom. Rep., 181.

Compensation cannot be awarded, under Section 270, Code of Criminal Procedure, to a person charged with theft under Section 380 of the Penal Code. *Jalil Munshi* v. *Farnan Hossein*, W. R., 1864, Cr., 55.

The compensation awarded, under Section 44 of the Code of Criminal Procedure, to the person injured in consideration of the loss which he has suffered, corresponds to damages awarded in Civil proceedings. *Queen* v. *Baijoo Koormee*, 5 W. R., Cr., 76.

Compensation, under Section 44 of the Code of Criminal Procedure, cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed. *Lall Singh, prisoner*, 10 W. R., Cr., 39.

The award of compensation referred to in Section 44 of the Code of Criminal Procedure should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial. *Queen* v. *Gour Churn Doss and others*, 11 W. R., Cr., 53.

On a reference by a Sessions Judge, an order made by a Magistrate, under Section 44 of the Criminal Procedure Code, awarding compensation to the complainant out of a fine inflicted for causing hurt reversed, as there was no evidence on the record to show that loss was caused, or that any special damage of a pecuniary nature resulted to

the complainant from the offence. *Reg.* v. *Samser Babji*, 3 Bom. Rep., Cr., 43.

Since the passing of Act VIII of 1869, a Magistrate may, under Section 270, in a case in which more than one person has been accused, award compensation not exceeding Rs. 50 to each person. *Bhyroo Lall, petitioner*, 14 S. W. R., Cr. R., 75.

Amends, under Section 270 of the Code of Criminal Procedure, are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue. *Reg.* v. *Rámji Oalad Dáji*, 5 Bom. Rep., Cr., 12.

Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner. *Reg.* v. *Yessáppá bin Ningáppá*, 5 B. R., Cr. R., 41.

The compensation or award which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess. *Adram* v. *Hurbullub*, 2 N. W. R., 58.

Under Section 270 of the Criminal Procedure Code, a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding Rs. 50 to the accused by way of compensation, and cannot impose it by the way of fine, nor can he directly sentence the complainant to imprisonment in default of payment. *Queen* v. *Gopai*, 2 N. W. R., 430.

A Magistrate is not authorized, under Section 270 of the Criminal Procedure Code, to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad character or repute. *Queen* v. *Bul Kishen*, 2 N. W. R., 447.

An award of compensation to the widow of a person who died in consequence of a fall into a pit, negligently dug by the accused, from the fine imposed on the latter, is illegal. *Reg.* v. *Shiabasáppá*, 7 Bom. Rep., Cr. Ca., 73.

When on a complaint being preferred to a Magistrate of an offence not coming within Chapter XV of the Code of Criminal Procedure, the Magistrate alters it so as to bring it under Chapter XV, he cannot award compensation to the accused, under Section 270 of the Criminal Procedure Code, the offence originally complained of not being one for which compensation can be awarded. *Reg.* v. *Gurningápá et al.*, 7 Bom. Rep., Cr., 58.

Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Chapter XV and one under Chapter XIV of the Code of Criminal Procedure, a Magistrate may award amends to the accused under Section 270 of the Code, if he considers the charge with reference to the cases under Chapter XV to have been vexatious. *Modhoosoodun Ghose* v. *Ingram Payruh*, 13 S. W. R., Cr. R., 39.

In a trial for causing hurt, the Sub-Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under Section 270 of the Code of Criminal Procedure,—*Held* that the section did not apply to such a case. 5 Mad. Rep., Rul. XL.

When a prosecutor fails to substantiate his charge, by making contradictory statements, the Magistrate who tries the case under Chapter XV of the Criminal Procedure Code can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence. *Queen* v. *Rupan Rai*, 6 B. L. R., 296; and 15 S. W. R., Cr. R., 9.

38.—Wrongful Confinement.

Where a complaint constituted a charge of wrongful confinement under Section 343, and not one of criminal force under Section 352 of the Penal Code, the order awarding amends under Section 270, Code of Criminal Procedure, was quashed as illegal. *Azgur Howladar* v. *Asruddin*, 17 S. W. R., Cr. R., 1.

Held by the majority of the Court, that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the prisoner's house, and was not a willing inmate while she was there. *Queen* v. *Ameen Daraz*, 4 W. R., Cr., 3.

A sentence of fine only cannot be passed, under Section 348 of the Penal Code, for wrongful confinement to extort confession : part of the sentence must be imprisonment. *Dhunraj Singh* v. *Petumber Doss*, 5 W. R., Cr., 5.

The time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.

In no case is a police officer justified, by Section 152, Code of Criminal Procedure, in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case. *Queen* v. *Suprosunno Ghosaul*, 6 W. R., Cr., 88.

A Deputy Magistrate has no power to dismiss, in default of prosecution, a charge laid, under Section 347 of the Penal Code, of wrongful confinement for the purpose of extorting money. *Queen* v. *Bedoor Ghose*, 12 W. R., Cr., 12.

39.—Conviction.

Where a person, though charged under two heads, was found guilty of what was substantially but one offence,—*Held* that it was improper for the Sessions Judge to record a conviction under two sections of the Indian Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed. *Reg.* v. *Zooa Karubey*, 4 Bom. Rep., Cr., 12.

A conviction of a prisoner on a plea of guilty before a Court of Session is valid although there were no Assessors. *The Queen* v. *Srikant Charal*, 2 B. L. R., F. B., 23.

Persons not formally charged or put on their defence cannot legally be convicted. *Omit Ram* v. *Nonao Ram and others*, 6 W. R., Cr., 90.

Convictions under the Police Act V of 1861 are appealable like other convictions. When the appellants are convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by Section 411 of the Code of Criminal Procedure, the appeal lies to the Sessions Court. *Thakoor Doss* v. *Ghodai Shek*, 5 W. R., Cr., 22.

A conviction and sentence arrived at by a Deputy

Magistrate in the absence of the prisoner were quashed as irregular. *Queen* v. *Rajcoomar Singh*, 8 W. R., Cr., 17.

Where a prisoner has been duly convicted of a criminal offence, and afterwards there turns up fresh evidence, which would, in the opinion of the Judge, if it had been available at the trial, have produced an acquittal, the proper course to take is not to acquit the prisoner, but to apply to the proper authority for a pardon. *Reg.* v. *Hart*, 1 Ind. Jur., N. S., 333.

It being impossible on the evidence recorded to decide which of two contradictory statements made by the prisoners was false and which was true, they were convicted on the alternative charge. *Queen* v. *Narain Doss*, 1 W. R., Cr., 15.

Conviction of prisoners in two separate cases upon the evidence recorded in another case quashed as illegal, with a direction to the Deputy Magistrate to avoid making remarks in his proceedings calculated to foster bad feelings between planter and ryot. *Queen* v. *Bunk Behary*, 1 W. R., Cr., 36.

Where the evidence for the prosecution was not taken, the prisoner was held to have been illegally convicted. *Re Sameerooddeen and others*, 6 W. R., Cr., 92.

Where a person, though charged under different Sections of the Penal Code, was convicted of what was substantially but a single offence,—*Held* that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment as for separate offences, under Section 46 of the Code of Criminal Procedure, exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence. *Held* also that as the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under Section 75 of the Penal Code. *Reg.* v. *Gaun Lodu*, 2 Bom. Rep., 132.

Where, in a case in which a prisoner was convicted of theft, and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it. *Queen* v. *Shibchurn Haree and others*, 11 W. R., Cr., 12.

It is not sufficient for a conviction, under Section 474 of the Penal Code, to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred. *Queen* v. *Lokenath Saha*, W. R., 1864, Cr., 12.

A Jury may ignore the graver charges on which a prisoner is tried, and find him guilty of some lesser crime on the evidence. *Queen* v. *Satoo Sheikh*, 3 W. R., Cr., 41.

A conviction on a charge of attempting to obtain a gratification as a reward for influencing a public servant in the exercise of his public functions is illegal, as disclosing no legal offence, when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. *Queen* v. *Setulchunder Bagchee*, 3 W. R., Cr., 69.

Held that it was not illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them. *Reg.* v. *Narayan Krishna*, 2 Bom. Rep., 416.

The High Court will not interfere upon a mere statement of a prisoner, unsupported by any evidence whatever, that the Magistrate who convicted him did not record the whole of the defence he wished to make. *Nirba Singh* v. *Tofuzzul Hossein*, 8 W. R., Cr., 57.

The mere fact that the prosecutor gave the prisoner time to make out his accounts and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only. *In re Sreekant Biswas*, 5 W. R., Cr., 56.

A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft. 4 Mad. Rep., Rul. XXX.

A conviction under Section 181 of the Penal Code is good, though the offence falls within Section 183. But a sentence under Section 181 which awards no terms of imprisonment is illegal. 4 Mad. Rep., Rul. XVIII.

A person convicted of dacoity under Section 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity under Section 412, when there is no evidence of the commission of more than one offence. *Queen* v. *Sahabut Sheikh*, 13 S. W. R., Cr. R., 42.

When the evidence is insufficient to convict a person of an offence in a criminal trial, he cannot be removed from office on the ground of that offence; if there are other circumstances in his conduct warranting his removal from office, they should be stated and proved. *Gungadhur Roy, in the matter of*, 13 S. W. R., C. R., 116.

Held that an order of a Sessions Judge, by which he altered a conviction by the Assistant Sessions Judge, of "dacoity" to one of "robbery," was illegal, not being an amendment of a sentence or order within the meaning of Section 22 of the Criminal Procedure Code.

Held further, that if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence, and to have left them to be charged with and tried for "robbery." *Reg.* v. *Joao Thomesit et al.*, 5 Bom. Rep., Cr., 22.

Where the Subordinate Magistrate convicted certain persons without allowing them a proper opportunity for the summoning and attendance of witnesses named for the defence the High Court quashed the conviction and directed the Subordinate Magistrate to re-hear the case. 5 Mad. Rep., Rul. XXVII.

The defendant was arrested by a warrant, and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under Section 174 of the Penal Code,—*Held* that the conviction was good. 5 Mad. Rep., Rul. XV.

40.—Previous Conviction.

An offender is only liable to enhanced punish-

ment, under Section 75 of the Penal Code, for an offence punishable under Chapter XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. *Queen* v. *Pubon*, 5 W. R., Cr., 66.

Records of previous convictions should not be put in until the prisoner has been convicted in the case then under trial. *Queen* v. *Jehan Mullick*, 5 W. R., Cr., 67; and see *Queen* v. *Shiboo Mundle*, 3 W. R., Cr. 38.

Where a prisoner was convicted and sentenced, under Section 50 of Act XVII of 1850, upon the charge of fraudulently secreting a post letter, and on appeal such conviction and sentence were confirmed,—*Held* that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction. *The Queen* v. *Dalapatta Van*, 1 Mad. Rep., A. C., 83.

41.—Summary Conviction.

Held that the summary conviction and punishment of two police officers, under Section 29, Act V of 1861, by a cantonment Magistrate without formal trial, was irregular and illegal.

Held also that, although the Magistrate of a district is competent to order the removal of any particular case from the file of a Subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence, and which are not pending before any of his subordinates.

Held also that a Cantonment Magistrate has power to try cases, under Section 29 of the Police Act, without complaint. *Government* v. *Girdharee Lall and Sheikh Ahmed*, 1 Agra Rep., Cr., 24.

A Police Magistrate has power to convict summarily, under Act IV of 1866 (B. C.), Section 26, for an offence punishable under Section 116 of the Penal Code. *Queen* v. *Mahbub Khan*, 1 B. L. R., O. Cr., 39.

There are strong grounds for urging that the Legislature intended that convictions under Sections 24 and 25, Act IX of 1869, should be summarily disposed of by the Magistrate, but the Court is not prepared to hold that the right of appeal is taken away. No jurisdiction is given to the Judge to reverse a conviction under these sections because he may regard it as one of hardship, nor has he to determine whether or not the failure to pay was in pursuance of an intention to avoid payment or not.

By failing to make payment within the time specified in the notice the tax-payer is guilty of an offence within the terms of Section 25, and subsequent payment does not take the case out of the provisions of that section.

To render such a conviction valid it must be shown that the prosecution was instituted at the instance of the Collector, and the mere sending on the tehseeldar's report, with an expression of the Collector's general desire to prosecute defaulters, cannot be held tantamount to the institution of a prosecution at the instance of the Collector.

The provisions of Section 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. *Queen* v. *Cheaik Ram*, 2 N. W. R., 113.

42.—Disputes concerning Land.

There are no "general powers" in any law which authorize a Magistrate to issue orders directing that a party shall be kept in peaceable possession of land. Such orders were therefore cancelled as without warrant of law, the procedure prescribed in Section 318 of the Code of Criminal Procedure not having been observed. *The Queen* v. *Hemendronath Tagore*, 9 W. R., Cr., 20.

It is not necessary that the proceeding required by Section 318, Code of Criminal Procedure, should be recorded in a particular form or on a separate sheet; it is sufficient if it be recorded. *Joyram Singh and others* v. *Jugnarain Doobey and others*, 10 W. R., 1864, Cr., 16.

In a case of disputed possession of land, the Magistrate should record the proceedings required by Section 318, Code of Criminal Procedure, and look to possession, not to right,—*i.e.*, maintaining in possession the party in possession, and forbidding disturbance of possession. *Grijamonee* v. *Ishur Chunder*, W. R., 1864, Cr., 2.

A Magistrate has no authority to restore to possession a person who has been illegally dispossessed. He must declare the party in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime. *Ramjeeban Doobey* v. *Luchmonee Dabea*, W. R., 1864, Cr., 5.

When there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival ryots,—*Held* that, instead of attaching the whole estate, under Section 319 of the Code of Criminal Procedure, the Magistrate ought to have settled the dispute as between the ryots. *Ramdyal* v. *Chinta Monee*, W. R., 1864, Cr., 28.

Two investigations, under Section 318, Code of Criminal Procedure, were before a Magistrate, who, after deciding one of the cases, remarked on the other, that because the lands adjoined he had taken the evidence in the two cases together, and found it unnecessary to continue the enquiry further. *Held*, under Section 404, that the parties kept out of possession were entitled to a full enquiry. *Watson and Co.* v. *Ranee Surnomoyee*, 8 W. R., Cr., 63.

Held that it would be highly technical and unnecessary to interfere with a Magistrate's order under Section 318, Code of Criminal Procedure, on the ground that the Magistrate had not formally stated that he was satisfied that a dispute likely to induce a breach of the peace existed, when obviously the Magistrate had information of that kind before him. *Mussamut Zuhoorun, petitioner*, 6 W. R., Cr., 4.

A Magistrate ought not to interfere, under Section 318, Code of Criminal Procedure, with the execution of a decree of the Civil Court. If called on to interfere at all, because he is apprehensive of a breach of the peace, he should, under Section 319, maintain in possession the person who has been actually put in possession by a decree of the Civil Court. *Shama Soondery Debia* v. *Jardine, Skinner, and Co.*, 6 W. R., Cr., 10.

Before a Magistrate can pass any order regarding possession of disputed land he must observe

the forms prescribed by Section 318, Code of Criminal Procedure. *Sabhee Singh and others*, 6 W. R., Cr., 50.

On a charge of forcible ejectment, a Magistrate has nothing to do with the rights of the parties to the land. *Gunganarain Poddar* v. *Deboo Mundul*, 7 W. R., Cr., 12.

Under Section 318 of the Code of Criminal Procedure, a Magistrate can only try the question of possession, without reference to the right of possession. *Queen* v. *Mussamut Imam Bandee*, 7 W. R., Cr., 26.

Where A. is in actual peaceable possession of land, B.'s attempt to recover possession of it by force is an illegal act which A. has a right to resist. If B. uses force in carrying out his attempt, A. has a right to oppose force to force, and to inflict upon B. such injury as is necessary to compel him to desist. *Queen* v. *Sechee, alias Sachee Boler*, W. R., Cr., 112.

A Deputy Magistrate vested with the powers of a Subordinate Magistrate of the Second Class cannot institute proceedings under Section 318 of the Criminal Procedure Code. *Queen* v. *Ootum Mal*, 2 W. R., Cr., 2.

A Joint Magistrate cannot award possession, under Section 318 of the Code of Criminal Procedure, without making a formal enquiry. *Queen* v. *Runjeet Molla*, 2 W. R., Cr., 31.

An attachment of land, under Section 3, Act IV of 1840, can only be withdrawn by the officer who attached the property. *Queen* v. *Lalla Huree Hur Pershad*, 2 W. R., Cr., 32.

No enquiry should be made, nor order passed giving possession to one side or the other, under Section 318 of the Code of Criminal Procedure, save on the supposition that the dispute is likely to cause a breach of the peace. *Queen* v. *Sonaoollah*, 2 W. R., Cr., 44.

A Magistrate is quite justified in preventing a person from entering upon land in the possession of another. *Queen* v. *Saadut Khan*, 3 W. R., Cr., 19.

Before passing an order in a case of disputed possession of land, &c., the procedure enjoined by Section 319 of the Code of Criminal Procedure should be carried out. *Queen* v. *Seetanath Roy*, 3 W. R., Cr., 9.

In a case of disputed possession likely to lead to a breach of the peace, the Magistrate, instead of merely binding down the parties to keep the peace, and declining to interfere further, is bound to dispose of the question of possession under Section 318, Criminal Procedure Code. *Rajah Anundnath Roy, petitioner*, 4 W. R., Cr., 12.

The omission of a Magistrate to record a proceeding in a case of disputed possession of land is not a mere non-formality in procedure, but renders the whole of the Magistrate's proceedings illegal.

When the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession. *Harvey* v. *Brice*, 4 W. R., Cr., 26.

In cases of dispute concerning the possession of land under Section 318 of the Code of Criminal Procedure, the Magistrate has no jurisdiction to interfere, unless he is first satisfied of the existence of a dispute likely to cause a breach of the peace. *Dewan Elahee Newaz Khan* v. *Subarunnissa*, 5 W. R., Cr., 14.

Where a Magistrate thinks that the acts of the accused are likely to lead to a breach of the peace, and their statements as to possession of land are false, he may proceed to try whether the accused should not be charged with unlawful assembly. *Eman Ali* v. *Sudduruddeen and others*, 9 W. R., Cr., 18.

To satisfy the requirements of Section 318 of the Code of Criminal Procedure, a Magistrate must himself enquire into the likelihood of a breach of the peace happening, and must come to a judicial decision upon it; and in conducting the subsequent investigation, he must examine the witnesses whom the parties have tendered. *Mussamut Anundee Kooer* v. *Ranee Soonaet Kooer*, 9 W. R., Cr., 64.

It is not necessary that an order issued by a Magistrate under Section 62 of the Code of Criminal Procedure, whereby a breach of the peace was prevented, should be supplemented by a proceeding under Section 318 of the same Code. *Luteef Hossein, petitioner*, 10 W. R., Cr., 1.

When in a case under Section 318, Code of Criminal Procedure, a Magistrate has taken any evidence, he is not justified in refusing to proceed with the case, because the parties neglected to file written statements on the day fixed for filing the statements. *Case of Goluck Chunder Mytee*, 11 W. R., Cr., 9.

In a case under Section 318 of the Code of Criminal Procedure, a Magistrate need not summon witnesses, but may proceed on investigations conducted by the District Police, if he considers that they show that a breach of the peace is likely to occur.

In proceedings under Chapter XX of the Code of Criminal Procedure, a Magistrate should not hold a lengthened and protracted investigation, but should make a speedy and summary enquiry into the fact of possession, and pass, with as little delay as possible, an order declaring the party whom he finds in possession entitled to retain it, until ousted by due course of law. *Queen* v. *Bullubkant Bhuttacharjee and others*, 11 W. R., Cr., 36.

The ruling of a Civil Court, that a plaintiff in a certain case had alleged title and undisputed possession, but had in no way proved that allegation, is not such an order as would justify a Magistrate, under Section 318 of the Code of Criminal Procedure, in putting him out of possession in favour of another party. *In the matter of Jogesh Prokash Gangooly and another*, 11 W. R., Cr., 43.

The provisions of Section 318 of the Code of Criminal Procedure are substantially complied with when the Magistrate states that he is satisfied that the disputes between the parties were likely to induce a breach of the peace, and records his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted. *Bisseshur Narain Mahtah, petitioner*, 8 W. R., Cr., 83.

Section 318 of the Code of Criminal Procedure does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award, shall be entitled to have the award set aside, and to be put in possession, but only that the party out of possession must prove title. *Shib*

Pershad Roy v. *Rughoo Nath Singh*, W. R., 1864, 295.

Under Act XXV of 1861, Section 318, the Magistrate, if satisfied that a dispute concerning land is likely to result in a breach of the peace, shall record a "proceeding," stating the grounds of his being so satisfied. This proceeding should show on the face of it that there are reasonable grounds for apprehending a breach of the peace. Under this section the question of title is excluded, and the Magistrate is equally prohibited from grounding a *primâ-facie* case of possession on the title shown in evidence by either party. He should confine himself to ascertain what was the subject of the dispute and the question of the possession. *R.* v. *Omirto Nauth Jha and others*, 1 Ind. Jur., N. S., 399; 6 W. R., Cr. 61.

Where an order under Section 318 of the Criminal Procedure Code was made between A. on the one side, and B. and the three tenants of B. on the other, declaring that A. was in possession of the property in dispute,—*Held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B. could not be criminally punished for disobeying the order in question. *In the matter of Gopal Burnawar*, 3 B. L. R., A. Cr., 13.

A Magistrate has no power to decide a question of possession, under Section 318, Act XXV of 1861, until he has recorded a proceeding, stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace. *In the case of Kashi Kishor Roy* v. *Tarini Kant Lakori*, 3 B. L. R., A. Cr., 76.

A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land, obtained, pending his suit, an order from the Magistrate, under Section 318 of the Criminal Procedure Code, that he should be maintained in possession until ousted by due course of law. The suit was dismissed, plaintiff failing to prove his title, and the defendants then applied to the High Court, under Section 404 of the Criminal Procedure Code, to set aside the Magistrate's order, and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. *Jugesh Prakas Ganguli* v. *Nilkamul Mookerjee*, 3 B. L. R., A. C., 57.

Section 320 of the Criminal Procedure Code gives special jurisdiction to Magistrates with full powers; and, in the cases provided for by it, the general power given to any Magistrate by Section 62 is barred. *Anonymous*, 3 Mad. Rep., Cr., 23.

A Magistrate finds, under Section 320 of the Criminal Procedure Code, on a dispute between R. and P., that the public have been in the habit of using a certain road over P.'s land for carts, &c., and accordingly directs it to be opened (*i.e.*, by removal of obstructions). P. brings a regular suit against R., in which the issue is whether the road is public or not; this is found in the negative, except as to a footpath; costs are apportioned, and the cart-way is ordered to be stopped. R. appeals on the merits, and P. files a cross-objection: the first judgment is affirmed. On special appeal by R. (as to the mode of dealing with the proof),—*Held* that the finding of the Civil Court was beyond its competence, and that the suit was not such as is contemplated by Section 320, *viz.*, to test the right of "exclusive possession." *Pyari Lall and Co.* v. *E. G. Rooke*, 3 B. L. R., A. C., 305; 12 W. R., 199.

A Sessions Judge has no power to interfere with an order of a Magistrate attaching disputed land under Section 319 of the Code of Criminal Procedure. *Hurronath Chowdry* v. *Royendro Chunder Roy*, 15 S. W. R., Cr. R., 1.

Right of way is a right of use of land within the meaning of Section 320 of the Criminal Procedure Code. 4 Mad. Rep., Rul. XII.

The power of attaching land regarding which there is a dispute, conferred on a Magistrate by Section 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zemindars are in possession by their ryots. *Maseyk, J. W., in the matter of*, 15 S. W. R., Cr. R., 1.

A Magistrate is bound under Section 320 of the Code of Criminal Procedure to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court. *Queen* v. *Bhoiro Mundle*, 14 S. W. R., Cr. R., 28.

A Magistrate, under Section 318 of the Criminal Procedure Code, is to enquire into the question who is in actual possession of the property in dispute, without considering how that possession has been obtained. *Dustur Husung Jamasji*, 6 Bom. Rep., Cr. Ca., 30.

Where a Magistrate proceeding under Section 318, Code of Criminal Procedure, decides on the evidence in favour of a party as being in possession of the disputed land, the High Court cannot reconsider the Magistrate's decision and decide which party is in actual possession. *Bhurut Chunder Bose* v. *Dwarkanauth Chowdry*, 15 S. W. R., Cr. R., 86.

Where an order had been made by a Magistrate under Section 318 of the Code of Criminal Procedure in favour of A. in respect of certain land, and D. subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which he was put into possession by an officer of the Collector, it was held that before B. could be convicted under Section 188 of the Penal Code of disobeying an order made by a public officer, it should be proved that B. was aware of the order under Section 318, and that having that knowledge he disobeyed it. *Abelukh Lall* v. *Sirnum Singh*, 15 S. W. R., Cr. R., 50.

Where two parties have a dispute before a Magistrate as to the right to the use of water which the party complained against had embanked, the Magistrate should proceed under Chapter XXII, and not as for a nuisance under Chapter XX of the Code of Criminal Procedure. *Queen* v. *Madhoo Churn*, 13 S. W. R., Cr. R., 51.

In order to give a Magistrate jurisdiction to make an order regarding the possession of land, under Section 318 of the Code of Criminal Procedure, he must be satisfied that there exists a dispute likely to induce a breach of the peace, and he must record the grounds of his being so satisfied. It is not sufficient that there is a mere scintilla of evidence, but there must be some evidence from which the Magistrate may reasonably draw the necessary

conclusion of fact. The question whether any such evidence existed is one for the consideration of the High Court. 4 Mad. Rep., Rul. XLIX.

The decision of the Deputy Magistrate was quashed, (1) because the property in dispute being ijmalee he had no jurisdiction to try the dispute under Section 318 Code of Criminal Procedure, but ought to have proceeded in the manner laid down in Circular Order No. 10 dated 16th April, 1863; (2) because a portion of the disputed julkur being situated within the district of Backergunge, the Deputy Magistrate of Furreedpore had no jurisdiction with reference to that portion of the julkur which was admittedly not within the limits of his jurisdiction. *Goluck Chunder Roy* v. *Raj Mohun Bose*, 17 S. W. R., Cr. R., 33.

It is a misconception of the aim and object of the law, as well as a waste of time to the Court and of money to the parties, to come up to the Court, under Section 318 Code of Criminal Procedure, with questions of title to possession of land which can only be settled in a Civil Court. *Koomer Poresh Narain Roy* v. *Watson and Co.*, 17 S. W. R., Cr. R. 3.

The mere service of a notice upon a mofussil naib who takes no steps whatever to consult his employer or act under his directions, is not such a notice as is contemplated by Section 318, Code of Criminal Procedure, in a case of dispute regarding possession of land. *Ramrunginee Dassee* v. *Gooroo Dass Roy*, 17 S. W. R., Cr. R., 9.

The sanction of the Civil Court is not necessary to a complaint of forcible dispossession by a party who was put into possession by the Civil Court, nor is the Magistrate limited in his action by the mistake of the complainant inciting Section 188 of the Penal Code as the section under which the offence charged falls. *Doolar Pandey*, 17 S. W. R., Cr. R., 10.

The purchaser of an interest in land at a sale in execution of decree obtained an order for possession under Section 263 or 264, Act VIII of 1859, and a dispute arose between him and another person who had some interest in the land, as to what passed under the sale certificate. Without ascertaining the rights of the parties the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. *Held* that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the Section to do what was necessary to prevent a breach of the peace.

The High Court may interfere with and quash an order passed by a Magistrate under Section 62, Code of Criminal Procedure, when the order is one that was beyond the power and out of the jurisdiction of the Magistrate to make it.

Quære, Whether pleaders have a right to be heard in such cases. *Dengoo Shaikh* v. *Adam Sircar*, 17 S. W. R., Cr. R., 37.

A Magistrate has jurisdiction, under Section 318, Code of Criminal Procedure, to prevent breaches of the peace in places where the rivers have dried up. The jurisdiction that was once there, under Section 30, is not taken away by reason of the land having appeared and the water disappeared.

It is not competent to a party who, when there is no clear evidence of actual possession, puts in certain documents which would be evidence of title, and invites the Magistrate to consider them as bearing upon the fact of possession, to object afterwards that the Magistrate has gone into the question of title.

When a Magistrate is not satisfied that either of the contending parties was in actual possession, his proper course is to attach the property, and not give either party what might be supposed to be the advantage of a finding on his part that there was possession.

Where a Magistrate made an order, under Section 318, without previously recording a proceeding, his order was annulled, and the case sent back to him that he might proceed under the section. *Emambundu Begum* v. *Sek Bahadoor*, 17 S. W. R., Cr. R., 53.

A Magistrate cannot, under Section 318, Code of Criminal Procedure, decide as to the respective claims or rights to actual possession, nor act upon former decisions to prove previous title or possession. All that he has to do is to find which party is in actual possession. *Government* v. *Sreepatty Roy*, 17 S. W. R., Cr. R., 59.

43.—Security for Good Behaviour.

Where a person is confined in default of giving security for his good behaviour, under Chapter XIX of the Code of Criminal Procedure, a second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. An order of a Sessions Judge confirming an order of the above nature made by the Magistrate is open to revision, under Section 404, though not appealable under Section 408. *In re Juswant Singh*, 1 Ind. Jur., N. S., 301; 6 W. R., Cr., 18.

If a Sessions Judge be of opinion that a person acquitted by him ought to give security for future good behaviour, he should discharge him, and inform the Magistrate of his opinion that security should be taken, leaving the Magistrate to take the necessary steps for that purpose, and the Sessions Judge should not send the party in custody to the Magistrate.

A separate note of each witness's deposition is required to be taken by Section 195 of the Code of Criminal Procedure, which is not satisfied by a statement that a witness "deposes as last witness." *Reg.* v. *Bhya Wullud Soojun and others*, 1 Bom. Rep., 91.

The order in this case calling upon the prisoner to furnish security for good behaviour, under Section 297 of the Code of Criminal Procedure, set aside as erroneous, that section not referring to persons of a violent or turbulent character. *Narain Sooboodhi*, *petitioner*, 6 W. R., Cr., 6.

In an enquiry under Section 306 of the Code of Criminal Procedure as to proceedings against persons required to give security for good behaviour, a Magistrate has no power to use the information which the police may have obtained as evidence in the case. *Queen* v. *Komul Kissen*, 11 W. R., Cr., 35.

The Magistrate may require the accused to

deposit money in lieu of security for his good behaviour. *Queen* v. *Kristendro Roy*, 7 W. R., Cr., 30.

A person in custody from his inability to give security is not in custody for an offence with which he has been charged, or of which he has been convicted. 3 Mad. Rep., A. J., 23.

To justify a Magistrate in taking action under Section 296 of the Criminal Procedure Code, there must be evidence before him legally sufficient to establish the fact that the person charged is a person of the character described in the section. *Queen* v. *Buldu and others*, 2 N. W. R., 455.

Where a person, under Section 297 of the Criminal Procedure Code, is ordered to provide security for his good behaviour, the order should, under Section 300, state the number of sureties required from the defendant.

The object of the law as to security for good behaviour is, that sureties shall be responsible for the good behaviour of the person called upon to provide security, not that a deposit be made in cash. *Queen* v. *Sheo Buksh*, 2 N. W. R., 295.

44.—Security to keep the Peace.

There is nothing in Section 62, Criminal Procedure Code, to justify a Magistrate in making an order under that section on the mere report of a police officer. *The Queen* v. *Bhyro Dayal Singh*, 3 B. L. R., A. Cr., 4; S. C., 11 W. R. Cr., 46.

Section 62 of the Code of Criminal Procedure does not apply to disputes connected with lands, but refers specially to nuisances and other similar matters in which immediate action is necessary, in order to avoid a risk of illegal consequences. *Raj Bullub Addhya* v. *Gobindo Chunder Moiter*, 12 W. R., Cr., 66.

The power of issuing orders to prevent breaches of the peace, &c., conferred on a Magistrate by Section 62 of the Code of Criminal Procedure, extends only to immoveable property of the description set forth in Chapter XXII of that Code. *The Queen* v. *Gaduck Chunder Goohoo*, 12 W. R., Cr., 38.

Held that an Assistant Magistrate, as he comes within the definition of the term of "any magistrate," was competent to pass an order under Section 62 of the Criminal Procedure Code, which contemplates circumstances under which an immediate order is urgently required, and in this respect differs from Section 308 of that enactment, and that it should be read along with Section 188 of the Indian Penal Code. *Government* v. *Mahomed Buksh*, 1 Agra Rep., Cr., 23.

An order of a Magistrate, under Section 62, Criminal Procedure Code, *e.g.*, prohibiting one of two rival proprietors of two different hâts from holding his hât on certain days of the week in order to prevent obstruction, annoyance, and injury, is not a judicial order; and is, therefore, not open to revision by the High Court under Section 404, Criminal Procedure Code.

Per Phear, J. (dissenting.)—The power conferred by Section 62, Criminal Procedure Code, is of a judicial character within the meaning of the word "judicial" in Section 404; and an order of a Magistrate in exercise of that power is in the nature of an injunction, and is, therefore, subject to revision by the High Court under Section 404, Criminal Procedure Code. *Queen* v. *Abbas Ali Chowdry*, 14 S. W. R., Cr. R., 46, and 6 B. L. R., 74.

Section 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur. *Radhakishore* v. *Giridharee Sahee*, 13 S. W. R., Cr. R., 19.

A Magistrate may, under Section 291 of the Code of Criminal Procedure, cancel an order passed by him under Section 282 of that Code, summoning a person to show cause why he should not enter into a bond to keep the peace. *Mussamut Anundee Kooer* v. *Ranee Soonit Kooer*, 10 W. R., Cr., 40.

A statement by a complainant (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property is credible information, within the meaning of Section 282 of the Code of Criminal Procedure, of an intended breach of the peace. *Queen* v. *Kristender Roy*, 7 W. R., Cr., 30.

There is nothing in the Criminal Procedure Code which makes it imperative on a Magistrate to confront the accuser and the accused in a case under Section 282 of the Penal Code; and if a Magistrate considers a statement on oath of a complainant to be "credible information" under that section, there is no reason why he should not call on the accused to give security, the sufficiency of such "credible information" being ordinarily left to the Magistrate to determine. *Tarinee Kant Lahoory Chowdhry, petitioner*, 8 W. R., Cr., 79.

A petition unsupported by any complaint or deposition on solemn affirmation cannot be considered "credible information" within the meaning of Section 282 of the Code of Criminal Procedure on which to warrant a Magistrate to demand security to keep the peace. *Chamaro Mah and others* v. *Kashi Chunder Lalla and others*, 8 W. R., Cr., 85.

Held (Glover, J., *dissentiente*), the report of a police officer, though it justifies the issuing of a summons, is not sufficient ground on which to bind a man over in a recognizance to keep the peace.

The Magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses.

The *onus* lies on the person who has obtained the summons to prove that the defendant is likely to commit a breach of the peace. *Behari Patak* v. *Mahomed Hyat Khan; A. D. Dunne* v. *Hem Chandra Chowdry; Government* v. *Behari Lall Brojotasi*, 4 B. L. R., F. B., 46.

Before initiating proceedings under Section 318, Code of Criminal Procedure, a Magistrate must satisfy himself on legal evidence that there exists a likelihood of a breach of the peace, and also record a proceeding stating the grounds of his being so satisfied. *Tarafdi Mundle* v. *Chunder Bhoosun Bannerjee*, 16 S. W. R., Cr. R., 74.

When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the

peace, a Magistrate is justified, without enquiring who was the aggressor or the aggrieved party, to proceed under Section 318 of the Code of Criminal Procedure, and to take whatever steps are in his opinion necessary to prevent a breach of the peace. *Gunga Narain Mitter* v. *Gour Soondur Chowdry*, 15 S. W. R., Cr. R., 85.

The prisoner was convicted of an offence punishable under Section 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under Section 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rs. 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period.

The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. *Sellam*, 6 Mad. Rep., 25.

The summons to a person to show cause why he should not be required to furnish recognizances to keep the peace should, under Section 283, Code of Criminal Procedure, set out the substance of the information against him.

When the party summoned shows cause, the Magistrate in taking evidence should look not merely to the question of possession, but also whether he is satisfied that there was a probability of a breach of the peace. *Koonjobeharry Chowdhry* v. *Eknath Gurain*, 15 S. W. R., Cr. R., 43.

A Magistrate, before proceeding under Section 318 of the Criminal Procedure Code, must be satisfied by evidence that a dispute likely to induce a breach of the peace exists. A police report is not evidence. *Bhadreshwari Chowdrain, in the matter of the Petition of*, 7 B. L. R., 329; 16 S. W. R., Cr. R., 17.

Where a Magistrate who apprehended a breach of the peace eventually discharged the recognizances which he had compelled the parties to give, it was *held* that he exceeded his jurisdiction when he also gave directions as to the disposition of the property in dispute between the parties. *Chowdry Sheo Nundun Proshad* v. *Chowdry Nil Kanth Proshad*, 13 S. W. R., Cr. R., 44.

Under Section 318 of the Criminal Procedure Code, a Magistrate, having satisfied himself that a breach of the peace is likely to ensue, should enquire which party is in possession, and after satisfying himself on that point should record a proceeding declaring the party he held to be in possession to be entitled to retain possession until ousted by due course of law, and should forbid any disturbance of such possession; but he should not go on to enquire into the rights of parties in possession, or forbid the exercise of any right by such party.

An order passed under Section 318 of the Criminal Procedure Code does not fall within the provisions of Clause 7, Section 1, of Act XIV of 1859. *Doorjun Singh* v. *Shibba*, 3 N. W. R., 171.

Although it is competent to a Magistrate upon conviction and sentence for assault to order the accused to enter into an engagement to keep the peace, yet having omitted to do so he can afterwards only institute proceedings under Section 281 of the Criminal Procedure Code, upon receiving some further credible information (other than that which he derived from the previous trial) that the parties are likely to commit a breach of the peace.

It is essential to the validity of a summons issued under Section 281 that it should contain the substance of the information by which the Magistrate is moved to act.

A separate summons should be issued to each person required to furnish security, and a separate bond taken from each, which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it. *Queen* v. *Powell and others*, 3 N. W. R., 96.

Before making an absolute order directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence on which he bases the order in the presence of the accused or his agent. *Per* Loch, J., Glover, dissenting. *Mughan Misra* v. *Chammun Teli*, 2 B. L. R., Cr., 7.

It is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring security for keeping the peace. *Case of Mullick Fukeerun*, 11 W. R., Cr., 6.

The period for which a prisoner can be bound down on security to keep the peace is one year from the date of his release from imprisonment. *Queen* v. *W. Don Dolloi*, 6 W. R., Cr., 71.

Where a matter in respect of which further security to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under Section 290 of the Code of Criminal Procedure. *Diego De Silva* v. *Jehangeer and others*, 7 W. R., Cr., 23.

Security to keep the peace. Notice to show cause why security should not be demanded must be served before a Magistrate can pass orders requiring security to keep the peace. *Sham Mohinee* v. *Futtek Chand Dass*, 9 W. R., Cr., 16.

There is no appeal to the Court of Session from an order made by a Magistrate, under Section 409 of the Criminal Procedure Code, requiring a penal recognizance to keep the peace under Section 280. The Court of Session may, however, in such case, under Section 434 of the Code, call for and examine the record of the Court below; and if it shall be of opinion that the order of the Magistrate is contrary to law, refer the proceedings for the orders of the High Court.

There is no provision of the Criminal Procedure Code which makes it lawful for a Court of Session to call for and examine the record of a case tried by a Subordinate Magistrate, where no sentence or order has been passed thereon by the immediately subordinate Court of the Magistrate.

A conviction of house-trespass by a Subordinate Magistrate was reversed on appeal by the Magistrate of the district, who moreover directed the Subordinate Magistrate to take a recognizance bond in the sum of Rs. 50 from the accused, that he would not for one year enter the house, and would not commit a breach of the peace.

Held by the High Court, that the order directing the recognizance bond to be taken should be set aside as having been improperly made by the Magistrate in the absence of the accused and upon the suggestion of his adversary.

Semble,—The order was also illegal as not authorized by Section 280 or any other section of the Code of Criminal Procedure. *Reg.* v. *Bháskar K. Khaskar*, 4 Bom. Rep., C. A., 1.

A summons under Section 282 of the Code of Criminal Procedure, to show cause why the person summoned should not enter into a bond to keep the peace, can legally issue on information if it be credible, contained in a case which was brought against the person summoned for illegal assembly, of which he was acquitted. The order directing that the defendant should enter into the bond cannot, however, be made until the Magistrate has taken fresh evidence, properly given, on the appearance of the accused before him (or of his agent); and before he has adjudicated judicially on such evidence, that it is necessary for the preservation of the peace that a bond should be taken. *Nur Singh Narain, petitioner*, 10 W. R., Cr., 1; 2 B. L. R., A. Cr., 7.

In proceedings against persons to show cause why they should not enter into bonds to keep the peace, it is incumbent on the Magistrate to adjudicate judicially on evidence given before him as to the necessity for taking such security. And in such cases the *onus* of proof lies upon the party on whose complaint the summons was issued. *Queen* v. *Nirmgun Singh*, 2 N. W. R., 431.

A Magistrate is not competent, under Section 282 of the Criminal Procedure Code, to order persons to enter into bonds to keep the peace merely upon the statement of the complainant, on which the summons was granted, and without taking further evidence, or giving the parties an opportunity of cross-examining the complainant. *Queen* v. *Nusseer-ood-deen*, 2 N. W. R., 461.

The High Court declined to interfere with an order passed by a Magistrate in a case in which he ordered security to be taken for the preservation of the peace, where it appeared that the evidence was sufficient to warrant the order, although such evidence was taken in the vernacular and in disregard of the provisions of Section 267 of the Code of Criminal Procedure. *Queen* v. *Puriaj Singh*, 13 S. W. R., Cr. R., 20.

Order of District Magistrate, requiring certain persons to enter into recognizance and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by Section 307 of the Criminal Procedure Code. *Reg.* v. *Dalpatram Pemabhai*, 5 Bom. Rep., Cr., C. P., 105.

A Magistrate acts without jurisdiction in making an order binding a person to keep the peace when there is no complaint before him of a breach of the peace being likely to be committed by such person, and without taking any evidence in the matter. *Brojondro Koomer Rai Chowdry, alias Dighoo Baboo*, 17 S. W. R., Cr. R., 35.

It is illegal and contrary to the provisions of Section 282, Code of Criminal Procedure, to take recognizances from one person in order to prevent another from committing a breach of the peace. *Ram Coomar Banerjee* v. *Rajah Gopal Singh Deb*, 17 S. W. R., Cr. R., 54.

Defendants were charged with theft, and on their appearance before the Sub-Magistrate, on 1st May, were bound over by recognizance to appear from that date until the close of the trial. On the 2nd May, when the case was called on, defendants were not present, but they appeared on the 3rd. The Sub-Magistrate heard what they had to say, and directed the penalties on the forfeited recognizances to be levied from the defendants. *Held* that there was no ground for the interference of the High Court as a Court of Revision; that there is nothing illegal in requiring defendants to execute such a bond, and that no notice was necessary before proceeding to enforce the penalty. 6 Mad. Rep., Rul. XXXIX.

Section 294 of the Code of Criminal Procedure does not authorize the imprisonment of sureties. 4 Mad. Rep., Rul. LXIX.

Where a defendant charged with an offence bound himself to appear before a Sub-Magistrate on the 10th June, and the defendant did appear on that day, but made default on the 11th of June, on which the case was called,—*Held* that there was no forfeiture of the recognizance. In such cases Section 219 of the Code of Criminal Procedure requires that the Magistrate shall form a reasonable opinion that there has been wilful default before issuing process to enforce the penalty. 4 Mad. Rep., Rul. XLIV.

45.—Recognizances.

Recognizances are not necessary from persons acquitted by the Sessions Judge. *Queen* v. *Anund Chunder Chuckerbutty*, 3 W. R., Cr., 33.

It is not necessary that there should be a conviction of rioting in order to admit of a Magistrate taking recognizances to keep the peace. *Queen* v. *Seetaram Hazra*, 1 W. R., Cr., 45.

The estreating of recognizances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal enquiry have failed without just excuse to attend, and have thus created an obstruction to public justice; but where a Magistrate thinks it proper to estreat their recognizances, he ought to allow them an opportunity of justifying their default. *Queen* v. *Dassoo Manjee*, 11 W. R., Cr., 39.

The order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary. *Queen* v. *Gendoo Khan*, 7 W. R., Cr., 14.

A Magistrate cannot bind down parties to keep the peace beyond the term of their first recognizance, without proceeding as prescribed by Section 290 of the Code of Criminal Procedure. *Kally Churn Singh* v. *Bunkur Singh and others*, 7 W. R., Cr., 26.

Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place, is not sufficient. *Queen* v. *Kally Bhyrub Sandyal*, 11 W. R., Cr., 52.

An unproved charge of false imprisonment is not the credible information contemplated in the law, on which a Magistrate may take recognizances to keep the peace. *Keshub Chunder Sandyal and three others*, 6 W. R., Cr., 1.

It should appear, on the face of a Magistrate's order, that he had received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace. *Bereshur Pershad and another, petitioners*, 6 W. R., Cr., 93.

In a case which is made over for investigation to the Police, the prosecutor and his witnesses should be required, under Section 151 of the Code of Criminal Procedure, to enter into recognizances to attend and give evidence.

A recognizance binding over an accused person to appear to answer a charge should specify the particular day on which he should be in attendance in Court. *Queen* v. *Pooran Jolaha*, 11 W. R., Cr., 47.

After calling upon a person, under Section 282 of the Code of Criminal Procedure, to show cause why he should not enter into recognizances to keep the peace, a Magistrate should not order the defendant to enter into such recognizances without taking evidence, or making enquiry whether the defendant had committed any act which might probably occasion a breach of the peace. *Queen* v. *Deo Nundun Singh*, 12 W. R., Cr., 16.

A. executes in district T. a recognizance to keep the peace towards B., A. was afterwards convicted in district S. of having assaulted B. in that district,—*Held*, A. had forfeited his recognizance, and the Magistrate in District T. could proceed against him under Section 293 of the Criminal Procedure Code. *Queen* v. *Sham Sunder Chowdhry*, 2 B. L. R., A. Cr., 11.

A Magistrate has not power to mitigate the penalty entered in a recognizance bond, which must be enforced to its full amount, unless Government forego a portion of the penalty. *Anonymous*, Bom. Rep., 140.

A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary for the preservation of peace to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made. *Queen* v. *Lall Behary Singh and others*, 11 W. R., Cr., 50.

Before a Magistrate can declare that recognizances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace. *In the case of Kalikant Roy Chowdhry*, 3 B. L. R., Ap., 155.

The report of a Subordinate Magistrate is such "credible information" within the meaning of Section 282 of the Code of Criminal Procedure, as to authorize a Magistrate to summon an individual named in the report, and require him to enter into a recognizance to keep the peace, although the report does not suggest that a recognizance should be required, but suggests other means for the prevention of disputes and the preservation of order. *Nellikel Edatthilitta Pugy Achen, ex-parte*, 2 Mad. Rep., 240.

Held (Glover, J., dissenting) that, on the appearance of a party summoned under Section 282 of the Code of Criminal Procedure, it is incumbent on the Magistrate, before taking a bond from him for the preservation of the peace, to adjudicate judicially on evidence given before him as to the necessity for taking security. The *onus* in such case is on the party on whose complaint the summons was issued. *Dunne* v. *Hem Chunder Chowdhry*, 12 W. R., Cr., 61.

A charge of criminal trespass and mischief was dismissed. Thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace.

Held that it was not necessary also to issue a summons to them under Section 283 of the Criminal Procedure Code. *Queen* v. *Chowdhry*, 2 B. L. R., Ap., 28.

On the application of A., a recognizance was taken from B. that he would keep the peace for six months under a penalty of Rs. 500. Before the expiry of the period B. assaulted C. *Held* that there was a forfeiture of the recognizance. *Jahu Bax* v. *Government*, 6 B. L. R., Ap., 66; and 15 S. W. R., Cr. R., 14.

A surety who was bail for an accused person having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail-bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and secondly, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal. *Queen* v. *Durga Das Bhuttacharjee*, 7 B. L. R., Ap., 37.

Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah), it was *held* that the surety was released from liability under his recognizance by the permission which the Court at Nowadah gave the accused, without the surety's consent, of leaving that place of business, and also by the subsequent transfer of the case to another Court. *Queen* v. *Mewa Lall*, 13 S. W. R., Cr. R., 53.

A Magistrate cannot pass an order, under Section 62 of the Code of Criminal Procedure, directing a certain person to abstain from a certain act, or to take order with certain property, unless he is satisfied that such direction on his part is likely to prevent or tends to prevent a riot or affray; nor can he pass an order under that section, or under Section 282, or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses, though under Section 282 the Magistrate may bind him down to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act. *Lutchmeeput Singh and Rautmul*, 14 S. W. R., Cr. R., 3.

Per Ainslie, J.—In a case in which proceedings are taken for forfeiture of recognizances, the person against whom they are held is competent to give evidence on oath on his own behalf. *Quære*,—When recognizances are forfeited, is a Magistrate bound to forfeit the whole amount of the bond, and is the power of reducing the sum to a penalty corresponding to the breach of the peace confined only to the Government? *Jehan Buksh, petitioner*, 15 S. W. R., Cr. R., 87.

An order calling for recognizances Sund erection 280, or for security under Section 281, Code of Criminal Procedure, must be passed at the time of deciding the original case. If no such order is then made, subsequent proceedings must be taken under Section 282, and the parties summoned to show cause. *Gobind Sooboodhee and others, petitioners*, 15 S. W. R., Cr. R., 56.

Before proceeding to bind parties to keep the peace summonses should be duly issued to the witnesses, who should be examined in the presence of the parties. The accidental presence of any agent is not, legally speaking, such presence before which an examination is legally sufficient. *Coomer Pooresh Narain Roy*, 16 S. W. R., Cr. R., 45.

Where the condition of bail-bonds, given by the defendants and by the surety of a security-bond, was that the defendants should appear when called upon,—*Held* that the defendants and their surety were entitled to reasonable notice of the time at which the former would be required to attend. 4 Mad. Rep., Rul. XLV.

Where a Magistrate required security from persons for their good behaviour, under Section 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment,—*Held* that the order was illegal, Section 301 requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security, the Magistrate should not go beyond a sum for which there is a fair probability of the defendants being able to find security. 4 Mad. Rep., Rul. XLVII.

Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under Section 296 of the Criminal Procedure Code, for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. *Queen* v. *Soral Gupar and another*, 3 N. W. R., 126.

The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognizances to keep the peace.

The report made by a police officer that there is a likelihood of there being a breach of the peace, is not legal evidence to prove the existence of any dispute likely to cause a breach of the peace. *Abhaya Chowdry* v. *T. Brue*, 6 B. L. R., Ap., 148, and 15 S. W. R., Cr. R., 42.

In a case in which an accused was charged with voluntarily causing grievous hurt, the Magistrate convicted him of that offence, and also ordered him to furnish recognizances to keep the peace,—*Held* that as the Magistrate had jurisdiction under Chapter XVIII of the Code of Criminal Procedure to pass the latter order regarding recognizances, the Session Judge could not, on appeal, while upholding the conviction for grievous hurt, cancel the order as to take recognizances, the evidence on the record being sufficient for that purpose. *Jinamoodeen Bhina, prisoner*, 13 S. W. R., Cr. R., 73.

A. was bound over to keep the peace for a year. Before the expiry of the period he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under Section 298 of the Code of Criminal Procedure, directed A. to enter into another recognizance for a further period of one year,—*Held* the order was illegal. *Queen* v. *Kalinath Biswas*, 6 B. L. R., Ap., 116, and 15 S. W. R., Cr. R., 18.

An order directing certain persons to enter into recognizances of Rs. 500 each, conditioned to keep the peace for the period of one year, without first summoning them to show cause why they should not be required so to do, is irregular, and will be quashed. *Queen* v. *Moonee Doobey*, 2 N. W. R., 189.

Held that where the personal attendance of an accused is dispensed with, a recognizance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond. *Reg.* v. *Lallub Jassubhái*, 5 Bom. Rep., Cr. R., 64.

In proceedings taken against a person to obtain security for good behaviour under Section 296 of the Criminal Procedure Code, the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross-examine them. *Queen* v. *Shunkur and others*, 2 N. W. R., 406.

46.—Absconded Offender.

The proper remedy of claimants to property attached as belonging to an absconding offender is by a civil suit.

The Court declined to quash such an attachment as made without observance of the due formalities, being of the opinion that the plea of informality could be considered on the surrender of the fugitive, but cautioned the Magistrate against a sale until the needful formalities were carried out. *Re Chunder Bhon Singh and others*, 17 S. W. R., Cr., 10.

Regulation XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land, or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the Legislature intended to authorize the confiscation of the property of any person other than the delinquent. *Juggomohun Buksee* v. *Roy Mothooronath Chowdry and others* 7 W. R., P. C., 18.

Under Regulation XI, 1796, the Governor-General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature who should abscond or conceal themselves so as not to be found upon process issued against them. After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been regularly and legally done, unless such presumption were rebutted by sufficient evidence. *Musst. Gobab Koonurer and others* v. *The Collector of Benares*, 7 W. R., P. C., 47.

Sections 183 and 184 of the Code of Criminal

Procedure (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to 6 months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation, but the party on suing to recover his property may prove by evidence that he had not absconded. *Queen* v. *Muddun Mohun Podar*, 3 W. R., Cr., 34.

A warrant addressed to a police officer to apprehend an offender and bring him before the Magistrate is not "a summons, notice, or order" within the meaning of Section 172 of the Penal Code; and the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section. *Queen* v. *Womesh Chunder Ghose*, 5 W. R., Cr., 71.

Section 172 of the Penal Code applies to a witness who absconds to evade service of warrant issued under Sections 188 to 190 of the Code of Criminal Procedure, while Section 183 of the latter Code applies to a party who absconds. *Hossein Manjee, prisoner*, 9 W. R., Cr., 70.

47.—Right of Private Defence.

The accused had, in using right of private defence of property, caused the death of a thief, who was seized in the act of committing a burglary in his house, and was convicted by the Sessions Judge of culpable homicide, and sentenced to three years' imprisonment. The sentence was reversed on appeal, and the prisoner acquitted. *Queen* v. *Kurrim Bux*, 3 W. R., Cr., 12.

In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising right of private defence of property, were acquitted by the Jury of culpable homicide, but convicted of rioting,—*Held* that, not being legally guilty of any offence coupled with rioting, and not being rioters or members of an unlawful assembly, they could claim the benefit of Section 104, Penal Code: they were therefore released. *Queen* v. *Mith Singh and others*, 3 W. R., Cr., 41.

Dispute between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed, one of the Mollahs when exercising the right of retaking their own property. Three of the Shikdars were also wounded. The Shikdars were convicted of culpable homicide not amounting to murder and of rioting, but the Mollahs were held entitled to the protection conferred by Section 101, Penal Code, on those who, while exercising the right of private defence, cause their assailants any harm other than death. *Queen* v. *Tanoo Shikdar and others*, 3 W. R., Cr., 47.

The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack. *Queen* v. *Nowabdee*, W. R., 1864, Cr., 11.

When the accused, whose property had frequently been stolen, went out with a *latee* to watch his property, and with the *latee* struck a thief, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th Exception to Section 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by Sections 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property. *The Queen* v. *Mokee*, 12 W. R., Cr., 15.

There can be no right of private defence, either on one side or the other, in a case of premeditated riot. *Queen* v. *Jeolall and others*, 7 W. R., Cr., 34.

The legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a *latee*, which results in the death of the party attacking, and such right of private defence of the body extends, under Section 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended. *Queen* v. *Moizoodin and three others*, 11 W. R., Cr., 41.

A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. *Queen* v. *Tulsi Singh and others*, 2 B. L. R., A. Cr., 16; 11 W. R., Cr., 64.

The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary, and struck out at the man a blow which caused his death. *Held* that the accused simply exercised his right of private defence, and was guilty of no offence.

Two other men, who helped him to remove the dead body, and were accused of causing the disappearance of evidence, knowing that an offence had been committed, under Section 201, Penal Code, were also acquitted, for that section contemplates a belief that an offence has been committed; and as the first prisoner was acquitted of all offence, it may be presumed that the other prisoners did not believe that any offence had been committed. *Queen* v. *Pelkoo Mishyo*, 2 W. R., Cr., 42.

In cases of hurt or grievous hurt the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence. *Queen* v. *Sohun and Samoo*, 2 W. R., Cr., 59.

Where land in the possession of A. was encroached on by the servants of B., who committed mischief on the land, and the servants of A. assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A. of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under Clause 4, Section 105 of the Penal Code. *The Queen* v. *Raj Krisso Doss*, 12 W. R., Cr., 43.

The firing of a gun at persons at a distance of twenty-five yards, without a reasonable apprehension of danger and without any necessity for so doing, is not justifiable by the right of private defence. *Queen* v. *Hussanuddy*, 17 S. W. R., Cr. R., 46.

The right of private defence under Section 103 of the Penal Code is restricted by Section 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence. *Queen* v. *Dhununjai Poly*, 14 S. W. R., Cr. R., 68.

Where the offence which occasions the right of private defence of property is criminal trespass, the right of defence under Section 104 of the Penal Code only extends (subject to the restrictions of

Section 99) to the voluntarily causing to the wrong-doers some harm other than death. *Queen* v. *Goburdhan Pari*, 14 S. W. R., Cr. R., 74.

The right of private defence as described in Section 97 of the Penal Code is subject to the restrictions mentioned in Section 99, that is, it should be exercised only in the defence of one's own body or that of another person against an offence affecting the human body. Under Section 102 the right commences only as a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence, and by Section 99, Clause 4, the right is restricted to not inflicting more harm that it is necessary to inflict for the purpose of defence.

Where A. trespassed on the lands of B., whose servants seized and confined A. till the following day, when B. gave information to the police, it was held that the conduct of B. and his servants in confining A. could not be supported on the ground that they were exercising the right of private defence of property, under Sections 97, 104, and 105 of the Penal Code. *Queen* v. *Kassinauth*, 13 S. W. R., Cr. R., 64.

48.—NUISANCE.

In the case of a complaint under Section 308 of the Code of Criminal Procedure, for the removal of an obstruction from a thoroughfare, a Magistrate should first enquire if the road is a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should withhold his hand and abstain from carrying out the order for the removal of the obstruction. *Becharam Bhuttacharjee*, 15 S. W. R., Cr. R., 67.

There is no right of appeal from the decision of a Jury appointed to try whether the order of a Magistrate for the removal of a nuisance under Section 308 of the Code of Criminal Procedure was reasonable and proper. Such decision of the Jury is not a judicial proceeding with which the High Court can interfere under Section 404. *Shitaram* v. *Ramanund*, 16 S. W. R., Cr. R., 16.

In referring a case regarding a nuisance to arbitrators under Section 310, Code of Criminal Procedure, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the Jurors is changed and a fresh Juror is appointed. Where this is not done a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators. *Shama Kant Bundopadyha, in the matter of*, 14 S. W. R., Cr. R., 69.

A prostitute by visiting a dak-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech or gesture or act, or that she had occasioned annoyance to the public generally or to any persons who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under Section 290 of the Indian Penal Code as having committed a public nuisance. *Queen* v. *Musumut Begum*, 2 N. W. R., 349.

In order to remove a public nuisance a Magistrate is bound to proceed under Section 308 and following Sections of Chapter XX of the Criminal Procedure Code, and is not competent to pass a summary order to the police to do so. *Queen* v. *Damodur Dass*, 2 N. W. R., 452.

49.—MAINTENANCE.

Before an order under Section 316 of the Code of Criminal Procedure for the maintenance of a wife or child can be passed against a person, the charge must be legally proved against him, the words "due proof" in that section meaning legal proof on oath. *Gonda* v. *Pyari Doss Gosscin*, 13 S. W. R., Cr. R., 19.

An order made under Section 316 of the Criminal Procedure Code, fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law. *Musumut Munglo* v. *Jumna Dass*, 2 N. W. R., 454.

Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be rigorously imprisoned for the term of fifteen days for every breach of the order, under Section 316 of the Code of Criminal Procedure, the High Court quashed the latter part of the order as being irregular and bad in substance. 5 Mad. Rep., Rul. XXXIV.

No order can be passed under Section 316 of Chapter XXI of the Criminal Procedure Code for the maintenance of an unborn child. *Musumut Larlu* v. *Bansa Ditchit*, 3 N. W. R., 70.

An order of maintenance under Section 316 of the Criminal Procedure Code is a "judicial proceeding of a Criminal Court," within the meaning of Section 404 of that Code, but no appeal lies against such order under Section 409. *Reg.* v. *Thakú bin Irá*, 5 B. R., Cr. R., 81.

A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under Section 316 of the Code of Criminal Procedure, for the maintenance of their illegitimate daughter. *John Meislebach*, 17 S. W. R., Cr. R., 49.

X.

MISCELLANEOUS DOCTRINES OF LAW AND EQUITY.

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1.—FRAUD.

(a) *Miscellaneous.*

The plaint alleged fraud in the defendants in that they represented themselves as agents, when in fact they were principals, in fifty-eight instances in which they had made contracts with the plaintiffs. The prayer of the plaint was "that the defendants may either be held personally responsible on the several said contracts as purchasers thereunder, or otherwise that they may be held personally liable for damages, for fraudulently representing that they were authorized to effect the contracts aforesaid;" and further asked for an account and for damages. It appeared clear to the Judge below, on the evidence, that the defendants acted as principals, and he treated the case on the issue of fraud alone.

Ten cases only of the fifty-eight were selected by the plaintiffs, on which they gave evidence of the fraud; and the Judge found in their favour as to three, and held that the plaint charging fraud the plaintiffs could not succeed on any cause of action incidentally disclosed. The decree was drawn up with reference only to the three cases on which the fraud was found, so far as finally to dispose of them, but ordered an enquiry as to the fraud in all the rest.

Held that the case was appealable, and that the decision of the Court below was right. *Ghasseram Misser and others* v. *Williamson and others*, 2 Ind. Jur., N. S., 205.

Plaintiff had executed a kistbundee for arrears of rent decreed against him by a Revenue Court. He then sued to set aside the decree and kistbundee, on the ground that the decree had been based on a fraudulent and fictitious kubuleut. The suit, though dismissed in the first Court, was decreed in appeal. *Held* in special appeal, there being no evidence of the fraud on the record of the case, that the plaintiff was not entitled to a decree. *Murriam Bebee* v. *Mahomed Jamal*, 12 W. R., 380.

Held that, where the widow and plaintiff, the transferee, were engaged in a scheme for evading the restrictions put by the Hindu law upon the widow's right of alienation, and were making use of the forms of a suit in furtherance of the fraud, it was quite competent for the lower Appellate Court

to determine and satisfy itself (some of the persons really interested being minors, and the transaction being open to suspicion as prejudicial to their reversionary rights) of the true nature of the transaction at the instance of the remote reversioner, even had the nearer reversioner been present and consented to the decree being passed in plaintiff's favour. *Dowar Rai* v. *Mussamut Boonda and others*, 1 Agra Rep., F. B., 57.

In an action of trespass against the Sheriff, it appearing that the plaintiff had never had possession of the property alleged to be converted, and that the conveyance to the plaintiff of the property seized had been effected with the view of defrauding the creditors of an insolvent, who shortly before such conveyance was the owner of the same,—*Held* that the plaintiff was not entitled to recover.

The doctrine of a fraudulent conveyance being void as against creditors, *held* to be a principle of Hindu as it is of English law. *Sham Kissore Shaw* v. *David Cowie*, 2 Ind. Jur., O. S., 7.

A person who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under Section 206 of the Penal Code, and not under Section 145, Act X of 1859. *Gour Chundra Chuckerbutty* v. *Kishen Mohun Singh*, 10 W. R., Cr., 46.

In a suit to recover immoveable property alleged to have belonged to the plaintiff's husband which she inherited from him, and from which, after seven years' possession, she was ousted by the defendant, whose possession was conferred by the Magistrate under Section 318 of the Code of Criminal Procedure, the defendants claimed under a deed of sale which the lower Courts found to have been executed in fraud of creditors,—*Held*, that if plaintiff was in possession for seven years since her husband's death, she should not be allowed to be dispossessed on the ground of a fraudulent deed to which defendant was a party years previously, to which plaintiff was no party. *Echamoyee and others* v. *Hurro Soonduree Dassee and others*, 12 W. R., 155.

A. obtained a decree in a suit instituted on a bond, purporting to have been executed by plaintiff's father, and one D. proceeded to execute it, by putting up for sale certain rights and interests of plaintiff as the legal representative of her father. Plaintiff sued on the allegation that the decree was fraudulent and collusive, and that she had not been served with notice of proceedings taken in execution,—*Held* that it was for the plaintiff to make out her case of fraud, and that it was not for defendant to show that the decree obtained from a competent Court was not collusive, or that notice had been actually served. *Mohima Chunder Mullick* v. *Buroda Soonduree Dassee*, 12 W. R., 148.

When the main issue is whether a conveyance is a real transaction between the parties to it, and not merely executed in fraud of creditors, evidence as to the subsequent beneficial possession of the property, and generally as to the mode in which the parties deal with it, is most important, and should have due weight given to it. *Tara Chunder Ghose* v. *Mohesh Chunder Doss*, 2 W. R., 30.

The legal meaning of *bonâ fide* is with due care and after due enquiry. *Radhaprosad Singh* v. *Ram Jewan Singh and another*, 11 W. R., 389.

In a sale by a guardian of a minor without necessity, the purchaser cannot be said to have acted *bonâ fide* unless his belief that the sale was necessary had been arrived at after due care and attention. *Sheo Pershad Ram* v. *Thakoor Pershad*, 5 W. R., 103.

A *bonâ-fide* purchaser in Section 5, Act XIV of 1859, does not necessarily mean *bonâ fide without notice*, but an honest purchaser without actual fraud. *Gisborne and Co.* v. *Radhanauth Dass*, 5 W. R., 253.

Where a motion is found not to have been *bonâ fide*, the act done upon it by the Court cannot be considered to be one of which the party moving is entitled to take the benefit. *Bharoth Debea* v. *Kurroonamoye Dossia*, 10 W. R., 229.

Held that defendant could not be allowed in special appeal to object that the lower Court had not determined the *bona fides* of plaintiff's purchase, unless he (defendant) had not only alleged fraud, but shown the way in which the fraud was intended to be carried out. *Bycunto Nath Sett* v. *Russick Lall Bormono*, 10 W. R., 231.

Quære,—Whether a question of *bona fides* is one of law or one of fact. *Tabbur Singh and others* v. *Motee Singh and others*, 9 W. R., 443.

A person does not become a *bonâ-fide* purchaser within the meaning of Act XI of 1855 unless he has made all reasonable enquiries as to the title. Enquiries from neighbours are not sufficient. *Gour Gopaul Dutt* v. *Bissennath Ghose*, Cor. Rep., 41.

A putneedar who had obtained two decrees, one for back and current rents and the other for back rents, first sold the tenure in execution of the decree for back rent, and within three days after its sale caused it to be sold again in execution of the decree for back and current rents. *Held* that, having come in under the provisions of Section 106, Act X of 1859, and his objections having been overruled by the Collector, he had a right to sue within a year from the date of adjudication, and the suit would lie in the Civil Court, as the act of the putneedar in setting up the defaulter's tenure a second time for sale for arrears due by the defaulter was a fraud. *Sowdaminee Dossee* v. *Bholanath Shaha*, 9 W. R., 363.

A sale by a husband to his wife may be collusive and a fraud upon his creditors, notwithstanding the payment of the purchase-money by the wife out of her funds. *Bhawan Lall* v. *Mussamut Akeedum*, 1 W. R., 319.

Where a tenure has been sold under Section 105, Act X of 1859, in execution of a decree for the rent of land held under a mourosee pottah, a tenant in possession is at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises. *John Borradaile & Co.* v. *A. C. Gregory*, 2 W. R., Act X R., 63.

When a sale of immoveable property in execution of a decree is set aside by a competent Court, the right of the purchaser to recover back his purchase-money, under Section 258, Act VIII of 1859, is absolute, even though he himself caused the property to be put up for sale, provided he was not guilty of any fraud or misrepresentation, or did not guarantee the validity of the sale under the decree. *Brojendur Roy Chowdhry* v. *Jugurnath Roy*, 6 W. R., 147.

Where a plaintiff sued for recovery of possession of property which he said he purchased from two defendants, and it was found as a fact that one of the defendants did not sell, but that the other used fraud in effecting the sale, it was *held* that the decision below which gave plaintiff a decree for the entire property against the defendant who acted fraudulently was erroneous, and that the decree should have absolved from liability the share of the defendant who did not join in or know anything of the sale. *Kaleedass Mozoomdar* v. *Meheroonissa Khatoon and others*, 8 W. R., 482.

Where a transaction was originally a sale, temporarily converted into a mortgage for some fraudulent purpose, but subsequently, as between the parties to the fraud, voluntarily restored to its original state of a sale,—*Held*, under the circumstances, that the sale should stand good, and consequently that there was no necessity for foreclosure, and no equity of redemption to sue for.

When a granddaughter purchases from a grandmother and attempts to oust a stranger who purchased *bonâ fide* and without notice, full and satisfactory proof of the *bona fides* of the transaction is necessary, even though no motive for fraud is proved. *Sheikh Imdad Hossein* v. *Beebee Alikoonnissa*, W. R., F. B., 77.

There is no fraud in a purchaser securing the assent both of the ostensible and beneficial owners to his purchase, so as to require a good title. *Kallee Mohun Paul* v. *Bholanath Chakladar and others*, 7 W. R., 138.

A defendant may plead the joint fraud of himself and the plaintiff as a bar to an action upon a contract which the plaintiff seeks to enforce by suit. The distinction between acts voidable by statute and at common law discussed. *A. Seshaiya* v. *K. Kandaiya*, 2 Mad. Rep., 249.

No one ought to be allowed to take advantage of his own fraud, even under a title from a Government sale for arrears of revenue. *Nawab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

Where a party to a suit chooses to clothe with fraud that conduct of the other side on which he bases his claim, he must understand that he risks his success with the charge which he makes. *Hurro Monee Dossea and others* v. *Onookool Chunder Mookerjee and others*, 8 W. R., 461.

Section 11, Act XXIII of 1861, and Sections 256 and 257, Act VIII of 1859, do not apply to a suit in which fraud is imputed vitiating the sale *in toto*. *Umbika Churn Chuckerbutty* v. *Dwarka Nath Ghose*, 8 W. R., 506.

Where a mother conveyed her property to her daughter, and the property was afterwards attached in execution of a decree against the daughter,—*Held* that the mother could not obtain a reconveyance of the property on the ground that the conveyance to the daughter was for the purpose of defrauding the mother's creditors, and that the *onus* was on the mother to prove that the decree against the daughter was a fraudulent contrivance to deprive the mother of possession of the property. *Keshubchundra Sein* v. *Vyasmone Dossia*, 7 W. R., 118.

A party should not expect redress from a Court of equity, justice, and good conscience, when he avows before such Court that, granting all his intentions to be fraudulent, he has a perfect right to seek to render inoperative a contract into which he willingly entered. *Komolanath Sein and others* v. *Beharee Cant Roy*, 11 W. R., 313.

When a decree is obtained fraudulently, and without notice to the opposite party, either of the suit or sale, the judgment-debtor may claim a rehearing any time within 15 days after the seizure of his person or property. *Boidoo Nath Roy* v. *Brojo Kisore Chuckerbutty*, 2 W. R., Act X R., 15.

A son cannot obtain a decree when suing as heir to regain property, alleging his father's fraud as the cause of action. *Bhuggobutty Dossee* v. *Kishen Nath Roy*, 3 W. R., 30.

A party cannot allege or plead his own fraud, nor can his representatives, nor a private purchaser from him, do so, unless they are themselves the defrauded parties, and seek relief from the fraud. *Luckee Narain Chuckerbutty* v. *Taramonee Dossee*, 3 W. R., 92.

A party claiming through another is not at liberty to plead that other's fraud as against a defendant in possession who claims under the fraudulent conveyance. *Fureedoonissa* v. *Ruhomut*, 4 W. R., 37.

Where a decree-holder, in taking out execution, is opposed by the judgment-debtor, and imputes fraud to the latter, the Court executing is bound to examine into the allegations. *Ram Dhun Rukhit* v. *Punchanun Chuckerbutty*, 10 W. R., 144.

In a suit to set aside an execution sale on the ground of fraud, it is not sufficient for a Court to find that the mode of making the attachment and proclamation was according to law; but it is necessary to consider the surrounding circumstances. *Choonee Sahoo* v. *Munnoo Lall*, 14 S. W. R., C. R., 325.

(*b*) Indicia *of Fraud.*

The relationship between parties to a conveyance of property may be immaterial if the purchase is found true, but is not immaterial where the question to be decided is whether the purchase was true or fraudulent. The mere handing over of the purchase-money from one party to the other in the presence of strangers, and the registration of the deed, are not sufficient to prove the transaction to be *bonâ fide*. *Pran Kissen Deb* v. *Lokenath Singh Mojoomdar*, 10 W. R., 445.

A zemindar (A.) gave certain villages in putnee to B., and received consideration-money and rent from him, but B. never got possession of them, nor derived any benefit from the putnee; it having been found that the villages belonged to a third party as lakherajdar, who obtained a decree against A in a suit to which B. was made a party.

Held that, in cases like this, it would be a sufficient proof of fraud to show that the fact (of ownership) as represented was false, and that the person making the representation had a knowledge of the fact contrary to it. *Raja Nilmoney Singh* v. *Gordon Stuart*, 9 W. R., 371.

Plaintiff sued for possession on a declaration of his itmamee right to a portion of a talook, for which his mother obtained an itmamee pottah. Afterwards the original superior tenure having been sold for arrears of rent under Act VIII of 1835, the father of defendant No. 1 purchased those rights and interests in the name of the defendant, and then obtained from the zemindar a pottah and settlement of the talook as one coming under the

provisions of Regulation VIII of 1819. He then fell into arrears, the talook was sold under the Regulation last cited, and he purchased it benamee.

Held that the legal inference from these facts was that the conduct of the father of the defendant No. 1 was fraudulent. *Soobul Chundra Pal* v. *Autter Aly and others*, 11 W. R., 32.

Where G. and Co. were unable to meet the bills of T. and Co., and wrote to T. and Co., "If you do not arrange for renewal or payment of them, we must stop payment;" G. and Co., knowing that they were insolvent, but for the purpose of delay, and not for any benefit to the estate, agreed to mortgage to T. and Co. what was substantially the whole of the estate.

T. and Co. renewed the bills, and the bills again falling due, and A. and Co. being unable to meet them, T. and Co. paid them. Shortly afterwards G. and Co. filed their petition of insolvency, without having carried out the agreement. In a suit by T. and Co., the Court refused to decree specific performance of the agreement, and held that it was a fraud against the general body of the creditors. *Teil and others* v. *D. C. Gordon and another*, 2 Ind. Jur., N. S., 142.

The mere non-payment of a debt does not necessarily prove collusion between the debtor and his vendor to defraud the creditor. Fraud must not be presumed without good and probable grounds. *Kissendhun Surmah and others* v. *Ramdhun Chatterjee and others*, 6 W. R., 235.

A conveyance was held to be benamee and in fraud of creditors, even though executed and registered before obligation was incurred, when the conveyance was between near relations, and it was found that, in spite of the alleged conveyance, the possession remained with the original owner of the estate. *Roop Davi Singh* v. *Narain Sahoo*, 1 W. R., 217.

Where a deed was executed conveying a man's entire property to his son, only two years old, and reserving to himself one rupee a day for his subsistence, and after execution the conveying party remained in possession,—*Held* that, in the absence of explanation, no other inference could be drawn than that the deed was merely intended to be used as a blind. *Sreeinath Singh Chowdhry* v. *Sreemutty Hurreprea*, 10 W. R., 449.

Held, by the majority of the Court (Trevor, J., *dissentiente*), that a sale by a husband to his wife may be collusive and a fraud upon his creditors, notwithstanding the payment of the purchase-money by the wife out of her funds. *Bhawan Lall* v. *Mussamut Akeedum*, 1 W. R., 319.

Where a person purchases for one who is in failing circumstances and has decrees against him in execution, and allows the vendor (being his relative) to remain in possession of the goods sold, as well as the profits thereof, he may perhaps purchase in good faith; but the Courts are not justified in declaring the validity of such a transfer without there being the clearest proof that the purchaser has bought, and paid the consideration, and some sufficient explanation of the apparently suspicious circumstances attending the purchase. *Kallyan* v. *Douluta and Mehir Singh*, 1 Agra Rep., A. C., 79.

A bond contained a stipulation to the effect that, as the obligors were urgently in want of money and unable to procure a stamp, they executed the bond on plain paper, agreeing to make good any penalty the obligees might have to pay in suing them to enforce the obligation,—*Held* that this was not in point of law an agreement to evade the Stamp Law, though, as a matter of fact, an intention to evade the Stamp Law might have been inferred. *Shoshee Bhoosun Banerjee* v. *Tara Chand Kur and another*, 11 W. R., 553.

A decree of an Appellate Court obtained, after a compromise not to prosecute the appeal, was held to be an adjudication obtained not only with great impropriety, but in effect by fraud. *Rajmohun Gossain* v. *Gourmohun Gossain*, 4 W. R., P. C., 47.

There is nothing fraudulent or illegal in a father making provision that property over which he has complete control shall not go into the hands of an insolvent son; but a benamee conveyance to female members, the father continuing the absolute and uncontrolled owner during his life, and the son entering into possession after his death, cannot exclude the claim of the son's creditors. *Hemanginee Dassee* v. *Jogendronarain Roy*, 12 W. R., 236.

Where a vendor knowing that he had no right or title to property, or being cognizant of the existence of incumbrances, or of latent defects materially lowering it in value, sold it and neglected to disclose such defects to the purchaser,—*Held* that there was a fraudulent concealment vitiating the contract. *Peary Mohun Soor* v. *Abdool Sobhan Chowdhry*, 7 W. R., 258.

If a man largely indebted executes a conveyance of property to his wife, as in satisfaction of dower, the conveyance is void as against his creditors, if executed for the fraudulent purpose of keeping the property in his own hands out of the reach of the creditors. So also a conveyance by a man in such circumstances to his wife is fraudulent and void if no dower is due, and the conveyance is voluntary, and not made in satisfaction of any debt due to him. *Shaik Mahomed Bussooroollah* v. *Abimoonissa*, 7 W. R., 513.

In considering a case of alleged fraud in the purchase of an estate, it is material to enquire what relation the purchase-money paid bore to the value of the estate. *Sree Huree Chundra Dey* v. *Gopal Chundra Chuckerbutty and others*, 7 W. R., 10.

Where an overseer in the Public Works Department, who is prohibited by the rules of his office from entering into any trade or contracts with that department, enters into an agreement of partnership for carrying on business under contract with the department, such agreement is a fraud upon the public, and is therefore one which a Court of Justice ought to treat as an absolute nullity. *Sharoda Prosad Roy and another* v. *Bhola Nath Banerjee*, 11 W. R., 441.

The setting up of a hostile title against the zemindar by a tenant under a fraudulent pottah amounts to a disclaimer and forfeiture of all right of occupancy to which the tenant might have been entitled had he set up his title under Section 6, Act X of 1859. *Mirza Nadir Beg* v. *Mudduram*, 2 W. R., Act X R., 2.

Where a deed of sale is executed under circumstances which suggest an intention to defraud creditors, it is not sufficient that the sale was formally made and the deed duly registered; the

Court must be satisfied as to consideration having actually passed from the purchaser to the former owner, and as to the source from which the purchase-money was derived. *Muthuroollah* v. *Soraboodeen*, 15 S. W. R., C. R., 305.

A putnee talook being about to be brought to sale under Regulation VIII of 1819, the agents of the sharers were in attendance at the Collectorate on the day of sale, prepared to pay the rent due. Two of the agents (T. and B.) happening to be out of the way at the time, the lot was about to be called up, the third (K.), without informing the Collector or zemindar's agent of their intention to pay, or giving notice to the others, purchased the putnee,—*Held* that K.'s act was one of bad faith, that the 4-annas shareholders whom he represented could not in equity be allowed to benefit by adopting the fraud.

Held that as between the Collector and zemindar and the defaulting putneedars the sale was valid; but that it was void so far as it created a title in favour of the 4-annas shareholders to the 12-annas share, and K. must be treated as having made the purchase on account of, and as a trustee for, the 12-annas shareholders. *Koylash Chunder Banerjee* v. *Kalee Prosunno Chowdry*, 16 S. W. R., C. R., 80.

(c) *Absence and Inadequacy of Consideration.*

A deed of assignment of property by a Hindu woman, without consideration or proper advice, is held to have been improperly obtained and may be set aside. *Soondur Koomaree Debia* v. *Kishoree Lal Sein*, 5 W. R., 246.

A gift by a husband to his wife is not void against the husband's creditors, if at the time of the gift the husband was solvent, and the wife was put in possession under the gift, especially if the plaintiff became a creditor of the husband long after the gift. *Shaik Enact Ali* v. *Mussamut Rampreah Koonwar*, 1 W. R., 21.

Where money-lenders dealing with ignorant, illiterate peasants made use of the necessitous position of those peasants, who were seeking to raise a sum of money for the purpose of stocking and tilling their lands, to impose upon them a contract in the form of a mortgage, by which they agreed in default of punctual payment of the half produce, and other events, to sell their land at a gross undervalue, *viz.*, one-third of the amount of the mortgage debt, which in itself was not more than equal to half the value of the annual produce of the land, and to remain liable to the remaining two-thirds of that debt with interest, and, even if no default should occur on their parts in payment of a moiety of the annual produce, or the performance of their other covenants, and notwithstanding full payment of the principal, to continue for fifteen years to pay the half produce of the lands to the mortgagees,—

Held (reversing the decrees of both the Courts below) that the deed of mortgage should only stand as security for the payment of the principal sum of Rs. 300, and interest at 9 per cent., and in all other respects should be set aside as inequitable, fraudulent, and grossly oppressive. *Held*, also, that if in execution of the reversed decrees the lands had been made over to the mortgagees as purchasers they should be restored to the mortgagors, and that the rents, profits, and produce received by the mortgagees while in possession should be set off on account against the said principal sum and interest, and that the balance should be paid by the party against whom the same might be found.

Mere inadequacy of consideration, unless it be so great as to amount to evidence of fraud, is not sufficient ground for setting aside a contract, or refusing to decree specific performance of it. But inadequacy of consideration when found in conjunction with any such other circumstances as suppression of true value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding or even ignorance, is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts, or refuse to decree specific performance of them.

Quære,—As to the validity of a mortgage of future crops. *Kedár Ràvn and another* v. *Atmarambhat and another*, 3 Bom. Rep., A. C. J., 11.

(d) *Undue Influence, &c.*

In a suit to enforce performance of a contract, where defendant pleads that the contract was executed under compulsion and intimidation, it is not sufficient for him to prove that it was executed from fear of a criminal complaint, as that might have been a righteous fear, and not simply a bodily fear imposed on him, in order to his doing that which he would not of his own free will have done.

Should he plead that the contract was based upon the condonation of a criminal complaint against the plaintiff, which might have been of a nature not condonable by law, and that the contract was therefore void, it would be for him to show what was the nature of the offence complained of. *Kumala Nath Sein and others* v. *Beharee Kant Roy*, 11 W. R., 314.

A contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust, is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other party made an unfair use of his advantages. This rule of equity applies strongly in a case where any person, acting as an attorney or as a legal adviser, enters into a contract with his client in respect of the subject of litigation or advice. Undue influence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable. *F. J. Pushong* v. *Munia Halwani*, 1 B. L. R., A. C., 95; 10 W. R., 128.

Certain parties convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with complainant, who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered. They accordingly sold him some property in lieu of cash. *Held* that the sale was not made under illegal pressure. *Sheik Nubbee Buksh and others* v. *Mussamut Bebee Hingon and others*, 8 W. R., 412.

A Court of Equity will not set aside the voluntary deed of a weak man who is not absolutely

non compos, unless the weakness as well as the facts surrounding the transaction, and the nature of the transaction itself, be such as to satisfy the Court that the person had not at the time a mind adequate to the business, and that he might have been imposed upon, or unless the Court is not satisfied of the good faith of all the parties to the transaction. *Rajender Chunder Newgee* v. *Bhoobun Kalee Debea*, W. R., 1864, 65.

Where a deed purports to have been executed by a purdah woman, the Court should see that it was fairly taken from her, and that she was a free agent and duly informed of what she was about. When the disposition is in the nature of a death-bed disposition, the Court that upholds it ought, from whomsoever it proceeded, to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed, and expressed his real intention. *Grish Chunder Lahoree* v. *Mussamut Bhuggobutty Debia*, 14 S. W. R., P. C., 7.

Where the High Court affirmed the judgment of the Court below on the facts, without giving reasons for such affirmance, the Judicial Committee reviewed the facts and reversed the decree.

Where one seeks to set aside a deed on account of duress, and such duress does not amount to personal duress, but merely to prepare by threats as of injury to property, the plaintiff must offer to restore any benefit accruing to him under the deed. *Guthrie, C. S.* v. *Abul Mazaffer*, 7 B. L. R., 630; and 15 S. W. R., P. C., 50.

(*e*) *Consequences of Fraud.*

A vendee who purchases for valuable consideration, and without notice of benamee, from the ostensible owner of the property held by him under an apparently good title, will be protected from subsequent acts of the owner or his heir, both of whom were parties to the fraud; and his purchase will hold good against any subsequent sale made by them. *C. Rennie* v. *Gunganarain Chowdhry*, 3 W. R., 10.

Parties who admit another to represent themselves as the proprietors of their estate, and thus induce others to lend money, are not entitled to consideration from a Court of equity and good conscience. *Nundun Lall* v. *William Tayler*, 5 W. R., 37; S. C., 1 Ind. Jur., N. S., 55.

The representatives of, or private purchasers from, a party selling benamee in fraud of creditors, or pleading such a sale in order to recover the property afterwards, are bound equally with the original defaulters, and cannot take advantage of what must be held to be their own wrong. *Purikheet Sahoo* v. *Radhakishen Sahoo*, 3 W. R., 221.

The representatives of a man who executes a benamee gift fraudulently in favour of his wife are bound by his act, but the gift is no bar to the claims of any creditor. *Roshun Beebee* v. *Sheikh Kureem Buksh*, 4 W. R., 12.

A wife cannot sue for confirmation of possession of property sold in fraud of his creditors by her husband to her in the name of another. *Bhowanee Pershad* v. *Oheedun*, 5 W. R., 177.

A father who transferred property to his sons for the sake of defrauding creditors, and permitted the sons to put forward claims on the property founded on a title inconsistent with his own, was held to have created a state of circumstances in which the sons were entitled to say that he could not afterwards sue to recover the property from them. *Hurry Sunkur Mookerjee* v. *Kali Coomar Mookerjee*, W. R., 1864, 265.

Where goods have been obtained by means of a fraudulent purchase, the vendor has a right to disaffirm the contract, so as to re-vest the property in himself, and this even if the property had passed to the vendee, with the consent of the vendor.

Where a vendee purchased cotton, with the preconceived design of not paying for it, the sale did not pass the property; and although the cotton may have been, with the vendor's consent, allowed to be placed on the vendee's boat, still the vendee must be considered as the agent of the vendor, and his possession as that of the vendor's, and the cotton as still the property of the vendor, as long as the price was not paid. *Dursum Lall Pandey and others* v. *Indur Chunder and others*, 6 W. R., 81.

Where the plaintiff's property had been fraudulently transferred,—*Held* that he was entitled to recover the damage or loss which he sustained on account of such fraudulent transfer from the actual transferor, and from the person who was found to have been the prime mover and instigator in the transaction, as well as from his own agent who consented to such transfer, and the purchaser who, being aware of circumstances sufficient to create suspicion, dealt with persons who had no authority to sell. *T. Wharton* v. *Moona Lall and others*, 1 Agra Rep., A. C., 96.

Where a mortgagor executes a deed of sale for the purpose of defrauding and defeating his creditors, it is void against any of the creditors who may obtain a decree against him, although the deed may have been executed before execution was taken out on the decree. *Radha Mohun Dutt* v. *Bissessur Bundoopadhaya*, 6 W. R., 90.

A person cannot recover under a deed of sale in fraud of creditors, even against a party to the fraud, except it may be against the person who executed the deed. *Koylash Chunder Mookerjee* v. *Shuroop Chunder Putwaree*, 6 W. R., 98.

A declaration of title cannot be granted to the purchaser under a kobala from two parties where the conveyance has been found to be fraudulent and collusive, even though one of the parties really had an interest in the property, and transferred it in the same conveyance. *Allamoonissa Bibee* v. *R. P. Sage and others*, 11 W. R., 335.

On the transfer of a decree by sale after attachment, any payment or adjustment of that decree made by the judgment-debtor to the original decree-holder in fraud of the purchaser, or of the attachment under which the sale to the purchaser took place, cannot defeat or affect the purchaser's rights. *Hureenarain Chatterjea* v. *J. W. Smith*, 3 W. R., S. C. C., Ref., 11.

A benamee or collusive sale of property in execution of a decree will not save it from re-sale in satisfaction of the decree. *The Nawab Nazim of Bengal* v. *Muzhur Ali*, 3 W. R., Mis., 4.

Where a decree-holder brings to sale in execution of his decree property on which he holds a mortgage, without notifying his encumbrance upon it, and on being asked by any intending bidder at the

time of the sale whether there is any encumbrance on the property, gives an evasive answer which misleads the bidder and induces him to purchase the property as encumbered, he cannot subsequently claim as against such bidder to enforce his mortgage. *McConnell* v. *Mayer*, 2 N. W. R., 315.

2.—BENAMEE.

The argument that deeds executed benamee in fraud of creditors are good between the parties and their heirs, may avail a purchaser for valuable consideration without notice of the nominal nature of the transfers, but cannot avail another person who has made use of his knowledge of the existence of these nominal deeds in order to perpetrate a fraud on other minor heirs. *Rutton Dyee* v. *Roy Gouree Sunkur; Roy Rashbeharee Lall* v. *Roy Gouree Sunkur*, 4 W. R., 72.

A suit for rent was brought against A. and B., on the ground that A., in whose name the ijara was taken, was benamee, and that B. was the real lessee. *Held*, first, that the plaintiff might have a decree against one, but was not entitled to a decree against both; secondly, that the judgment of the Court of first instance giving a decree against both defendants might, on appeal, be modified, by reversing the judgment as to one of the defendants, and allowing it to stand against the other. *Rajkissore Mozoomdar and others* v. *Hurulall Bukshee*, Marsh., 188.

A suit to recover possession of property which was purchased by a vakeel from his client benamee in the name of another, and which was never made over to that other, cannot be maintained in the name of the ostensible purchaser. *Fuzeelun Bibee* v. *Omdah Bibee and Shah Jonab Ally*, 10 W. R., 469.

Property bought by P. in the name of S. was mortgaged by P. through his benameedar S., by conditional sale to L., who, dying after foreclosure, left it in possession of his widows, defendants Nos. 3 and 4, from whom plaintiff purchased it at a sale in execution of a decree against them. Defendants Nos. 1 and 2 resisted on the ground that S.'s conditional sale did not pass the rights and interest of P., which they bought at an auction sale in execution of a decree against P.

Held that the decree of foreclosure was good and binding against Nos. 1 and 2, unless they could show fraud. If property is purchased in the name of a benameedar, and the *indicia* of ownership are placed in his hands, the true owner can only get rid of the effect of an alienation by showing that it was made without his acquiescence, and the purchaser took with notice of the fact. *Bhugwan Doss* v. *Upooch Singh and others*, 10 W. R., 185.

Where property is held benamee, and the ostensible owner assents to its being disposed of to the prejudice of the real owner, the latter cannot be allowed to object, the fraud being a consequence of his own act. *Brojonath Ghose* v. *Koylash Chunder Banerjee*, 9 W. R., 593.

Benamee transactions are a custom of the country, and must be recognized till otherwise ordered by law. Meanwhile the extent of their compatibility with an honest purchase depends upon the peculiar circumstances of each case. *Kally Mohun Paul* v. *Bholanath Chackladar and others*, 7 W. R., 138.

Where there is an allegation that a lease is held benamee, it is not sufficient for the party in whose name the lease is drawn out to produce the document, but it is necessary for him to prove that he has the beneficial interest in the property. *Sarodamohun Roy Chowdhry* v. *Shama Soondery Dossia, guardian of Bama Churn Goohoo, minor, and another*, 7 W. R., 209.

Where the property belonging to one family is conveyed to another by a deed of such a nature as secures the continuance of the profits to the former, the possession by the latter must be held to be on behalf of the former, until by some unequivocal act they show a distinct intention to hold on their own behalf. *Juggernath Pershad Dutt* v. *C. S. Hogg and others*, 12 W. R., 117.

The habit of holding land benamee, though inveterate in India, does not justify the Courts in making every presumption against apparent ownership. *Judoonath Bose* v. *Shumsoonnissa Begum*, 8 W. R., P. C., 3.

Before shutting out a decree-holder who has taken by assignment, on the ground that he is a mere benamee holder from one of the judgment-debtors, it is necessary to be very careful, and to ascertain beyond a doubt that the fact is so. *Khajah Mahomed Issa Khan* v. *Mr. P. Onraet and others*, 8 W. R., 26.

In a suit to declare certain sales benamee in a case where the property of a husband was sold to realize a fine of Court, and passed from hand to hand until it was sold to the wife, who moreover was in possession of the property when the sale of the husband's rights and interests took place,—*Held* that the plaintiff was entitled to a clear finding as to whether the wife held the property in her own right or in trust for her husband, and that the *onus* of showing the source whence the money came was on the wife. *Bindoo Boshinee Debee* v. *Pearee Mohun Bose*, 6 W. R., 312.

A. purchased B.'s rights at a sale in execution of a decree of a Civil Court, but found the lands in the possession of C., a purchaser at a sale by the Collector's Court. A. prayed to be put in possession summarily, alleging C. to hold merely benamee for B. *Held* that A. could not proceed summarily, but must bring a regular suit. *Omesh Chunder Roy* v. *Bibee Ashrufoonissa and another*, 6 W. R., Mis., 122.

The mere taking a benamee lease, unaccompanied by any other circumstance of suspicion, does not *per se* constitute fraud. *Munoolall* v. *Reet Bhoobun Singh and others*, 6 W. R., 283.

Under Regulation XI of 1822 a benamee purchase for defaulting proprietors, at a sale for arrears of revenue, is not *ipso facto* illegal and void. *Kaleedoss Mookerjee* v. *Mothooranath Banerjee*, 5 W. R., 154.

The real owner of property is the person who should institute a suit for it. A benamee holder may sue as trustee on behalf of the beneficial owner, without disclosing the name of the real owner; and if the defendant does not object to the suit proceeding in that form, and raises no issue upon the real title of the plaintiff, the suit may proceed and be decided. *Prossunno Coomar Roy Chowdhry* v. *Gooroo Churn Sein; Gooroo Churn Sein* v. *Oojulmonee Chowdhrain*, 3 W. R., 159.

Registration of a deed does not affect the question of *bona fides*, nor is a conveyance, to be considered *bonâ-fide* simply because there is proof of its execution and some statement that money was on the occasion actually paid by the vendee into the hands of the vendor in the presence of witnesses unacquainted with the circumstances of the parties and the relation they bear to each other; but in coming to a conclusion, the circumstances and probabilities are to be carefully considered and weighed, *e.g.*, the object of the purchase, whether the purchase-money really belonged to the purchasers, and whether possession was taken after purchase, and, if not, why possession was not taken. *Bhoobun Mohun Burraul* v. *Sreemutty Nagoree Dossia*, 15 S. W. R., C. R., 15.

The creditor of a deceased proprietor is not prevented, in the way in which the deceased would have been were he alive, from questioning acts done by the said proprietor's benameedar; for the rule of law by which an heir or assignee stands in no better position than the party through whom he derives his title admits of an exception in favour of those who would be themselves aggrieved or defrauded by the party through whom they claim. *Baboo Lekhraj Roy* v. *Motee Madhub Sein*, 15 S. W. R., C. R., 333.

In cases of benamee purchase in India, the criterion of beneficial ownership is the source from which the purchase-money is derived. *Akbur Ali* v. *Mahomed Faiz Buksh*, 15 S. W. R., C. R., 12.

Where property is bought from a wife as the ostensible owner, the husband consenting to the sale, and the transaction is *bonâ-fide* on the part of the purchaser for a consideration, the purchase is a good one, even if the property is not the wife's but the husband's. *Sheikh Golam Russool* v. *Sheikh Abdool Ruheem*, 15 S. W. R., C. R., 19.

The law as to benamee conveyances taken by a father in the name of a son, whether in Hindoo or Mahometan families, should be considered in all Courts in India as conclusively settled by the decision of the Privy Council in *Gossain and Gossain*, 6 Moore's East Indian Appeals.

That decision, however, was not applied to the present case, in which it was found that a father, who had purchased property with his own funds, had had the conveyance drawn up in his son's name with a view to affect the interests of his daughters and to vary the rule of succession between sons and daughters in his family. *Nawab Azimut Ali Khan* v. *Hurdwaree Mull*, 14 S. W. R., P. C., 14.

In the case of a benamee purchase, the mere use of the *furzee* name is sufficiently disposed of if the party whose name is used sets up no claim, and if there appears to have been long continued possession on the part of the person claiming to be the beneficial owner. *Mussamut Hoymobutty Dassee* v. *Sreekissen Nundy*, 14 S. W. R., C. R., 58.

In a suit by an heir to recover property which had been transferred by a benamee and fictitious conveyance on the part of plaintiff's father, where the object was bound to have been to defraud creditors, *Held* that plaintiff could not be permitted to plead the fraud of his father from whom he derived his title. *Kaleenauth Kur* v. *Doyal Kristo Doss*, 13 S. W. R., C. R., 87.

In cases where the question is whether property bought and held in the name of another than the party claiming as the real purchaser, is the property of that other, or merely bought and held in his name (benami) for the claimant, the criterion is to consider from what source the purchase-money came; the presumption is that a purchase made with the money of A. in the name of B. is for the benefit of A.; and where the purchase is by a father, whether Mahometan or Hindu, in the name of his son, there is no presumption of an advancement in favour of that son. Upon the facts, the decision of the Courts below reversed. *Moulvi Syad Azhar Ali* v. *Mussamut Bibi Altaf Fatima*, 4 B. L. R., P. C., 1, and 13 S. W. R., P. C., 1.

When a decree is assigned to A. for his benefit, in the name of B., B., the ostensible decree-holder, may take out execution. *Purna Chundra Roy* v. *Abhaya Chundra Roy*, 4 B. L. R., Ap., 40.

3.—Statute of Frauds.

A contract of guarantee is a "matter of contract and dealing" within the terms of Section 4 of 21 Geo. III., c. 70, and therefore such a contract made by a Hindu is not affected by Section 4 of the Statute of Frauds. When a defendant raises a claim of set-off on the trial of that issue he must be considered as plaintiff. *Srimati Jagadamba Dasi* v. *Grob*, 5 B. L. R., 639.

When a contract is proved to have been entered into, but no memorandum thereof in writing has been signed by the parties, a Hindu defendant is not entitled to plead the Statute of Frauds. *John Borradaile and another* v. *Chimsook Buxyram*, 1 Ind. Jur., O. S., 70; 1 Hyde's Rep., 51.

Quære,—Does the Statute of Frauds form any part of the procedure of the High Court in its original jurisdiction? *Ram Lago Dutt* v. *Nobogopal Mookerjee and W. C. Stewart*, Bourke's Rep., O. C., 367.

The 4th Section of the Statute of Frauds applies to cases in the mofussil in which the defendant alone is a British-born subject. *Mattya Pillai* v. *Western*, 1 Mad. Rep., 27.

The 4th Section of the Statute of Frauds does not apply to suits in which the defendant is a Hindu. *Nekram Jemadar* v. *Iswariprasad Pachuri*, 5 B. L. R., 643; 14 S. W. R., 305.

4.—Champerty.

Where the Court finds any person, though not a party to the suit, guilty of champerty or maintenance, and setting in motion the process of the Court for improper purposes, such person will be made to pay the costs of such proceeding. *Juggessur Coowar* v. *Prossono Coomar Ghose*, 1 Ind. Jur., N. S., 282.

A contract, the effect of which is to assist another in carrying on the litigation against a third party, made with the express declaration that it was out of spite and ill-feeling against such third party, is a contract against public policy, and a suit cannot lie upon it. *Bamun Doss Banerjee* v. *Huro Lall Shaw*, 10 W. R., 140.

The Courts will not interfere when a transfer is completed at once, *e.g.*, when a party buys a certain share of a litigant's risk, and stands or falls by his purchase, having only the right to recover his

share from the party suing if the latter wins his case, and having no claim at all if the Courts decide against him.

Quære,—Whether in the present state of the law in India (1864), champerty can be pleaded at all. *Punchanun Muzoomdar* v. *Doorga Nath Roy*, W. R., 1864, C., 300.

Quære,—Whether champerty or maintenance, according to English law, is forbidden by the law of India.

Where A. sues in respect of his own interest for the violation of a contract made for him by B. as agent only, the assignment of B.'s interest on the agreement, in order to enable A. to bring his suit, is not champerty or maintenance.

When an agreement to grant a lease was incomplete and conditional upon an advance within eight days required to meet pressing demands, a delay of nineteen days was held to be unreasonable, and likely to defeat the object of the lease. *G. F. Fischer* v. *Kamala Naicher, zemindar of Ammanaiknon*, 3 W. R., P. C., 33.

Every purchase of a suit is not champerty. *Jug Mohun Lall* v. *Mussamut Buddun Koer and others*, 9 W. R., 243.

Held by Glover, J. (Macpherson, J., dissenting), that there is no law against champerty or maintenance in Bengal. *Paunch Cowree Mahtoon and others* v. *Kalee Churn and others*, 9 W. R., 490.

Where the purchaser of a share of land joins his vendor in a suit to recover his own property, his action cannot be termed "champerty." *Munirakhun Singh* v. *Bhoydoy Singh and another*, 12 W. R., 133.

The law of England as to the offences of maintenance and champerty does not apply to natives of India. In dealing with objections to their contracts, on the ground of maintenance and champerty, the Court must look to the general principles regarding public policy and the administration of justice upon which that law at present rests.

To constitute "maintenance," improper litigation must have been stirred up with a bad motive for purposes contrary to public policy and justice.

"Champerty" is a species of "maintenance" and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject-matter of the litigation.

Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence proceedings against the then tenant of the subject-matter of the intended lease. *Pitchakutti Chetti* v. *Kamala Nayakkan*, 1 Mad. Rep., 153.

R. enters into an agreement with G. that if a suit, which was then about to be brought by G., for the recovery of certain lands should be decided in favour of G., R. was to pay G. Rs. 85, and G. was to make over to R. half the land recovered. R. was to pay Rs. 50 in certain proportions, which R. was to lose if the suit was not decided in favour of G. G. recovered the land, and R. then sued him upon the above agreement.

No issue was taken in the Court of first instance on the question whether the agreement was void for champerty.

An issue was raised on this question by the Appellate Court, and (no evidence being taken) was decided in favour of the defendant.

Held in special appeal that, as it was not manifestly apparent in the face of the proceedings that the agreement was against morality or public policy, the Appellate Court ought not to have held it void.

Semble, That the above agreement was not void on the ground of champerty: at any rate, that it was capable of explanation by a consideration of the surrounding circumstances, which the plaintiff should have had an opportunity of giving in evidence. *Rámráv Khunderáv* v. *Govind Pandshet et al.*, 6 Bom. Rep., A. C. J., 63.

In a suit by a Mahometan mookhtear for specific performance of an agreement under which he advanced money to carry on a suit by members of a Hindu family to set aside alienations made by their father, on the understanding that he was to be entitled to a share of the estate recovered from the purchasers in the event of success,—

Held that the agreement savoured of champerty, and that a suit involving such interference in the affairs of a Hindu family could not be countenanced. *Sheikh Abed Hossein* v. *Lalla Ram Sarun*, 13 S. W. R., C. R., 426.

A Hindu widow, as the heiress of her husband, sued his four surviving brothers, who retained the enjoyment of the whole joint estate, for the recovery of her share. While the suit was pending, on the 24th April, 1859, she entered into an agreement with the defendant by which, after reciting the nature of her claim, and stating that she was too poor to prosecute it, she assigned to him all she might be entitled to receive from the joint estate in right of her deceased husband, together with all interest and accumulations thereon, and all advantage to be derived from the suit about to be instituted by the defendant G.; and she appointed him her attorney to institute and carry on any suit in her name for recovering her right and share in the property; it being agreed that he should retain one moiety of what might be recovered absolutely for his own benefit as remuneration, and out of the other moiety should repay himself such sums as he might from time to time have advanced or paid for her maintenance, with interest at 12 per cent. per annum, and also all such sums and costs as he might from time to time have advanced or been put to in carrying on the suit, with 12 per cent. per annum, and should pay over the residue to the widow herself. Subsequently the suit was withdrawn.

In May, 1859, the widow, by G., filed a fresh bill against her husband's surviving brothers, for recovery of her husband's share in the estate, together with accumulations, and in August, 1861, obtained a decree for a large sum of money out of the joint estate, "the whole to be enjoyed by her as a Hindu widow in the manner prescribed by Hindu law." By a deed dated November 14th, 1860, G. assigned his interest under the assignment of April, 1859, to H. S., the defendant.

In a suit brought on the 22nd February, 1866, by the reversionary heirs of the husband in the Court of the Principal Sudder Ameen of Hoogly,

against the widow, G., and H. S., the last one of whom alone resided in Calcutta, which suit was, on the 23rd of April, 1866, removed into the High Court, on the application of G. and H. S., it was prayed that the agreement of April, 1859, and all sub-assignments that might have been made be set aside as void, and that the money should be paid into Court and kept there during the life of the widow defendant, for the benefit of the reversionary heirs, and in order to prevent waste.

Held, by Phear, J., the suit being one to prevent contemplated waste, was not barred by lapse of time. The suit must be treated as if the plaint had been originally filed in this Court, the proceedings in the Hoogly Court being without jurisdiction, and the cause of action having arisen wholly within the jurisdiction of the High Court.

The agreement of 4th April, 1859, was void as being without definite consideration, and being in the nature of a gambling transaction not valid against heirs under Hindu law; and it was also void being of a champertous nature, and contrary to public policy. The law which forbids and avoids all acts contrary to public policy, and subversive of the general interests of society, is in force in this country. Independent of the Charter, there is a power inherent in any Court of Justice which receives its authority from the State to make the interests of private persons subordinate to those of the public, and to take care that where they are in conflict that the latter should prevail.

Semble,—There is nothing in equity which prevents a suitor, pending a suit, or any other legal proceedings, from assigning the whole or any part of the subject of litigation.

Held, on appeal, by Peacock, C. J., and Macpherson, J., that the suit could be maintained for the relief sought, and for the protection of the property.

That the defendant H. S., by joining in the application to have the suit removed to the High Court, admitted the jurisdiction of the Court to try the suit in the exercise of its Extraordinary Original Civil Jurisdiction, and could not afterwards dispute the jurisdiction. The law therefore to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hoogly.

That the deed of the 4th April, 1859, so far as it related to the moiety of the property assigned to the defendant G. absolutely, was not binding on the plaintiffs or on the persons who upon the death of the widow may succeed to the property of her deceased husband. Though not void on the ground of champerty it was an unconscionable bargain, and a speculative if not a gambling contract, and there was no necessity for such an alienation by the widow. But so far as regards the assignment of the moiety as security for the advances and expenses which G. or his assigns might reasonably and properly make or incur for the maintenance of the widow for carrying on the necessary proceedings to enforce her rights, with twelve per cent. interest on such advances, it is not void, but created a charge upon that moiety which was binding upon the reversionary heirs of the husband to the extent of such advances and expenses. There was legal necessity for such charge, and it affected the moiety both of principal and accumulations. *Held*, by Macpherson, J.—That accumulations are not the same as income, and cannot be dealt with by a Hindu widow as such; they should be treated in the same way as the corpus of the estate.

The agreement of April, 1859, was void by English law as being a mere gambling transaction, and contrary to public policy and illegal.

The law which would have been applicable to the case, if it had been tried at Hoogly, is practically the same as the English law, whatever may be the nationality of the parties. *Grose* v. *Amirtamayi Dassee*, 4 B. L. R., O. C., 1; 12 W. R., O. C. 13.

5.—INJUNCTION.

Injunction granted to restrain a partner from excluding his co-partner from the partnership business and from doing any act to prevent its being carried on according to the articles. *Vardachalla Nattan* v. *Ramaswami Nayakaer and others*, 1 Mad. Rep., A. C., 341.

In an application for an injunction to restrain the use of a trade mark, it is not a sufficient defence to say there was no fraudulent intention, and that is no reason for not granting the application. *Graham and others* v. *Ker, Dods, and others*, 3 B. L. R., Ap., 4.

In a suit for an injunction to compel defendant to reduce to its original dimensions an embankment which he had recently raised from a certain height to a greater height, on the ground that the effect of defendant's act had been, and would be, to injure plaintiff's land by preventing the passage of water which used to overflow that land,—*Held* that plaintiff was bound to establish not merely an injury, actual or prospective, caused by the act complained of, but an injury caused by infraction of some right which plaintiff possessed, or by the omission of something which defendant was legally bound to do. *Pran Kisto Roy* v. *Huro Chunder Roy and another*, 10 W. R., 435.

The Court, in granting an *ad interim* injunction, will first see that there is a *bonâ-fide* contention between the parties, and then on which side, in the event of obtaining a successful result to the suit, will be the balance of inconvenience if the injunction do not issue, bearing in mind the principle of retaining immoveable property in *statu quo*.

On those principles an injunction was granted to restrain the defendants from "selling, alienating, or otherwise disposing" of certain houses, the subject of a suit, in which the plaintiff, claiming under the will of his father, sought to set aside proceedings in execution taken by an executor (under whom the defendants claimed) after the death, but before the grant of probate of the will of the deceased, and by which proceedings the executor had seized the houses in satisfaction of his own debt. *Gomes* v. *Carter and others*, 1 Ind. Jur., N. S., 411.

Proof of actual damage is not necessary in order to sustain an action for an injunction to restrain the defendant from collecting, without any title, from the ryots of the plaintiff's estate, two annas rent over and above the full sixteen annas in the

rupee. *Nadirjumma Chowdhry* v. *Ram Chunder Surma*, W. R., 1864, 362.

Injunction granted to restrain a bazar-dealer from using trade marks similar to those of a Glasgow firm trading in India. *Ewing* v. *Choonee Lall Mullick*, Cor. Rep., 150.

Principles on which the Court grants injunctions and assesses damages in the case of obstruction of ancient lights. Effect of alteration of windows on plaintiff's right. *Lackersteen* v. *Tarucknath Poramanick*, Cor. Rep., 91.

Injunction granted by the Court to restrain proceedings in the mofussil against the Court Receiver. *Beer Chund Gossai* v. *Hogg*, Cor. Rep., 56.

Section 92, Act VIII of 1859, applies to a case where it is shown to the satisfaction of the Court that the defendant in possession is likely to endamage or make away with any property in dispute in the suit, and empowers the Court in such a case to issue an injunction to the defendant to refrain from the particular act complained of, and, in case of necessity, to appoint a receiver or manager of so much of the property only as is in dispute. *Joynarain Geeree* v. *Shibpershad Geeree*, 6 W. R., Mis., 1.

Where A. seizes property in attachment of a decree which had been obtained by his own judgment-debtor, and there is nothing to show that that decree was sold to B., and A. is not proved to have acted maliciously or without probable cause, A. is not liable to B. in a suit for damages. The seizure, moreover, having been made under the order of the Court, the defendant was not liable for what was done under the Court's order.

In attaching a decree under Act VIII of 1859, the Civil Court should not proceed under both Section 92 and Section 236 of that Act, but under Section 92 alone, and the Collector has no power to attach such decree. *Joykalee Dassee* v. *The Representative of Chandmalla*, 9 W. R., 133.

The Court of the Principal Sudder Ameen of Thana being closed during vacation, a plaint which, under Section 6 of the Civil Procedure Code, ought to have been instituted in that Court was, by the order of the District Judge, referred for trial to the Assistant Judge, entered in the register of suits in the Judge's Court, and tried by the Assistant Judge.

Held, reversing the decree of the District Court in appeal, that it was not lawful for the Judge to refer the suit, without its having first been instituted in the Principal Sudder Ameen's Court; and that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge. *Motilal Ramdas* v. *Jawnadas Janerdas*, 2 Bom. Rep., 42.

Where a Court has no jurisdiction to make an order it can have no jurisdiction to modify such order. It is not lawful for a District Court, under Section 92 of Act VIII of 1859, to issue an injunction to stay waste, &c., or to appoint a receiver or manager, in respect of property in dispute, in a suit pending in a Subordinate Court. The District Judge may withdraw the suit from the Subordinate Court to the District Court under Section 6 of the Code, and then make orders in accordance with the terms of Section 92.

Semble,—A Court having jurisdiction to make orders under Section 92 has no right to make such orders without some evidence that the property in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit. *Dhunderam Saubiteram* v. *Chanda Nabai, widow*, 2 Bom. Rep., 103.

Held that Section 96 of the Code of Criminal Procedure allows, by implication, the power of bringing a suit for damages, leaving that remedy to those who do not wish to take advantage of the remedy given them by the Act.

Where special damage is the gist of a plaintiff's case, and he fails to prove such damage, he is precluded from recovering ordinary damages. *Edward Wilson* v. *Kanhyo Sahoo*, 11 W. R., 143.

The plaintiffs, who were in possession of certain premises, brought a suit to restrain the defendant from selling a share in them which he had attached in execution of a decree upon a mortgage to him of that share, and to set aside the deed of mortgage. According to the plaintiffs' case they (the plaintiffs) were in possession under a decree of Court obtained upon a mortgage executed to them by the executor of the will of the last proprietor under a power contained in the will, and the mortgagors to the defendant, who were the brother and the son of the testator, had no interest in the property at the time of their mortgage to the defendant. The plaintiffs applied for an *ad interim* injunction, and the Court granted the application. *Ruplal Khettry* v. *Mahima Chandra Roy*, 5 B. L. R., 254.

The power of a Court to attach property, and to appoint a receiver extends only to the better management or custody of any property which is in dispute, and ceases when the suit comes to an end. An injunction in respect of property cannot be maintained after a claim is dismissed, or pending an appeal. *Shaikh Moheeodeen* v. *Shaik Ahmed Hossein*, 14 S. W. R., C. R., 384.

In a suit to have the portion of a bund cut by the plaintiff closed up, and for an injunction restraining the defendant from so cutting the bund in future as to injure the plaintiff,—*Held* that it was material to try the question whether the plaintiff had a cause of action, and also the question as to the property in the bund, because if the bund belonged exclusively to the plaintiff the defendant, unless he could prove a right of user, was a trespasser, and on the other hand, if it belonged exclusively to the defendant it would be necessary to enquire whether the defendant had so used his own property as to injure the property of his neighbour. *Nund Kishore Singh* v. *Hakim Ram Kishore Singh Deb*, 17 S. W. R., C. R., 359.

An injunction cannot be issued under Section 92, Code of Civil Procedure, on a mere allegation that the defendant wishes to realize debts by bringing actions in Court, without proof of an intention of waste, damage, or alienation. *Prosseno Moyee Dossee* v. *Wooma Moyee Dassee*, 14 S. W. R., C. R., 409.

A. having brought a suit against B., obtained and issued, on the 24th July, 1868, an injunction against him under Section 92, Act VIII of 1859. The suit was on the 18th of August, 1868, dismissed; but no compensation was awarded to B., under Section 96

of Act VIII of 1859, in respect of the injunction which had been issued against him. A. and B. both appealed, the former against the decision dismissing his suit, the latter for compensation. Both appeals were dismissed on the 23rd November, 1869, B.'s because it was engrossed on a stamp paper of the value of eight annas only.

B., on the 16th December, 1869, then instituted a suit against A. in the Small Cause Court, for damages in consequence of the injunction which A. had caused to issue against him in his suit.

Held that B. was not debarred, by Section 96 of Act VIII of 1859, from instituting a suit against A. for damages, there not having been an award of compensation under that section. The cause of action accrued from the time at which the plaintiff was first damaged by the wrongful injunction, continued as long as the injunction remained in force, and limitation began to run as soon as the injunction was at an end. *Nanda Kumar Shaha* v. *Gaur Sankur*, 5 B. L. R., Ap., 4; 13 S. W. R., C. R., 305.

A. obtained a decree against B. and others (Hindus), on a title of purchase from them, for possession of an undivided moiety of a dwelling-house, to the remaining moiety of which C. (a Hindu) alleged he was jointly entitled, and that he and his family were in possession. On A.'s proceeding to obtain execution of his decree C. brought a suit, alleging that A. had obtained no title under his purchase, and praying for partition of the property. On application for an *interim* injunction to restrain A. from executing his decree pending the particular suit, the Court granted the application. *Anantnath Dey* v. *Mackintosh*, 6 B. L. R., 571.

6.—Trusts.

An agreement in the nature of a deed of compromise was executed in the English form between a husband and wife (Armenian Christians) relative to the wife's separate property. The present suit was brought by the official assignee (appointed under the Insolvent Act) of the husband, not for the specific performance of an agreement remaining *in fieri*, in which a Court of Equity has a discretionary power to grant or to refuse relief beyond the law, but to set aside an act done in plain violation by the wife of an agreement which, in all its material parts, had been executed, and all the benefits of which the party violating it retained on her part, while as against the other party she treated it as a nullity.

Held that the fraudulent exclusion out of the settlement of a house alleged to have been purchased by the husband with the wife's money, which was the foundation of the defence, had not been established against the husband; that even if it had been it could not have been used as a defence in this suit; that if the house was bound by a trust for the children, it could not be subject to a right of execution for the wife's private debts; and that her proper course would not have been to treat the agreement as a nullity, but to act upon it and enforce it by a bill to compel a settlement of the property which had been improperly withheld. *Catharine Arrathoon* v. *John Cochrane*, 4 W. R., P. C., 66.

If a trustee has power to make valid grants, the grantees have a perfectly good title, if they take for valuable consideration without notice of the trust. *Luteefun* v. *Bego Jan*; *Syud Cherag Ali* v. *Bego Jan*, 5 W. R., 120.

S. being entitled to personal estate by a settlement executed upon her marriage with R., vested it in trustees on terms which conferred upon her an estate for her separate use for life, with remainder, in case she should die in the lifetime of her husband, to her children, share and share alike. The settlement did not contain a power to invest in the purchase of real estate.

R. died in the lifetime of S., and a portion of the trust fund was invested by the trustees in the purchase from S. of real estate vested in her as representative of R. S. afterwards married P.; and during her second coverture a further portion of the trust fund was with the consent of S. invested in the purchase of real estate. S. survived P. and died intestate, leaving a son and daughter and the children of another daughter her next of kin.

Held, 1st, that the events contemplated by the settlement not having arisen, the trust fund became the absolute property of S.; and, 2nd, that the devolution of the trust fund was to be governed by the state of its investment at the time of her death, and that therefore so much of it as was invested as above must descend as real estate.

Also, the parties being neither Mahometans nor Hindus, and though, not strictly speaking, all of them European British subjects, yet having all of them adopted the law which affects European British subjects in India, the real estate, whether situated within or without the local limits of the jurisdiction of the Court, will descend to the heir-at-law. *Rigordy* v. *Smith and others*, 1 Ind. Jur., N. S., 290.

Unless a plaintiff who alleges that he gave the property sued for to the defendant in trust makes out at least a *primâ-facie* case of trust, he is not entitled to call upon the defendants for their defence, nor to get a decree, merely because the defendants fail in proving the case set up by them. *Koodejamira Beebee* v. *Assur Hossein*, 2 W. R., 58.

In a suit by the mutawallee of a large Mahometan establishment, acting on behalf of the Mahometans of the neighbourhood, to secure the performance of trusts of a deed of appropriation by a Mahometan, the plaintiff was held, with reference to the words of Sections 14 and 15, Act XX of 1863, to be a person interested in the preservation of the trust, and a proper person to bring the suit. He was not required under those sections to have any interest in the trust, direct or immediate, or any share in the management of the property. *Doyal Chund Mullick* v. *Keramut Ali*, 12 W. R., 382.

Held that where a trust has been once perfectly created, although there may have been no transmutation of possession, it cannot be defeated by any subsequent act of the settler, and apparent dispositions of portions of the property afterwards made by him to particular members of a family, the individuals constituting which have, as a class, a beneficial interest in the whole, must be regarded not as gifts to them or creations of new trusts in their favour which he had no power to make, but as the acts of a trustee, and available only to the extent of the shares to which such persons may be entitled.

But this applies only to dispositions out of the principal of the fund, and not to payments made out of its income to particular members of the family for their maintenance, or other expenses, as there may be circumstances which would render it inequitable to take an account of the latter, so as to charge such persons with what they may have received beyond their respective shares. *Sir Jamsetji Jijibhai* v. *Sonábái and others*, 2 Bom. Rep., 139.

Where immoveable property was given into the possession of the defendant, under an order of a revenue officer, which directed the defendant to sell the crops and, after payment of Government dues, to account for the profits to the plaintiff on his claiming it, it was *held* that the defendant was not a depository, but a trustee of the property. *Vital Vishvanath Pralhn* v. *Ram Chundra Saddshiv Kurkire*, 7 Bom. Rep., A. C. J., 149.

Suit brought to recover possession of a talook upon the alleged ground that the moneys with which the purchase was made were not the moneys of the person in whose name the property was bought, but of a lady with whom he was living as her husband, and that there was a resulting trust in her favour. The Privy Council considered that the very principle of a resulting trust was that the property had been purchased with money belonging to another, with an implied trust that it should belong to that other person to whom the money also belonged; but that if it was the intention of the person to whom the money belonged that there should be no such trust, no such implied trust could arise by implication, and the presumption would then be met by the facts. Considering, also, that the suit was brought to set aside a purchase which had been made eleven years before and had remained unimpeached from the time when it was first made until the institution of this suit, and that the suit was brought after the death of all the parties who knew the transaction and could have explained it, their lordships were of opinion that every Court would be bound to look with very great jealousy at the evidence which was brought forward to support such a case. *Mussamut Ameeroonissa Khanum* v. *Mussamut Ashruffoonissa*, 17 S. W. R., C. R., 259,

A former abuse of trust in another instance (their lordships observed) could not be pleaded against a trustee who sought to prevent a repetition of abuse, even if he were formally implicated in the same indefeasible courses against which he was seeking to protect the property, though it would be a reason for excluding him from the administration of the property as sebait. *Juggutmohinee Dassee* v. *Sookhemony Dassee*, 17 S. W. R., C. R., 41.

7.—Religious Endowments—(*See* Hindu Law, Mahomedan Law).

(*a*) *Miscellaneous.*

A person temporarily officiating as priest has no right or title to the property of the church in which he officiates.

The permanent incumbent, and that portion of the community which remains attached to his ministrations, might perhaps claim the restoration of a portion of the property shared by trustees. *Fernandez* v. *Fernandez*, 2 Ind. Jur., O. S., 12.

The vendee of a karaima right cannot compel the trustees of a pagoda to admit him to the office and give him emoluments. *Keyake-Ilata Kotel Kanni* v. *Yadattal Vellayangot Achuda Pisharodi*, 3 Mad. Rep., A. J., 380.

One test of an endowment as to whether it is *bonâ fide* or nominal is to see how the founder himself treated the property, and how the descendants have since treated it. *Ganga Narain Sircar* v. *Brindabun Chunder Kur Chowdhry*, 3 W. R., 142.

The high priest of a religious endowment in Assam, who was only a nominee of the grantees, was held to have no right to grant leases in his own name and of his own authority. *Ram Doss and others* v. *Moheshur Deb Missree*, 7 W. R., 446.

Documentary proof is not absolutely necessary to prove an endowment. *Muddun Lal* v. *Sreemutty Komul Bibee and others*, 8 W. R., 42.

If mutwallees fail to act up to the directions of an endowment, the grant does not necessarily revert to the heirs of the grantee. *Reasut Ali* v. *J. C. Abbott and others*, 12 W. R., 132.

In this case the Court refused to enforce against the manager of certain endowed property a contract for specific performance (the contract being for the grant of a putnee lease of a portion of the said property), on the ground of its being doubtful whether it is competent to the manager of endowed property to grant a putnee thereof. *Motee Doss* v. *Modhoo Soodun Chowdhry*, 1 W. R., 4.

An ascetic, a mere-life tenant, cannot alter the succession to an endowment belonging to ascetics by an act of his own in connection with the status under which he originally acquired the trust. *Mohunt Rumun Doss* v. *Mohunt Ashbul Dass*, 1 W. R., 160.

Unless endowed property descends to the heirs of a deceased khadim, they can have no right to manage or interfere with the property. If a khadim has only a life-interest, any lease given by him will be in force only during his lifetime, and cannot continue without the consent of the succeeding khadim, or perhaps of the mutwallee, if he has any special right to confirm leases. *Sujaurt Ali* v. *Busheerooddeen*, 2 W. R., 189.

Where the plaintiff sued to recover certain property not wuqf, on the ground that the mutwallee and his ancestor (a former mutwallee) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment,—*Held* that as plaintiff had shown no title either as heir or otherwise to partake of the benefit of the endowment he had no right to recover possession, and that the utmost he could ask for was to have the mutwallee who had misconducted himself removed, and a new mutwallee appointed, provided he showed circumstances which according to law would justify the Court in selecting a mutwallee. *Bhurruck Chundra Sahoo and others* v. *Golam Shurruf*, 10 W. R., 458.

Grants to an individual in his own right and for the purpose of furnishing him the means of subsistence, do not constitute a work for endowment. *Bibee Kunneez Fatima* v. *Bibee Saheba Jan and others*, 8 W. R., 313.

It having been decided in a former suit, wherein the present plaintiff and appellant was defendant and the present defendant was plaintiff, that the latter could not claim from the former a share of certain property set apart for the maintenance of a

samsthan,—*Held* that, after that decision, it was not competent to the present defendant to collect the rents of the property. He was accordingly ordered to make them over to the present plaintiff. *Dado Ranji* v. *Dinonath Ranji*, 2 Bom. Rep., 77.

Land granted for the endowment of a khalihi, or other religious office, cannot be claimed by right of inheritance. Where such a grant has been made, the members of the grantee's family have no right at his death to a division amongst them of the income derivable from the land. The right to the income of such land is inseparable from the office for the support of which the land was granted. *Jaafar Moheoodee Shahib* v. *Aji Moheoodeen Shahib*, 2 Mad. Rep., 19.

An account decreed against the Administrator-General, who had been appointed the executor of the last surviving trustee under the will of the founder of a religious institution.

Quære,—Whether the Advocate-General must not be made a party in all such cases.

Notice of the decree directed to be given to the Advocate-General, in case he should think fit, on behalf of the Crown, to propose a scheme for the management of the charity. Powers of the Advocate-General. *Thakoor Doss Sett* v. *C. S. Hogg*, Cor. Rep., 68.

A mutwallee in possession is entitled to make arrangements for endowed lands, and to obtain kubuleuts from the ryots. *Obhoy Churn Paul* v. *Sadut Ali*, 2 W. R., Act X R., 70.

Where the mutwallee of an endowment dies without nominating a successor the management must revert to the heirs of the person who endowed the property. *Peet Koonwar* v. *Chutter Dharee Singh*, 13 S. W. R., C. R., 396.

A property wholly dedicated to religious purposes cannot be sold; but where a portion only of its profits is charged for such purposes the property may be sold, subject to the charge with which it is burdened. *Basoo Dhul* v. *Kissen Chunder Geer Gossain*, 13 S. W. R., C. R., 200.

A suit to recover on a bond given by the *de facto* manager of a muth as a charge on the muth having been decreed by the Subordinate Judge,—*Held* that as the obligor had turned the previous manager out of possession, and as his own right to possession was contested at the time he executed the bond, he was in no better position than a trespasser and wrong-doer. *Ramchurn Pooree* v. *Nunhoo Mundle*, 14 S. W. R., C. R., 147.

Where property is endowed (made wuqf) by the proprietor, and as such devolves to his widow as trustee (mutwallee), it cannot be sold in satisfaction of a claim against him. *Fegredo, J.* v. *Mahomed Mudessur*, 15 S. W. R., C. R., 75.

(*b*) *Rulings under Act XX of* 1863.

A committee, appointed under Act XX of 1863, has power to dismiss the trustees or superintendents of temples described in Section 3 of the Act, without having recourse to a civil suit; but such power can only be exercised on good and sufficient grounds. *Chinna Rangaiyangar* v. *Subraya Mudali*, 3 Mad. Rep., A. J., 334.

Where there were not good and sufficient grounds for the removal from office of the defendants, superintendents of a pagoda, within Section 3 of Act XX of 1863, by the committee appointed under that Act, the High Court confirmed the decree of the Civil Judge dismissing a suit brought by the plaintiffs, who had been appointed by the committee as superintendents in place of the defendants, for the recovery of the pagoda, and the property belonging to it. *Chinna Rangaiyangar* v. *Subraya Mudali*, 3 Mad. Rep., A. J., 338.

The suits referred to in Act XX of 1863, as needing the authority of the Court for their jurisdiction, are solely suits charging trustees, managers, or committees with misfeasance, malversation of the temple property, or neglect of duty. There is nothing in the Act to oust the jurisdiction of the ordinary Courts over suits to establish a right to share in the management. *Agri Sarma Embrandri* v. *Vistnu Embrandri*, 3 Mad. Rep., A. J., 198.

In the case of a public endowment transferred to trustees, managers, or superintendents of such lands under Act XX of 1863, any person or persons interested (and the interest need not be a pecuniary one) in the religious establishment, in its worship or service, or in its trusts, has a right of suit, after leave obtained from a Civil Court against such trustees, &c., for misfeasance, or breach of trust, or neglect of duty. *Bibee Kuneez Fatima* v. *Bibee Saheba Jan and others*, 8 W. R., 313.

Where a Civil Judge, upon a petition, applying under Section 18 of Act XX of 1863 for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor, reversing the former order, decided by an order upon the rights of the parties,—*Held* that though both orders were made without jurisdiction, that fact does not give the High Court an appellate jurisdiction in the matter. *Kaviraja Sundara Murteya Pillai* v. *Nullo Naikan Pillai*, 3 Mad. Rep., A. J., 93.

Since the passing of Act XX of 1863 a mutwallee, or manager of a Mahomedan endowment, cannot be considered to hold the position he was taken to have in the judgment of the Privy Council (6 W. R., P. C., 3), *viz.*, as an officer appointed by the Government; and therefore the ordinary rules of limitation are applicable to such cases. *Shaikh Lall Mahomed* v. *Lalla Brij Kishore*, 17 S. W. R., C. R., 430.

An appropriator, who sues on the ground that the trust created, so far as it related to the appointment of mutwallees, had never been acted upon, and that the original rights of the appropriator remain, is at liberty to bring such a suit without leave of the Court, under Section 18 of Act XX of 1863.

According to Shea law, a man who devotes property to charitable or other uses, and transfers the proprietary right therein to a trustee, cannot at his pleasure take it back from the trustee whom he has constituted the owner, and give it to another person, unless on the creation of the trust he has reserved to himself the right to do so in express terms. If a superintendent of an endowment misconducts himself, the Mahometan law admits of his removal, and this is sufficient to protect the objects for which the trust was created. *Hidaitoon-nissa* v. *Syud Afzul Hossein*, 2 N. W. R., 420.

The defendant was sued as the trustee of a

pagoda to recover a certain sum of money for which he had not accounted. The defendant was dismissed by three members of the district committee, which consisted of six members, the other three members refusing to sign the order of dismissal. The plaintiffs were appointed trustees in place of the defendant by the members who dismissed the defendant.

Held that the appointment of the plaintiffs was invalid, and that they were not entitled to sue the defendant. *Bandurungy Annuchuriyur* v. *Jyathory Mudaly*, 4 Mad. Rep., 463.

The plaintiffs describing themselves as the agent and gomastha of the hereditary durmakurtah of the Trivellore Pagoda, brought a suit for damages against the defendant the committee of the district, appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and retention of the property. The plaint stated that the defendants were punished criminally for the trespass by the Magistrate who, after enquiry under Sections 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were the value of jewels, cash, records, and accounts not restored; the expense incurred by the durmakurtah in the purification of the pagoda; the amount of counsel's and vakeel's fees in the criminal proceedings; and the amount of income received by the defendants during their possession during a festival held at the pagoda.

Held that the plaint was brought by the plaintiff personally, and not on behalf of the plaintiffs, by the durmakurtah through his recognized agents; that the plaintiffs were entitled to recover a moderate amount of damages for the wrong done to them in ejecting them from the pagoda; that the expenses incurred in the criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and its natural and necessary consequences; that the amount of income received by the defendants during the festival was a loss sustained by the durmakurtah and not by the plaintiff personally, and that the plaintiff had failed to make out the loss of property alleged.

Semble,—That an order of the Civil Court, under Section 18 of Act XX of 1863, refusing leave to institute a suit, and deciding that the temple was governed by a hereditary durmakurtah, and therefore within Section 3 of the Act, was not conclusive upon the question of title between the parties. *T. Srinivassa Chariyar* v. *Venkutasa Naikur*, 4 Mad. Rep., 410.

By an agreement entered into between the predecessors of the plaintiff, durmakurtahs of a temple, and the defendants, it was provided that the defendants should have a permanent right of cultivating certain lands belonging to the temple upon payment of the circar tirva and a swamibogam mentioned in the agreement. Subsequently to the agreement the Government notified that the melvarum payable to the Government would be thenceforth permanent and not according to the nerick ascertained by reference to the market prices in certain towns, and the Government stated that any advantage arising from the change of system should go to the ryots themselves. The plaintiffs sued the defendants to recover the balance of the market value of the produce of the land cultivated by the defendants after deducting the amount of circar kist paid by them.

Held (reversing the decree of the lower Court) that the defendants were only liable to pay the amount of swamibogam mentioned in the agreement, and that no right was acquired by the plaintiffs by virtue of the subsequent arrangement made by the Government. *Thesikam Jyengar* v. *Ganapathy Jyer*, 4 Mad. Rep., 320.

A District Committee appointed under Act XX of 1863 has no right to call for accounts from trustees of temples which are within Section 4 of the Act. Regular appeal No. 12 of 1867 followed. *Venkutabula Krishna Chettiyar* v. *Kaliyanaramaiyangar and twelve others*, 5 Mad. Rep., 48, and *Ramienger* v. *Guanasambanda Pandarasannadu*, 5 Mad. Rep., 53.

The plaintiff, claiming to be the owner of a mutt and certain land attached to it under a grant from the Rajah of Tanjore, from the possession of which he had been ejected by the Collector of Tanjore in 1856 on charges of breach of trust and other misconduct, sued to recover the possession of the lands and mesne profits. The Civil Judge found that the grant was for the performance of religious ceremonies and pious observances only, and that the plaintiff had led a vicious life and been guilty of malversation in his office, and, being of opinion that the plaintiff had been properly deprived of the lands belonging to the mutt, under Regulation VII of 1817, dismissed the suit. *Held* that under Section 4 of Act XX of 1863 the plaintiff became entitled on the passing of the Act to the restoration of the endowment. *Jusagheri Gosamier* v. *The Collector of Tanjore*, 5 Mad. Rep., 334.

The Committee of a District duly appointed under Act XX of 1863 are entitled to maintain a suit in a Civil Court without having obtained the leave of the Court to bring the suit, as well when the object of the suit is to establish their right of control under Section 3 of the Act, as when it is sought to enforce such control against the officers of the temple subordinate to them. *Venkatasa Naida* v. *Sudagopasma Jyer*, 4 Mad. Rep., 404.

Act XX of 1863 does not apply to a suit brought by the dhurmakarta of a temple and one of its worshippers to compel the defendant, as heir of the late manager, to make good, out of the property inherited by him, the deficiency in the devasthanum funds caused by breach of trust and misappropriation by the late manager. The leave of the Civil Court for the institution of such a suit is not necessary, and the suit is maintainable. The right of instituting such suits is not a privilege accorded by Act XX of 1863, but a pre-existing right. *Jeyangarulavaru* v. *Durma Dossee*, 4 Mad. Rep., 2.

A suit by an officer of a mosque, temple, or religious establishment, for dismissal from his office is not a suit for misfeasance within the meaning of Section 14, Act XX of 1863. *Syed Amin Sahib* v. *Ibram Sahib*, 4 Mad. Rep., 112.

In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue. The Act applies to property in Calcutta. *Gaves Sing* v. *Rumgopal Sing*, 5 B. L. R., Ap., 55.

8.—Miscellaneous Discussions.

Remarks on the doctrine of equity as to the applicability of the defence of purchase for valuable consideration with notice.

The defence does not apply where the Court of Chancery is exercising a jurisdiction concurrent with that of the Courts of law. *Samapkanardar* v. *Pereemal Chetti*, 2 Mad. Rep., 14.

A defendant is not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement. *Gour Chundra Biswas* v. *Greesh Chunder Biswas and others*, 7 W. R., 120.

A zemindar bequeathed the whole of his zemindary to his eldest son, leaving certain fixed stipends to his other children. In consequence of subsequent events the Court considered these stipends ought to be reduced. It was alleged that the value of the zemindary had been reduced by a sale of a part of it; but as it was nowhere alleged that the sale had been occasioned by bad season, or acts of God, and not by the neglect of the person through whom the appellant claims, the question of natural equity was held not to have arisen. *Maharajah Grees Chunder Roy* v. *Sumbhoo Chunder Roy*, 5 W. R., P. C., 98.

When a man builds a house on land supposing it to be his own, or believing that he has a good title, and the real owner, perceiving his mistake, refrains from setting him right, and leaves him to persevere in his error, a Court of Equity will not allow the real owner to assert his legal right against the other without at least making him full compensation. *Mussamut Rani Rama* v. *Shrikh Jan Mahomed*, 3 B. L. R., A. C., 18; 11 W. R., 574.

An usufructuary mortgage of lands was executed in 1846, but the mortgagee did not enter into possession. In 1852 his representative, the plaintiff, commenced a suit to obtain possession, but allowed it to drop. In 1854 he commenced the present suit for the same object. *Held* that laches could not be imputed to the plaintiff from the date of presenting the plaint in 1852, and that the produce from that date should be accordingly awarded him. *Lakshmi Narayana* v. *Ramappa Chakkira*, 1 Mad. Rep., 70.

Although the English law is not obligatory upon the Courts in the mofussil, they ought, in proceeding according to justice, equity, and good conscience (Regulation IV of 1827, Section 26), to be governed by the principles of English law applicable to a similar state of circumstances. *Dada Hanaji Babojir Jogushet*, 2 Bom. Rep., 38.

In deciding a case in the absence of specific law and usage, according to justice, equity, and good conscience (Regulation IV of 1827, Section 26), the Court should be guided by the principles of English law applicable to a similar state of circumstances. *Webb* v. *Lester and others*, 2 Bom. Rep., 55.

The parties having acted under a misapprehension of the law, leave was given to bring a new suit within three years. *Gooroo Swamy Perria Woodia Taver* v. *Rany Anga Mootoo Natchair*, 6 W. R., P. C., 50.

The English doctrine of advancement is applicable in India as between a father and daughter, both of English extraction and living under English law. The *status* of the daughter, under an alleged *bonâ-fide* purchase made by her father for her advancement when a minor, cannot be set aside except by positive proof that the father merely made use of her name as he would that of any servant or stranger, retaining the beneficial interest in the property for himself. *Kishen Koomar Moitro* v. *M. S. Stevenson*, 2 W. R., 141.

By contract and deposit of title-deeds B. charged certain land in favour of A., as a security in respect of the non-delivery of the title-deeds of an estate bought by A. from him. After the creation of this charge the land was transferred by B. to C. The Sudder Court having decided that the contract was not operative as an hypothecation or pledge, even between the parties to it, and that A. had no right of suit against C., to whom the land had been transferred,—*Held* by the Privy Council, reversing that decision, that an agreement created a lien on the land, and that no positive law was shown to forbid the giving effect to such agreement.

The owner of property subject to a lien or charge can in general convey to another no title higher or more free than his own; it lies always on a succeeding owner to make out a case to defend such prior charge.

The law in India does not enable a purchaser of land to look only to the apparent title in the Collector's books, or the presumed title of the owner in possession; and it is beyond the province of a Court of Justice to give effect to the title of such a purchaser to the extent of defeating a prior lien or charge.

Conceding that a purchaser for value, *bonâ fide*, and without notice of the charge, would have an equity superior to A.'s right,—*Held* that a purchase in good faith by C. had not been proved.

If the English doctrine on this subject be adopted, as the rule prescribed by justice, equity, and good conscience, its qualifications and restrictions should not be rejected. *Varden Seth Sam* v. *Luckpathy Royjee Lallah*, Marsh., 461.

A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandize and *jus accrescendi* not allowed.

The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate. *Webb* v. *Lester and others*, 2 Bom. Rep., 55.

A person bound to make an enquiry, and failing to do so, will be held to have notice of all such facts as that enquiry, if made, would have brought to his knowledge. *Sambanda Mudaliyar* v. *Nanasambandapandara and others*, 1 Mad. Rep., 298.

A lender is not bound to enquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue. It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment. *Nuffer Chunder Banerjee* v. *Guddadhur Mundle*, 3 W. R., 122.

English precedents are only to be applied in India after being carefully weighed and tested with regard to the customs and habits of the people. *Juggobundoo Shaw* v. *Grant, Smith, and Co.*, 2 Hyde's Rep., 129.

The transactions of Independent States between each other are governed by other laws than those

which Municipal Courts administer. *The East India Company* v. *Kamachee Boye Sahiba*, 4 W. R., P. C., 42.

No man, acting with good faith, and believing that he has a ground for doing so, should be held liable, because, upon his application, a Magistrate makes an order which, it afterwards turns out, ought not to have been made. *Pureug Singh and others* v. *Jogessur Suhaye*, 8 W. R., 111.

A suit, the sole object of which was to have a trust fund paid into Court, was dismissed on the ground that the plaintiff had no actual title to any part of the fund. When the plaintiff in a suit, seeking solely the payment into Court of a fund for the relief of poor Armenian orphans, had no interest, except as a member of the Armenian community, —*Held* that he had no such title to part of the fund as would support the suit.

Held also that the consent of the defendants, the trustees of the fund, to the decree sought by the plaintiff, would not justify the Court in making it to support a bill *quia timet:* the plaintiff must have a title in possession or expectancy, and the property must be in danger. *Satoor* v. *Satoor and others*, 2 Mad. Rep., 8.

The digging of a well is not an act of waste. *Mugneeram Chowdhry* v. *Gunesh Dutt Singh*, W. R., 1864, 275.

Where moneys deposited in Court had been drawn out by a party on the admission of the opposite party, and the latter sued on the allegation that, as the former had been declared by a decree of Court to have only a life-interest in the property in dispute, the money which represented that property ought to be so tied up as to prevent defendant from wasting it, it was *held* (following a decision of the Privy Council) that it was not sufficient to allege that defendant was committing waste : the suit would not lie, unless some act of waste threatening the *corpus* of the property were proved. *Mussamut Budun* v. *Fuloor Ruhman*, 9 W. R., 362.

In a suit against a widow individually, and not in her representative capacity, to recover plaintiff's share of property alleged to have been in her possession, the suit being one wherein defendant was charged with devastation in respect of such property only,—*Held* that defendant was not liable in that suit to be made answerable out of her husband's assets for any devastation which he may have committed. *E. Staves* v. *Eulalia Dias*, 10 W. R., 444.

Where the Chief of an Independent State, exercising the sovereign power of that state within its territories, confiscates property within those territories, the confiscation must be respected by English Courts of Justice. The fact of such confiscation, if disputed, must be ascertained by the Court in the same manner as are all other facts which are in issue between the parties. *Shoyay Att* v. *Shoyay Doang*, 14 S. W. R., C. R., 218.

A Court of Equity will not interfere where a tenant-in-common acts reasonably for the purpose of enjoying the property, held in common, in any way in which an owner can enjoy such property without injury to his co-purchaser, but the case is different where there has been a direct infringement of a clear and distinct right. *Gopee Kishen Gossain* v. *Hem Chunder Gossain*, 13 S. W. R., C. R., 322.

The theory of the *donatio mortis causâ* considered. *N. Visalatchmi* v. *N. Sibboo Pillai*, 6 Mad. Rep., 270.

The *lex loci contractus* determines the capacity of a person to contract, and reference ought not to be made to the law of his domicile of origin.

The privileges and disabilities of minority, so far as they are not removed by express enactment, attach to European British subjects in this country until they have attained the age of 21 years.

The same rule ought, on principles of justice, equity, and good conscience, to be observed in the Non-Regulation as in the Regulation Provinces. *Hearsay* v. *Girdhara Lal*, 3 N. W. R., 338.

Held that, the evidence showing that certain acts of trespass by one of the defendants were for the benefit and on behalf of the members of the committee, and were afterwards adopted and taken advantage of by them when they had acquired a full knowledge of those acts, the defendants for whose benefit the acts were done were liable for the trespass. *Venkatasa Naiku* v. *S. Srinivasa Charyar*, 4 Mad. Rep., 410.

Whether a person, if his domicil of origin was Scotch, does not lose that domicil and acquire an Indian domicil by settling as an indigo planter in India and there dying ; also whether a son of a Scotchman retaining his domicil, though resident in India, can, if born out of wedlock, become legitimate *per subsequens matrimonium*. *In re Thomas Newton*, 17 S. W. R., C. R., 35.

The Law of Merchants is not applicable to banking transactions in the mofussil. *Syud Ali* v. *Gopal Dass*, 13 S. W. R., C. R., 420.

A Commissioner's amulnamah cannot destroy legal rights, even if no protest or objection be made. *Ram Gobind Roy* v. *Syud Kushuffudoza*, 15 S. W. R., C. R., 141.

An unappropriated payment is to be applied to the earliest debt, although the debt is barred by the Act of Limitation, where the facts do not raise any question which might affect such priority. *Mooneappah S.* v. *Veucatarayadoo*, 6 Mad. Rep., 32.

Payments unapplied by either the debtor or the creditor should be appropriated to the earlier items making up the debt due. This rule is not impaired by the decisions in the cases of Mills *v.* Fowkes (5 Bing., N. C., 455), and Nash *v.* Hodgson (6 Deg. M. and G., 474). *Hirada Karibázappah* v. *Gadigi Muddappa*, 6 Mad. Rep., 197.

An independent sovereign prince is privileged from suit in the Courts of British India.

The Thákur of Palitána is an independent sovereign prince.

A suit was brought against the Thákur of Palitána (his title being omitted from the plaint), and an *ex-parte* decree was obtained against him. An application on the part of the Thákur to have the decree set aside was dismissed, and the plaintiff then sued out an attachment, but, failing to execute it within a year, was compelled to apply to the Court, under Section 216 of the Code, for leave to execute it. The defendant at the same time applied to have the attachment and all proceedings under it declared null and set aside.

The Court (without expressing an opinion as to

whether the order dismissing the application to have the decree set aside would have prevented it from declaring the decree void *ab initio*),—*Held* that as the decree was made erroneously and without jurisdiction it would not, when apprised of the error, assist the plaintiff in carrying it into execution in a case in which lapse of time made it incumbent on the plaintiff specially to invoke the aid of the Court for that purpose. *Ladkuvarbai* v. *Ghoel Shrisarsangi Portabsanji*, 7 Bom. Rep., O. C. J., 150.

Where H., knowing that B. claimed certain land as his own, nevertheless purchased the land from a third person and erected a bungalow upon it, which B. did not interfere to prevent,—It was *held* that the English rule of equity, which under such circumstances would allow B. to recover the land with the bungalow upon it, ought not to be applied in India, but that H. should be allowed to remove the bungalow he had erected. *Náráyan-bin Rághaji* v. *Bholágir Garu Mangir*, 6 Bom. Rep., A. C. J., 80.

A judgment debt due to the Crown is in Bombay entitled to the same precedence in execution as a like judgment debt in England, if there be no special legislative provision affecting that right in the particular case.

Under similar circumstances a judgment debt due to the Secretary of State in Council for India is in Bombay entitled to the like precedence, and the reason is that such debt is vested in the Crown, and when realized falls into the State treasury.

The nature of the cause of action in respect of which the judgment was recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority.

As the Crown is not, either expressly or by implication, bound by the Indian Companies Act (X of 1866), and as an order made under that Act for the winding up of a company does not work any alteration of property, such an order does not enable the Court to stay the execution of a judgment debt due to the Crown or to the Secretary of State in Council for India.

The cession of Bassein and its dependencies (including Bombay and Salsette) by Sultan Bahádur of Gujarát to the Portuguese, and the treaty made thereupon mentioned.

It is a principle recognized by the laws of many countries that claims of the Crown or State are entitled to precedence, *e.g.*, the Hindu, Roman, and French codes, the laws of Spain, the United States of America, Scotland, and England. *Secretary of State in Council of India* v. *The Bombay Landing and Shipping Company, Limited*, 5 Bom. Rep., O. C., 23.

The Secretary of State in Council for India is liable for the damages occasioned by the negligence of servants in the service of Government, if the negligence is such as would render an ordinary employer liable. *Peninsular and Oriental Steam Co.* v. *Secretary of State for India*, 5 Bom. Rep., Ap., 1.

The Portuguese inhabitants of the town and island of Bombay not having had their laws, and usages having the force of laws, preserved to them by the treaty by which Bombay was (A.D. 1661) ceded to the English, are subject to English law, so far as the same has been introduced into Bombay, and has not since been varied by legislation.

Where a Portuguese inhabitant of Bombay, being entitled to certain immoveable estate in perpetuity, died intestate before the 1st of January, 1866 (on which day the Indian Succession Act, 1865, came into force), leaving two nephews by a sister as his next of kin, it was held that the elder of them, as heir-at-law of the intestate, was entitled to succeed solely to such immoveable estate. *Joao Mariano Lopes* v. *Francisco Lopes*, 5 Bom. Rep., O. C., 172.

In a suit brought by a Mohammedan to redeem from the defendant, who was a Parsee, certain property that had been conveyed by the ancestor of the latter by a by-al-wafa (deed of conditional sale), *Held* that the law to be applied was, under Section 26 of Regulation IV of 1827, that of the defendant. That, in the absence of any specific law for Parsees in the mofussil, the rule of justice, equity, and good conscience should be observed, and the Court should follow with certain necessary modifications the practice of the Courts of Equity in England.

That the by-al-wafa amounted in effect to a mortgage of the property, and that, according to the Courts of Equity, a mortgagee in possession ought to be allowed for proper and necessary repairs to the estate.

Where portion of the mortgaged premises was accidentally burned, and portion of them fell down, and the mortgagee rebuilt them, it was held that the mortgagor was not entitled to redeem, unless upon payment of the sum so expended by the mortgagee, though such sum amounted to more than double the price for which the premises had been conditionally sold to the mortgagee. *Manchurzhá Ashpandiárij* v. *Kamrunissa Begum*, 5 Bom. Rep., A. C., 109.

A decree for the removal of a building upon his land may be given to the owner, even though he has stood by and allowed the defendant to construct it, provided the building is not substantial and has not cost much and the materials may be removed without difficulty. *Sufdur Ali Khan* v. *Jeo Narain Singh*, 16 S. W. R., C. R., 161.

The question as to the validity of the marriage of Native Christian converts does not depend on the presence or otherwise of an ordained minister of religion. *Kristo Mohun Christian* v. *Anunda*, 16 S. W. R., C. R., 249.

Conditions in village administration-papers purporting to interfere with or alter the ordinary rules of descent, will not be enforced.

The law of inheritance, whether Hindu or Mahometan, is a part of the law of this country, and as such overrides the provisions of a document which was not designed to record more than the rights of the village community.

Small sections of society cannot be allowed to make special laws of descent for themselves. *Musumut Sarupi* v. *Mukh Ram*, 2 N. W. R., 227.

9.—Lis Pendens.

The doctrine of *lis pendens* is not applicable to the case of a purchaser at a sale in execution. *Nuffur Mordha* v. *Ram Lall Adhicary*, 15 S. W. R., C. R., 308.

By the rule of *lis pendens*, a decree pending a suit is not to be got rid of by a sale by one of the parties while the suit is pending. *Fuzeelun Bibee* v. *Omdah Bibee and Shaik Jonab Aly*, 10 W. R., 469.

Ejectment. Defendant in the position of pur-

chasers *pendente lite* with notice. The doctrine of *lis pendens* has a wider operation here than in England; is applicable to natives of this country. Distinction between equitable lien created *pendente lite* and an absolute sale. *Kassim Shaw* v. *Unnodapersad Chatterjee*, 1 Hyde's Rep., 160.

In a suit brought in a Small Cause Court to recover balance of rent due, the defendant pleaded the pendency of a suit brought by him in the District Moonsiff's Court against the plaintiff for damages for illegal dispossession, and that he had given credit against the amount of damages for the balance of rent due. *Held* that the pendency of the suit in the District Moonsiff's Court was not a bar to the present suit, but that it was open to the Court, in its discretion, to postpone the hearing of the present suit until the District Moonsiff had given his decision. *Mattakarippa Kaundan* v. *Rama Pillai*, 3 Mad. Rep., A. J., 158.

Suit to recover possession of a Mutah from which plaintiff had been ejected by an order of Court, passed in execution of the decree in a suit to which he was no party. Plaintiff claimed under a deed of sale from A. (a purchaser from C. and D) dated 11th November, 1860, and alleged that he purchased for valuable consideration and without notice of any other claim. Defendant asserted that plaintiff purchased fraudulently with notice of her late husband's right of purchase. It appeared that defendant's husband had sued C. D. and others to enforce a lien upon the Mutah, and obtained a judgment of the Privy Council upholding his lien and declaring its priority over the purchase of C. and D. This suit was pending before the Privy Council at date of plaintiff's purchase. In 1862 defendant's husband sued C. and D. for specific performance of an alleged agreement for sale, dated October, 1851, without adducing any evidence as to the existence of the agreement, and got a decree in his favour because the Principal Sadr Amin had said in the original case that C. and D. had agreed to sell the Mutah. The present plaintiff was turned out of possession under this decree, to the proceedings in which he had in vain sought to get made a party, on the ground that he was affected by notice of the former proceedings. He sought relief under Section 230, Act VIII of 1859, but his application was dismissed, and he then commenced this suit. The Civil Judge decided in favour of plaintiff,—*Held*, confirming the decree of the lower Court, that this was a case of a vendee of property, perhaps subject to a lien, turned out upon a decree against other people declaring the holder of the lien the owner of the property, and that the ejectment was wrongful and procured by a gross misuse of the Court's process.

The effect of notice of *lis pendens* considered. Parties seeking specific performance of a contract should come to the Court for relief within reasonable time. *Maria Sarden Seth Sam* v. *Appundi Ibrahim Sahib*, 6 Mad. Rep., 75.

Three brothers, M. L. B., P. K. B., and G. D. B., being jointly entitled in equal shares to an undivided one-third share in certain property, mortgaged their shares by three deeds bearing different dates to one R. N. Between the dates of the two last mortgages the brothers instituted a suit for partition of the property and for certain other objects; and on the 2nd February, 1864, a decree was made in the suit, declaring the brothers entitled to a one-third share of the property, and ordering a partition and the taking of accounts, and reserving the question of costs. R. N. was not made a party to this suit. On 6th September, 1864, the brothers covenanted to mortgage certain property to the plaintiff, including that previously mortgaged to R. N.; on 8th and 9th December the agreement was performed by conveyances in which R. N. joined, and which recited that he had been paid off; and on 28th November, 1866, and 27th March, 1867, the three brothers conveyed their equities of redemption to the plaintiff. On 15th June, 1868, an order was made in the partition suit for the sale of a sufficient portion of the property to pay the costs of the parties to the suit, and under this order the property which the plaintiff sought to recover in the present suit was sold on 1st May, 1869, and purchased by the defendant, who at the time had full notice of the plaintiff's claim. *Held*, the doctrine of *lis pendens* did not apply, and the plaintiff was entitled to recover possession. *Kailas Chundra Ghose* v. *Fulchand Jahurri*, 8 B. L. R., 474.

10.—CUSTOM.

The question of the origin and binding force of customary law discussed, and the authorities upon the subject cited and commented upon. *Tara Chand* v. *Reeb Ram*, 3 Mad. Rep., A. J., 50.

Proof of mercantile usage needs not either the antiquity, the uniformity, or the notoriety of custom which, in respect of all these, becomes a local law. The usage may be still in course of growth; it may require evidence for its support in each case; but in the result it is enough if it appear to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. *Juggomohun Ghose* v. *Manick Chund*, 1 W. R., P. C., 8.

A custom that some only of the mirasidars of a village should bind the co-owners of the village lands is valid. *Anandayyan* v. *Deverajyan*, 2 Mad. Rep., 17.

A custom which has never been judicially recognized cannot prevail against distinct authority. *Narasmal* v. *Balarama Carlu*, 1 Mad. Rep., A. C., 420.

The custom of the Reddi caste, according to which a father-in-law may disinherit his heir in favour of a son-in-law, is bad. *Zaimana Reddi* v. *Mahalinga Chetti and others*, 1 Mad. Rep., A. C., 51.

A question of custom is a question of fact on which the lower Court alone can pass a decision, and on which the High Court cannot interfere. *Hurreehur Mookeree* v. *Jadunath Ghose*, 10 W. R., 153.

A custom to adopt names in trade must be proved strictly. *Missreelon* v. *Ramnarain*, Cor. Rep., 63.

If it is contended that the succession to property is regulated by any special family custom, that custom ought to be alleged and proved with distinctness and certainty. *Serumak Umah* v. *Patathun Vitil Marya Coottry Umah*, 15 S. W. R., P. C., 47.

A finding upon a question of custom after going into evidence is a finding on a question of fact,

with which the High Court cannot interfere in special appeal. *Syud Ali* v. *Gopal Dass*, 13 S. W. R., C. R., 420.

II.—JOINT LIABILITY AND CONTRIBUTION.

The plaintiff purchased a house with land attached, and sub-let the property to his vendor, one of the defendants. The defendants having in collusion prevented his enjoying rent, he sued for rent, but on their intervention the suit was dismissed. He then brought a regular suit, and obtained a decree from the Civil Court for khas possession. His present suit is to recover wasilat.

Held that, although the defendants were not all in possession, yet as they all continued to oppose the plaintiff's possession they were jointly liable for the wasilat. *Shamasunker Chowdhry* v. *Sreenauth Banerjee*, 12 W. R., 354.

In a suit to recover the value of the produce of land from defendants, who had agreed to cultivate it, but had failed to do so, it was held that, as defendants were jointly liable, a specification of liability was not required. *Munraj Muhton* v. *E. Hudson*, 12 W. R., 309.

When a lease is granted jointly to two tenants both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liability. *Jogendra Deb Roy Kut* v. *Kishen Bundhoo Roy and others*, 7 W. R., 272.

Where a judgment was passed against several defendants, jointly and severally, and some of them paid the whole of the judgment debt,—*Held* that they might sue the others for contribution.

One tort-feasor cannot recover contribution against another. *Suppanachari* v. *Chakkarapatta and another*, 1 Mad. Rep., A. C., 411.

Where two parties are jointly and severally liable under the terms of a bond, the principal may be sued for the amount due with interest, notwithstanding that a decree has been obtained for the same sum against the other party. *Mahomed Roheemoodeen* v. *Indoor Chunder Jowhurree*, 12 W. R., 192.

One of the nine judgment-debtors paid the whole of the debt, and then applied to execute the decree against one of the others. *Held* that he was entitled to receive only one-ninth of the debt from him. *Mussamut Kishen Kaminee Chowdrain* v. *Mohima Chunder Roy*, Marsh., 339.

A suit for contribution will not lie in the Small Cause Court in the absence of an implied joint contract for contribution. *Sreeputty Roy* v. *Loharam Roy and others*, 7 W. R., 384.

If a man request another to pay money for him there is an implied contract to repay the amount, for which an action will lie in the Small Cause Court, if it does not exceed Rs. 500. A suit for contribution not founded on any contract is not cognizable by the Small Cause Court. *Noorai Mollah and wife of Eyennooddeen Migie, deceased*, v. *Sheikh Nubboo and others*, 7 W. R., 386.

In a suit for contribution, where a joint decree cannot be passed, the specific liability of each co-sharer must be not only alleged but clearly established. *Pitambur Chuckerbutty* v. *Bhyrubnath Paleet*, 15 S. W. R., C. R., 52.

In a suit for contribution it must be distinctly proved that both parties enjoyed the benefit of the object to the gaining of which they executed a bond jointly. *Kashee Dass Sandyal* v. *Gobind Nath Lahory*, 17 S. W. R., C. R., 530.

The defendants entered into a contract with the plaintiff in writing, by which, in consideration of the trouble taken and large sums of money advanced by the plaintiff on behalf of the defendants, the defendants promised that they would from generation to generation pay to the plaintiff Rs. 100 per annum out of a specified fund. The plaintiff brought a suit to recover a sum within the pecuniary jurisdiction of the Small Cause Court under the written contract. *Held* that the Small Cause Court had jurisdiction to entertain the suit, and that the undertaking of the plaintiff to forbear from enforcing the debt due to him prior to the contract was a sufficient new consideration to support the contract.

Held also that on the death of one of the co-contractors the whole liability to the plaintiff attached to the surviving co-contractors. *Chetu Narayana Pillay* v. *Ayamperumal Ambalom*, 4 Mad. Rep., 447.

Plaintiff, defendant, and another party had jointly and separately contracted with Government to do certain work, depositing security and stipulating that a percentage upon the worth of the work done should be retained in the hands of Government to meet the contingency of the Government incurring expense in case of failure on the part of the contractors. The contract was completed by one of the contractors, who received the amount which had been deducted as above, and gave a joint receipt for the same.

Held that there was nothing in law to prevent plaintiff from recovering as from defendant his share of the said amount. Such a suit was not one for money due on a contract and was not cognizable by a Small Cause Court. *Coomar Narain Dass* v. *Ram Coomer Mya*, 15 S. W. R., C. R., 513.

A. and B. jointly executed a bond in favour of C. When the bond fell due A. alone executed a second bond for a larger amount in favour of C., covering the amount of the debt under the former bond together with a further advance to him (A.). At the same time C. cancelled the former bond,—*Held* that thereupon A. could maintain his suit against B. for contribution. *Trailakhanath Roy* v. *Kashinath Roy*, 6 B. L. R., 633; and 14 S. W. R., C. R., 458.

A claim for contribution should distinctly set forth the amounts due by each party sued, failing which the plaint should be rejected. *Bholanath Chatterjee* v. *Indurchund Doogur*, 14 S. W. R., C. R., 373.

A decree having been executed for the full amount due against a joint-debtor, the latter sued his co-debtors for contribution, who pleaded that at the time of payment the decree had been barred in consequence of a certain proceeding in the execution case not having been *bonâ fide*,—*Held* that the question raised by the defendants was necessarily considered in the execution case, that the Court must be assumed to have acted rightly in granting execution, and that the plaintiff having been compelled to pay the joint-debt was entitled to re-

imbursement. *Shib Chunder Bidyaruthar* v. *Huren Dass Bhuttacharjee*, 13 S. W. R., C. R., 298.

In a suit for possession an intervenor claimed the lands in dispute upon a title distinct from that of plaintiff; whereupon the intervenor was made a defendant, and a decree was ultimately passed in plaintiff's favour, with costs payable jointly and severally by all the defendants. The original defendants having been obliged to pay the whole amount of these costs in execution, they brought a suit for contribution against the legal representatives of the intervenor,—*Held* that in the absence of any contract or agreement there was no equity between the parties to justify a suit for contribution. *Kristo Chunder Chatterjee* v. *Wehd*, 14 S. W. R., C. R., 70.

Notwithstanding an order of the Privy Council that a certain sum should be paid to a judgment-debtor out of money deposited by the judgment-debtor in their treasury, the former took out execution against the property of the latter, who having died in the meantime was represented by plaintiffs and defendants. Certain property belonging to the deceased having been attached and advertised for sale, plaintiffs paid the costs due under the Privy Council decree, and then sued for contribution,—*Held* that defendants were liable for the sum paid in excess of plaintiff's share. *Shaikh Ahmudoollah* v. *Maah Khan*, 14 S. W. R., C. R., 115.

Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, defendant binding himself to make over to plaintiff other lands in exchange,—*Held* that if defendant failed to make over the lands last mentioned, plaintiff might sue him for specific performance or for damages, but could not, under the contract, sue to recover lands which he did not buy. *Kishoree Debia and others* v. *Jugernauth Acharjee*, 9 W. R., 269.

When there is an agreement to sell, and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the said money. A deed of agreement to sell at some future period may be registered under Act XIX of 1843. *Shibkishen Doss* v. *Sheikh Abdool Soban Chowdhry*, 3 W. R., 103.

Where a partition deed has been made and partly acted upon, and nothing is asserted against it in the way of undue influence,—*Held* that the proper course for the plaintiff was to sue to enforce performance, and not for her rights as they may have existed previously. *Mussamut Bhowanee Koonwer* v. *Thakoor Doss*, 2 Agra Rep., A. C., 277.

Held, under the circumstances of the case, that there was not such a contract on consideration received as to make this a case where a suit for specific performance rather than a suit for damages should be held to be the correct form of action. *Bal Gobind Mahtoon* v. *Meer Lutafut Hossain and others*, 7 W. R., 142.

An agreement to remain for ever in a particular community cannot be enforced by a suit in Court. *Nitye Shaha and others* v. *Soobul Shaha and others*, 10 W. R., 349.

12.—Specific Performance.

Immoveable property situate in the island of Bombay was conveyed in 1859 to N. and his wife (Parsees), their heirs, executors, administrators, and assignees, and was subsequently mortgaged by N. and his wife, but the mortgagee did not enter into possession. In 1861 N. alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as N. could confer. *Held* that, notwithstanding the non-concurrence of the mortgagee and of N.'s wife, N. must specifically perform his contract. The non-concurrence of the mortgagee could not prevent the right of the plaintiff to specific performance by N. of the agreement, because N. should either himself redeem the mortgage or permit the plaintiff to do so. *Naoroji Beramji* v. *Rogers*, 4 Bom. Rep., O. C. J., 1.

The result of a long-pending litigation was that the defendants were directed to pay wasilat for certain lands which they had possessed under an invalid lakheraj claim. They subsequently entered into a compromise with the plaintiff, their zemindar, and agreed that if they defaulted in rent, or if the lands became khas of the zemindar, or were by any means to be alienated, the defendants would point out the lands, or, on failure to do this, would pay damages for the loss of the same. *Held* that lapse of time and surrender of the lands were no impediment to the Court granting relief to the plaintiff in the shape of a decree for specific performance. *Rajah Protap Chunder Singh* v. *Gooroo Dass Roy; Rajah Pertap Chunder Singh* v. *Chunder Koomar Roy*, W. R., 1864, 76.

There are only two classes of cases in which specific performance of an agreement to enter into a partnership has been decreed: first, where the parties have agreed to execute some formal instrument which would confer rights that would not exist unless it was executed; secondly, where there has been an agreement which has come to an end to carry on a joint adventure, and the decree that the agreement is valid, prefaced by the declaration that the contract ought to be specifically performed, is made merely as the foundation of a decree for an account. *Verdachalahattam* v. *Ramasarum Nayoka and others*, 1 Mad. Rep., A. C., 341.

The ascertainment of the amount of damages is a necessary preliminary to a decree under Act VIII of 1859, Section 192, for specific performance of a contract and payment of damages as an alternative in case of non-performance.

The application of the doctrine of specific performance to partnerships is governed by the same rules as those which govern it in other cases. Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence legal proceedings against the then tenant of the subject-matter of the intended lease. *Pitchakutti Chetti* v. *Kamalla Nayaka*, 1 Mad. Rep., 153.

A Court of Equity will not decree specific execution of an agreement in favour of a party who

is not competent to perform his part of the agreement. To entitle a party to specific performance he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. *Bungsheedhur Mullick* v. *Calcutta Auction Co.*, 1 Hyde's Rep., 45.

The Court refused to enforce specific performance of a contract to grant a putnee lease of certain endowed property on the ground that it was doubtful whether it was competent to the manager of endowed property to make such a contract. *Motee Doss* v. *Modhoosoodun Chowdhry*, 1 W. R., 4.

A suit to obtain specific performance of the conditions of a lease, and not to cancel the lease or eject the tenant from his holding, is cognizable by a Civil Court, and not by the Revenue Court. *Abdool Ghunnee* v. *Gudree Rai*, 3 Agra Rep., 192.

Certain putneedars applied for a butwarra under the provisions of Regulation XIX of 1814. At the time of the butwarra it was stipulated between the putneedars of a 6-annas and a 7-annas share that in the event of a particular village falling by division wholly to either of them they would reunite and hold the 13-annas share joint as before. One party having resiled from this agreement, it was held that the other party was entitled to sue for specific performance, and such a suit would lie only in the Civil Court. *Nuckchand Singh and others* v. *Hunooman Dutt Singh and others*, 10 W. R., 69.

A suit lies for specific performance of a contract in respect of an adjustment subsequent to, and for property beyond, the decree, notwithstanding Section 11 of Act XXIII of 1861, which applies only to subject-matters relating to the decree. *Ram Lochun Bulra* v. *Madhub Chunder Bulra*, 3 W. R., 118.

A suit for specific performance of a contract to sell land will not lie if the plaintiff neglects to enforce his rights for a long time (in this case three years) after his rights under the contract for sale accrued, and if he does not act up to a condition precedent to the sale to him. If he has any claim at all it would be for damages against the person breaking the contract for loss sustained by the non-fulfilment thereof. *Pureeag Singh* v. *Khur Singh and others*, 8 W. R., 280.

In a suit to enforce delivery of a kobala where plaintiff was found not to have acted up to the original terms of the contract, inasmuch as he failed to pay a part of the consideration-money as agreed upon, and did not offer to pay up the remainder until the suit was brought,—*Held* that defendant was no longer bound to deliver over or ratify the document which it was intended should be executed between them. *Ram Junno Koondoo* v. *Mullicka Dassee*, 14 S. W. R., C. R., 338.

When an agreement provides that an act is to be done by one of the parties within a limited time, and the party fails to perform the act within such time, if the other party elects notwithstanding to take the benefit of the contract the latter must perform his part of it; and though exact and literal performance of the original stipulation has become impossible, the terms of the contract must be carried out as nearly as possible. *Maharanee Brojo Soonduree Debia* v. *Collins*, 13 S. W. R., C. R., 359.

The High Court can, under the Charter and Act VIII of 1859, grant specific performance of part of a contract and give damages for the breach of the remainder. In a suit for specific performance of a contract the cause of action is sufficiently shown by a statement of the terms of the contract, followed by the averment of the refusal of the defendant to perform it, with a readiness and willingness of the plaintiff to do his part in it. *Ununtram Dass* v. *Ramlochon Aich*, 14 S. W. R., O. C., 15.

The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale. The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance, *held*, the suit would lie. *Tripura Sundari* v. *Rasik Chundra Kununguí*, 6 B. L. R., Ap., 134; and 15 S. W. R., C. R., 189.

Plaintiff had entered into a contract with one of the defendants for the purchase of certain immoveable property, and after he made a small advance the contract was written out and registered. The purchaser refusing to pay up the purchase-money unless the vendor paid the costs, or half the costs, of registration, the latter re-sold the property to a third person. The present suit was to compel the completion of the contract and delivery of the property. *Held* that in bringing such a suit, the plaintiff was bound, if he had not previously tendered the money to the defendant, to pay it into Court. *Mahadoo Begum* v. *Syud Habubool Hossein*, 15 S. W. R., C. R., 44.

13.—Personal Privilege.

Where a Mahemetan lady of position residing within the town in which a Court held its sitting was willing to admit the Court to an interview at her own residence, the Judge was held to have done wrong in insisting upon her personal appearance in Court. *Tohurutoollah Chowdry* v. *Asaloodeen Chowdry*, 15 S. W. R., C. R., 129.

The Privy Council dissented from the conclusion came to by the High Court, that any *primâ-facie* case had been made out by the plaintiff (respondent); and considered that the suit, being one brought against purdah women upon a deed alleged to have been executed by them, wholly failed, inasmuch as there was no proof that the women had signed the deed, or that it had been ever signed by them, and that their lordships, if they affirmed the judgment of the High Court, would be going against the whole course of cases that have been decided in India and by the Privy Council in respect of transactions to which purdah women are parties. *Mussamut Azeezoonissa and Eshan Bebee* v. *Baqur Khan*, 17 S. W. R., C. R., 393.

Where the conveyance by a purdah woman is impeached, there ought to be clear evidence, not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about. *Syud Fuzzul Hossein* v. *Amjud Ali Khan*, 17 S. W. R., C. R., 523.

In cases of transactions by purdah women mere registration does go far to corroborate the proof of their validity, unless a mutation of names takes place, which, if done under a mooktearnamah, has not the same effect as against a purdah woman as

it has against a person capable of transacting his own business and acting for himself. *Syud Fuzzil Hossein* v. *Amjud Ali Khan*, 17 S. W. R., C. R., 523.

14.—Title, Escheat, &c.

A litigant is bound to disclose all his titles at once. He cannot be allowed to keep back one, and then, years after, to bring a fresh suit on the ground that he had still a right in reserve. *Brojo Lall Roy* v. *Khetter Nauth Mitter*, 12 W. R., 55.

In a dispute about julkurs between the proprietors of a neighbouring estate, where the title-deeds of the two parties do not specially mention the particular pieces of land or water in contest, the title of the parties must depend on the fact as to which of them has been in possession. *Shama Soondery Debia* v. *The Collector of Maldah and others*, 12 W. R., 164.

Section 24, Act X of 1859, does not apply to cases in which pure questions of title are involved. *Jameer Mundul Gomashta* v. *Mohima Chunder Ghose*, 5 W. R., Act X R., 15.

Held that, as a general principle of law, the fact of obtaining possession affects the title, and has in all systems of law, European and Oriental, been always treated as a most important element in the acquisition of title. *Salim Sheikh* v. *Boidonath Guttuck*, 12 W. R., 217.

It is not competent to the Government to deny the title of a tenure which it has, by selling, once guaranteed to the purchaser. *Jeebun Singh Burmono* v. *The Collector of Buckergunge*, 2 W. R., 77; *and Goluck Chunder Sein* v. *The Collector of Buckergunge*, 2 W. R., 139.

The title to large properties may be incidentally adjudicated upon in suits for small amounts. *Omrao Singh* v. *Khuruk Singh*, 2 W. R., 218.

In a suit to recover immoveable property in the possession of the defendant, a plaintiff cannot ordinarily succeed merely by showing that the title has accrued to him. *Joykishen Mookerjee* v. *Raj Kishen Mookerjee*, 12 W. R., 315.

When a suit is brought for confirmation of possession upon a certain title the plaintiff is bound by the title which he sets up in his plaint, except when he sues to recover immoveable property from which he has been ousted. *Umbica Churn Banerjee* v. *Digamburee Dabee*, 12 W. R., 429.

A title once declared valid cannot afterwards be attached on grounds which were available and might have been taken when the former suit was under trial. *Sunooburnissa Khanum* v. *Meher Chund*, W. R., 1864, 313.

In a boundary dispute the title of the plaintiff is not, except under very peculiar circumstances, open to attack; but when the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but as having a right thereto under a superior title, then the defendant has a right to call the plaintiff's title in question. *Ramchunder Banerjee* v. *Muddunmohun Tewaree*, W. R., 1864, 355.

When a suit for confirmation of title is brought and dismissed for want of proof of title, the Court need not go into the question of possession. *Jussoda Dassee* v. *Sheikh Mahomed Fukeer*, W. R., 1864, 367.

Immoveable property situated in the island of Bombay, conveyed in 1859 to N. and his wife (Parsis), their heirs, executors, administrators, and assigns, was subsequently mortgaged by N. and his wife, but the mortgagee did not enter into possession. Afterwards, in 1861, N. alone entered into an agreement with the plaintiffs to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as N. could confer. *Held* that it was necessary, under such circumstances, to consider whether the estate of N. and his wife in the property were chattel real or real estate: for if it were chattel real, N. by his marital right, according to English law (which in this case applied), might dispose, either wholly or in part, of her interest; and if the property were realty, the lease by N. would at all events bind her for the term of five years, if N. should so long live.

Assuming the property to be realty, *semble*, that on N.'s death before the expiration of the term of five years the lease would, as against the wife surviving, be voidable only, and not void.

The proposition laid down by the Judge of the Division Court, that all immoveable property in Bombay was of the nature of chattel real, and that there was not any property of the nature of freehold of inheritance in that island, disapproved of and denied as being irreconcileable with Royal Charters, Acts of Parliament, and of the Legislative Council of India, decisions of the Courts, both in India and England, and the tenures of land and practice of conveyancers in Bombay.

Statement of the circumstances which led to the passing of Stat. 9, Geo. IV., c. 33 (Fergusson's Act), and also of those which led to the passing of Act IX of 1837 (relating to the immoveable property of Parsis). *Naoroji Beramji* v. *Rogers*, 4 Bom. Rep., O. C. J., 1.

The seizure by the British Government, acting as a sovereign power through its delegate, the East India Company, of the Raj of Tanjore, with the property belonging thereto, was, with its consequences, an act of State over which a Municipal Court has no jurisdiction. *The East India Company* v. *Kamachee Boye Sahiba*, 4 W. R., P. C., 42.

As no law of feudal escheat exists in this country, the title of Government to property on failure of heirs rests on grounds of general or universal law. The Government by not entering upon the lands of a deceased person, by allowing another to enter, and by accepting revenue from him, is not estopped from calling his title into question. *The Government* v. *Greedharee Lall Roy*, 4 W. R., 13.

The illegitimate son of an Englishman by a Mahometan woman died intestate without lawful issue, leaving him surviving his mother, his mistress, and several illegitimate children. *Held* that his property passed to the Crown in default of heirs. The territorial law of British India is a modified form of English law. *The Secretary of State* v. *The Administrator-General of Bengal*, 1 B. L. R., O. C., 87.

Quære,—Whether the doctrine of merger applies to lands in the mofussil in this country. *Woomesh Chundra Goopto* v. *Rajnarain Roy*, 10 W. R., 15.

A plea of merger cannot be raised for the first time in special appeal. *H. Rushton* v. *W. L. Atkinson*, 11 W. R., 485.

Where a Hindu widow claimed property on the

ground that it had been held as benamee for her husband, and also that a hibbanamah had been executed in her favour in order to remove certain difficulties, it was *held* that the titles were not inconsistent, there was nothing to prevent her succeeding on the strength of the hibbanamah. The mere fact of registration in a Collector's books is no evidence of title. *Ameeroonissa Bibee* v. *Woomarooddeen Mahomed Chowdry*, 14 S. W. R., C. R., 49.

Where a sale of landed property which has been executed by the Government was made by Government without any restriction being attached to the original notice of sale, which stated that the highest bidder was to be the purchaser,—it was *held* that the Government could not, subsequent to the bid and the deposit of the earnest-money, impose any condition, but was bound to make over possession irrespective of the character of the highest bidder. In selling the property of rebels which it had confiscated the Government does not perform an act of State, but stands in the situation of an individual selling his property by auction, and a suit may therefore be properly brought against the Government by the purchaser, if the Government refuses to give up possession or transfer the possession to another. *Sheo Lall Bohree* v. *Sheikh Mahomed*, 13 S. W. R., P. C., 4.

15.—Prescription.

Oral evidence, if credible, is legally sufficient to prove a prescriptive title. *Meherban Khan* v. *Mahboob Khan and others*, 7 W. R., 462.

In a suit for the removal of a wall on which plaintiff had been allowed by defendants for a number of years to rest the thatch of a hut, and which wall and thatch, after having been thrown down by a cyclone, had been rebuilt by plaintiff, though the thatched roof had been again blown down, and there was no thatch at the time of the suit,—*Held* that, under these circumstances, the plaintiff could not have acquired a prescriptive right that the water from the thatch should pass over defendant's lands, and was not entitled to restrain him building up the wall. *Lall Monee Dossee* v. *Joynarain Shahah*, 11 W. R., 508.

The English Prescription Act does not apply to the Mofussil. *Joy Prokash Singh* v. *Ameer Ali*, 9 W. R., 91.

A title by prescription cannot be created by length of user short of twelve years, the ordinary period prescribed by the Statute of Limitation. *Doorga Churn Paul* v. *Pearee Mohun and others*, 9 W. R., 283.

No fixed period has been laid down within which a right by prescription may be gained in this country. The evidence must be such as to justify the Court in inferring the existence of a valid ancient right, having regard to the nature of that right and the circumstance under which it has been exercised. *Kristo Mohun Mookerjee and others* v. *Jagannath Roy Jugi and others*, 2 B. L. R., A. C., 323; 11 W. R., 236.

The lower Appellate Court having found that on the expiry of the defendant's lease the land came into the immediate possession of the zemindar who let it to the plaintiff, the plea raised by the defendant, that he has a prescriptive right of occupancy, will not avail him, unless he can get over the fact found by the lower Appellate Court, or can show that the zemindar had illegal possession of the land. *Kupram Kurmokar* v. *Jameer Poramanick*, 1 W. R., 167.

A plaintiff may have a prescriptive right to pass and re-pass in boats during the rainy season over certain lands belonging to the defendant, notwithstanding that the general public have no such right of passage, and that the channel does not lead to the plaintiff's house, and is injurious to a bank belonging to the defendant. *Ramsoonder Burral* v. *Woomakant Chuckerbutty*, 1 W. R., 218.

To constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right of prescription. *Askar* v. *Ram Manik Roy*, 5 B. L. R., Ap., 12; 13 S. W. R., C. R., 344.

Prescriptive rights are founded on the presumption of a grant from long-continued uninterrupted user and enjoyment as of right. *Chunder Jaleah* v. *Ramchurn Mookerjee*, 15 S. W. R., C. R., 212.

In 1859 A. obtained a decree for possession of land against B., but no proceedings in execution were taken, and B. continued in possession. In 1869 C., having purchased the right and interests of A. in the decree, forcibly dispossessed B., who had been twelve years in possession. B. now brought this suit against C. to recover possession. *Held*, the execution of the decree of 1859 being barred, and B. having been twelve years in possession, he was entitled to recover. Adverse possession which bars the remedy also transfers the rights. *Amirunnissa Begum* v. *Umad Khan*, 8 B. L. R., 540; 17 S. W. R., C. R., 119.

Where a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent and those under whom he held in regular succession for more than thirty years, it was *held* that the grantee had acquired a right of property in it under Regulation V of 1827, Section 1. By Warden, J.—Independently of the origin or nature of the grant. By Gibbs, J.—In the absence of it being shown to have been a personal grant, and by the conduct of Government in paying to the several generations in succession. *Collector of Kheda* v. *Harishankur Tikum et al.*, 5 Bom. Rep., A. C., 23.

Where the plaintiff's ancestors had enjoyed an allowance during four successive generations, for a period extending over more than a century, the legal presumption, in the absence of the original grant, is that such grant was hereditary.

The allowance having been continued by the British Government to the plaintiff's grandfather, for the same reasons for which a village (admitted to be held on hereditary tenure) had been continued, and having been paid to the plaintiff's grandfather up to his decease, and afterwards as a matter of course, to the plaintiff's father, it was held that the enjoyment of the plaintiff's grandfather and father was proprietary enjoyment; and as this enjoyment had continued uninterruptedly for more than thirty years, that, under Regulation V of 1827, Section 1, a statutory and indefeasible title to the allowance had been acquired. *Desái Kulyánrúya Hukamatrúyo* v. *The Government of Bombay*, 5 Bom. Rep., A. C., 1.

Per Macpherson, J. The length of time required in a case of prescription prior to 1st July, 1871, was

at least twelve years. The "Limitation Act, 1871," requires peaceable and open enjoyment without interruption for twenty years.

The right asserted in a claim founded on prescription should be strictly and clearly defined, and cannot be based on rights which are inconsistent. When a party is called upon by the Court to elect which branch of a double case he will proceed with, the election must be distinct and clear, and such as will bind him and will show accurately on the face of the record, the claim (if any) which is abandoned. *Rajah Bijaj Keshoy Roy* v. *Obhuj Churn Ghose*, 16 S. W. R., C. R., 198.

Adverse possession for more than twelve years is of itself sufficient to create a title. *Ramsahaj Singh* v. *Koldeep Singh*, 15 S. W. R., C. R., 80.

16.—Powers of Legislature.

It is beyond the power of the local Legislative Council to pass an Act in any way affecting the provisions of a Statute of the Imperial Parliament. *Aboo Sait and Co.* v. *Abob Sait and Co.*, 2 Mad. Rep., 439.

Although the old East India Company had power, under the Charters of Charles II., to make laws affecting British-born subjects, yet this power ceased in A. D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3rd and 4th William IV., c. 123 (with the exception of a limited power of legislating as regarded the local limits of the presidency town) no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found.

Semble,—That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3rd and 4th William IV., c. 123. With the exception of offences made punishable by the 53rd George III., c. 155, Section 105, by Justices of the Peace, the Recorder's Court had, by virtue of the 37th George III., c. 142, Section 10, exclusive criminal jurisdiction over British-born subjects throughout the Bombay Presidency, and the same exclusive jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India.

The Bombay District Police Act (No. VII of 1867) passed by the Governor of Bombay in Council for making Laws and Regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the Mofussil, being also Justices of the Peace, over British-born subjects, as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the criminal jurisdiction which that Court possesses over British-born subjects in the Mofussil, which jurisdiction is exclusive except in so far as it is limited by Statute 53, George III., c. 155, Section 105, and certain subsequent Acts of the Government of India. *Queen* v. *Edward Reay*, 7 Bom. Rep., Cr., 6.

17.—Construction of Acts.

Trees are to be held moveable property for the special purposes of the Registration Act, but they are not ordinarily so regarded in Indian Acts. *Chowdhry Roostum Ali* v. *Dhandoo*, 4 Agra Rep., 157.

The meaning of an Act is to be gathered solely by reference to the Act itself. *Muddoosooden Dey* v. *Bamachurn Mookerjee*, 1 Hyde Rep., 100.

The only Act in relation to Civil Procedure in force in 1863, besides Act VIII of 1859, and the Acts modifying such Acts, were Act XVII of 1852 and a part of Act VI of 1854. *Sagor Dutt* v. *Ramchunder Mitter*, 1 Hyde Rep., 136.

A special enactment is not impliedly repealed by a subsequent general enactment, if the two enactments are not so repugnant as to be incapable of standing together. *Subapati Mudaleyar* v. *Narayansvami Mudaleyar*, 1 Mad. Rep., 115.

If the express words of an Act do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of law to extend such enactment or to give to the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment. *Port Canning Land Company, Limited*, 16 S. W. R., C. R., 208.

It is not for a Civil Court to speculate upon what was in the mind of the Legislature in passing a law, but the Court must be bound by the words of the law judicially construed. *Mohesh Chunder Dass* v. *Madhub Chunder Sirdar*, 13 S. W. R., C. R., 85.

18.—Miscellaneous Regulations.

Towjees, mehal melanee papers, jaidads, and jumma wasil bakee papers are not *per se* an account within the meaning of Section 3, Regulation I of 1798. *Goluck Chunder Dutt* v. *Mohun Loll Sookut*, 5 W. R., 271.

The rights and interests of a judgment-debtor in a jagheer granted under Section 34, Regulation XII of 1805, cannot be sold in execution of a decree. The Court should sequestrate the property, and make the proceeds available during the life of the debtor for the payment of the money decreed (*dissentiente*, Steer, J.). *Shaikh Zameelooddeen Mahomed* v. *Russik Chund Addy*, 1 W. R., F. B., 85.

A 20 years' lease of an estate attached under Regulation II of 1806 is inconsistent with the objects of attachment under that Regulation. *Maharanee Inderjeet Kooer* v. *Mussamut Khanum Jhan*, 1 W. R., 63.

Regulation XIV of 1812, as well as Act XVI of 1842, by which it is modified, apply to the Ceded and Conquered Provinces only, and not to the District of Tirhoot. *Ameer Aly* v. *Ameeroonissa Begum*, 11 W. R., 11.

The owner of the house where an ornament has been found concealed may, under Section 6, Regulation V of 1817, retain possession of it as a "valuable property" under Section 2, if no one else has substantiated any claim thereto. *Prem Moyee Bewah* v. *Nobin Chunder Chowdhry*, 4 W. R., Mis., 8.

Regulation V of 1817—Hidden Treasure-Duty of Finder of Hidden Treasure—Right of Zemindar to Hidden Treasure—Right of Government. *In the matter of the petition of Uma Charan Banerjee*, 7 B. L. R., Ap., 3, and 15 S. W. R., C. R., 525.

Regulation XIV of 1827 (Bombay), Section 1,

Clause 1, Article 7, and the Religious Law of the Hindus, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee. *Reg.* v. *Avajee Wullud Gobindram*, 1 Bom. Rep., 93.

Where more than one person is convicted under Section 4, Regulation XXI of 1827 (Bombay), of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, *viz.*, the forfeiture of double the value of the opium and double the amount of the duty leviable thereon. *Reg.* v. *Vakutchand and another*, 1 Bom. Rep., 50.

A conviction and sentence by a Full Power Magistrate for breach of the rules for the retail sale of opium under Regulation XXI of 1827 (Bombay), Section 10, annulled for want of jurisdiction, as the Zillah Magistrate alone was empowered to enforce the penalty. *Reg.* v. *Sade Valad Pavodi*, 3 Bom. Rep., A. C., 39; *Reg.* v. *Gania Bim Bopu*, 3 Bom. Rep., A. C., 50.

By Section 26, Regulation IV of 1827 (Bombay), the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of civil suits. *Abbas Ali Zenool Aradin* v. *Golam Mahomed Wallad Baba Mirza*, 1 Bom. Rep., 36.

Clause 1, Section 27, Regulation IV of 1827 (Bombay), imposes no obligation on the Courts to ascertain whether there is family rule or usage, where there is no allegation of such fact in the leadings, or where the parties have waived resort to the course prescribed by the Regulation. *Modee Kaikhoosrow Hormuzjee* v. *Cooverbaee*, 4 W. R., P. C., 94.

The Executive Government is not empowered to introduce Regulation VIII of 1822 into any other tract of country than that described in Section 2. *Rajah Rajkishen Singh Surmono Badadoor* v. *The Collector of Gowalparah*, 3 W. R., 180.

When a failure to sow indigo according to contract is not shown to be due to accident, it must be presumed to have been fraudulent, and does not in that case fall within Clause 4, Section 5, Regulation VI of 1823, which limits the penalty to three times the sum advanced. *Lall Mahomed Biswas* v. *Robert Watson and Co.*, 4 W. R., 62.

Cotton having been sold subject to examination by an inspector, the mere fact of cotton of two different qualities being found in one of the bales is not sufficient to support a charge under Section 1, Clause 1, of Regulation III of 1829 (Bombay). Magistrates are bound to record translations of their findings in criminal cases. *Reg.* v. *Ruttunjee Bhookun*, 1 Bom. Rep., 17.

A suit for the emoluments attached to the office of Kurnam in an unsettled district is barred by the operation of Section 3, Regulation VI of 1831 (Madras). *Collector of the Kristna District* v. *Kalavagunta Chinnamrazee*, 5 Mad. Rep., 360.

Regulation IX of 1833 contains no provision making the pendency of proceedings before a punchayet a bar to the Civil Court jurisdiction. *Sikundar Ali and others* v. *Purwurush Ali and others*, 3 N. W. R., 132.

19.—Miscellaneous Acts.

(*a*) *Acts of* 1840 *and* 1841.

The suit was dismissed by the lower Appellate Court on the ground of the plaintiff's inability to explain how, in execution of an Act IV award for a small portion of the land in dispute, he was ousted from the whole. *Held* that the Court should have tried the question of the hereditary nature of the tenure pleaded by the defendant, as well as the fact of possession and subsequent dispossession alleged by the plaintiff. *Byrubnath Sandyal* v. *Hurro Soondery Debia*, 1 W. R., 32.

In a suit for confirmation of plaintiff's right to land within a kharija talook, by the setting aside of an adverse award under Act IV of 1840 (which had been confirmed in appeal), where it was found that after defendant had held the land for a year under the award in question plaintiffs had again entered into possession, it was *held* that as plaintiffs were in possession, though in contravention of the Magistrate's order, they did not need the Court's intervention to put them in possession, and their omission to sue for possession was no bar to their title being investigated. *Shiboo Soondery Dabee* v. *J. Beckwith and others*, 9 W. R., 580.

An award under Act IV of 1840 is not sufficient proof of title when the person in whose favour it is given does not maintain his possession under the award before the survey authorities, and allow his adversary to take actual possession. *Joogul Kishore Shaha* v. *Raj Kishen Surmah*, 3 W. R., 129.

A sunnud issued to an agent of H. H. Holkar, under Act XV of 1840, and Regulation XIII of 1830, was held not to be invalidated by the omission to enter the agent's name in any list of exempted or empowered persons under Regulations XXIX of 1827 and XIII of 1830.

The omission to secure the agent any specific jurisdiction under Regulation XIII of 1830 was held to disentitle him from exercising any but the most ordinary jurisdiction which could be exercised under that law. *Sukaram bin Witojee* v. *Sudasew bin Sayajee*, 1 Bom. Rep., 96.

A suit will not lie for the reversal of a Magistrate's order made under the authority of Act XXI of 1840, nor to recover damages for the doing of the act directed by the order; but the proper remedy of a party aggrieved by the order is to appeal against it under Section 4. *Ramkissore Bhuttacharjee* v. *Bisseshur Bhuttacharjee*, Marsh., 231.

Section 22, Act XII of 1841, does not apply to a suit for a declaration of the plaintiff's title in right of inheritance as against other members of the family. *Shaikh Mahomed Wayez and another* v. *Musst. Sugeeroonissa*, 6 W. R., 38.

An order in a summary suit for possession of land under Act XIX of 1841 is no bar to a regular suit to try the question of title (see Section 17), which may be brought any time within twelve years. *Lall Narain Singh and Dedputty Singh* v. *Ranee Narain Kooar and Mussamut Shama Kooar*, 2 Ind. Jur., N. S., 191.

No appeal lies from an order of a Judge proceeding under Act XIX of 1841.

The fact that the Judge may have rejected evidence which ought to have been received and con-

sidered does not warrant the High Court in interfering to set aside an order of such Judge. *Venkatá Chetta Chetti and others* v. *Parvatammal*, 2 Mad. Rep., 418.

The remedy for a party dissatisfied with an order passed under Act XIX of 1841, making a division of a deceased person's property, is by regular suit, not by appeal. *Mussamut Edoo* v. *Mehdee Khan*, W. R., 1864, Mis., 12.

Where a Magistrate, acting under Act XXI of 1841, has ordered the removal of an obstruction placed on a road by a person claiming a right to the soil, and a title to place the obstruction, the remedy of such person is by appeal against the order under the 4th Section, and he cannot institute a suit in the Civil Court to have a declaration of his right to close up the way. *Prankissen Surma and others* v. *Ramrooder Surma and others*, Marsh., 214.

Trustees were appointed for a Company in 1845, and the partnership was to last twenty years, which expired on December 31st, 1864. The shareholders thereupon appointed S., a new trustee, to sell the business, and he sold it to R. The old trustees had left the country. In an application, with the consent of all parties, under Act XXIV of 1841, that S. might sign the deed of transfer, the Court held that it was necessary to show that the old trustees had no lien on any other property in the concern before the order asked for could be made. *In the matter of Fort Gloucester Mills Company*, Bourke's Rep., O. C., 260.

(*b*) *Acts of* 1843 *and* 1844.

Plaintiff being entitled by an arrangement between the members of a family of patils, of whom he was one, to a third of the emoluments of the office of managing revenue and police patil, sued the defendant in possession to recover a third of a portion of the hereditary fields set apart as remuneration for the performance of the duties of the office; and the District Judge, in appeal, found his claim barred on the ground solely that he had not for twelve years been in possession of the one-third which he claimed of the service land,—

Held that the suit must be remanded for re-trial, as it did not appear, having regard to Section 4 of Act XI of 1843, whether the plaintiff's turn to officiate as patil, and his right to enjoy the land in dispute, and consequently the cause of action, arose more than twelve years before the suit was brought. *Sinde* v. *Sinde*, 4 Bom. Rep., A. C. J., 51.

Held that the interest enjoyed by one of a body of co-parceners in possession of land attached by way of emolument to a hereditary office cannot be bequeathed to one or more of the other co-parceners, as the estate held by each sharer is only a life-interest, subject to the right of the Collector, under Act XI of 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office. *Bhimappa* v. *Mariappa*, 3 Bom. Rep., A. C., 128.

An agreement between two members of a pátil family that they are to officiate in turns is not illegal as being opposed to public policy. The Court will not, however, compel the actual pátil to vacate office under such an agreement as long as his appointment under Act XI of 1843 is unrevoked. *Vaku Valád Ram Pátil* v. *Pánd Valad Málji Pátil et al.*, 6 Bom. Rep., A. C. J., 243.

A transaction is not necessarily a lottery within Act V of 1844, simply because a matter of whatever kind is agreed to be decided by lot.

Where twenty persons agreed that each should subscribe Rs. 200 by monthly instalments of Rs. 10, and that each in his turn as determined by lot should take the whole of the subscriptions for one month,—*Held* that the agreement was not illegal, and that a suit might be brought on a bond given by one of the subscribers who had received one month's subscriptions, to secure the payment of his subsequent monthly instalments. *Kamakashi Achari* v. *Appeaver Pillai*, 1 Mad. Rep., 448.

Held (Tucker, J., *dissentiente*) that all town duties, taxes, and cesses of every kind on trades or professions (and not merely such of them as were then levied by Government) were abolished by Act XIX of 1844, and that a privilege enjoyed by a private person to levy certain fees on articles imported and exported through three of the city gates of Surat, and originating in an alienation by a former sovereign of a portion of the royal revenues derivable from that source, ceased from the date when the said Act came into operation; and consequently that the Court was not precluded from so deciding, because the provisions of Act XX of 1839 (empowering the Governor in Council of Bombay to prohibit the levy of haks and fees) had not been complied with in forbidding the levy of the fees in question.

Per Couch, J.—The intention of the Legislature in 1844 appears, from the language used by it in Act XIX, and from the recital in Act XVI of that year, to have been the import on salt being about to be increased, that, instead of leaving haks such as this to be abolished at different times under the Act of 1839, they were then to be entirely abolished. *Nasarvanji Pestanji* v. *The Deputy Commissioner of Customs, &c.*, 2 Bom. Rep., A. J., 75.

(*c*) *Acts of* 1847 *and* 1849.

When the Collector of Ghazeepore, under Act I of 1847, the operation of which is confined to the territories subject to the North-Western Provinces, tried a dispute as to the boundaries of two zillahs, one within and the other without the North-Western Provinces, he was held to have acted without jurisdiction, and therefore not to be a competent authority within the meaning of Section 14, Act VIII of 1859. *Puhlwan Singh* v. *Maharajah Moheshur Buksk Singh*, W. R., 1864, 191.

Where a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese possession of Goa, but no order was recorded by the Sessions Judge of Mangalore who tried the case under Section 9 of Act I of 1849,—*Held* that there ought to be a new trial. 5 Mad. Rep., Rul. XIII.

A pension having been granted by Government to B. P. in lieu of a saranjam held by his grandfather, a claim to share the same by M. P. and his brothers was compromised by B. P. agreeing to pay them a certain proportion thereof yearly. The Agent for Sardars, affirming the decree of the Assistant Agent, found the agreement to be null

and void as an assignment of a future interest in a pension.

Held that, as the pension was not granted "in consideration of past services and present infirmities or old age," the case did not come within the terms of Act VI of 1849, and that the agreement was a valid one. *Panse* v. *Panse*, 4 Bom. Rep., A. C. J., 62.

On a petition praying that an attachment placed on a pension, of which petitioner was the recipient, might be removed under Act VI of 1849, the High Court declined to interfere, as it had not been shown that the pension was one enjoyed in consideration of past services and present infirmities or old age. *Vithalráv Eshvantrav ex-parte*, 4 Bom. Rep., A. C. J., 65.

Arrears or pension due to the deceased at the time of her death form part of her estate, and the person who is legal heir to the deceased is entitled to recover them. The grantee of the pension formerly enjoyed by the deceased has no right to such arrears which formed part of the deceased's estate. *Mussamut Noushahah Sooltan Begum* v. *Mussamut Nuhurah Sooltan Begum*, 4 Agra Rep., A. C., 44.

An order made by a District Judge, rejecting an application to attach a pension, on the ground that being a political pension it could not be attached under Act VI of 1849, was reversed, on petition, by the High Court, which directed the pension to be attached. *Harbhat bin Rám Chandrabhat*, 4 Bom. Rep., A. C. J., 67.

(*d*) *Acts of* 1855 *and* 1857.

Clause 1, Section 1, Act VI of 1855, shows that the Statute was designed for the benefit of creditors, and that it authorizes sale of both the legal and equitable rights of judgment-creditors. Under this clause, therefore, an equity of redemption is a kind of property that may be seized and sold. A., a mortgagee who takes from B. as security an existing mortgage from C. to B., stands in the same position towards, and is subject to the same equities in respect of, the mortgagor B., who has assigned that mortgage to him by way of sub-mortgage, as B., himself a mortgagee, does to the original mortgagor C. A., mortgagee, at a Sherift's sale held under a writ of *fi. fa.* sued out by him upon his mortgagor's bond and warrant to confess the mortgage debt, purchased his mortgagor's equity of redemption, and obtained a conveyance thereof from the Sheriff under Clause 3, Section 1, Act VI of 1855. *Held* in a suit by the mortgagor against the mortgagee for redemption of the mortgage, that the latter was entitled under that Act to hold the mortgaged estate against the mortgagor freed from the equities existing in him previous to sale, and conveyance of his rights and interests under the mortgage. *Toyluck-omohun Tagore* v. *Gobind Chunder Sen*, 1 Ind. Jur., O. S., 128; 1 Hyde's Rep., 289.

In the case of a conviction by a Subordinate Magistrate, under Section 18 of Act III of 1857, of a person who through neglect permitted a public road to be damaged, by allowing his pigs to trespass thereon,—*Held*, on a reference to the District Magistrate, that the conviction was not illegal, because the land damaged was a public road, as the right to use a public road is limited to the purposes for which the road is dedicated. *Reg.* v. *Lingana bin Ginbana et al.*, 4 Bom. Rep., Cr., 14.

The repealing section of Act XVII of 1862 does not affect the powers of a Subordinate Magistrate under Section 13 of Act III of 1857. *Reg.* v. *Meer Saheb Cassamia and another*, 1 Bom. Rep., 100.

A Magistrate cannot, under Section 13, Act III of 1857, punish, except for an act of forcible opposition to the seizure of cattle damage feasant. *Hills* v. *Sreekury Roy*, 7 W. R., 155.

Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to rent, the person entitled to the rent is not entitled to recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. *Neelmoney Singh Doe* v. *The Government; Neelmoney Singh Doe* v. *Chutterdhun Singh*. Marsh., 308.

Judgment-creditors having *bonâ-fide* attachments upon property, at the time that the property of their debtors become forfeited to Government under Act XXV of 1857, are entitled in priority to Government. *Oodit Dass* v. *The Government*, Marsh., 259.

The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859, pointed out. *Held* that it is not incumbent on a party aggrieved by acts done under these laws to bring a suit at all; but if he brings a suit, it must be brought within a year of the attachment or seizure complained of. *Byjnauth Singh* v. *Solano*, 14 S. W. R., C. R., 114.

(*e*) *Acts of* 1859.

The European British subject, not belonging to or connected with the Army, who resides within a cantonment, is amenable to the jurisdiction of a Cantonment Joint Magistrate under Section 1 of Act III of 1859.

Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the Cantonment Magistrate and the Small Cause Court Judge have concurrent jurisdiction over him to the amounts respectively cognizable by them. *Jehangir* v. *Richard Morgan*, 4 Bom. Rep., A. C. J., 187.

The High Court can set aside an order of the Judge made under the Act without evidence being taken, without remanding the case to the Judge, there being no analogy in this respect between an ordinary civil suit and proceedings under this Act. *Sheikh Bushareetoollah* v. *The Collector of Tipperah*, 8 W. R., 375.

Nothing in Section 20 of the Act allows a concurrent period of 12 years to sue in the ordinary Civil Courts for confirmation of civil rights. *Gobind Pandey* v. *Heemut Bahadoor and others*, 6 W. R., 42.

According to Section 20, a suit for possession of confiscated property under title must be brought within one year of attachment or seizure. Proceedings to foreclose are not the suit contemplated by

that law. *Mudun Singh* v. *Mussamut Bibee Koolsoom*, W. R., 1864, 377.

The property in suit was attached by the Magistrate in 1858, and seized in 1862, without adjudication of forfeiture, as provided by Act XXV of 1857, and the owner did not surrender himself to undergo trial, and did not establish his innocence, or prove that he did not escape or evade justice within one year from the date of seizure, as provided by Section 8 of that enactment. *Held* that the suit was not barred by one year's limitation provided in Section 9 of the said Act, it being applicable to suits and proceedings in respect of property seized after conviction of the offender if he is tried, or after an adjudication of forfeiture if he is not in person present to take his trial, and not where there is a mere seizure by a Magistrate of a suspected person's property without further proceedings.

Although Section 18, Act IX of 1859, deals with such property, and provides that the offender's failure to surrender himself within one year from the date of seizure would preclude the Courts from questioning the validity of seizure, yet the general terms of that section cannot, in the absence of express provision to that effect, be construed to mean that any involuntary absence would be treated as a default or refusal to surrender. *Held*, therefore, that plaintiff's suit, if he succeed in establishing that his absence within the limited period was involuntary, would be removed from the operation of that section.

The plaintiff's suit was not barred by Section 20, Act IX of 1859, which deals with the rights of persons who are not accused and suspected of the act of rebellion, and its operation according to ordinary rules of construction cannot be extended to cases not within the preceding portion of the section. *Mahomed Yousuf Ali Khan* v. *Government and others*, 1 Agra Rep., A. C., 191.

Plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader, and after a time he was captured.

No formal proceedings were taken under Sections 2 and 7 of Act XXV of 1859 for adjudicating his property (which consisted of little more than an annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the manager under the Court of Wards. The annuity was withheld, and was no longer regarded as a charge on the estate, but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by those who had the management of the estate, which was charged with the payment, would be an illegal act in no way affecting the plaintiff's right; but as the withholding of the payment was under the authority and direction of the official who was authorized to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment or seizure, and could not be questioned except under the provisions of Section 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. *Ranee Chunda and another* v. *Koonwer Roof Singh*, 4 Agra Rep., 281.

Where the property of a rebel has been sold, any party claiming an interest in the thing sold is bound, under Section 20, Act IX of 1859, to bring his suit within one year from the date of the order of confiscation. *Prosunno Pandey* v. *Gunga Ram*, W. R., 1864, 2.

According to Section 20, Act IX of 1859, a suit for possession of confiscated property under title must be brought within one year of attachment or seizure. Proceedings to foreclose are not the suit contemplated by that law. *Nundun Singh* v. *Mussamut Bibee Koolsoom*, W. R., 1864, 377.

A mokurrureedar having fled and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground (1) that his suit was barred by Section 20, Act IX of 1859; and (2) that the mokurruree was not an absolute tenure, but one on condition of service to be rendered to the former proprietor, whose estate had been confiscated for rebellion. *Nepal Singh* v. *Ram Sarun Singh*, W. R., 1864, 5.

Held that the plaintiff's suit was barred by limitation provided by Act IX of 1859, Section 20, as not having been instituted within one year from the date of seizure by Government. *Mussamut Ameeroonnissa* v. *Shib Suhai*, 1 Agra Rep., A. C., 271.

Where the rights and interests of mortgagees only are confiscated and granted, the suit to redeem by a mortgagor is not barred by Section 20, Act IX of 1859. *Ramdhun and others* v. *Rajah Bhowanee Singh Bahadoor*, 4 Agra Rep., 139.

A suit by a mortgagee for possession, on ground of foreclosure, of rebel's property sold under Act IX of 1859, is barred by limitation, if not brought within one year from the date of seizure or sale. *Gobind Pandey* v. *Hemut Bahadoor*, 6 W. R., 42.

The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859, pointed out.

A seizure within the meaning of Section 20, Act IX of 1859, is such a taking possession of the property forfeited as is referred to in Section 7, Act XXV of 1857, not merely formal but actual. *Byjnath Singh* v. *Solano*, 14 S. W. R., C. R., 114.

Where, by a decree of the Special Commissioners' Court, established under Act IX of 1859, a decree was made directing property to be made over to a claimant, the proceedings of officials making over that property were, when followed by a suit against Government to obtain possession of a portion of that property, in which suit the Government raised no question as to the propriety of the decree, or of the making over of the bulk of the property under it, *held* to bind the Government as to the right of the decree-holder to the property. *Secretary of State* v. *Mussamut Knanzadi*, 5 B L. R., 312.

An order of a Magistrate passed under Section 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him. *Reg.* v. *Jomá bin Bálu*, 1 Bom. Rep., Cr., 37.

The imprisonment of a defendant by order of the Magistrate under Act XIII of 1859 does not preclude the plaintiff from proceeding by civil suit for recovery of money advanced to the defendant for the performance of work. *C. A.*

A. Vernede v. *Abdul Giri Chinna Sueámi*, 2 Mad. Rep., 427.

Act XIII of 1859 does not apply to contracts for a "chakri" domestic or personal service, but to contracts to serve as artificer, workman, or labourer. *In the matter of Domestic Servants*, 3 B L. R., A. Cr., 32; 12 W. R., Cr., 12.

An order directing compensation under Act XIII of 1859 is illegal. Such portion of the money advanced to the defendant as had been appropriated to the fulfilment of the contract, or as could justly be set-off against a part fulfilment of the contract, ought not to be ordered to be refunded. 4 Mad Rep., Rul. LXVIII.

Breach of contract to supply wood does not fall within the purview of Act XIII of 1859 *In the case of the Upper Assam Tea Company* v. *Thopoor*, 4 B. L. R., Ap., 1.

Persons convicted under Section 48 of the Police Act (XXIV of 1859) are not liable to both fine and imprisonment in default of payment. The procedure to be followed in enforcing the fine is that laid down in Madras Act V of 1865. *Anonymous*, 3 Mad Rep., Ap., 9.

There is no Act of the Legislature which empowers either the District Magistrate or the local Government to define a "term" for the purpose of Section 48, Act XXIV of 1859 6 Mad. Rep., Rul. XXXIV.

(*f*) *Acts of* 1860.

A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under Section 26 of Act XXXI of 1860; and certain persons were, in consequence of his notification, arrested and brought before him charged in a police report with carrying arms without license. No summons or warrant had been applied for, nor any complaint lodged before the Magistrate, previous to the arrest of the prisoners No charge in writing was framed as required under Sections 250 and 251 of the Criminal Procedure Code No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under Section 188 of the Indian Penal Code, of disobedience of an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held* that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on. *The Queen* v. *Nandkumar Bose*, 3 B. L. R., Ap, 149.

The word "suit" in the proviso of Section 3 of Act XLII of 1860 refers to regular suits before a Collector under Act X of 1859, and not to the summary proceedings under Regulation XXVIII of 1802, and Section 2 of Regulation V of 1822. *Adimulan Pillai* v. *Kovel Chinna Pillai*, 2 Mad. Rep., 22.

Mere casual presence, or even residence for a temporary purpose, without the intention of remaining, is not dwelling within the jurisdiction of a Small Cause Court within the meaning of Section 4 of Act XLII of 1860. *Saminatha Pillai* v. *Varisai Mahomed Savatatan*, 2 Mad. Rep., 304.

Section 6 of Act XLII of 1860 does not alter or interfere with the jurisdiction of the Military Courts of Requests established by Stat. 20 and 21 Vic., c. 66, Section 67. *Shaumooga* v. *Middleton*, 1 Mad. Rep., A. C., 443.

Execution against the person of a judgment-debtor is not a preliminary step necessary to entitle the judgment-creditor to proceed against the debtor's immoveable property under Section 11, Act XLII of 1860. *Vencátasami Naik* v. *Vattamalay Gaundan*, 2 Mad Rep., 339.

Section 21 of Act XLII of 1860 is to be given the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. *Sabapati Mudali* v *Muttuswámi Mudali and others*, 1 Mad Rep, A C., 103.

(*g*) *Acts of* 1862—1868.

Act VIII of 1862 does not relieve putneedars from their liability under the old laws of paying the zemindary dâk charges. *Bissonath Sircar* v. *Ranee Shurnomoyee*, 4 W. R., 6.

Section 5, Act VIII of 1862, does not prevent the Civil Courts from entertaining a suit against the ex-King of Oude without the consent of the Government *Petition of Begum Bibee, Bismullah Khanub, and Tainub Khanum*, 7 W R., 168.

Held (Jackson, J., dissenting) that an officer exercising the powers described in Section 1, Act XV of 1862, is competent, under the provisions of Section 59 of the Penal Code, to pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment. *In the case of Boodhooa, prisoner*, 9 W. R., Cr., 6.

A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, &c., in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent to a judgment or decree in the said action or suit by default, or in any other way to pass or be pronounced against the defendant, empowers the attorney to accept service and appear for the defendant within the meaning of Sections 17 and 49 of Act VIII of 1859.

Held that Section 7 of Act XX of 1862 refers only to warrants of attorney for the entering up of judgments in the High Court which were in existence before the 1st July, 1862.

That, where a summons has not been issued to a defendant, the defect is cured by his appearance. *Khaulut Chundra Ghose* v. *Sreemutty Saroda Soondery Dassee*, Bourke's Rep, O. C., 244.

Sunnuds granted by Settlement Officers under the Bombay Act II of 1863 do not prejudice the rights of third persons. *Puji Beir Candan and another* v. *Malari bin Rama*, 1 Bom Rep, 171.

Madras Act IV of 1863 does not take away the former jurisdiction given to the District Moonsiff in respect of causes of action arising within the limits of his jurisdiction. *Magam Timmaya* v. *Tangattur Kandappa*, 2 Mad. Rep., 82.

Conviction under Section 9 of Bombay Act IX of 1863, and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had juris-

diction in the matter over the person convicted, and for want of evidence of fraud.

Quære,—Whether, notwithstanding Section 411 of the Criminal Procedure Code, a regular appeal lies in such case. *Reg.* v. *Jivan Usman and others*, 3 Bom. Rep., Cr., 12.

With reference to Section 18, Act XXI of 1863, an advocate cannot sue upon a promissory note given by anticipation for fees not taxed; nor can the Court in such suit award to the plaintiff a *quantum meruit* for his services. *Donald Macleod* v. *Mah Mah Yet*, 7 W. R., 390.

Under Act XXI of 1863 (Sections 22 to 26), a case cannot be stated for the opinion of the High Court with reference to a point of law arising out of proceedings in execution of a decree. *In the matter of R. Sutherland*, 9 W. R., 478.

By Act V (B. C.) of 1863, the appointment of peons is vested in the Nazir, subject to the approval of the Judge, by whatever title designated (Sections 3 and 12), and no superior authority is competent to control such appointments or to restrict the choice of the Nazir. *Gooroo Dyal Singh, petitioner*, 9 W. R., 333.

To render a person liable to punishment under Section 16, Act V (B. C.) of 1864, for obstructing the line of navigation of a Government canal, it must be shown that he wilfully obstructed the navigation. *The Queen* v. *Kabil Manji and others*, 2 B. L. R., A. Cr., 23.

A conviction under Act V of 1864 (B. C.) cannot be bad, unless it is charged and proved that the accused wilfully obstructed the navigation. *Queen* v. *Kalil and others*, 11 W. R., Cr., 18.

By Section 18, Act VII of 1864 (B. C.), salt, not being conveyed by the route and to the place prescribed in the rowanna, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under Section 39, and not in the Magistrate. *Queen* v. *Boidonath and others*, 7 W. R., Cr., 48.

If salt exceeding five seers is found within the limits prescribed by Section 12 of Act VII of 1864 (B. C.), unprotected by a rowanna or pass, the salt is contraband, and liable to seizure, and the parties transporting it are punishable under Section 16. It matters not whether any attempt or intention to sell is proved or not. *Queen* v. *Ofatulla*, 6 B. L. R., 381.

Held that until an enquiry is made under Section 31, Act VI of 1865 (B. C.), the Protector of Labourers is not competent to act under Section 32.

That the procedure under Section 31 must be conducted in accordance with Section 444 of the Criminal Procedure Code.

That to support a conviction under Section 32, Act VI of 1865 (B. C.), it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was made. *In the matter of the Northern Assam Tea Company*, 3 B. L. R., A. Cr., S. C., 12 W. R., Cr., 29.

The wages of labourers employed under Act III of 1863, and VI of 1865 (B. C.), are leviable out of the land, and form a primary charge upon it, into whosesoever hands it may pass. Therefore such labourers are entitled to their wages in full against a company which is being wound up; and purchasers of the land from the company are entitled to set-off against the purchase-money payments made by them to such labourers on account of wages due to them by the company previous to the purchase. *In the matter of the Indian Companies' Act*, 1866, *and the S. Cachar Tea Co.*, 2 Ind. Jur., N. S., 180.

A putneedar, in execution of a decree for rent against his mourasidar, attached certain property of his, including a parcel of land belonging to the plaintiff, who, to save that portion, paid the whole amount due, and sued the mourasidar to recover the portion he ought to have paid. The suit was dismissed, no obligation on the plaintiff to pay having been shown. He appealed, alleging that her portion was within and subordinate to the holding of the mourasidar, and to sell would have jeopardized her holding.

Held that the case was rightly remanded by the lower Appellate Court, but that the issue to be tried was whether the plaintiff was a party who came under the provisions of Section 6, Act VIII (B. C.), 1865, read with Section 13, Regulation VIII of 1819, more particularly with Clause 3. *Luckhee Prea Debia* v. *Brindabun Dey*, 12 W. R., 313.

The length of notice to be given to persons holding licenses for carrying on slaughter-houses under Act VIII of 1865 (B. C.), must be determined in each case according to its own particular circumstances. *E. Vere Haldane*, 6 W. R., 77.

Madras Act VIII of 1865, equally with the prior enactments, abstains from authorizing the cognizance by the revenue authorities of suits for arrears of rent. *Gauri Anantha Parathesi* v. *Kaliappa Setti*, 3 Mad. Rep., A. J., 213.

An appeal to the Collector is not necessary as a condition precedent to a suit in the Civil Court under Section 13, Act VIII (B. C.) of 1865. *Nogendro Chundro Ghose* v. *Musruff Bibee*, 15 S. W. R., Cr., 17.

The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him at Madras. While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit; but he returned to Vellore previous to the hearing of the suit. The Small Cause Court Judge of Vellore held that the defendant was dwelling at Vellore at the time of the institution of the suit within the meaning of Section 8, Act XI of 1865. *Held* that there was nothing in point of law to prevent the Judge from affirming his jurisdiction. *D. Kissun Sing* v. *Lieut. R. L. N. Sturt*, 5 Mad. Rep., 471.

Held that the words "three miles" in (Bombay) Act III of 1866, Section 1, Clause 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained. *Reg.* v. *Bhekoled Vinohá and others*, 4 Bom. Rep., Cr., 9.

Plaintiff, on the 15th June, 1868, immediately after the death of his debtor, brought a suit against the debtor's widow (1st defendant) for recovery of the debt, and, before judgment, obtained attachment

and sale of property of the deceased, the sale proceeds being kept in deposit in the Court. These proceedings took place in June and July; and on the 15th August administration was granted to the Administrator-General, the widow not having taken out administration. On the 28th September, the Administrator-General was, on plaintiff's application, made defendant in place of the widow, and the suit proceeded against him to decree. Before plaintiff applied to execute this decree, the amount of the sale proceeds was, by the direction of the Civil Judge, handed over to the Administrator-General; accordingly, on this ground, plaintiff's application to the District Moonsiff for execution was rejected. He appealed unsuccessfully to the Civil Court.

Held, on special appeal, that Section 33 of Act XXIV of 1867 took away plaintiff's right to payment otherwise than rateably with the other creditors. *Haninabala Sannappa* v. *Mrs. Cook and J. Miller, Esq.*, 6 Mad. Rep., 346.

The fine imposed under Section 17, Act IX of 1868, for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out. *The Queen* v. *Ram Gobind Chuckerbutty*, 2 B. L. Rep., Ap., 40; S. C., 11 W. R., Cr., 13.

A Magistrate was held to have acted rightly in dismissing a complaint under Section 17 of Act IX of 1868, because there was no evidence that the names of the accused were included in the list mentioned in Section 17. In prosecution under this Act, a Magistrate must proceed in the manner laid down in Chapter XV of the Code of Criminal Procedure, and must require proof of all the facts which go to constitute the offence. *Queen* v. *Khettro Mohun Ghose and others*, 11 W. R., Cr., 56.

A suit against the King of Oude, commenced without the consent of the Governor-General in Council, was held to be null and void, even though it had been instituted, and judgment had been given, before the passing of Act XIII of 1868. *Begum Bibee* v. *The King of Oude*, 11 W. R., 116.

Under Act XIV of 1868, the police are not empowered to put a woman on the register of "common prostitutes" against her will.

The penalty prescribed by Section 11, Act XIV of 1868, for disobedience of any of its rules, is for a "woman" who voluntarily registers herself as a "common prostitute."

A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868, against the legality of her registry, or that she is not a common prostitute.

The possession of a registry ticket is not sufficient evidence of being a common prostitute. *In the case of Lakhimoni Raur*, 3 B. L. R., A. Cr., 70; S. C., 12 W. R., Cr., 55.

A Judge has no authority under Act XVI of 1868 to order a Subordinate Judge to try proceedings in execution of a decree which are a portion of the original civil suit tried by himself. *Moonshee Aftabodeen Ahmed* v. *Mohinee Mohun Dass*, 15 S. W. R., C. R., 48.

A Zillah Judge has no power to transfer proceedings in execution of a decree to a Subordinate Court, unless duly authorized under Section 19 of Act XVI of 1868. *Sheikh Mahomed Kumroodeen* v. *A. Ujoobunissa*, 17 N. W. R., 113.

Under Section 18 of Act XVI of 1868, an appeal lies to the District Judge if the subject-matter of the original suit does not exceed in value Rs. 5,000. It is immaterial whether or not the subject-matter of the appeal exceeds that amount in value. *Musst. Masooma Bebee* v. *Musst. Nazur Fatma*, 17 N. W. R., 117.

(*h*) *Municipal Acts.*

Where a party is injured by an order of Municipal Commissioners under Act XXVI of 1850, issued in respect of a subject within their jurisdiction, he is debarred from bringing a suit in the Civil Court to annul such order, until he has exhausted the remedies afforded to him by the rules framed by Government in accordance with the provisions of the Act. *Sakhárám Shridhur Gadkuri* v. *The Chairman of the Municipality of Kulyán et al.*, 7 Bom. Rep., A. C., 33.

The managing committee of Municipal Commissioners appointed under Act XXVI of 1850 have no power to try and convict persons for alleged breaches of rules made in pursuance of that Act. The power to inflict fines for such offences is, by Section 10, vested in the Magistrate. *Reg.* v. *Mávji Dayál; Reg.* v. *Kalidas Keval*, 5 Bom. Rep., Cr., 10.

The Chairman of Municipal Commissioners appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him.

Held, accordingly, that disobedience of such an order was not an offence within Section 174 of the Indian Penal Code. *Reg.* v. *Purshotam Válji*, 5 Bom. Rep., Cr., 33.

Where accused was convicted under Act XXVI of 1850 of disobedience of an order made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court as being illegal. *Reg.* v. *Jagunnath Bhat bin Appa Bhat*, 5 Bom. Rep., Cr. C., p. 103.

A notice under any of the Sections of Act III (B. C.) of 1864 preceding Section 81 may, under that section, either be served upon the person addressed, or left with some servant of the family.

The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Municipal Act have been substantially complied with, Section 48 protecting the Commissioners against such mistakes. *Gopee Kishen Gossain* v. *W. H. Ryland*, 9 W. R., 562.

The obstruction of a drain by a tree blown down by a cyclone is not an obstruction within the meaning of Section 57 of Act IV of 1864 (B. C.).

The owner of ground is answerable under Section 67, whether his ground was made dirty by himself or by somebody else. *Anonymous*, 3 W. R., Cr., 33.

The owner of land is punishable if his land is made filthy by other people, unless he has let it,

when the occupiers are liable. *Queen* v. *Parbutty Churn Sircar*, 3 W. R., Cr., 57.

A suit cannot be maintained to recover assessment unlawfully levied by Municipal Commissioners under (Madras) Act X of 1865. *Bhimavarapu Bálaramáyá* v. *G. R. Hodson*, 3 Mad. Rep., A. J., 370.

A notice of action against Municipal Commissioners is absolutely necessary under Section 77, Act III of 1864 (B. C.). A notice of objecting to and asking for a reconsideration of the order complained of is not sufficient. *Abhoy Nath Bose* v. *The Chairman and the Deputy Chairman of the Municipal Committee of Kishnagur*, 7 W. R., 92.

The Municipal Commissioners were held entitled, under Section 73, Act III of 1864 (B. C.), to recover from the defendant the expense of clearing away any jungle which they found on his land, upon his failure after notice to clear it himself within the time specified in the notice. *Lord H. Ulick Browne, Chairman of the Municipality*, v. *Woomesh Chundra Roy*, 7 W. R., 213.

Plaintiffs, as proprietors, sued the Howrah Municipal Committee to recover possession of land from which they alleged they had been ousted by defendant's stacking stones thereon; and they regarded their cause of action as arising when the Municipal Commissioners refused to remove the stones. Defendant's case was that the land had been in possession of Government till Act III (B. C.) of 1864 was extended to Howrah, since which time the Commissioners had held the land.

Held (by Bayley, J.) that the Municipal Commissioners had acted properly under the law, and were entitled to the application of Section 87, Act III (B. C.) of 1864.

Held (by Phear, J.) that Section 87 could only protect defendants if sued for damages consequent on a wrong done by them in the reasonable belief that they were exercising their lawful powers; not if they were sued by parties kept out of possession by their continued wrong-doing. *Poorno Chunder Roy and others* v. *H. Balfour, Chairman of the Municipal Commissioners at Howrah*, 9 W. R., 535.

Municipal Commissioners are entitled to one month's notice of action under Section 87, Act III (B. C.) of 1864, while they have been acting *bonâ fide* in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover thereof. *Gopee Kishen Gossain* v. *W. H. Rayland and others*, 9 W. R., 279.

Held that the Magistrate, as President of Municipal Committee, has no power to issue an order forbidding as a nuisance an Act not included in the rules passed under Act XXVI of 1850. *Government* v. *Sham Soonder, petitioner*, 1 Agra Rep., 34.

A Joint Magistrate, though Vice-Chairman of a Municipal Committee, can impose fines under Act IV of 1864 (B. C.).

The Joint Magistrate should make a record of his proceedings before passing sentence. *Anonymous*, 3 W. R., Cr., 33.

Act III of 1864 (B. C.), Section 67—Fine for suffering premises to be in a filthy state. *Queen* v. *Dwarka Nath Hajra*, 16 S. W. R., Cr. R., 70, and 8 B. L. R., Ap., 9.

A Municipal Commissioner invested with the powers of a Magistrate under Act III (B. C.) of 1864, is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially; and so long as he acts within his jurisdiction, and in good faith, no action for damages will lie against him in a Small Cause Court. *Shahazada Halimoozzumuh* v. *Municipal Commissioners of Hoogly*, 13 S. W. R., C. R., 340.

The words "uses any premises" in Section 77, Act III of 1864, mean using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. *The Municipal Commissioners for the suburbs of Calcutta* v. *Zamir Shaikh*, 16 S. W. R., C. R., 4.

The municipal authorities have no power under Section 57, Act III of 1864, Bengal Council, to impose a fine on a person for blocking up a drain which is not shown to be public property, or along the side of any highway. *Bani Madhub Bannerjee*, 14 S. W. R., Cr. R., 23.

By Section 19 of the Bye-laws of the Howrah Municipality, framed under Section 84, Act III of 1864 (B. C.), and confirmed by the Lieutenant-Governor, it is within the discretion of the Municipality to refuse permission for the excavation of a tank, and the Courts have no power to interfere with the *bonâ-fide* exercise of such discretion. *Bhyrub Chunder Bannerjee* v. *Chairman of the Howrah Municipality*, 17 S. W. R., C. R., 215.

Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro-formâ* defendants in the suit. This suit was dismissed as barred by the Law of Limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months, in consequence of his having been dispossessed by the Municipal Commissioners.

Held that the suit was not barred by Section 2, Act VIII of 1859, and that Section 87, Act III of 1864 (B. C.), did not apply.

Semble,—Act III of 1864, Section 87 (B. C.), relates only to actions brought in respect of acts done by the Commissioners under that Act for the purpose of the Act. *Price* v. *Khilat Chandra Ghose*, 5 B. L. R., Ap., 50, 13 S. W. R., C. R., 461.

Where the accused was charged with a breach of Section 77, Act III of 1864, in not taking out a license for a wood-yard, and he pleaded that the yard had been in existence prior to 1864, it was held that the Magistrate was wrong in refusing to enquire into the allegation as to the existence of the yard prior to 1864. *Chairman of the Suburban Municipal Commissioners* v. *Umbica Churn Mookerjee*, 15 S. W. R., Cr. R., 84.

By Section 63, Act III (B. C.), 1864, Municipal Commissioners, if they deem a house or building to be in a ruinous state, may, after the notice prescribed by that section, cause the same to be taken down. *Gopeekishen Gossain* v. *Mr. W. H. Rayland and others*, 9 W. R., 279.

Held that, under Section 180 of Act VI of 1863 (B. C.), the Justices of the Peace are required to keep up and maintain the existing tanks, reservoirs, &c., vested in them, or to substitute a new tank, reservoir, &c., for any existing tank, reservoir, &c., *i.e.*,

new works of a like kind, each for each, in place of the old. Therefore, where the Justice had closed a tank for the purpose of constructing in its place a different means of water supply, a mandamus was issued directing the Justices to maintain the tank, and supply it with water, or to substitute another in its place, and supply that with water. *Queen* v. *The Justices of the Peace for the Town of Calcutta*, 2 Ind. Jur., N. S., 282.

The Chairman of the Justices of Calcutta, on the complaint of the Health Officer, issued a warrant for the seizure of certain articles of food, and without notice to the owners, or reducing the proceedings to writing, condemned them as unfit for use. In support of a rule *nisi* for a *certiorari* for bringing up the order that it might be quashed, it was argued that the Chairman had not, as such, jurisdiction to make the order; and that it was invalid, as notice had not been given, and the proceedings had not been reduced to writing. Cause was shown that the description of the Chairman was immaterial, as he was also a Justice of the Peace, and that such summary proceedings were necessary for the public safety.

Held that the Act does not empower the Chairman of the Justices, as such, to issue a warrant under the 200th Section; that such a warrant must show, on the face of it, that the Justice issuing it had jurisdiction; that the application under Section 200 must be reduced to writing; that the evidence taken therefrom must be recorded; and that notice must be given to the party proceeded against. *Day and Co.* v. *The Justices for the Town of Calcutta*, Bourke's Rep., O. C., 232.

A suit cannot be maintained to recover assessment unlawfully levied by Municipal Commissioners under (Madras) Act X of 1865. *Bhimavavarapu Balaramaya* v. *G. R. Hodson*, 3 Mad. Rep., A. C., 370.

R. was fined by the Deputy Magistrate for using an unlicensed slaughter-house. He subsequently gave an ijara or lease to A. to carry on the business. R. was prosecuted again for evading the law by "slaughtering cattle or allowing cattle to be slaughtered" without a license. He was fined Rs. 200 by the Deputy Magistrate. On appeal to the Sessions Judge he was acquitted. On the motion of the Municipal Commissioners for a rule to set aside the order of the Sessions Judge, it was *held*, per Jackson, J., that R., by giving a lease to A., had parted with his interest, and had ceased to have any power to allow or disallow the slaughtering of cattle. That Section 7, Act VII (B. C.) of 1865, provides penalties only, and does not describe an offence or relate to a conviction. It is quite another question whether the act itself is an offence irrespective of Section 7, and whether R. could be dealt with as an abettor.

Per Mitter, J. (*dissenting*). The Judge has found that the lease was given by R. with the avowed object of continuing the slaughter-house, and admittedly for the express purpose of evading the law; the case therefore falls within the express words of the section, "or allows cattle to be slaughtered." *In re Municipal Commissioners for the Suburbs of Calcutta*, 6 B. L. R., Ap., 28, and 14 S. W. R., Cr. R., 67.

By Section 151 of Act VI of 1863 (B.C.), the Justices are empowered in making any main or sewers for the drainage of Calcutta, "to carry such sewers through, across, or under any street, or any place laid out as or intended for a street, or any cellar or vault which may be under any of the streets, and (after reasonable notice in writing in that behalf) into, through, or under any enclosed or other land whatsoever, making full compensation for any damage done thereby; and if any dispute shall arise touching the amount or apportionment of such compensation, the same shall be settled in the manner thereinafter provided for the settlement of disputes respecting damages and expenses." Section 229 provides that "in all cases where any damages, costs, or expenses are by this Act directed to be paid, the amount of the same, in case of dispute, shall be ascertained and determined by a Judge of the Calcutta Court of Small Causes." Section 226 provides that a month's notice shall be given before any action is brought under the Act against the Justices. By Act V of 1857, the Oriental Gas Company was empowered to lay down pipes and execute other necessary works for the supply of gas to Calcutta. In an application by the Company for a writ of mandamus to compel the Justices to join with the Company in referring to a Judge of the Small Cause Court to ascertain the amount payable to the Company as compensation for damage alleged to have been occasioned to their pipes, &c., by the drainage works of the Justices, an affidavit was filed, in which the Company's manager stated specifically the loss that had been occasioned, and that he had on personal inspection satisfied himself that the loss was occasioned by the negligent execution of the drainage works of the Justices. The affidavit on behalf of the Justices stated that "in carrying out such drainage works, the Justices, or their contractors, agents, or servants, have not damaged the pipes, &c., of the Company, and that the Justices deny that they are in any manner liable for the damage in respect of which compensation is sought by the Company, or that they have done or caused any damage to the Company."

Held (per Phear, J.), on the facts, that the Justices' works had caused damage to the Company's main and pipes.

Held also, that the compensation-clause of Section 151, Act VI of 1863 (B.C.) makes the Justices liable to compensate owners of land, or of any interest in land through which the drainage works are authorized to be carried, for any damage caused by any proceedings in such works. It applies to cases where the works have been done with due care and skill, and where, but for the Act, there would have been a right of action against the Justices.

Held also, that the denial of liability by the Justices was simply a general denial that any damage had been done to the Company; the question, therefore, between the parties resolved itself into a dispute as to the amount of damage, which, by Section 151, must be settled in the manner provided by Section 229. Hence the Company was entitled to a writ of mandamus.

Held also, that Section 226 applies to proceedings *dehors* the Act, and not to proceedings taken to enforce compliance with the provisions of the Act.

Held (per Couch, C. J., and Markby, J. on appeal),

the word "judgment" in Clause 15 of the Letters Patent of 1865, means a decision, whether final, or preliminary, or interlocutory, which affects the merits of the question between the parties by determining some right or liability. The order of the Court below, that a writ of mandamus should issue, was not a "judgment," therefore no appeal lay from it.

Held also, that the proceeding by way of mandamus is a "proceeding in a civil case" within the meaning of Rule of April 4th, 1866. *Justices of the Peace for Calcutta* v. *Oriental Gas Company*, 8 B. L. R., 433, and 17 S. W. R., C. R., 364.

In a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices are authorized to make by Act VI of 1863 (B. C.), it being shown that the Justices have entrusted the execution of the work to skilled and competent contractors,—*Held* the Justices were not liable.

In such a suit no cause of action will be allowed to be raised, except that disclosed in the notice of action required to be given to the Justices by Section 226 of the Act. *Ullman* v. *The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

No suit can be maintained against the Justices of the Peace of the City of Bombay in respect of an alleged wrongful distress for unpaid rates levied by the Municipal Commissioner of that city, either under the provisions of Act II of 1865 (Bombay) or Act IV of 1867 (Bombay). In such a suit the Municipal Commissioner himself or the actual tortfeasor is the proper defendant. *Shibsunkur Govindram* v. *The Justices of the Peace of the City*, 5 Bom. Rep., O. C., 145.

Madras Act III of 1869 gives a Tahsildar power to issue summonses. 6 Mad. Rep., Rul. XLIV.

Madras Act III of 1869 confers no authority upon revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue. 5 Mad. Rep., Rul. XXVIII.

An order to repay a fee under Section 31 of Act VII of 1870 is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court, and may be retained in deposit pending an appeal, where an appeal lies. 5 Mad. Rep., Rul. XXVIII.

Section 154 of Madras Act III of 1871 was not intended to apply to omissions to take out licenses. It applies to breaches of the Act which, in a policeman's view, are offences, and regarding which, if committed within his view, one of two courses is open to him—*viz.*, to arrest without warrant, or to lay an information before a Magistrate, and apply for a summons or warrant. If he adopts the latter course, then Sections 43 and 66 of the Criminal Procedure Code require that the information should be reduced to writing, and given on oath or solemn affirmation, before any process is issued thereon. Section 68 of the Code is limited to cases in which no complaint has been made, and the Magistrate, *proprio motu*, institutes a prosecution. 6 Mad. Rep., Rul. L.

Under Section 43, Act XXI of 1856, only persons holding licenses, and not their servants, are subject to the penalties specified in the section. *Queen* v. *Ramkishen*, 8 W. R., 4.

(*j*) *Abkarry Acts.*

In a suit brought by plaintiff for the specific performance of an agreement entered into between the plaintiff and defendant, whereby the defendant, an Abkarry contractor, undertook to sub-let to plaintiff the Abkarry of a Talook, and also to recover damages for the breach of contract,—*Held* that Section 99 of the Abkarry Amendment Act (Madras Act III of 1864) did not affect the rights and liabilities of the parties *inter se*, under the terms of an unexecuted contract to sub-rent, although the Act would prevent the sub-rentor deriving any benefit under an executed contract of sub-renting from the excise, or the manufacture or sale of liquor, as defined in Section 2, until he had complied with the condition prescribed in Section 9 of the Act. *Venkata Kristnurjia* v. *Venkatachalaiyar*, 5 Mad. Rep., 1.

Sweet palm juice, which by exposure to the operation of natural causes ferments and becomes toddy, is as much manufactured by the person who exposes it as if the same result were produced by the process of distillation. 5 Mad. Rep., Rul. XXVI.

The Magistrate convicted the accused under Section 21 of Madras Act III of 1864, and directed the confiscation of certain arrack found in his possession,—*Held* that the accused being a licensed vendor, the arrack was not liable to confiscation. 5 Mad. Rep., Rul. XII.

Primâ facie, toddy is fermented palm juice. A conviction under Section 21 of Madras Act III of 1864, for selling toddy without a license, upheld, although no evidence was given as to whether fermentation had taken place. 5 Mad. Rep., Rul. XXXVI.

Upon a conviction under Section 22 of (Madras) Act III of 1864, for conveying liquor without valid permits, it appearing that the defendants produced permits by the Talook Abkarry Renter, covering the amount of liquor which was being conveyed, but made out in the names of third parties who were not present when the liquor was seized, but on whose behalf the liquor was at the time of seizure being conveyed,—*Held* that the permits were valid, and the conviction was bad. 5 Mad. Rep., Rul. XXIX.

The Lord's Day Act (29 Car. 2, c. 7) does not extend to criminal cases in British Burmah. A was convicted and fined for the breach of an Abkarry rule. *Held* that the conviction could not be supported, on the ground that the Abkarry rule had not the force of law. *Abrahim* v. *Queen*, 1 B. L. R., A. Cr., 17.

The Abkarry Acts (XXI of 1856, XXIII of 1860, and XX of 1864) not having been extended to British Burmah, and no power being vested in the Chief Commissioner to make rules containing penal clauses, the Abkarry rules passed by that functionary have not the force of law. *In re Abraham, prisoner*, 10 W. R., 350.

XI.

EVIDENCE.

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1.—ADMISSIONS.

The admission of a defendant's vakeel in Court was held to be legal evidence of the receipt of money, and to do away with the necessity for other proof. *Kaleekanund Bhuttocharjee* v. *Gireenbald Dabia and others*, 10 W. R., 322; *Matadee Roy* v. *Modhoosoodun Singh and others*, 10 W. R., 293.

A statement made by a party is not, *ipso facto*, conclusive against him, though it may be used against him and may be evidence, more or less weighty, possibly even conclusive, according to the circumstances of each case, and the result come to by judicial investigation. *Ayetun and others* v. *Ramsebuk Poddar and others*, 12 W. R., 156.

An agent's admission that he purchased as an agent is evidence against his heirs that the purchase was not made by him on his own account. *Goreeboollah Sircar* v. *G. D. Boyd*, 2 W. R., 190.

Admission cannot be presumed from non-denial. If a fact, or a document in support of a fact, is to be proved, it must be proved by legal evidence whether the fact is directly in dispute or not. *Kirteebas Maithey* v. *Ramdhone Khara*, 2 Ind. Jur., N. S., 197; 7 W. R., 526.

The strict rule that averments not traversed must be taken to be admitted, is not applicable to the Indian Courts. *Anundomoyee Chowdhrain* v. *Sheeb Chunder Roy*; 2 W. R., P. C., 19.

Where a person uses the admission of another as evidence the whole admission must be put in. He cannot put in half and exclude the other half. Those who have to decide upon the evidence are not bound to believe the whole of the statement. *Rajah Nilmoney Singh Deo* v. *Ramanoograh Roy and others*, 7 W. R., 29.

Admissions, &c., by the parties in a former arbitration may be used in evidence in a subsequent suit. *Huronath Sircar and others* v. *Preonath Sircar and others*, 7 W. R., 249.

Where a plaintiff deliberately claimed lands as rent-free he was not allowed, merely on the ground of the proprietor admitting the lands to be leased to plaintiff's vendors, or even of the defendant making a somewhat similar admission, to benefit by such admissions and vary his claim. *Nidha Chowdhry* v. *Bunda Lall Tacoor and others*, 6 W. R., 289.

Plaintiff sued to recover rent for several years on an instrument alleged to have been signed by all the ryots on the estate. Defendant denied having been a party to the instrument, but admitted that he held a small portion of land of the defendant with a small rent, and that somewhat more than a year's rent was due.

Held that as plaintiff relied entirely upon the admission of the defendant, both as to the amount due and proof of his cause of action, he must

accept that admission as a whole. *Bonomalee Churn Mytee* v. *Sheikh Habez-ood-deen*, 12 W. R., 317.

Held that the fact of defendants being allowed to appear as co-plaintiffs in a redemption suit, to which plaintiff was no party, cannot be received in evidence as an admission adverse to plaintiff's interest; and so also the admission made by Kaiwal, plaintiff's brother, and "lumberdar," cannot, merely on account of his being such, be held as binding against the plaintiff, unless it be shown that he (Kaiwal) was invested by plaintiff with sufficient authority in that behalf. *Bucha* v. *Lullee and others*, 2 Agra Rep., A. C., 20.

In a suit by a daughter for property left by her father, in which the defendants relied upon certain admissions said to have been made by plaintiff relinquishing the share in the inheritance left by her father, and in which they also set up a will of the father conveying the property to others, the lower Court should have enquired into the genuineness of the will, and required the defendants to prove that the admissions, which plaintiff impugned, emanated from her, or from some one duly authorized by her to make them. The mere fact that the admissions were contained in statements filed in a Court of Justice in her name does not necessarily prove that they were made by her. *Asmutoonissa Bebee* v. *Atta Hafiz and others*, 8 W. R., 468.

A mere admission by the defendant of plaintiff having purchased a jote is insufficient to prove that he ever was defendant's tenant. *Sheikh Bakur Ali Chowdhry* v. *Sheikh Ashkur Ali*, 5 W. R., 156.

An admission subsequently made by a debtor whose property has been sold is not evidence against the purchaser of the property. *Khemunkuree Chowdhrain* v. *Ghoorchunder Mojoomdar*, 5 W. R., 268.

The plaintiffs, in their answer to a plaint by these defendants, admitted that they had received a certain sum on behalf of the defendants, and alleged that they had applied it in a particular way. The Judge discredited this statement, and made a decree not founded upon it. The plaintiffs thereupon sue for the sum, the receipt of which they had so admitted. *Held* that such admission was evidence against them. *Bhugmunt Narain Jha* v. *Loll Jha*, Marsh., 48.

Where tenants sued for a declaration that their holding was mokurruree at a given rent, and the surburakar of their zemindar admitted their right on behalf of the zemindar, who himself filed a petition corroborating his surburakar's statement, it was held that these admissions would bind any subsequent zemindar not being an auction-purchaser at a sale for arrears of Government revenue. *Messrs. R. Watson and Co.* v. *Nobin Mohun Baboo*, 10 W. R., 72.

In a suit for enhancement of rent, plaintiff's admission that defendant had held the tenure for 30 or 32 years at the same rent, was held not to amount to an admission that the land had been held at that rate of rent from the Permanent Settlement, and that plaintiff should have an opportunity allowed him of rebutting any presumption which might arise from that admission. *Pearee Mohun Dutt* v. *Radha Madhub Mookerjee*, 10 W. R., 427.

The admission of a lessor does not bind a lessee in certain cases in which a *bonâ-fide* act might have bound. *Sutrooghun Dutt* v. *Brojogopal Ghose*, 3 W. R., 143.

In a suit for enhancement of rent a defendant is not bound to traverse a statement made by the plaintiff in the notice of enhancement as to the description of the land in question. The doctrine of admission by non-traverse is not applicable to written statements filed under Act X of 1859. *Shadhoo Singh* v. *Ramanoograha Lall*, 9 W. R., 83.

The statement of a party to a suit is admissible evidence against him to prove the contents of a written instrument. *Muttukaruppa Kaundan* v. *Rama Pillai*, 3 Mad. Rep., A. C., 158.

Suit by a purchaser from a mortgagee against a dur-mokurrureedar for the cancellation of his mokurruree lease granted without authority by the mortgagor. In a former suit brought by the mortgagee for possession the mortgagor admitted the mortgage. *Held* that, although that admission was conclusive as between the mortgagor and the mortgagee, the colluding parties, yet that in the present case, brought to avoid the defendant's title on the strength of an alleged collusive mortgage, it was quite competent to him to contest its *bonâ-fide* nature. *Donunjoy Dey Potedar* v. *Dwarka-Nath Singh*, 5 W. R., 280.

Muttukuruppa Kaundan v. *Rama Pillay*, 3 Madras Rep., 158, applies to the defendant's admission of a transaction embodied in a written document not receivable in evidence, and is no authority whatever for construing a document present to the Court upon a defendant's admission. *Máhálatchmi Ammál* v. *Palani Chelli*, 6 Mad. Rep., 245.

An admission made by an intervenor in a former suit is evidence against him, *quantum valeat*, in a subsequent suit. *Sheo Surn Singh* v. *Ram Khelawan Singh*, 14 S. W. R., C. R., 165.

The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety, nor to injure the right of a purchaser from her of such moiety. *Numpoo Sahoo* v. *Budhoo Jummadur*, 13 S. W. R., C. R., 2.

In a suit to recover a specific sum of money which had been attached by the Magistrate where defendant expressed his intention to take the money for the purpose of investing it in trade,—*Held* that defendant's admission was sufficient evidence to show that the money was in danger of being alienated within the meaning of Section 92 of the Code of Civil Procedure *Goluck Chunder Goho* v. *Mohun Chunder Ghose*, 13 S. W. R. C. R., 95.

In a suit by the grandchildren of the deceased daughter of a member of a joint Hindu family, who, though not entitled to his property as his heirs, had been long in possession, the surviving daughter, in whom according to Hindu law her father's interest would now be legally vested, admitted by a petition filed in this suit that by her gift or relinquishment plaintiff had a title to her father's share. The admission was *held* to be evidence

that such title existed anterior to the commencement of the suit. *Gour Lall Singh* v. *Mohesh Narain Ghose*, 14 S. W. R., C. R., 484.

A copy of a defendant's deposition in a former suit having been put in by plaintiff at a late stage of the case, when defendant had no means of explaining away any supposed admission therein,—*Held* that the first Court was wrong in accepting the same as an admission binding on defendant, and that the lower Appellate Court was right in sending for the defendant and examining him on the subject. *Shaikh Komuroodeen* v. *Shaikh Monye Mundle*, 16 S. W. R., C. R., 220.

When a defendant admits any one fact contained in the written statement of the plaintiff, and thereby excludes independent evidence thereof, he is not entitled to say that the plaintiff has relied on his statement as evidence, and that he (defendant) is in consequence in a position to claim that the whole of it may be read as evidence in his own favour. *Shaikh Shurfuraz Mollah* v. *Shaikh Dunnoo*, 16 S. W. R., C. R., 257.

A plaintiff abandoning his own case and falling back on the admission of the defendant is bound to take these admissions as they stand and in their entirety. *Tarinee Pershad Sein* v. *Dwarkanauth Rukheet*, 15 S. W. R., C. R., 451.

An admission before a Registrar of the receipt of purchase-money attested by his endorsement, as required by Clause 3, Section 66, Act XX of 1866, though evidence of the strongest and most reliable description, ought not to be treated as conclusive. In the face of such admission, however, the party seeking to get out of its effects must make out his case by very clear evidence. *Mahomed Hanef Meajee* v. *Mozhur Ali*, 15 S. W. R., C. R., 280.

Plaintiff sued in the Revenue Court for the recovery of rents fraudulently misappropriated by defendant, and upon defendant's allegation that plaintiff was etmamdar or gomashat, and not izardar, the Deputy Collector dismissed plaintiff's suit for want of jurisdiction. Plaintiff now sues in the Civil Court, and upon plaintiff again raising the plea of non-jurisdiction the Moonsiff came to the conclusion that plaintiff's allegation that he had been etmamdar was false. *Held* that any admission or allegation of the defendant in the former suit, put in evidence by the plaintiff, was amply sufficient to support the plaintiff's allegation in this suit that he had been etmamdar; and that the Moonsiff went out of his way to enquire into a fact which was not disputed by either of the parties. *Bhugwan Chunder Dutt* v. *Meehoo Lall Chuckerbutty*, 17 S. W. R., C. R., 372.

2.—Judicial Notice.

Where R. had tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of a Magistrate or of a Justice of the Peace,—*Semble*, the High Court was bound to take judicial notice that R. was a Justice of the Peace for Bengal. *Queen* v. *Nabadwip Gosawmi*, 1 B. L. R., O. Cr., 15.

3.—Oral Evidence.

Evidence given when a party never had the opportunity either to examine or to cross-examine the witnesses, or to rebut their testimony by fresh evidence, is not legally admissible for or against him, unless he consents that it should be so used. *Gorachand Sirkar* v. *Ram Narain Chowdhry*, 9 W. R., 587.

The oral evidence of persons able from their position to testify as to certain lands being mâl is not to be rejected as hearsay when they depose that they have known the lands to be mâl for many years, and that defendant has been in the habit of paying rent for them. *Dabee Prosaud Chatterjee* v. *Ram Coomar Ghosal and others*, 10 W. R., 443.

Oral evidence, if believed, may be as good for proving title to land as documentary evidence. *Durban Fukeer and others* v. *Nobin Chundra Mojoomdar and others*, 10 W. R., 217.

Where a pottah is obscure its meaning may be elucidated by oral testimony. *Mohun Lall Roy* v. *Urnopoorno Dossee and others*, 9 W. R., 566.

In the absence of any circumstance giving rise to a presumption that an alleged deed of absolute sale is a mortgage, a Civil Court is right in refusing to credit oral evidence to vary the express and unambiguous terms of the deed. *Radha Mohun Shamee* v. *Rammohun Surmah*, 9 W. R., 251.

Oral evidence is sufficient to prove boundaries. *Ranee Surut Soondury Dabia and another* v. *Rajendur Kishore Roy Chowdhry and others*, 9 W. R., 125. And possession. *Denobundhoo Suhaye* v. *James Furlong*, 9 W. R., 155.

Oral evidence is not admissible to set aside a deed of sale which, by its terms, is clearly absolute. *Jugobundhoo Mookerjee* v. *Luckheessuree Debia*, W. R., 1864, 388.

Parol evidence cannot be admitted to contradict a deed except when fraud, mistake, surprise, or the like is alleged. *Erskine and Co.* v. *Okhoy Chunder Dutt*, W. R., 1864, 58.

Oral evidence of witnesses deposing in general terms is not sufficient to establish fraud on the part of a former putneedar in converting mâl lands of the putnee in excess of 100 beegahs into rent-free lands, so as to entitle the present putneedar to resume them as invalid lakheraj. *Shibsoonduree Debia* v. *Syud Mahomed Ali*, W. R., 1864, 137.

As between Hindus oral evidence is admissible to show that land nominally purchased for A. and conveyed to him by an instrument in writing was really purchased for A., B., and C. *Palaniyappa Chetti* v. *Anuinugan Chetti*, 2 Mad. Rep., 26.

Where a suit was brought upon two native bonds executed by the defendant for the principal and interest reserved, and the bonds contained a statement that the principal had been borrowed and received in cash,—*Held* that it was open to the defendant to show, by evidence, that only a portion of the principal sum had been received by him. *Zanindor Sree Matee Ramchandra Vellia* v. *Verappa Chetti*, 2 Mad. Rep., 174.

Oral evidence of the discharge of an obligation executed by writing is admissible. *Ramanadamisaraiyar* v. *Rama Khattar*, 2 Mad. Rep., 412.

Oral evidence is admissible in equity where, by

way of defence, the object is to get rid of a written contract of a sale of land by showing that it is not the contract really entered into by the parties; but the evidence must be very powerful to induce the Court to believe that the terms expressed are not the real ones.

Evidence of a contemporaneous oral agreement to suspend the operation of a written contract of sale until an agreement for a re-sale is executed, is admissible as a defence even in a Court of law. *Dada Honaji* v. *Babajee Jagushet*, 2 Bom. Rep., 38.

Payment of a debt due on a samaduskut may be proved by oral evidence alone. *Gooman Gutoobhaee* v. *Sorabjee Burjorjee*, 1 Bom. Rep., 11.

In a suit between Mahometans a pedigree may be satisfactorily established merely by oral evidence. *Mohdin Ahmed Khan* v. *Syud Mahomed and others*, 1 Mad. Rep., O. C., 92.

An adjustment of accounts may be proved by oral evidence. *Kampillikarbasanappa* v. *Summa Samadiram*, 1 Mad. Rep., A. C., 183.

Oral evidence may be admitted to explain a document, but not to vary the terms thereof when such terms are in themselves clear and undoubted. *Rambuddun Singh* v. *Ranee Sree Koonwar*, W. R., 1864, Act X R., 22.

If an agent signs a promissory note without disclosing the names of his principals the latter are not liable, and no parol evidence is admissible with a view to establish their liability. *Sheo Churn Sahoo* v. *G. Curtis*, 3 W. R., 139.

Oral evidence must not be admitted of the contents of a decree of the original existence of which there is no clear proof. *Mufeezooddeen Cazee* v. *Meher Ali*, 1 W. R., 212.

A written document may be explained by oral testimony. *Chunder Nath Deb* v. *Gunga Gobindo Singh Roy*, 1 W. R., 94.

Parol evidence can only defeat a written contract when mistake or fraud is proved. *Kassim Mundle* v. *Sreemutty Noor Bebee*, 1 W. R., 76.

Parol evidence may be received to show that, notwithstanding a deed purports to be a deed of absolute sale, the true nature of the transaction is a mortgage. *Kashinath Roy* v. *Nowcowry Koondoo*, 1 W. R., 22.

Oral testimony, if worthy of credit, is sufficient, without documentary evidence, to prove a fact or a title. *Ram Soondur Mundul* v. *Akima Bibee and others*, 8 W. R., 366.

The lower Court received parol evidence to supply words in an old deed, lost in consequence of the parts on which they were written having been eaten by insects. *Held* that the parol evidence was properly admitted. *Benodhee Lall Roy* v. *Dulloo Sircar*, Marsh., 620.

Oral evidence is admissible to prove that consideration has not been paid at all or in full, notwithstanding the recital in the bond that full consideration has been paid. *Sheikh Wallee Mahomed* v. *Sheikh Koomar Ali and others*, 7 W. R., 428.

Extrinsic evidence is not admissible to alter a written contract, or to show that its meaning is different from what its words import; where there is a latent ambiguity in the wording, parol evidence is admissible to explain it. *Ram Lochun Shaha* v. *Unnopoorna Dassee*, 7 W. R., 144.

In a suit by a husband against his wife to recover property alleged to have been nominally sold by him to her, oral evidence was not allowed to be admitted to prove that no consideration ever passed between them, after he had solemnly in a written document admitted that it had passed. *Mussamut Ram Dee Koonwaree and others* v. *Shib Doyal Singh*, 7 W. R., 334.

Parol evidence is admissible to prove a verbal contract. *Ramguttee* v. *Ibrahim Ismailjee Seedut and another*, 7 W. R., 353.

In a suit for purchase-money oral evidence is admissible to show how the purchase-money has been apportioned. *Dhooka Thakoor* v. *Ram Loll Shahee and others*, 7 W. R., 408.

Parol evidence is admissible to prove the conduct of the parties, the value of the property, and other circumstances connected with the transaction between the parties to the written contract. *Phetoo Monee Dossia* v. *Greesh Chunder Bhuttacharjee*, 8 W. R., 515.

Parol evidence was held admissible to explain a deed, *e.g.*, to prove that a village not included in a putnee lease was intended by the parties to be included in it. *Dhunput Singh Doogur Roy Bahadoor* v. *Sheikh Jowahur Ali*, 8 W. R., 152.

Oral evidence cannot be adduced by a plaintiff who is barred by limitation, in order to supplement the want of an acknowledgment in writing, which, under Section 4, Act XIV of 1859, will prevent the ordinary rule of limitation from being applied. *Wooma Soondery Dassee* v. *Biressur Roy*, 8 W. R., 289.

In a suit brought on an allegation of forcible dispossession, oral evidence, if credible and pertinent, is sufficient to establish the fact of possession. *Sheo Suhaye Roy* v. *Godur Roy*, 8 W. R., 328.

Parol evidence is inadmissible to vary the terms of a written document, except under special circumstances. *Mussamut Sam Deye Kower* v. *Bishen Dyal Singh*, 8 W. R., 339.

Mere oral testimony is insufficient to prove possession of land without any of the documentary evidence (leases, agreements, collection papers, &c.) which is the invariable concomitant of actual possession in this country. *Thakoor Deen Tewaree* v. *Nawab Syud Ali Hossein Khan and others*, 8 W. R., 341.

Parol evidence is not admissible to vary a deed of sale so as to make it a mortgage deed, whether as against a party to the deed, or as against an innocent purchaser from the person in whose favour the deed was executed. *Mahomed Azeem* v. *Raesooddeen and others*, 6 W. R., 111.

Parol evidence is admissible to show that the name of the party used in a deed was only benamee for another person. *Tara Monee Debia* v. *Shibnath Tulapattur and others*, 6 W. R., 191.

Oral evidence may be received to prove that the consideration stated in a deed to have been paid was not paid, but not to prove that only a small portion of the consideration stated in the deed to have been received in full was to be paid at the

time, and that the rest was not only to remain in abeyance pending the result of a suit, but to be paid only in case of the successful termination of that suit. *Shewab Singh* v. *Sheikh Asgur Ali*, 6 W. R., 267.

There is no provision of law which forbids a Court to accept parol testimony on support of wasilat without the support of dakhilas. *Ram Kishen Chuckerbutty* v. *Rajah Gunga Narain Shaha*, 6 W. R., Mis., 39.

Remarks on the object and importance of cross-examination. *Meer Sujad Ali Khan Nawab Zoolfukar Dowla Bahadoor* v. *Lalla Kasheenath Doss and others*, 6 W. R., 181.

The evidence of one witness, if reliable, is sufficient to prove a fact. *Taleem Misser* v. *Mussamut Kundun Kooer and others*, 11 W. R., 194.

Where both plaintiffs and defendants rely upon a deed, the defendants specially claiming it as their own deed, and being purchasers under it, the latter are bound by its terms, and cannot be permitted to set it aside by the testimony of witnesses. *Khyroollah* v. *Abdool Muhjid and others*, 11 W. R., 307.

An adjustment of accounts may be proved by oral evidence. *Kamilikarebasavappa* v. *Somasamuddiram*, 1 Mad. Rep., 183.

The adjustment of accounts may be proved by verbal evidence, and need not necessarily be in writing signed by the party to be bound. *Poornima Chowdhrain* v. *Nittanund Shah*, W. R., F. B., 82.

In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under Section 15 of the Act of Limitation (XIV of 1859). The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees. *Held* that oral evidence was admissible to apply to the land to which it was intended to refer. *Valampuddicherri Padmanalhan* v. *Chowakuran Pudiapurayil Kunhi Kolendan*, 5 Mad. Rep., 320.

In a suit for specific performance of an agreement to convey certain property, the contract which was in writing was admitted by the parties, but the defendant alleged that there had been an understanding verbally come to, that if he repaid the consideration-money, with interest, &c., to the plaintiff within two years, the plaintiff would reconvey the premises to him. *Held* that the defendant could give parol evidence to supplement the written contract, and show that it was intended to be a mortgage, and not an absolute bill of sale. *Bholanath Khettri* v. *Kaliprasud Agurwalla*, 8 B. L. R., 89.

Where a written instrument provided for a joint tenancy and joint contract by all the parties executing to pay the whole rent of a village without any reference to the quantity of land in the holding of each,—*Held* that oral evidence was not admissible to show that separate specific contracts were entered into by each of the parties, and it made no difference that the evidence was put forward as evidence of a custom. *Lee Morris, the Receiver of the Estate of His Highness the late Rajah of Tangore*, v. *Panchanadu Pillay*, 5 Mad. Rep., 135.

4.—Proceedings and Records.

A judgment adduced as evidence is not to be rejected merely on the ground of its having been *ex-parte*. *Ojoon Shahoo* v. *Anund Singh and another*, 10 W. R., 257.

The report of a serishtadar, after local investigation, cannot be legal evidence, unless it is shown that no Civil Court Ameen was available for the duty in the district. *Goluck Chunder Kool* v. *Dookhee Ram*, 12 W. R., 209.

A written statement is not legal evidence, although the same penal consequences may follow from it if false as from a false deposition. *Ijootoolah Khan* v. *Ram Churn Gangooly*, 12 W. R., 39.

Where certain amounts of rent are recited in a judgment as proved to have been paid in certain years, such recital is evidence as between the parties to the suit. *Mussamut Reazoonissa* v. *Tookun Jha*, 10 W. R., 246.

Held (following the ruling of a majority of a Bench of three Judges) that a nazir's return is no legal evidence of service of notice. *Shahkoondun Lall* v. *Noor Aly*, 10 W. R., 3.

Held that in subjects of a public nature, such as to prove custom of preemption, &c., previous judgments between other parties are admissible as evidence, but must not be regarded as conclusive evidence, and that a custom is not established by one instance. *Tota Ram* v. *Mohun Lall*, 2 Agra Rep., A. C., 120.

In a suit for arrears of rent from a putneedar, where plaintiff stated that he had, on an allegation made by defendant that a dacoity had taken place in her house, allowed her an abatement; but finding from a judgment of the High Court that no such dacoity had taken place, he claimed full rents, —*Held* that the High Court's judgment was admissible, with a view to ascertain the truth of plaintiff's case. *Rajah Enayet Hossein* v. *Bebee Khooboonnissa*, 9 W. R., 246.

The report of a nazir deputed to enquire into the condition of property in dispute under Section 180, Act VIII of 1859, is admissible in evidence, although he was not an Ameen appointed under Act XII of 1856. *Buzal Rohim* v. *Lutafut Hossein*; *Mussamut Khodejoonnissa Bibee* v. *Lutafut Hossein*, W. R., 1864, 171.

Survey maps are not evidence of title in a dispute regarding a right of fishery. *Thakoor Broma* v. *Thakoor Lallitnarain Dao*, W. R., 1864, 120.

The report of an Ameen, however valuable in clearing up difficulties as to the identity and position of lands, is, generally speaking, of no value in determining questions connected with the possession of lands in dispute in past times. *Prannath Chowdhry* v. *Mirnomoyee Chowdhry*, W. R., F. B., 39.

The proceedings in two former suits where, under similar circumstances, though the exercise of the right was disputed on other grounds, the right of preemption was admitted to exist, may be received in evidence in support of the custom.

A person claiming to exercise his right of preemption must take the bargain as it was made. Any apportionment of the purchase-money is altogether illegal. *Madhub Chundra Nath Biswas* v. *Tomee Bewa and others*, 7 W. R., 210.

Statements made in a verified written statement of a party are not admissible in evidence (Bayley,

J., *dubitante*). *Mookta Keshee Dossee and others* v. *Koylas Chunder Mittra and others*, 7 W. R., 493.

A judgment in a former suit against plaintiff, to which defendant was no party, is not evidence between the parties to a present suit. *Mahomed Ali* v. *Shurum Ali*, 8 W. R., 422.

The proceedings of a Settlement Ameen cannot be taken as evidence against a person who was not a party in those proceedings. *Lall Singh and others* v. *Modhoosoodun Roy*, 8 W. R., 426.

The Full Bench Decision (7 W. R., 388) merely laid down that a decision in a suit *inter alios* relating to a question of adoption was not a judgment *in rem*, and was not conclusive; and that a judgment or order in a suit *inter partes* in which it had been found that the plaintiff had been adopted, could not be used at all as evidence of the fact of adoption in a suit *inter alios*. It only spoke of decrees or judgments *inter alios*, and never intended to speak of the admissibility or inadmissibility of thackbust maps or other similar surveys, as to whether they would or would not be evidence against persons who were not parties to them. *Motee Lall and others* v. *Ranee*, 8 W. R., 64.

In a suit for damages for defamation of character, a police officer's report may be evidence that the words were spoken, but not of malicious intention. *Mohendro Chunder Chuckerbutty* v. *Sorbo Kokhia Debia*, 11 W. R., 534.

The report of a nazir that summons has been served on a defendant is not legal proof of service. *Ram Soondur Chuckerbutty* v. *Kalee Komul Dutt*, 6 W. R., Act X R., 92.

The report of a sheristadar is not, under Section 180 of the Code of Civil Procedure, and in view of the fact that there was a Commissioner attached to the Court, legal evidence. *Byjnath Singh and others* v. *Moharanee Indurjeet Kooer*, 8 W. R., 331.

The investigation by a Magistrate in a case in which he found that the lands in dispute were not within his jurisdiction, but within that of another Magistrate, is not evidence. *Chunder Coomar Roy* v. *Kureem Buksh Chowdry*, 6 W. R., 137.

Remarks on the admissibility in evidence of judgments in previous suits, and on the inapplicability in all its strictness to the Courts of this country of the English rule that, except in matters of general interest or public rights, a verdict in a previous suit, to be admissible, must be between the same parties, or parties through whom the parties actually in litigation claim. *Doorga Doss Roy Chowdhry* v. *Nurendro Coomar Dutt Chowdhry*, 6 W. R., 232.

The report of an Ameen and the evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to the suit agreeing that the evidence should be taken before the Ameen, and that the matters in dispute should be referred to him for enquiry. *Sarat Chundra Roy Kanango* v. *The Collector of Chittagong*, 2 B. L. R., Ap., 3.

A verified petition is not evidence. *M. F. R. Miselbach, petitioner*, 6 W. R., Mis., 43.

An award under Act IV of 1840 between an intervenor and a party other than the plaintiff is no evidence against the plaintiff. *Ameeroonissa Khatoon* v. *Joggur Nath Roy and another*, 11 W. R., 113.

A copy of translation of what a Magistrate is supposed to have said in English in a proceeding under Act IV of 1840 is no evidence of an admission. *Ramjee Lall* v. *George Anderson, acting manager of the Rajah of Durbhangah, on behalf of the Court of Wards*, 7 W. R., 141.

Copies of depositions given in suits in which defendant was not a party cannot be treated as evidence in a case in which he is a party. *Shumbo Geer Gossain* v. *Ram Jewan Lall*, 8 W. R., 509.

A summary decree under Regulation VII of 1799, for the rent of 1265, at a higher rent than that at which the ryot claims to hold, which decree was passed in accordance with two summary decrees of 1263 and 1264, for the reversal of which a suit was then pending in the Civil Court, became a nullity on the reversal of these decrees, and is no evidence in a suit for enhancement of a variation of rent depriving the ryot of the benefit of the presumption under Section 4, Act X of 1859. *Joy Kishoree Chowdhrain and others* v. *Gopal Lall Thakoor*, 6 W. R., Act X R., 28.

The conviction in a criminal case is not conclusive evidence in a civil suit for damages in respect to the same act. *Bishonath Neogy* v. *Huro Gobind Neogy*, 5 W. R., 27.

Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable. *Hurrish Chunder Chuckerbutty* v. *Tara Chand Saha*, 2 B. L. R., Ap., 4.

The report of an Ameen upon a local investigation is sufficient evidence to support a decree, if it is believed by the Court, and considered sufficient, without further evidence to corroborate it. *Seetaram Mookerjee* v. *Ramnarain Mookerjee and others*, 6 W. R., 51.

Plaintiff, as representing decree-holder, sued for confirmation of title and for sale of the property in execution. Defendant's case was that he was purchaser for valuable consideration from the original judgment-debtor. The lower Appellate Court set aside this plea, on the ground that the High Court had declared in special appeal, in a previous litigation between defendant and another party, that the purchase in question was spurious, null, and void.

Held that the decision of the High Court, though not binding and final evidence against the defendant in this suit, was sufficient to give plaintiff a *primâ-facie* case which, by the rules of pleading, it was for defendant to rebut. *Abdool Kureem* v. *Suffer Ally*, 11 W. R., 118.

The mere fact of a particular rate of rent having been decreed against two ryots not having a right of occupancy, is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood. *Surahutoonissa Khatoon* v. *Gujonee Buktoor*, 11 W. R., 142.

Suit to recover damages for a malicious prosecution. The case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused. His sentence was reversed by the Court of Session, and then this suit was commenced.

Held that in the absence of any special and probable circumstances to rebut it, the judgment of

one competent tribunal against the plaintiffs affords very strong evidence of reasonable and probable cause. *Parimi Bapirajee* v. *Bellamkonda China Venkagyo*, 3 Mad. Rep., A. C., 238.

Where records from a Government office are required as evidence, it is for the Court to send for them; but papers required from a Court of Wards, which is not a Government office, must be obtained by the party who needs them, by means of a summons on the proper officer. *Sobbee Jha* v. *Soshunauth Jha*, 15 S. W. R., C. R., 150.

A judgment *inter partes* may be received in favour of a stranger as against a party thereto, not as concluding such party, but as evidence for what it is worth. *Bhyrub Nath Toee* v. *Kally Churn Chowdry*, 16 S. W. R., C. R., 112.

Where an order for a local investigation, under Section 180, Code of Civil Procedure, is not objected to by the opposite party at the time it is made, the Court is justified in viewing as evidence the report of the Commissioner, and the depositions taken by him, being a part of the record. *Ramrukha Roy* v. *Gobind Dass Byragee*, 15 S. W. R., C. R., 291.

A Civil Court is bound to receive as evidence authenticated documents named in the plaint, and filed by the plaintiff's pleader on the day appointed for fixing issues, even though through inadvertence of the amlah they were not made part of the record. *Ram Runjun Chuckerbutty* v. *Annund Chunder Mookerjee*, 15 S. W. R., C. R., 323.

Where there is a conflict between a Judge's memoranda of evidence and the recorded depositions of witnesses, the Court must be guided by the latter. *Moharanee Heeranath Kooern* v. *Baboo Burm Narain Singh*, 15 S. W. R., C. R., 375.

The lower Appellate Court was held to have committed an error in law in admitting the plaint filed in the previous suit as evidence against the present defendant, and also in relying on a decision of 1867, which did not determine any question of right as between the present plaintiff and the present defendant with reference to a julkur in dispute. *Kashee Chunder Mozoomdar* v. *Seetul Chunder Tullapatter*, 17 S. W. R., C. R., 151.

Decrees obtained by either party, to which the other was not a party, or the proceedings of the revenue authorities, though not binding, should be treated as evidence to which the Court should give such weight as it thinks proper. *Collector of Furreedpoore* v. *Kalee Dass Hazrah*, 17 S. W. R., C. R., 194.

Suit regarding a chur claimed by defendant as having formed on the bank of the river adjacent to his village, and by plaintiff on the ground that the bed of the river belongs to his village.

The survey in this case having been made at a time when neither of the present parties held any right in the land, but when both villages belonged to the same proprietor, was held to be some evidence of possession at that time, not only of the julkur but of the right of property in the river, and possession under these circumstances to be some evidence of title. *Mohinee Mohun Dass* v. *Khajah Assanoollah*, 17 S. W. R., C. R., 73.

5.—Admissibility of Evidence.

In a suit to recover property claimed by plaintiffs as shebaits lately in possession, and wrongfully ousted therefrom, it was held that statements made by the ancestors of plaintiffs and defendants were receivable as evidence.

In a suit of this kind it is incumbent upon the plaintiffs to prove the title which gives them the right to recover possession of the property, just as it would if they were seeking to recover upon a secular instead of a *quasi* religious title. *Nund Pandah* v. *Gyadhur and others*, 10 W. R., 89.

An original document upon which the plaintiff based his suit was proved to be in the possession of the defendant. In a previous suit the defendant's mother had filed the document, and on removing it had, according to the rules of practice, placed a copy there instead. The defendant on being summoned failed to produce the same. *Held* that a copy of such copy, so filed in Court, was admissible as evidence. *Held* also that a mother can bind her sons acting in good faith as their guardian. *Makbul Ali* v. *S. M. Masnad Bibee*, 3 B. L. R., A. C., 54.

In a suit for land claimed as originally belonging to a lakheraj holding of plaintiff's ancestor, which had been resumed by the zemindar, who afterwards caused it to be sold in execution of a decree as the lakheraj of his debtor, it was held that the judgment in the resumption suit was no evidence of plaintiff's title as against the auction purchaser (defendant) who had been no party to the suit. *Maha Moya Dossee* v. *Joodhestree Deb*, 10 W. R., 113.

A plea of guilty in the Criminal Court may, but a verdict of conviction cannot be considered in evidence in a civil case. *Sumboo Chundra Chowdry* v. *Madhoo Kyburt and others*, 10 W. R., 56.

Where a Principal Sudder Ameen had deputed a civil ameen to enquire into the fact of possession, instead of hearing the evidence on the point himself,—*Held* that, even if the Principal Sudder Ameen's order was improper, the deputation of the ameen was legal, and the evidence taken by the ameen was legal evidence, to be considered on its own merits. *Ram Churn Mahtoon* v. *Surubjeet Mahtoon and others*, 9 W. R., 494.

Where an Ameen had been deputed by a Civil Court to enquire into a question of possession, his report and the evidence taken by him are admissible under Section 180, Act VIII of 1859. *Bhyrub Roy* v. *Nobin Roy*, 9 W. R., 601.

No dakhila or document, unless of very old date, or for some other special reason, is admissible in evidence unless it is attested in some way. *Luchmeeput Singh* v. *Junggulee Kullyan Doss*, 9 W. R., 147.

Section 47, Act II of 1855, does not refer to evidence of living witnesses, but to declarations of deceased persons in cases of pedigree, who, though not related by blood or marriage to the family, were intimately acquainted with its members and state. Such declarations, after the death of the declarant, are admissible as evidence in the same manner and to the same extent as those of deceased members of the family. *Mohima Chunder Chund* v. *Mothooranath Ghose*, 9 W. R., 151.

The reception of a bond in which land is pledged as a mere collateral security as evidence, though not registered, is not barred by Section 49 of the Registration Act. *Woodoy Chand Jana* v. *Nitye Mundul and Poresh*, 9 W. R., 111.

A proceeding in an Act IV case between entirely

different parties, and a map used on that occasion, are not admissible evidence. *Joy Prokash Singh* v. *Ameer Ali*, 9 W. R., 91.

An authenticated copy of a hustabood of 1209, B. S., of which the original was put into the Collectorate by the zemindar according to Regulation VIII of 1800, was held to be no evidence against third parties, defendants in a rent suit. *Ram Nursing Mitter* v. *Tripoora Soondery Dassia*, 9 W. R., 105.

Private butwarra papers are good evidence towards showing what lands were in fact comprised in the estate at the time of butwarra. *Dwarkanath Roy Chowdhry* v. *Huronath Roy Chowdhry*, W. R., 1864, 238.

A copy of a record-keeper's report is not evidence, nor is a copy of a Magistrate's proceeding in a suit regarding other property covered by the deed in dispute. *Dwarkanath Bose* v. *Chundee Churn Mookerjee*, 1 W. R., 339.

A power of attorney authorizing the registration of a deed of mortgage, and recognizing a previous power to execute the deed of mortgage, is admissible as original evidence by way of admission of the previous deed. *Hosseinee Jan* v. *Mukhdoomun*, 2 W. R., 45.

A document found to have been subsequently added to, yet in some degree accepted as genuine, is not inadmissible in evidence. *Surbomungula Dossee* v. *Maharajah Sutesh Chunder Roy*, 2 W. R., 231.

Authenticated copies of documents, of which the originals are filed in another suit, are admissible in evidence when not objected to by the other side. *Goursurun Doss* v. *Kanhya Singh*, 2 W. R., 237.

A survey award sought to be set aside cannot be treated as evidence. An Ameen's report is evidence, without any specific documents corroborating his finding. *Eshan Chunder Sein* v. *Huree Churn Dey*, 2 W. R., 278.

In a suit for account by the representatives of A., deceased, a document was offered as evidence purporting to be a copy made by deceased of an account furnished him by the defendant containing an entry of a payment of Rs. 5,000 by the deceased to the defendant, and the purchase therewith by the defendant of company's paper for the deceased. *Held* that, by itself, the document was inadmissible. But when further evidence was given by a witness that the deceased had stated to him that the document was a correct statement of his account with the defendant,—*Held* that such evidence was admissible; and that, with the addition of this evidence, the document also was admissible as containing an entry by the deceased against his interest. But, *quære*, whether the circumstance that the entry only indicated a conversion of the money into a new shape did not take away the character of its being an entry against interest. *Mussamut Zaynub and others* v. *Hadjee Baba Cazranee*, 2 Ind. Jur., N. S., 54.

Decrees and proceedings to which the defendants were not parties are not admissible as evidence against them. *Rajah Sutto Surn Ghosal* v. *Dhone Krisna Sirkar*, 1 W. R., 88.

Neither an alleged pottah nor jumma-wasilbakee papers (when objected to by the other side) are receivable in evidence, until some proof beyond mere conjecture is given of their genuineness and authenticity, and the hearsay evidence of three witnesses does not supply the defect. *Govind Chunder Addy* v. *Mussamat Auloo Bebee*, 1 W. R., 49.

The deposition by a cazee of the vendor's admission to him of a sale and receipt of consideration, together with the conduct and statements of the parties, form legal evidence of the sale as against the vendors. *Hurrish Chunder Dutt* v. *Teen Cowree Dutt*, 5 W. R., 175.

A copy of an alleged deed of partition set up to defeat an ordinary rule of Hindu law, with respect to succession, and taken from the record of a miscellaneous proceeding, without any suggestion as to what has become of the original, is not admissible in evidence. *Ishan Chunder Chowdhry* v. *Bhyrub Chunder Chowdhry*, 5 W. R., 21.

A survey map sought to be set aside may be used for the purpose of testing the correctness of an Ameen's report. *Puddo Monee Dossee* v. *Bisseshur Dutt Chowdhry*, 5 W. R., 34.

A copy of a deposition of a person who is alive if filed in the lower Court, and not objected to there, may be used as evidence in the Appellate Court. *Fukeeroodeen Mahomed Ashun Chowdhry* v. *Kurreen Buksh Chowdhry*, 5 W. R., 43.

A. executed an instrument in favour of B., thereby covenanting to repay B. the amount of a loan, together with interest, and mortgaging certain immoveable property as security for repayment of the same. B. sued A. for the debt. *Held* that the instrument did not directly create, declare, transfer, or extinguish any right or title in immoveable property; the land was mentioned as a collateral security, and therefore the instrument was not inadmissible in evidence under Section 13 of Act XVI of 1864. *Gopal Prasad* v. *Nandarani*, 1 B. L. R., A. C., 192; 10 W. R., 252.

A proceeding of a Criminal Court is not admissible as evidence; a Civil Court is bound to find the facts for itself. *Keramutoollah* v. *Gholam Hossein*, 9 W. R., 77.

Reports of officers appointed under Regulation I of 1814, if received as evidence in the first Court, and not objected to in the Appellate Court, may under certain circumstances be accepted *quantum valeat*. *Bhikoo Shahoo* v. *Teik Ali Khan*, 9 W. R., 86.

In order to make the evidence of a deceased witness legally admissible, provided the admission of the evidence is questioned, it is strictly necessary to prove the death of the witness. *Queen* v. *Gogalur and others*, 12 W. R., 80.

Where no objection had been taken as to the admissibility of documentary evidence, *viz.*, a decree and other proceedings in regard to that decree which had been made use of by the opposite party, an Appellate Court has no jurisdiction to exclude it.

Where a defendant allows, without objection, a purchaser of a plaintiff's interest in the suit to substitute his name on the record under an order of Court, he cannot afterwards contend that the suit is thereby abated. *Bir Chandra Roy Mahapatter* v. *Bansi Dhar Roy Mahapatter*, 3 B. L. R., A. C., 214.

The plaintiff executed a deed of sale of a moiety, and a lease of the other moiety of certain property to B. B. instituted a suit under Section 15, Act

XIV of 1859, which was dismissed. B. then returned the deed of sale and lease to A., with the following endorsement under his signature, *viz.*, "returned, no claim." A. instituted the present suit for recovery of possession of the said property, and the defendant set up in his defence that A. had no right to sue for a moiety of the property, as the same had been conveyed to B.; and that the endorsement of the deed of sale, "returned, no claim," was not admissible in evidence, as the same had not been registered.

Held that the entry was only of evidence that the transaction was inchoate, and not final, so as to require a reconveyance.

Held that as the plea as to the inadmissibility of the evidence for want of registration was not specially taken in the Court below, it could not be allowed in special appeal.

Held that the *onus* was upon the defendant to prove his purchase. *Girish Chandra Roy Chowdhry* v. *Srimati Amina Khatun*, 3 B. L. R., Ap., 125.

That the evidence was given in the absence of the other side is not enough to make the deposition of a witness taken on commission inadmissible. *Ram Chand Mookerjee and others* v. *Kaminee Dabea*, 10 W. R., 236.

Under Section 58, Act III of 1851, Government chittas are admissible as evidence in cases in Chittagong. *Mahomed Fedye Sirdar* v. *Ozeeoodcen and others*, 10 W. R., 340.

Transfer of an under-tenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence unless it be stamped as though it were a separate deed. *Tetai Abom* v. *Gagai Gura Chawa*, 3 B. L. R., Ap., 30.

Where a party putting in chittahs called in a witness to attest them, but the witness did not do so, and the party did not apply to the Court to compel him to do so, the chittahs were held to be no legal evidence, even though admitted by the lower Court without objection from the opposite party. *Ijjutoolah Khan* v. *Ram Churn Gangooly*, 12 W. R., 39.

The verdict of a Criminal Court, with respect to the alleged theft of notes, is no evidence of the ownership of such notes. *Panna Lall* v. *Gopiram Bujuriah*, 3 B. L. R., Ap., 2.

Where the accounts of a mortgagee who has been in possession are being taken, his income-tax papers are inadmissible as evidence in his favour, though they may be used against him. *Shah Gholam Nuzuff* v. *Mussamut Emamun and others*, 9 W. R., 275.

Under Section 4, Act II of 1855, a Court is entitled to refer to entries made by its own officer, the Nazir, and find thereon that a warrant had been issued in accordance with an application admitted to have been made. *Nilkunt Chuckerbutty* v. *Sheo Narain Koonwar and others*, 8 W. R., 276.

Rough notes taken down by an Assistant Collector of what was said by witnesses whose depositions are not recorded are not evidence such as is required by law, and an opinion based on such evidence is without legal validity. *Bula Thukoor* v. *Meghlum Singh*, 14 S. W. R., C. R., 269.

A copy of a kazee's register is not receivable in evidence. The register itself should be produced or proof given of its loss, and the entry should be verified. *Jaffree Khanum* v. *Imdad Hossein*, 2 N. W. R., 314.

It is the practice of the Courts to receive evidence as to the actual payment of consideration-money, notwithstanding the sale-deed may contain an admission of the receipt thereof. It being generally, if not universally the case, that the consideration-money is not paid at the time of the execution of the deed, gross injustice would be committed if such evidence were excluded.

To enable an appellant in special appeal to succeed on the grounds that the depositions of his witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that, being present, application was duly made for their examination. *Surm Rai* v. *Ubhman Rai*, 2 N. W. R., 209.

The admission of the daughter of a mortgagee being that of a person having no title to the estate in question in the suit, is not binding on such mortgagor.

It is the province of the Court which has to decide issues of fact to determine the amount of credit to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a court of special appeal, is not at liberty to interfere. *Muthra Dass* v. *Magh Singh*, 2 N. W. R., 207.

Entries duly made in settlement proceedings, with respect to matters therein properly recorded, are, as against cultivators, evidence of such matters, although such evidence may be rebutted by other more reliable proof, if it be procurable. *Dubee Lal* v. *Goolzar Rae*, 2 N. W. R., 394.

A statement by a witness that a party is in possession is, in point of law, admissible evidence of the fact that such party was in possession. *Maniram Deb* v. *Debi Charan Deb*, 4 B. L. R., F. B. R., 97; 13 S. W. R., F. B. R., 42.

An unregistered document, requiring registration as affecting an interest in land, is admissible in evidence for any purpose for which registration is unnecessary. *Lachmiput Sing Dugar* v. *Mirza Khamy Ali*, 4 B. L. R., F. B., 18, and 12 S. W. R., F. B., 11.

In a suit for breach of a covenant to register contained in an unregistered mortgaged deed, the defendant cannot plead the non-registration of the instrument for the purpose of protecting himself. Such a deed is admissible in evidence for a collateral purpose without being registered. *Sham Narayan Lall* v. *Khimajit Matoe*, 4 B. L. R., F. B., 1 and 12 S. W. R., F. B., 11.

Jummabandi papers can be used only as corroborative evidence. *Gujjo Koer* v. *Syud Aallay Ahmed*, 6 B. L. R., Ap., 62; and 14 S. W. R., C. R., 474.

Act XX of 1866.—Unregistered document, admissibility of, in evidence. *Buttokristo Dass* v. *Khettra Chandra Bhuttacharjee*, 6 B. L. R., Ap., 69.

Where evidence, such as hearsay, is improperly admitted, the question for the Judicial Committee is whether, rejecting that evidence, enough remains to support the finding.

Disapproval was expressed by their Lordships of the reception by the lower Court of evidence which ought not to have been admitted. *Mohur Sing* v. *Ghurbin*, 6 B. L. R., 495, and 15 S. W. R., P. C., 8.

The judgment in a former suit against the same defendants in respect of the same subject-matter is admissible, though not conclusive, evidence against the defendants in a subsequent suit brought against them by other parties. *Lala Ranglal* v. *Deonarayan Tewary*, 6 B. L. R., 69, and 14 S. W. R., C. R., 201.

An Ameen had been deputed to make a local investigation, and had examined certain witnesses, but could not examine the rest, or complete his investigation and draw up his report, owing to the plaintiff not paying the necessary expenses. *Held* that the depositions of the witnesses without the Ameen's report were not admissible in evidence. *Debnarayan Deb* v. *Kuli Das Mitter*, 6 B. L. R., Ap., 70, and 14 S. W. R., C. R., 39.

The summons-book of the Small Cause Court, Calcutta, is admissible in evidence, though not signed by the presiding Judge. *Queen* v. *Nakur Sircar*, 6 B. L. R., 729.

The report of a mouzadar, not being that of a person competent within the meaning of Section 180, Act VIII, 1859, to report upon matters in process of judicial decision, may be disregarded by a Civil Court. *Rajaram Kalita* v. *Roopa Kugata Kalita*, 13 S. W. R., C. R., 113.

Chittahs made by the revenue authorities in the course of measurement of a Government mehal stand precisely on the same footing as chittahs made by them in enquiries relating to revenue, and are equally admissible in evidence; the circumstance that the proceedings relate to a khas estate cannot deprive them of the character of public proceedings upon matters of public interest. *Tarucknauth Mookerjee* v. *Mohendronauth Ghose*, 13 S. W. R., C. R., 56.

The rule that verbal evidence is not admissible to vary or alter the terms of a written contract is not applicable where the parties did not intend that the writing should contain the whole agreement between them; and this may appear either by direct evidence or by informality in the writing. *Beharee Lall Doy* v. *Kaminee Soondaree*, 14 S. W. R., C. R., 319.

Held, by Couch, C. J., following the decisions of the Calcutta and Madras High Courts, but doubting, that an unregistered bond, whereby immoveable property was pledged by way of collateral security, is admissible in evidence where effect is sought to be given to it for the purpose of obtaining a decree for the money due under it. *Tukaram Vithoji* v. *Khundoji Malhayi*, 6 Bom. Rep., O. C. J., 134.

Held (by Markby, J.), that a Judge was justified in rejecting as evidence a proceeding under Act IV of 1840. *Syud Abdool Ali* v. *Mullick Suddeeroodeen Ahmed*, 14 S. W. R., C. R., 493.

An unstamped instrument executed in foreign territory, and valid under the law of the place of execution, is admissible as evidence in Courts of British India, provided it does not affect any property situated in British India. (Act XVIII of 1869, Section 4.) *Nárâyan Sadá Shill* v. *Bápuji Balál*, 7 Bom. Rep., A. C. J., 140.

Regulation XII of 1827, Section 52, having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. *Reg.* v. *Bhâishankur Nartheram*, 6 Bom. Rep., Cr. Ca., 75.

The report and map of a nazir who is not examined in a case are no evidence whatever. *Gobind Muhtoo* v. *Gopee Bhuggutt*, 16 S. W. R., C. R., 4.

A lower Appellate Court was held to have been fully justified in rejecting measurement papers as inadmissible in law, where no proof was given to show in what circumstances, under what authority, and for what purpose they had been prepared. *Jahra Sahoo* v. *Bundhoo Sahoo*, 15 S. W. R., C. R., 218.

Measurement papers cannot be treated as inadmissible in evidence because set aside by the decisions of the lower Courts, if these decisions have been reversed by the High Court. *Gobind Muhtoo* v. *Gooper Bhuggut*, 16 S. W. R., C. R., 4.

The copy of a copy of a document may be admitted as evidence when it comes from a public office, and the original is shown to have been lost, but not otherwise. *Court of Wards* v. *Bunwaree Lall Thakoor*, 15 S. W. R., C. R., 102.

A statement made in a case by a pleader on behalf of his client after full consideration and consultation, is admissible as evidence against that client in another case in which he is a party. *Comabutter* v. *Pareshnauth Panday*, 15 S. W. R., C. R., 135.

A map is not admissible as evidence unless it is stamped. *Kunuck Monee Dassee* v. *Gopee Mundle*, 15 S. W. R., C. R., 180.

In a suit for possession, where plaintiff put in a copy of a solehnamah to which defendant was not a party,—*Held* that although no question of right or title could be decided adversely to the defendant on the basis of that agreement, yet it would be evidence that by an order of Court passed on that solehnamah the plaintiff was put in possession. *Sreemutty Dassee* v. *Pelarum Dassee*, 15 S. W. R., C. R., 261.

The evidence of a defendant's agent in the absence of defendant's own deposition, though not full and complete, is legal evidence. *Decourcy, R.* v. *Meghnath Jha*, 15 S. W. R., C. R., 157.

A collectorate peon's return of service of notice is not admissible as legal evidence. *Moinoollah* v. *Goluckmohee Chowdrain*, 15 S. W. R., C. R., 270.

In a suit to recover possession of certain land on the allegation that it was part of plaintiff's jote-jumma, which had been previously held by his father and mother, plaintiff's inability to substantiate an alleged pottah was held to be no reason why he should not be permitted to fall back upon other evidence, *e.g.*, possession by his father under a tolookee jote title. *Luckhee Chunder Chuckerbutty* v. *Ramdhan Shaha*, 15 S. W. R., C. R., 399.

A solenamah was considered admissible as evidence against plaintiff, because, although he was not a party to it, his maternal uncles, who were the managers on behalf of his mother through whom he claims were parties, and certain boundaries therein laid down contradict the statement as to the boundaries now made by him. *Mahomed Anwar Chowdry* v. *Roy Chunder Ghose*, 17 S. W., R. C. R., 522.

The plaintiff sued the defendant to recover rent due upon a muchilka executed by the defendant. The defendant admitted that he occupied the land under the express contract contained in the muchilka. The muchilka was a document the registration of which was compulsory under the Registration Acts, but was not registered.

Held that the plaintiff could not establish his case without putting the muchilka in evidence, and it was inadmissible not having been registered. *Lee Morris, Receiver of the Estate of His Highness the late Maharajah of Tangore* v. *Sapamitheetha Pillay*, 6 Mad. Rep., 45.

Although the admissibility in India of copies in evidence must not be dealt with by the strict rules prevailing at a *nisi prius* trial in England, yet their Lordships were of opinion that when a copy has been in any way received and it becomes the function of the Judge to consider what weight and value should be given to it, it is the duty of the Judge, in order to test its authenticity, to satisfy himself that there is some reason for producing a copy instead of the original, that there should be some account given in ordinary cases of the original, and some sufficient reason assigned why the original is not produced, and the parties rely upon the copy. In all cases the whole of the circumstances should be looked at in order that the Judge may come to a definite conclusion as to the genuineness of the document in question, and the weight and value which he will attach to it. There is a considerable difference between cases where documents come in as mere links or as part only of the evidence in the case, and those in which the suit is actually brought upon the instrument of which a copy is tendered, and the whole cause of action depends on the proof of the original instrument; strict proof may properly be required in the latter case

Dealing with the present document, their Lordships were not prepared to say that the High Court had miscarried in concluding it to be genuine; but the High Court did not rest upon that document wholly, but proceeded upon the whole of the evidence in the case, which appeared to their Lordships amply sufficient to support the finding of the Court. *Ramgopal Roy* v. *Gordon, Stuart and Co.*, 17 S. W. R., C R., 285.

A measurement made by Government from whom plaintiff derived his title was, in the absence of any evidence to the contrary, held as admissible in evidence of the area actually found under cultivation. *Bhyrub Chunder Mozoomder* v. *Huropersaud Bhuttacharjee*, 17 S. W R., C. R, 258.

A stipulation in a document that no other payments except payments endorsed on the document itself shall be admitted, does not exclude proofs of payment by other evidence. *A. Sashachellum Chetty* v. *T. Gowndappa*, 5 Mad. Rep., 451.

6.—Oaths and Affirmations.

A member of the Church of England is not exempt by law from taking an oath in a Court of Justice in India, although he may entertain sincere objections against taking an oath on the Bible, and is willing to make an affirmation binding upon his conscience The English Statute 17 and 18 Vic., Cap 125, does not apply to India. *P. Valu Mudali* v. *W. Sowerby*, 2 Mad. Rep, 246.

When an individual who is unable to read and write presents himself to affirm solemnly or make oath to the truth of an affidavit, it will be sufficient, in order to meet the requirements of Section 9, Act VIII of 1863, in obtaining his verification, to allow him to affix his "mark" in lieu of his "signature," and, in affirming or swearing him, to vary the usual words by saying "mark instead of signature," in lieu of "signature." *Anonymous*, 9 W. R., 357.

When a plaintiff before a Moonsiff came and petitioned the Judge, complaining that the Moonsiff had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance, and the Judge upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence,—*Held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice*, could not form the subject of a prosecution for false evidence. *Queen* v. *Chota Jadub Chunder Biswas*, W. R., 1864, Cr., 15.

A witness who is not a Mahometan or Hindu ought to be sworn, and not examined under the provisions of Act V of 1840. *Queen* v. *Ramtahal Singh*, 5 W R, Cr, 65.

Where a witness was, at the beginning of the day, solemnly affirmed once for all to speak the truth in all the cases coming before the Court that day,—*Held* that he might be convicted, under Section 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered. *Queen* v. *Venkatachalam Pillai and others*, 2 Mad Rep., 43.

A witness may be examined either on oath or on solemn affirmation, but he cannot be both sworn and put on solemn affirmation at the same time. *Queen* v. *Hossein Sirdar*, 13 S. W R., Cr. R, 17.

A Hindu who has become a convert to Christianity is not under a legal obligation to speak the truth unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under Section 193 of the Indian Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of Section 199 of the Penal Code, nor is the witness bound to make a declaration under Section 191.

A Hindu who has become a convert to Christianity cannot be convicted under Section 193 of the Penal Code unless his evidence be given on oath. *Vendamuttu*, 4 Mad. Rep., 185.

An agreement to take an oath by the parties to a suit filed in Court is not an adjustment by mutual agreement or compromise within the meaning of Section 98 of the Code of Civil Procedure. *Konnapalen Uthatchadayan Haje* v. *Perotta Meloden Ramen Nambiar*, 4 Mad. Rep., 422.

7.—Secondary Evidence.

A copy of a disputed deed cannot be taken as evidence without proof that the original is out of the power of the party producing the copy. The admission of the existence of the original is not tantamount to an admission of the correctness of the copy. *Mussamut Beebee Kurm* v. *Ruttun Bhuggut*, W R., 1864, 186.

Though a copy of a document should not be put in as evidence when the original itself is available,

yet in a case in which a copy of a letter was filed without objection in the Court of first instance, and the writer of the letter (one of the defendants) was cross-examined as to it, the lower Appellate Court was held not to be justified in refusing to consider that the copy was evidence of the letter. *James Fegredo* v. *Mahomed Modessur and others*, 10 W. R., 267.

After an appeal was filed the decree was destroyed. *Held* that a copy in the possession of the appellant might be received upon evidence being given of its authenticity. *Bishendyal Singh and others* v. *Mussamut Khaduma and others*, Marsh., 213.

The evidence of members of the family would be the best evidence as to whether the parties were joint or separate; the account books would be simply corroborative. *Jagun Kooer and others* v. *Rughoonundun Lall Sohoo and others*, 10 W. R., 148.

A copy of a pottah cannot be received in evidence without cause being shown for the absence of the original. *Robert Watson and Co.* v. *Sham Lall Pundah*, 10 W. R., 73.

Whether secondary evidence is admissible in the place of primary is a question for the determination of the Court which tries the case on its merits, but such determination is open to special appeal, if it is come to without evidence at all, or without evidence legally sufficient. *Chunderkant Ghose* v. *Showdaminee Debia*, 9 W. R., 517.

It is not enough for a party desirous of adducing secondary evidence of the contents of a document which ought to have been registered, to show that he cannot produce it, because it is not registered; he must show that its non-registration was not due to any fault or want of diligence on his part, or he must show that the party against whom he desires to use it was guilty of such fraud in the matter of non-registration that he cannot be allowed to object on that ground to the production of the secondary evidence. *Kumeezooddeen Haldar* v. *Rujub Ali*, 9 W. R., 528.

Where a Court is satisfied that a deed was executed, and has been lost or destroyed, it should receive secondary evidence of the contents, documentary or oral; and it is not necessary that the witnesses called in to give oral testimony should be attesting witnesses. *Syud Lotfoollah* v. *Mussamut Nusseebun*, 10 W. R., 24.

Where defendant, after executing a bill of sale in respect of certain lands, and receiving the full amount of purchase-money agreed upon, had repudiated the contract, and refused to make over possession, it was *held* that though the fact of the deed of sale not being registered precluded it, under Section 13, Act XVI of 1864, from being admitted as evidence, yet plaintiff was not excluded from showing by other evidence that he performed his part of the contract. There is nothing in that section which says that no contract purporting to create or transfer any right, title, or interest in land shall be recognized by the Civil Court unless reduced to writing. *Meer Helalooddeen Chowdhry* v. *Abdool Suttar*, 9 W. R., 351.

A copy of a document should not be received in evidence until all legal means have been exhausted for procuring the original. Where a document is alleged to be in the possession or power of a certain party, such party's denial in pleading that he has ever had the document is not sufficient to justify the omission of the processes the law provides for his testimony, and of his being called on to produce the original.

If a Judge is satisfied of a plaintiff's inability to produce an original pottah on which he relies, he ought to allow secondary evidence to be given of the contents of the document; but he should be satisfied, on reasonable grounds, that the evidence gives a true version of its contents, and he should require sufficient evidence of the execution of the pottah. *Shookram Sookul* v. *Ram Lall Sookul*, 9 W. R., 248.

When a suit was brought on a mortgage deed alleged to have been destroyed in the mutinies,—*Held* that if it were established that the original deed was destroyed, and that there was no copy of it in existence, the Court could receive oral evidence as to its contents, and determine the genuineness or otherwise of the deed on that evidence solely. *Sheosurun Ojha* v. *Mussamut Goolbanee Kooer*, W. R., 1864, 264.

When the original of a deed, relied on by the plaintiff, was at the command of the defendant, and plaintiff was only obstructed in producing it by the recusance of the defendant, the very best secondary evidence to which he could have recourse in lieu was held to be an authenticated copy filed in another case by the defendant herself; and, as such copy could not, under the ordinary rules of the Court, be removed from the custody of the Judge, it was held that there is no rule of law in Indian Courts of equity and good conscience to prohibit the reception of a copy of such copy under the circumstances. *Mukbool Aly* v. *Musnud Bibee*, 11 W. R., 396.

A copy of a document, purporting to be the copy of an original kobala alleged to have been registered by a Cazee, does not come within the provisions of Regulation XXXVI of 1793, Section 17. It might possibly be receivable as evidence if the accuracy of the first copy, and the execution and loss of the original, were proved. *Sreemunt Kowar* v. *Akbar Mundul and others*, 8 W. R., 438.

Copies of income tax returns should not be admitted as evidence without proof that the persons who made them were dead. *Lalla Gooroo Suhaye Singh* v. *Bromo Deonarain*, W. R., 1864, Act X R., 105.

Where a lease is inadmissible as evidence, because it is not registered, no secondary evidence of its execution is admissible. *Mussamut Kaboolun* v. *Shumsheer Aly and others*, 11 W. R., 16.

Secondary evidence cannot be given of a lost instrument requiring a stamp which was not stamped.

Quære,—Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. *Arunchellum Chetty* v. *Oluguppa Chetty*, 4 Mad. Rep., 312.

An authenticated copy of an authenticated copy of a deed is admissible as secondary evidence; but proof of the execution of the deed itself must be given before the copy can be admitted. *Tayubnissa Bibi* v. *Kunwar Sham Kishore Roy*, 7 B. L. R., 621, and 15 S. W. R., 228.

A certified copy of a document deposited in a public office, which document is itself a copy, is

admissible as secondary evidence where the absence of the original is duly accounted for. *Bhulábhái Gullábhái et al.* v. *Modji Desálji et al.*, 5 Bom. Rep., A. C., 48.

Where an instrument, the registration of which was rendered compulsory by Section 17 of the last Registration Act (Act No. XX of 1866) was destroyed accidentally by fire soon after its execution, and before registration,—*Held*, in a suit to compel the defendant to execute another instrument of the same effect as that which had been destroyed, that secondary evidence of the contents of the unregistered instrument was admissible. *Held*, also, that the plaintiff was entitled to the relief prayed for. *Nynakku Routhen* v. *Vakanù Mahomed Naina Routhen*, 5 Mad. Rep., 123.

8.—Weight of Evidence.

Neither number nor respectability of witnesses will supply the place of exact and necessary knowledge of the facts to which they depose.

Mutations of names in the Collector's register, as between two brothers, are papers which the Court is bound to consider as indicating that the members of the Hindu family between whom they have been executed were at that time living separately each for himself. *Peary Lall* v. *Mussamut Bhawool Koer and others*, 1 Ind. Jur., O. S., 100.

In a suit for rent and damages in which the amount of rent payable is in issue, the Judge must require the plaintiff to show that in past years the defendant has paid what the plaintiff is now demanding, and for the purpose of proving these past payments the best evidence is requisite, secondary evidence being only admissible when the absence of primary evidence is satisfactorily accounted for. *Ram Jeebun Lall* v. *Nund Lall*, 2 W. R., Act X R., 43.

In a suit to recover damages caused by the defendants plundering the house of the plaintiff, the Court of first instance passed, upon the evidence of two witnesses, a decree in favour of the plaintiff. On appeal by some of the defendants, the Judges of the Sudder Dewanny Adawlut of Agra held that the fact of plunder was not proved, and dismissed the suit as against all the defendants.

Held by the Privy Council that, as the defendants did not come forward to exculpate themselves by their own evidence, and as the evidence in support of the charge was unopposed, the decree of the Court of first instance could not be set aside. *Ganesh Singh* v. *Ram Raja*, 3 B. L. R., P. C., 44; 12 W. R., P. C., 38.

As it has been held by the Privy Council that, according to the practice in India, the recital in a deed of the payment of consideration-money is not conclusive evidence of such payment, a Judge was declared to have acted correctly in considering evidence on the question whether consideration so recited had passed or not. *Lollita Dassia* v. *Rutton Mallee Bhuttacharjee*, 10 W. R., 208.

The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person, nor is his decision one over which the Civil Courts have no jurisdiction. *Avissappa* v. *A. Ramjogee*, 2 Mad. Rep., 341.

One of the co-sharers in an estate which had been sold under Act XI of 1859 sued to recover her share from the certified purchaser (M.), himself one of the original owners. Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of M.'s having no written authority to act on her behalf. M., however, executed an ikrarnamah in which he admitted receipt of the purchase-money of plaintiff's two-annas share, and covenanted to give her possession. Defendant denies having received any contribution or consideration-money from the plaintiff, though admitting execution of the ikrarnamah. *Held* that even if the ikrar fully and unequivocally admitted payment of the consideration-money, that would not be conclusive evidence of payment as against the defendant, and proof would have to be given. *Mussamut Neymun* v. *Muzzaffer Wahid*, 11 W. R., 265.

Suit for the recovery of a debt upon an agreement which was not brought forward or alleged to be in existence, when the same demand was successfully disputed in a former suit brought during the infancy of the predecessor of the present appellant, who was the son of the alleged original debtor. The respondent having failed to account satisfactorily for the non-production of the agreement before, and the probabilities of the case being against the genuineness of the agreement, the suit was dismissed. *Katchy Kullyana Rungappa Kalaka Thola Oodiar, Zemindar of Oodiarpalliam*, v. *Baloosamy Chetty*, 3 W. R., P. C., 50.

The incidental mention of a child's age in the recital of a will is no proof of the exact age of that child. The proceedings after the devisor's death granting a certificate to the guardian of the girl are merely proof of her being a minor at that time, and do not disclose what her exact age then was. In the absence of proof of the person who made a sale being a minor at the time she executed a deed of sale to plaintiff, the *onus* of which lay on the defendant, the sale by her was upheld. *Nilmoney Chowdhry* v. *Mussamut Zuheerunissa Khanum and others*, 8 W. R., 371.

Unattested dakhilas, without corroborative evidence, are not in law sufficient evidence of payment of rent. *Kazee Odiut Zuman and others* v. *Mohiooddeen Ahmed, alias Mogul Jan*, 9 W. R., 241.

In a suit for arrears of rent it was held that settlement papers were only corroborative evidence; and that, though introduced on the testimony of sworn witnesses, they were not sufficient legal evidence of the yearly rental. *Bunwarree Lall* v. *J. Forlong*, 9 W. R., 239.

Evidence of possession and enjoyment for a series of years is of itself, if unanswered, cogent evidence of title. *J. G. Bagram* v. *The Collector of Bhullooa; The Collector of Rungpore* v. *Ram Jadub Sein*, W. R., 1864, 243.

The fact of a person not having brought a regular suit to obtain possession of land in reversal of a revenue award within three years of its confirmation by the Revenue Commissioner is not conclusive evidence of title. It can only be evidence of the date of possession at the time when it was prepared. *Sunkurnarain Singh* v. *Rajah Ram Tarun Deo*, 4 W. R., 56.

A Moonsift's report of a local investigation, when not shown to be substantially erroneous in its data or reasoning, should convey the greatest weight as

evidence of the facts it sets forth. *G. P. Wise* v. *Ameeroonissa Khatoon*, 3 W. R., 219.

The mode in which the offices of priest and manager have been held for many generations is material evidence of the conditions on which the original gift of an idol was made. *Nimaye Churn Poosaree* v. *Mooroolee Chowdhry*, 1 W. R., 108.

A former decision as to the situation of a chur, when an eight-annas share was in dispute, is not binding as an estoppel, although it is strong evidence in a suit in which the other moiety is disputed. *Nazimooddeen Ahmed Chowdhry* v. *J. P. Wise*, 5 W. R., 282.

Until a party has exhausted all the means prescribed by law for compelling a witness to produce a document known to be with him, and so long as the original is procurable, or its loss not satisfactorily accounted for, secondary evidence cannot be admitted. In cases of adoption careful scrutiny is necessary. The party seeking to establish an adoption is bound to produce the best evidence procurable. The rule by which the validity of such document may be tested is contemporariety of execution and publication of the deed of permission; and in the absence of this test all the circumstances bearing upon the alleged deed, and all the probabilities for and against its genuineness, must be thoroughly considered. *Greesh Chunder Lahooree* v. *Ramloll Sircar*, 1 W. R., 145.

Possession is evidence of title, and gives a good title against a wrong-doer; but a person who has not had possession cannot, without proof of title, turn another out of possession, even though that other may have no title, for possession is a good title against any one who cannot prove a better.

The mere production of a conveyance is no evidence that the person producing the document has obtained a conveyance from the person to whom the property is thereby conveyed, more especially when the person who produces the document is not, and never has been, in possession of the property.

A statement relating to property, made by a person when in possession of that property, may be evidence against himself, and all persons in possession of the property after such statement; but a statement made by former owner that he had conveyed to a particular person cannot be evidence against third persons. *Clarke* v. *Bindabun Chunder Sircar*, W. R., F. B., 20; Ind. Jur., O. S., 97.

Where both parties to a suit adduce calculations made in neighbouring villages as evidence to establish their respective cases, they impliedly consent that the calculations, although not strictly legal, shall constitute the materials upon which the Court is to act, they are not entitled afterwards to object to them in special appeal. *Anar Mollah* v. *James Hills*, 10 W. R., 139.

A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any act of ownership over the tree. *Chuttoor Bhooj Tewaree* v. *Syud Villaet Ali Khan*, W. R., 1864, 223.

When a subsequent deed of permission to adopt was proved, a distinct reference made in it to a former deed of the same character which corresponded in every particular with the description of it given in the subsequent instrument, was, in the absence of proof of the existence of any other document, or of anything calculated to throw doubt on the former instrument, held sufficient to establish its identity. *Kishen Sunkur Dutt* v. *Moha Mya Dossee*, W. R., 1864, 210.

Where defendant's written statement is referred to as evidence in plaintiff's favour, the whole of it becomes evidence in the suit, and the Court can, in its discretion, attach thereto, or to any portion thereof, so much value as seems to it fit. *Radha Churn Chowdhry* v. *Chunder Monee Shikdar*, 9 W. R., 290.

Where a considerable time has elapsed of enjoyment and apparent acquiescence, a purchaser, or one claiming through him, may be absolved from showing anything more than the fact of a sale made to him under some ostensible plea of necessity. *Madhub Chunder Hajrah* v. *Gobin Chunder Banerjee*, 9 W. R., 358.

What is sufficient evidence to warrant a presumption that a tenure has been held at a uniform rate for twenty years will depend upon the circumstances of each case. *Pearee Mohun Mookerjee* v. *Annund Moyee Debia and others*, 9 W. R., 158.

The appearance of an alleged minor may be taken into consideration in disposing of his plea of minority, but the decision must rest mainly upon positive evidence which he is bound to produce. *Khetter Mohun Ghose* v. *Ramessur Ghose*, W. R., 1864, 304.

The existence of a decree against the father is not sufficient evidence of the necessity for his selling his son's interest in ancestral property. *Kanto Lall* v. *Greedharee Lall*, 9 W. R., 469.

On an enquiry whether a signature is genuine the signature cannot be compared with a document not before the Court, nor with one of which the authenticity is disputed.

When a plaintiff attempts to enforce, as a contract of loan binding upon the defendant, immediately upon its execution, an instrument which he verbally agreed at the time should not so operate, and for which the defendant received no consideration, the latter may give evidence of the verbal agreement. *Aumamgola Chetti* v. *Kristavan Nayahkan*, 1 Mad. Rep., A. C., 457.

Where enhancement is sued for on the ground that the rent paid by the defendant is below the rate prevailing in the neighbourhood, it is not enough for the plaintiff to show that the adjacent lands are of a similar description to those held by defendant; he must also show that they are held by persons of the same class with the defendant. *Womurnath Roy* v. *Ashumbaru Biswas*, 12 W. R., 476.

In a suit to recover a village alleged by the plaintiff to have been let to defendant on service tenure by an ancestor of the plaintiff, and to be resumable at the pleasure of a successor, the only facts proved in evidence were a holding for a long period of years and payment of rent to the plaintiff, the zemindar. *Held* that such facts establish merely a tenancy from year to year. *N. S. Vasudeva Patrudu* v. *Sri Raja Sanyasiraj*, 3 Mad. Rep., A. C., 1.

In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an agraharam village for non-payment of tirvari due from the other tenants of the village, and to recover the increased tirvari imposed by the Collector,—*Held* that the fact of pottahs having been issued

separately to each tenant stating the share of land occupied, without defining the holding by boundaries, and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of tirvari stated in his pottah and no more, is not conclusive evidence of such individual liability. *Ellaiva* v. *The Collector of Madura*, 3 Mad. Rep., A. C., 59.

Uninterrupted and undisputed possession for a long time constitutes sufficient *primâ-facie* evidence of title; but if this possession is admitted to be under an adoption it will avail nothing if the adoption fails. *Raajah Haimun Mhull Singh* v. *Koomar Gunsheam Singh*, 5 W. R., P. C., 69.

Where there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced. *Ramalinga Pillai* v. *Sadasiva Pillai*, 1 W. R., P. C., 25.

Where the question for trial is the right to possession, it is not essential that the plaintiff should prove actual possession. *Gudadhur Koondoo and others* v. *Ram Coomar Bose and others*, 6 W. R., 155.

A native case is not necessarily false and dishonest because it rests on a false foundation, and is supported in part by false evidence. *J. P. Wise and others* v. *Sunduloonissa Chowdranee and others*, 7 W. R., P. C., 13.

The very strongest and most reliable evidence is required in the case of a claim to a share in an estate larger than the Hindu law allows. *Gopaul Chunder Mana* v. *Gourmonee Dossee and others*, 6 W. R., 52.

The production of a pottah in the presence of the party most interested in challenging its genuineness is a fact legally of the utmost importance in determining its genuineness. *Gunee Biswas* v. *Sreegopal Paul Chowdhry*, 8 W. R., 395.

In a suit to establish title, evidence of the plaintiff's possession, prior to the summary award under Section 15, Act XIV of 1859, under which he was dispossessed, may be good evidence of his title, and must be considered. *Bollubee Kant Bhuttacharjee* v. *Doorjo Dhun Shikdar*, 7 W. R., 89.

The giving of receipts for rent, coupled with the fact of payment of rent at the old rate down to the present time, is evidence of confirmation of the tenure by the auction-purchaser and his successor. *Tara Chand Dutt* v. *Mussamut Wakenoonissa Bibee and others*, 7 W. R., 91.

An *ex-parte* decision is not sufficient evidence as to the rates of similar lands in the neighbourhood on which to base an enhancement of rent from Rs. 17 to 50. *Mufeezoodeen, alias Bhaloomean*, v. *Woolfuttoonissa Bibee*, 7 W. R., 194.

If a particular mouzah has been held for many years as part of a particular mehal or zemindary, the fact of such holding affords a strong presumption that it is part of that mehal, even as against a purchaser at a sale for arrears of revenue of another mehal who claims that part of the mehal purchased by him. It is not conclusive evidence against such auction purchaser, nor could any length of adverse holding prior to his purchase preclude the auction purchaser from recovering it, if he could show clearly that it belonged to the mehal which he had purchased. *Pran Kissen Banerjee and another* v. *Juggobundhoo Dutt and others*, 7 W. R., 207.

A ryot is bound to give strict proof of a uniform payment of rent for twenty years. That is a matter which should not be decided in his favour on mere inference. *Sham Lall Ghose* v. *Boistub Churn Mozoomdar*, 7 W. R., 407.

In special appeal, the High Court held that evidence which did not allude to any specific acts of ownership was not sufficient evidence to prove possession.

The finding of the fact of possession by the lower Appellate Court upon such evidence reversed in special appeal. *Jugobundhoo Dass Gogendra Mohapatrah* v. *Denobundhoo Dass Gogendra Mohapatrah*, 2 B. L. R., Ap., 31.

Mere proof of possession for more than twelve years does not amount to proof of a mokurruree title. *Shiv Dayal Peeri and another* v. *Thakur Mahabir Prasaud*, 2 B. L. R., Ap., 81; 10 W. R., 477.

In a suit for arrears of rent at an enhanced rate, where defendant pleaded the presumption arising under Section 4, Act X of 1859, and plaintiff produced in support of his claim a decree of 1860, declaring him entitled to the enhanced rent and a later decree for arrears on the same scale,—*Held* that the fact that the later decree had only been executed in part, and that defendants never paid more than Rs. 24 to the Government, did not neutralize the effect of the decrees as the very best evidence that the rents had varied since the Decennial Settlement. *Woodoy Narain Sein* v. *Tarinee Churn Roy and others*, 11 W. R., 496.

Although, in order to prove the payment of a uniform rate of rent for 20 years, it may not be necessary to prove an uninterrupted course of receipts, yet, if the evidence in the case shows that, during the period for which receipts are not produced, the ryot was paying at a different rate of rent, that evidence must be taken into consideration with the receipts that are produced. *Gobind Chunder Bhoomick* v. *Rammonee Dosse and another*, 6 W. R., Act X R., 42.

In a suit for enhancement where the defendants plead a holding at a uniform rate from the Permanent Settlement, the mere existence of a pottah and amulnamah of 1215 is not conclusive evidence that the rate was then changed, or was then first fixed. *Luchmee Narain Shaha, alias Gopeenath Shaha*, v. *Koochil Kant Roy and others*, 6 W. R., Act X R., 46.

Inadequacy of consideration is not conclusive proof of *mala fides*. *Komola Persad Narain Singh* v. *Nokh Lall Sahoo and others*, 6 W. R., 30.

The fullest proof is requisite to support a trust which is declared by word of mouth by a person at the point of death, and is in terms an intention on the part of the donor to deprive his family of all substantial enjoyment of his property. *Bypro Persad Mytee* v. *Kena Dayee*, 5 W. R., 82.

The mere entry of the name of an elder member of a Hindu family in the revenue records is not conclusive evidence that the proprietary right exclusively belongs to him, unless it be proved that the person so recorded had sole enjoyment of the same for more than twelve years. *Runjeet Singh and others* v. *Madad Ali*, 3 Agra Rep., 222.

The mere fact of a survey award, without proof of possession, is not conclusive against all other

testimony. *Ali Ashruf* v. *Gunga Gobind Roy*, 5 W. R., 220.

The best evidence is required to prove a jumma-wasil bakee paper. *Allyat Chinaman* v. *Juggut Chunder Roy*, 5 W. R., 242.

In a suit in which the question was whether there had been a division, the sole evidence of division was the decision of a punchayat reciting that division; the question, however, not having been at all material to the point then in dispute,—*Held* that the decision was not sufficient evidence of the division. *Bhugavat Panday* v. *Rama She Shaiyo Panday*, 4 Mad. Rep., 5.

A. and Co. and B. and Co. entered into a joint adventure in opium. A. and Co. were to send money to various places to be handed to the agents, who were to buy and sell. They now claimed against B. and Co. for money alleged to have been so sent after giving credit for sums received. The proof was the arrival of the money at A. and Co.'s places of business, supported by entries in A. and Co.'s books at each place, but there was no proof of payment to the agents save such entries. As to remittances to the other places, the only evidence was the books of A. and Co. at the place of despatch. *Held* that there was no evidence as to the latter claims; and as to the former, although the evidence appeared insufficient, the case would not be remanded, as the appellant, independent of these claims, had a balance against them. *Seth Lakhmi Chand* v. *Seth Indra Mull*, 4 B. L. R., P. C., 31; 13 S. W. R., P. C., 36.

Possession of a Collectorate challan by a mookhtear is *primâ-facie* proof of payment by him of a fine levied by the Collector in a butwarra case. *Lalla Mohadeo Pershad* v. *Suttanund Misser*, 17 S. W. R., C. R., 502.

Evidence should receive its due weight, and not be rejected from a general distrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. *Ramamani Ammal* v. *Kulanthai Nauchear*, 17 S. W. R., C. R., 1.

In a suit to recover possession of land contained in a certain Government resumed mehal, where defendant's plea was that the land had been purchased by him at an execution sale for arrears of rent as belonging to a jungle mehal, the lower Appellate Court refused defendant's application for a comparison with the maps and chittahs made on the occasion of a boundary dispute between the zemindar and Government, when it had been decided in a local enquiry that the land belonged not to the resumed mehal, but to the jungle mehal.

Held that the Subordinate Judge ought to have entertained the application, the evidence offered having been the very best. *Radha Churn Gangooley* v. *Anund Sein*, 15 S. W. R., C. R., 444.

The *ex-parte* deposition of a witness who might have been called and cross-examined at the trial, ought not to have any weight given to it. *Lalla Bunseedar* v. *The Government of Bengal*, 16 S. W. R., P. C., 11.

The principle that a plaintiff is bound to produce the best evidence in his power was held not to justify a Judge in omitting to consider the weight and legal effect of the remaining witnesses, when plaintiff had failed to produce the most important witness. *Latore Mistree* v. *Agamudda Nushyo*, 14 S. W. R., C. R., 482.

A survey map and proceedings may in certain cases form evidence sufficient to prove title; and it is beyond the province of the High Court in special appeal to lay down any rule as to what weight is to be attached to that evidence. *Oommut Fatima* v. *Bhugo Gopaul Dass*, 13 S. W. R., C. R., 50.

9.—Documentary Evidence.

Held, in a suit for enhancement of rent, that jumma-wasil-bakee papers, when produced by the zemindar at the citation of the defendant himself, were not merely corroborative, but, under Section 4, Act X of 1859, good and sufficient evidence as against the latter in rebutting the presumption under Section 4, Act X of 1859. *Shib Prosad Doobey* v. *Promothonath Ghose and others*, 10 W. R., 193.

Jumma-wasil-bakee papers are at the best corroborative evidence, not independent testimony.

Quære,—Can such papers be dealt with as a "book," or be described as "kept in the regular course of business," within the meaning of Section 43, Act II of 1855? *Beejoy Gobind Burral and others* v. *Bheekoo Roy*, 10 W. R., 291.

Jumma-wasil-bakee papers cannot be treated as independent evidence. *Sheikh Newajee and others* v. *L. Lloyd*, 8 W. R., 464.

Jumma-wasil-bakee papers ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business;" and by Section 43, Act II of 1855, they are "admissible as corroborative, but not as independent proof of the facts therein stated." They are consequently insufficient by themselves, and without independent proof, to rebut the presumption which arises under Section 4, Act X of 1859, in favour of a defendant who has been found to hold lands at a uniform payment of rent for more than twenty years. *Ram Lall Chuckerbutty and others* v. *Tara Soondery Burmonya*, 8 W. R., 280.

In suits upon two hypothecation bonds executed by different defendants, the plaintiffs in the first suit sued for recovery from the defendants personally, and in the second suit for recovery from the defendants and also from the property hypothecated, and in each case obtained a decree. The lower Appellate Court reversed both decrees, on the ground that the bonds were vitiated by a fraudulent alteration of them in the material part, *viz.*, the date fixed for payment. *Held* that the documents might be used as evidence of the debt between the parties, and also of the creation of the charge upon the property hypothecated. It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place. *Ramasamy Kon* v. *Bhavanna Arrar*, 3 Mad. Rep., A. C., 247.

A survey map is not sufficient, in the absence of other satisfactory proof of title, or of long antecedent possession, to establish a plaintiff's right to the land, and to disturb the defendant's present possession. *The Collector of Rajshahye* v. *Doorga Soondery Debia*, 2 W. R., 210.

Where documents have been insufficiently stamped payment may be made into Court of the proper stamp duty; but documents not stamped at all ought not

to be received as evidence. *Lalljee Singh* v. *Akram Sen*, 12 W. R., 47.

Held that the counterpart of a lease, being a registered document, was admissible in evidence, and could not be rejected solely on the ground that the original registered lease was not before the Court. *Majid Hossein* v. *Juwon Khewat*, 3 Agra Rep., 233.

Where chittas were produced by plaintiff as evidence of certain lands being mâl, it was held that they were sufficiently attested by the deposition of the village gomastah that they were the chittas of the village while he was gomastah, and that he had been present when, with their assistance, a purtâl measurement had been carried out in the village. *Dabee Prosad Chatterjee* v. *Ram Coomar Ghossal and others*, 10 W. R., 443.

Bundobust papers are nothing more than a contemporaneous record of tenures as they existed in the years specified, and do not in any way import the commencement of a tenure or a fixing of the rent at that particular time. *Dhun Singh Roy* v. *Chunder Kant Mookerjee*, 4 W. R., Act X R., 43.

Jummabundee papers can never be treated as independent evidence of any contested fact. *Chamarnee Bebee* v. *Ayenoollah Surdir*, 9 W. R., 451.

A recital in a deed of mortgage granted by one of two undivided brothers to a third party, that a division had taken place between the mortgagor and his brother, is no evidence of separation as against the latter or his representatives. *Gopal Govind and Narayen* v. *Narayen bin Toojahee and Mahadoo Lakaram*, 1 Bom. Rep., 31.

A hatchitta book is a document kept especially as a security for the vendor; and in the absence of fraud it must be considered binding upon him. *Gopeemohun Roy* v. *Abdool Rajah Surjun Nacoda*, 1 Ind. Jur., N. S., 358.

Former decision rejecting issumnuvisee papers, which were not satisfactorily proved as conclusive evidence of a putneedar's title to land, adhered to. If properly supported and proved, such papers are *primâ facie* evidence until rebutted. *The Government* v. *W. Fergusson*, 9 W. R., 158.

Issumnuvisee papers which were mainly relied on by a plaintiff putneedar, in a suit brought to assess lands said to have been held by a ghatwal, in excess of the area to which he was admittedly entitled, were rejected as insufficient, in the absence of satisfactory proof as to whence the information in these papers was derived (decisions *contra* cited and dissented from); and the defendant ghatwal's contention that all the lands had been held at a uniform payment of rent from the time of the Permanent Settlement having been maintained, it was held that, whether he came under Sections 3 and 4, or under Sections 15 or 16, Act X of 1859, his rent could not be enhanced. *James Erskine* v. *The Government and Manick Singh and others*, 8 W. R., 232.

A writing under the hand of a deceased husband declaring that he gave his wife power to adopt, though not complete as a testamentary disposition, may yet be evidence of a declaration of fact. *Brojokishoree Dassee* v. *Sreenath Bose*, 9 W. R., 463.

Measurement papers of a zemindary made for the purpose of a partition are admissible as evidence as to title, as showing what the zemindary consisted of, though the partition may not have been carried out. *Anund Chunder Roy* v. *Huronath Roy*, 4 W. R., 26.

Canoongoe papers and proceedings of settlement officers are good evidence in questions of pergunnah rates, standards of measurement, and the like. *Nund Duntpat* v. *Tara Chand Pritheebaree*, 2 W. R., Act X R., 13.

The account books of a factory regularly sworn to by the manager are legal evidence of payment of rent. *Kalee Kant Mojoomdar* v. *R. Watson and Co.*, 2 W. R., Act X R., 75.

Books proved to have been regularly kept in course of business are admissible as corroborative but not independent proof of the facts stated. *Dwarka Dass and others* v. *Dwarka Dass*, 3 Agra Rep., 308.

If an instrument on which a case depends should appear to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least, and other evidence, that the alteration was made antecedently to the signature. *Petamber Manickjee* v. *Motteechund Manickjee*, 5 W. R., P. C., 53.

Maps drawn for one purpose are not admissible as evidence in a suit for a totally different purpose. *John Ker* v. *Nuzzar Mahomed*, 2 W. R., P. C., 29.

"Ought not to be accepted" may have different meanings with reference to documentary evidence and to parol evidence. *Khemun Kuree Chowdhry* v. *Beer Chunder Joobraj and others*, 6 W. R., 56.

Semble,—That a series of collection accounts or jumma-wasil-bakee papers appearing to be regularly kept may be evidence and entitled to credit on the same principle as other contemporaneous records made and kept by the party producing them in the ordinary course of his business.

How far and when canoongoe papers are admissible as evidence for the zemindar as to the rate of rent paid by the ryot. *Kheeromony Dossee and others* v. *Beejoy Gobind Bural and others*, 7 W. R., 533.

An examined copy of a quinquennial register is evidence without the production of the original. *Sreemutty Oodoy Monee Dabee and others* v. *Bishonath Dutt and others*, 7 W. R., 14.

Receipts of rent purporting to have been given by the former owners of a jote are not admissible in evidence without proof as to the handwriting of the parties who gave them, or some satisfactory account of the custody from which they came. *Womesh Chundra Mookerjee and others* v. *Sreemutty Bama Dossee*, 7 W. R., 15.

In a suit by a Mahometan to compel the defendant to rejoin him as his wife, a mere declaration by the defendant in a mortgage-deed executed by her, that she was the wife of the plaintiff, would not be evidence of the removal of the legal impediment to the re-marriage created by the divorce; neither can a presumption be drawn from the fact of the re-marriage that the impediment had been removed and that the defendant had again become lawful wife to the plaintiff after re-marriage. *Aktaroonissa* v. *Shairinoollah Chowdhry*, 7 W. R., 268.

With regard to the admissibility of evidence in the native Courts in India, no strict rule can be prescribed as in the Courts in England. A copy of a document coming out of a public office, and certified by the officer in charge of that depart-

ment to be a true copy, is admissible in evidence. *Unidi Rajaha Raji Venkataperumal Rouzea Bahadoor* v. *Pemmasamy Venkatadry Naidoo*, 4 W. R., P. C., 121.

Old canoongoe papers cannot, in the absence of evidence to show what they are and that they came out of proper custody, be received in evidence; before such papers can be admitted as evidence against a party it must be shown how they can be used against him. *Dwarka Nath Chuckerbutty* v. *Tara Soondery Burmonee*, 8 W. R., 517.

Documents not bearing proper stamps under Act X of 1862 are not admissible in evidence even to show the terms of the deed as against the party producing the same. *Thakoor Oomrao Singh* v. *Thakooranee Methab Koonwar and others*, 3 Agra Rep., 103.

A copy of a copy of a sunnud is not admissible in evidence. *Rajah Neelanund Singh and others* v. *Nusseeb Singh and others*, 6 W. R., 80.

The books of a creditor are not admissible as evidence against his debtor to prove the debt, unless there is other evidence of the debt; in which case entries in such books may be admitted as corroborative evidence under Act II of 1855, Section 43. In the case of a running account with items on both sides, the Statute of Limitations will not operate as a bar to items beyond the period of limitation, if there has been an agreement or understanding between the parties that only the balance should be due; and if within the period of limitation the debtor has admitted the state of the balance, including such items, to be correct. *Ramkristo Paul Chowdhry and others* v. *Hurrydass Koondoo*, Marsh., 219.

The recital in a lease granted by a husband of his wife's property, that he was empowered by mooktearnamah to manage her business generally, is not evidence against the wife that such a mooktearnamah existed. *Bhikunarain Singh* v. *Mussamut Necot Koer*, Marsh., 373.

Certificated copies of survey measurement chittas, field books, and maps are admissible in evidence. *Gopeenath Singh* v. *Anund Moyee Debia and others*, 8 W. R., 167.

It is doubtful whether, under Section 43, Act II of 1845, jumma-wasil-bakee papers are admissible as corroborative evidence. *Sheo Suhaye Roy and others* v. *Goodur Roy and others*, 8 W. R., 328.

Chittas are evidence of title in boundary disputes, if an account is given of them, and they are properly introduced and verified. *Sudakhina Chowdhrain* v. *Raj Mohun Bose and others*, 11 W. R., 350.

Pencil memoranda on a Government survey map held to be admissible as evidence.

Survey maps prepared under the authority of Government are evidence of possession, and, therefore, also of title.

Loazima and thaka papers are legal evidence *quantum valeant*. *Shaushee Mookhee Dossee and others* v. *Bissessuree Dabee*, 10 W. R., 343.

A copy of a document cannot be admitted as evidence, unless the absence of the original is properly accounted for; the mere fact of the latter being in another Court is not a sufficient reason. A map is not evidence of title, but only of possession, even though prepared by the gomastahs of both plaintiff and defendant. *Sreemutty Gourmonee* v. *Huree Kishore Roy and others*, 10 W. R., 338.

Under Section 13, Act II of 1855, Government survey maps are evidence, not only with regard to the physical features of the country depicted, but also with regard to the other circumstances which the officers deputed to make the maps are specially commissioned to note down. Further than this they are not evidence as to rights of ownership. *Koomodiny Dabea* v. *Poorno Chunder Mookerjee*, 10 W. R., 301.

The fact of a pottah being more than 30 years old was held not to do away with the necessity of proof before it could be used as evidence. *Fazil Sirdar* v. *Chenum Biswas and others*, 10 W. R., 237.

Copies, and not translations, must be tendered when parties wish to put in evidence judgments delivered in English; but there is no law which declares that Bengalee copies of formal decrees of a Zillah Court are inadmissible. *Kedar Nath Mahatah* v. *Kadumbinee Dabee*, 10 W. R., 239.

Documentary evidence tendered by a plaintiff cannot be rejected merely because it has not been adduced in a former suit to which plaintiff was a party. *Pureejan Khatoon and others* v. *Bykunt Chunder Chuckerbutty*, 9 W. R., 380.

Deeds of sale or wills which divert the course of inheritance must be proved by legal evidence before they can become operative. *Abedoonissa Khatoon* v. *Ameeronissa Khatoon*, 9 W. R., 257.

The absence of erasures or alterations is no ground for admitting what is at first sight a possible forgery to be a true document. *Ram Suhaye Singh* v. *Oodeet Singh*, 4 W. R., 9.

Held that jumma-wasil-bakee and peskee papers, though corroborative evidence against tenants, cannot be admitted as against a party holding under an adverse title. *Mohima Chunder Chuckerbutty* v. *Poorno Chunder Banerjee and others*, 11 W. R., 165.

Documents filed in a case under Section 318, Code of Criminal Procedure, cannot be accepted as evidence in a suit before a Deputy Collector. *Bhoobun Singh* v. *Dhoorub Singh and another*, 11 W. R., 171.

A mere alteration in the rate of rent on the part of a zemindar or person other than the tenant will not prove a variation, unless it be shown that the tenant submitted to or paid that varied and enhanced rate.

Zemindar's papers filed or attested by gomastahs are not conclusive proof of variation, unless it can be shown not merely that the jumma-wasil-bakee and similar papers show a varying rate, but that the ryot has paid at a varying rate. *Gopal Mundul* v. *Nobo Kishen Mookerjee*, 5 W. R., Act X R., 83.

Documentary evidence should not be summarily rejected for want of legal proof, unless the party producing it understands the nature of the proof required, and has had an opportunity of producing it. *Sheikh Gholam Hossein* v. *Okhoy Coomar Ghose*, 3 W. R., Act X R., 169.

Deeds of sale and mortgage and mutation of names in the Collector's register, as amongst members of a Hindu family, are evidence of separation. *Peary Lall* v. *Bhawoot Koer*, W. R., F. B., 18.

Chowkeedars' receipts and nazirs' reports are not

evidence *per se* of the service of the notice of appeal, or the like, but must be proved like any other documentary evidence. *Okhoy Chunder Dutt* v. *Erskine and Co.*, 3 W. R., Mis., 11.

One party, by merely producing his own books of account, cannot bind the other. *Sorabjee Vacha Ganda* v. *Koonwarjee Manickjee*, 5 W. R., P. C., 29.

A person who presents a document as evidence in an altered and suspicious state must explain the existing state of the document, unless there is corroborative proof strong enough to rebut the presumption which arises against an apparent falsifier of evidence. Such corroborative proof will be greatly strengthened if there be reason to suppose that the opposite party has withheld evidence which would prove the original condition and import of the suspected document. *Mussamut Khoob Koonwur* v. *Moodnarain Singh*, 1 W. R., P. C., 36.

Where the parties make no *bonâ-fide* attempt in the lower Court to prove the genuineness of conveyances on which they rely, they have no right to ask the Appellate Court to relieve them of the consequence of their own negligence. *Misree Begum and others* v. *Punnoo Singh and others*, 8 W. R., 362.

It is competent to show that a bond executed in favour of A. was really in favour of B., and that A. was a party to it merely in the capacity of gomastah of B. *Mussamut Beebee Suhoodeera* v. *Ram Rutton Tewaree*, Marsh., 3.

In a suit for enhancement of rent, a collection account or jumma-wasil-bakee filed many years previously by the plaintiff's predecessor in a suit to which the defendants are not parties, is not *per se* evidence for the plaintiff that the defendants' predecessor held at the rates of rent mentioned therein.

Semble,—That, if proved to have been regularly kept in the way of business, the paper might have been put in as corroborative evidence under Section 43 of Act II of 1855, or might have been used by the writer thereof to refresh his memory under Section 45.

Semble,—That, if it were shown that the writer was dead, or could not be found, the original might have been put in evidence under Section 39. *Kheero Monee Dassee* v. *Beejoy Gobind Burral*, 7 W. R., 533.

The recital of necessity in a lease is not *per se* legal evidence of the existence of the necessity which under Hindu law may justify an alienation by a mother or grandmother. *Obhoy Churn Doss* v. *Meer Saheb Ali*, 5 W. R., 244.

The mere insertion of the name of the defendant's father in the loazima papers of the zemindar is no sufficient evidence that rent has ever been paid for the lands in dispute. *Shibo Soondery Debia and others* v. *Ram Dhamait Kunnee and others*, 6 W. R., Act X R., 17.

Held in a suit to establish title to land, where an Ameen's map which professed to show the daghs of a hustabood chittah was not questioned by either party, it was not open to the Court to question its correctness, and to try whether it was possible to construct any map from the chittah. *Brijanauth Chowdry* v. *Lall Meeah Munneepoorce*, 14 S. W. R., C. R., 391.

Where a Court Ameen is appointed a Commissioner under the Civil Procedure Code, his report is only evidence on the point to which the commission refers; any report he chooses to make on any other point is no legal evidence in the case. *Syud Abdool Ali* v. *Mullick Sudderoodeen Ahmed*, 14 S. W. R., C. R., 493.

An investigation as to mesne profits made by a Civil Ameen in execution of a decree is no evidence against a party who was absent therefrom; and if his name was not mentioned in the petition for execution no presumption can arise that he was a party thereto. *Bholanath Chatterjee* v. *Inderchund Dogare*, 14 S. W. R., C. R., 373.

Survey proceedings are evidence of actual possession, and must be regarded as correct, so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title. *Rajah Leelanund Sing* v. *Rajah Mohendro Narain Sing*, 13 S. W. R., P. C., 7.

Documents of the description of a mourosee pottah are not required by law to be attested. *Grish Chunder Roy* v. *Bhugwan Chunder Roy*, 13 S. W. R., C. R., 191.

When it becomes necessary to establish the genuineness of a writing, the testimony of the writer or of some person who saw the paper or signature written is not, as a matter of law, the only mode of proof. Evidence as to the similarity of handwriting is just as good in point of admissibility as the testimony of the subscribing witnesses. *Grist Chunder Roy* v. *Bhugwan Chunder Roy*, 13 S. W. R., C. R., 191.

An adversary's account-books may be used as corroborative evidence, not as independent testimony. *Ramessur Singh* v. *Ajoodhya Pershad Singh*, 13 S. W. R., C. R., 294.

When a document is tendered, it is the first business of a court to satisfy itself whether the document is admissible at all. If not evidence between the parties, it should be rejected at once. If an admissible document comes under the class which requires proof, it should be distinctly noted that it is admitted on the record subject to proof, in order that if no proof be offered, the opposite party may ask the Court to take it off the record. *W. B. Manson* v. *Golam Kabria Moonshee*, 15 S. W. R., C. R., 490.

In a case involving a boundary dispute, a survey map, if not conclusive evidence, is evidence of an important character, which ought to be looked into and considered. *Guddadhur Banerjee* v. *Tara Chund Bannerjee*, 15 S. W. R., C. R., 3.

It is unfair and most unsafe for an Appellate Court to start objections to a document after the witnesses who proved it have been examined and allowed to go without being asked any question affecting the genuineness of the document. *Lalla Mohadeo Pershad* v. *Suttanund Misser*, 17 S. W. R., C. R., 502.

The Judge was held to have been wrong in summarily excluding copies of a kobala, and of certain admissions from evidence merely because they were copies and not originals, when no objection was taken to them, and in having rested his decision against the plaintiff's title upon two decrees, one of which was not between the parties to this suit, and the other had been found by the first Court to have been fraudulently obtained, without any

enquiry having been made into this matter by the Judge. *Sreemutty Luxina Bibee* v. *Juggo Mohun Dutt*, 17 S. W. R., C. R., 378.

In a suit between two ryots holding from the same zemindar as to a portion of a khal, the question being whether the disputed portion of the khal was situated in plaintiff's or defendant's holding, the Moonsiff on remand sent for the zemindar, who put in a verified kyfeut in favour of plaintiff, whereupon the Moonsiff, considering it unnecessary to enforce the zemindar's attendance, gave a decree for plaintiff. The Judge was of opinion that the kyfeut was not admissible in evidence, and dismissed plaintiff's suit without enforcing the attendance of the zemindar. The Court in special appeal held that the Judge was bound under the circumstances to enforce the zemindar's attendance and to have examined him, and remanded the case accordingly. *Khetter Mohun* v. *Soobul Dass*, 17 S. W. R., C. R., 426.

Although a Commissioner's report should have very great weight attached to it, it is not absolutely binding. *Vencata Reddi* v. *Venkaturamaiya*, 1 Madras Reports, 418, dissented from; *Kankutala Chellamaiya* v. *Poleshetti Papaiya*, 6 Mad. Rep., 36.

A document in the shape of a petition to a Court setting forth an arrangement come to between the parties in a suit, may be received in evidence in support of a fresh suit founded upon the agreement recited in such petition, although only stamped as a petition, it not appearing that the agreement recited was made in writing. *Ramdyal and others* v. *Dhooleny Jahumnur*, 3 N. W. R., 14.

10.—Ancient Documents.

To establish the authenticity of a document so old that the witnesses to its execution cannot reasonably be expected to be in existence, it is not necessary to go behind the possession of the present owner. If the custody from which the documents comes into Court has been and is the custody in which, judging from the purport of the document itself and the other circumstances of the case, it would naturally be expected to reside, then the document ought to be treated as authentic to such extent as to be admissible in evidence between the parties. *Chunder Kant Mistree* v. *Brogonauth Bysack*, 13 S. W. R., C. R., 109.

With regard to the proof of ancient documents the proper rule is, that if they are more than thirty years old they need not be proved, provided they have been so acted upon or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. Application of this rule considered. *Vithul Mahádeb et al.* v. *Daud Valad Muhammed Husen et al.*, 6 Bom. Rep., A. C. J., 90.

When a document is so old that the parties to it and the witnesses are in all probability dead, and evidence cannot be produced to prove the *factum* of its execution, the rule in England, as well as in this country, is to compel the party who relies upon the document to show that it comes from the custody in which it would naturally be expected to reside, were it a real and authentic document. *Sreekant Bhuttacharjee* v. *Rajnarain Chatterjee*, 10 W. R., 1.

The antiquity of a pottah is no evidence of its genuineness. *Allucka* v. *Kasee Chunder Dutt*, 1 W. R., 131.

The rule regarding the proof of documents more than thirty years old is that they need not be proved, provided they have been so acted upon or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty. *Hari Dhangar et al.* v. *Biru Darsa et al.*, 5 Bom. Rep., A. C., 135.

Held that the Subordinate Judge was bound to consider the plaintiff's pottah and amulnamah as evidence in this case, they being both very old documents and found in the possession of the party who, in the natural course of things, would be their custodian; and that he ought, before deciding against the plaintiff's evidence, to have insisted upon the attendance of one of the parties who had been cited by them as witnesses, but who had refused to attend. *Ramdhun Ghose and others* v. *Eshan Chunder Ghose and others*, 17 S. W. R., C. R., 346.

A Court is bound to decide upon the evidence without reference to any previous arrangement between the parties as to the mode in which the evidence is to be dealt with.

The rule of the English Law of Evidence, which dispenses with formal evidence of the execution of a document more than thirty years old, assuming it to be applicable to the Courts of this country, does not apply to a case in which it is not shown in whose custody the document has been kept; and even then the Court could reject the document if it thought it to be a fabrication.

A document thirty years old does not prove itself, in the absence of evidence, that it has come from the proper custody. The finding of a fact by the lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. *Guru Das Dey* v. *Sambhunath Chuckerbutty*, 3 B. L. R., A. C., 258.

Per Bayley, J.—The omission in the first Court to enquire or specify in the judgment as to whether a pottah, which is admittedly 102 years old, and which is actually supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the pottah is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the inference of the High Court in special appeal.

Per Glover, J.—The question as to proper custody is not in issue, the Judge having found the pottah proved by the evidence of witnesses. *Shah Buddiooddeen* v. *Golam Peer*, 17 S. W. R., C. R., 279.

The phrases "attesting a document" and "proving a document" severally defined and distinguished. *Bissonauth Chatterjee* v. *Madhubmonee Dabee*, 15 S. W. R., C. R., 511.

11.—Production, Proof, and Inspection of Documents.

Evidence of possession and enjoyment is good evidence of title as against the real owner only

where it has been undisputed and continuous. *Gooroo Persaud Roy and others* v. *Bykunt Chunder Roy and others*, 6 W. R., 82.

An affidavit in support of an application for taking documents out of the custody of the Court for the purposes of another suit should state in what way they are material to that suit. *Mollwo, March, and Co.* v. *Rajah Pertab Chunder Singh*, 1 Ind. Jur., N. S., 283.

Where a document is found on independent evidence to have been in existence long prior to the institution of the suit, and also to be genuine, it is not necessary to insist on the testimony of subscribing witnesses. *Mahomed Fedye Sirdar* v. *Ozeeoodeen and others*, 10 W. R., 340.

The production of documents in the Courts of India is subject to risk, and of all men a defendant talookdar has the greatest reason to be careful of his title-deeds, since, whatever may have been the recognition of his title by his existing zemindar, he may at some future time have to establish that title by the strictest proof against one coming in by purchase at a sale for arrears of revenue. *Gopal Lall Tagore* v. *Tilluck Chunder Roy*, 3 W. R., P. C., 1.

Remarks on the impropriety of allowing documents to be filed after most of the witnesses had been examined, without any explanation of their being tendered at that late period and without any enquiry whether they were relevant or otherwise, more especially one document filed after evidence and argument concluded, though it had been in plaintiff's hands before the commencement of suit. *Opendro Narain Ghose* v. *Bajpyee Raja Keshub Chunder Deb and others*, 6 W. R., 25.

When a lower Court dismisses a suit on the ground that the documents on which the plaintiff based his title were not authentic and genuine, it is incumbent on the lower Appellate Court, before giving the plaintiff a decree, to find whether the documents in question were authentic and genuine. *Shibchunder Bhuttacharjee* v. *Juggut Tara Chowdhrain*, 6 W. R., 64.

A Judge may send for and inspect any document filed with any record in his Court, and there is nothing in the Code of Procedure to prevent his basing his decision, wholly or mainly, on such document. *Bunwaree Lall* v. *Kisto Behary Roy*, 1 W. R., 63.

Where a party offers documents of such an age as to be incapable of being proved by direct evidence, he is bound to prove their custody. *Gour Paray* v. *Wooma Soondery Debia*, 12 W. R., 472.

A mookhtearnamah under seal is as valid as a mookhtearnamah under signature. A Judge is not bound or authorized to require proof of the genuineness of the seal. *Petition of the Maharajah of Burdwan*, 7 W. R., 475.

Dakhilas should be attested or proved by some oral evidence in the same manner as all other documentary evidence, the tenant should be required to attest them himself as far as he can. It will then remain for the zemindar to deny their genuineness, and he also should be examined regarding them. *Rajessuree Debia* v. *Shibnath Chatterjea*, 4 W. R., Act X., 42.

Where persons who subscribed to certain dakhilas were not produced as witnesses, and the absence of the dakhilas was not satisfactorily accounted for, the lower Appellate Court was held to have been right in law in refusing to attach credit to the evidence of other witnesses who swore to the dakhilas. *Golam Aly and another* v. *Agur Aly*, 11 W. R., 105.

Where a party filing dakhilas deposed that the amounts of rent he had paid were, according to the sums, entered in the dakhilas, such statement was held not to prove the dakhilas, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of the documents filed. *Koylash Nath Haldar* v. *Oomanath Roy Chowdhry*, 11 W. R., 170.

A Civil Court has every right to accept dakhilas tendered by a party as undisputed documents, where the opposite party says that he is not prepared to deny their genuineness. *Indro Bhoosun Deb* v. *Goluck Chuckerbutty*, 12 W. R., 350.

Dakhilas unattested, or attested only by the evidence of a manager and mookhtear, were held to be no legal evidence of uniform payment of rent. *Rezoonissa* v. *Bookoo Chowdhrain*, 12 W. R., 267.

Dakhilas relied upon by a defendant in a suit for arrears of rent at enhanced rates, to obtain the benefit of the presumption arising under Section 4, Act X of 1859, must be proved even if not positively denied. If a variation in the dakhilas is found to exist there must be a distinct finding as to whether the short payments of one year were made upon the next year, the variation *primâ facie* being evidence that the rent was not uniform. *Ramjadoo Gangooly* v. *Luckhee Narain Mundul*, 8 W. R., 488.

There is no rule of law prohibiting a Court of Justice from receiving the evidence of a defendant in favour of his co-defendant.

The best evidence in support of a deed of gift are the witnesses to its execution or its custody: it is not necessary to support it by documentary evidence. *Ram Comul Chuckerbutty* v. *Nund Ram Koolal and another*, 10 W. R., 261.

It is not necessary for a party who desires to prove a document to call the writer of it, if alive, as a witness, so long as he can give other satisfactory proof of its execution. *Gunganarain Dass* v. *Sarodamohun Roy*, 12 W. R., 30.

The plaintiff having sued for rent upon a kubuleut, and failed to prove it, is not entitled to a decree if he shows that the defendants had paid him rent for a number of years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. An admission by one ryot as to the rate at which he holds (though against his own interest) is not evidence to prove the rate at which another ryot holds. *Nurrohurry Mohonto* v. *Narainee Dossee*, W. R., F. B., 23.

When it has been found that a deed has been duly executed, and that a certain sum of money has passed in consideration of that deed, and where there is a recital in the deed of the fact that the balance of the consideration-money was paid previously to the execution of the deed, then there is something more than a presumption that the whole consideration has passed upon the deed. *Domun Singh and others* v. *Bhuggobutty Debea*, 8 W. R., 215.

The signing of a deed of conveyance of property made with full knowledge of the contents of the deed and of the object of the signature may convey the right of the person signing, even if the signature be not made in the assembly when the deed was executed. *Sunutoollah* v. *Dasee Bibee*, 1 W. R., 66.

A signature of a Rajah of the ancient Nuddea family was held to be valid, even though it did not contain the name of any particular individual. *Gunee Biswas* v. *Sreegopal Chowdhry*, 8 W. R., 395.

Where a document, although blank, when signed and put into the hands of one of certain parties, is afterwards filled by the consent of those parties with words which had already been agreed upon by them, and have, in consequence of such consent, been already drafted, the signature to the fair copy, although before the words were filled in, is just as binding as if it was attached to the document after the words had been written down in it. *Ahed Hossein* v. *Lalla Ram Surun and another*, 11 W. R., 216.

In accordance with former rulings (1 W. R., 331; 6 W. R., 82), it was *held* that, before a document, of whatever age it may be, can be put in as legal evidence, there must be sworn testimony as to the custody from which it has come. *Kalee Tara Debia* v. *Nitanund Shaha*, 12 W. R., 90.

Plaintiffs must, on the presentation of their plaints, produce in Court the originals of the document relied on by them in support of their claim. When a plaintiff can satisfy the Court at the hearing that some document on which he desires to rely was not presented with the plaint, because he was ignorant of its existence at the time, the Court will probably allow it to be received as evidence. *Campbell* v. *Keith*, 1 Hyde's Rep., 287.

In a suit for possession of land, the order that the party in possession do set forth a list of documents, is to be confined to documents other than title-deeds. Where the title-deeds are required by the plaintiff on special grounds, as, for instance, where it is alleged that the defendant is a trustee for the plaintiff, those special grounds on which they are required should be set forth by affidavit. *Heeralal Saha* v. *Jadub Chunder Chuckerbutty*, Cor. Rep., 66.

Held that the misconstruction of a document is an error in law, and is as such within the term of the present special appeal law; and that the Courts, in order to ascertain the intention of the parties, must look to the writing alone and to the statement of the parties themselves or their witnesses. *Held* further that a pottah, under the ordinary meaning of the words "ta bahali bundobust sircar," was to endure as long as the settlement. *Odit Narain and others* v. *Maharajah Moheshur Bux Singh*, 1 Agra Rep., F. B., 52.

In a suit brought against a Collector to compel him to refrain from preventing the plaintiff executing his decree against certain land, the only issue being whether the land was the private property of the judgment-debtors or Government service land, the plaintiff alleged that the land had been granted in fee mainly by a sanad which he petitioned the mamladar of the pergunnah to search for and send to the Collector; and on reference by the High Court, the District Judge found that the Collector did destroy the document that purported to be a copy of a sanad, such as the plaintiff petitioned the mamladar to send for. *Held* that it is not competent for the defendant to say that the document was not such a one as could be legally admitted in evidence, and that the case came within the rule, *Omnia præsumuntur contra spoliatorem*. *Adeshir Dhanjibhoi* v. *The Collector of Surat*, 3 Bom. Rep., A. C., 116.

A lower Appellate Court cannot be said to be wrong in law in not considering in its judgment documents which are not in the record when that judgment is passed. *Mahamed Hamidoolah and another* v. *Modhoo Sudon Ghose and others*, 11 W. R., 298.

A Judge may lawfully employ a former decision for the purpose of showing that documents which bear such a distant date that their attestation or proof in the usual form is impossible, had been used publicly on a former occasion in the same Court when they had been found to be authentic. *Nagur Singh and others* v. *Mushoo Nund Khan Sirdar and another*, 11 W. R., 309.

A ryot's receipts should not be rejected when they are not denied merely because he has not called the zemindar's agent to attest them. *Kattyain Dabea* v. *Soondury Dabea*, 2 W. R., Act X R., 60.

The issue being as to whether a certain mookhtearnamah, which purported to have been signed by the respondent, was valid or not, the validity of the mookhtearnamah was pronounced against, as there was no legal proof of its execution, and the absence of legal proof was not compensated by any legitimate inference arising out of or by any of the facts disclosed by the other parts of the case, the whole of the transactions relative to the execution thereof being of a very questionable character. *Seetul Pershad* v. *Mussamut Doolhin Badam Konwur*, 8 W. R., P. C., 22.

In a suit for possession, the fact of plaintiff having been a subscribing witness to a pottah which is set up by the defendant is not conclusive against the former. *Hosseinee Khanum* v. *Tijun Lull*, 14 S. W. R., C. R., 293.

The party producing dakhilas is bound to give some evidence of their having been signed by the person by whom they purport to have been granted, although the opposite party does not deny the signature. *Bharut Roy* v. *Gunga Narain Mohaputter*, 14 S. W. R., C. R., 211.

In order to prove legally the execution of a document of which a copy only is on the record, it is not enough for the witness to depose that he executed a document of that nature; the purport of the copy must be read to him, and he must be asked whether the original of the same was what he executed. *Mussamut Kamoola Khanum* v. *Khajah Mohamed Eusa Khan*, 13 S. W. R., C. R., 429.

Proof of a decree of the Small Cause Court by a copy of the record duly certified. *Harcnarayan* v. *Manik Sing*, 7 B. L. R., Ap., 61.

Where a plaintiff sues upon title-deeds as evidence of his claim he is bound to file them with his plaint, or else have them ready to produce at the time of the first hearing; otherwise he is bound to show good cause for not having done so.

In a suit to set aside a summary award under Section 246, Civil Procedure Code, a Judge is bound

to find facts upon the evidence tendered and taken in the case, and not upon any evidence taken in the summary cause. *Lekhraj Roy* v. *Mutty Madhub Sen*, 14 S. W. R., C. R., 95.

12.—PRESUMPTIONS.

In a suit to recover possession of certain lands in the bed of a river, which had changed its course, and to get rid of the effect of a Deputy Magistrate's order under Section 318, Criminal Procedure Code, it was found that plaintiffs had been in possession when the lands were surveyed some years previously as part of their village, and had continued in possession up to the year in which the criminal proceeding was held.

Held that the presumption raised by the plaintiff's continued and undisturbed possession was not rebutted by defendant's allegation that he was entitled to the julkur of the river. *James Hogg* v. *Denonath Koondoo and others*, 11 W. R., 566.

When a zemindar gives a lease, the presumption is that he is in a position to give possession of the property leased. *Douzelli* v. *Rajah Tek Narain Singh*, 2 W. R., Act X R., 103.

A Judge in this country is Judge both of law and fact, but if, in deciding upon the facts, he deals improperly with the presumptions which the law would raise, he commits an error in law which the High Court can correct in special appeal.

When a Judge decides without legal evidence he commits an error in law. *Ramee Surnomoyee* v. *Luchmeeput Doogur and others*, 9 W. R., 338.

Where A. is compelled by process of law to pay money which B. was legally compellable to pay, the law presumes that it was paid at the request of B. *Sappana Chari and another* v. *Shakkara Patan and another*, 1 Mad. Rep., A. C., 411.

An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent paid for three years may afford some presumption that the older items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand. *Rajah Enayet Hossein* v. *Sheikh Deedar Bux*, W. R., 1864, Act X R., 97.

An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the *onus* was in the first instance on the former. *Gunee Biswas* v. *Sree Gopal Paul Chowdhry*, 8 W. R., 395.

The presumption of legitimacy, where there has been opportunity for sexual intercourse, is not irrebuttable. *Pandáya Tétáner and another* v. *Púli Téláner and others*, 1 Mad. Rep., 478.

Uniform payment of rent for twenty years may be presumed without proof of such payment for every separate year. *Komul Lochun Roy* v. *Tumeerooddeen Sirdar and another*, 7 W. R., 417.

The Mahometan law allows legitimacy to be inferred from circumstances without direct proof. *Khaja Mahomed Gohur Ali Khan* v. *Haratoonissa*, 2 W. R., 52.

Proof of the fact that, in matters connected with succession, the law of the country of domicile has been adopted by a family, negatives any presumption arising from the observance of ancient customs in other matters. *Chundro Seekhur Roy* v. *Nobin Soondur Roy*, 2 W. R., 197.

In a suit for resumption, where the defendant gives direct evidence of possession for a period only a few years short of 1790, it is competent to the Court to infer from collateral facts and other evidence a possession prior to that period. *Hera Monee Debia* v. *Lokenath Mundul*, 2 W. R., 135.

The fact that, under certain circumstances, a river is in some places, and at extreme time of low water, fordable, does not warrant the presumption that the river was a fordable stream at the time of the formation of the chur. *G. P. Wise* v. *Ameeronissa Khatoon*, 3 W. R., 219.

When the payment of rent is not a matter directly in dispute, and dakhilas are produced by the ryot to show that he is entitled to the presumption under Section 4, Act X of 1859, if the landlord does not deny them he is legally presumed to admit them. *Kazee Khoda Newaz* v. *Mebo Kishore Raj*, 5 W. R., Act X R., 53.

Uniform rent for the 20 years preceding the suit ought not to be presumed upon evidence which only touches a portion of that period: on the other hand, it is not necessary to have evidence bearing directly on every one of the 20 years. It is sufficient if the whole time is included within limits upon which the evidence bears, provided the evidence leads to the belief of uniform rent. *Catherine Foschola* v. *Huro Chunder Bose*, 8 W. R., 284.

Defendant having purchased a decree, caused the judgment debtor's (P.'s) rights and interest in certain property to be sold in execution, and bought them himself. Plaintiff, who had purchased one B.'s rights and interests in a 4-annas share of the property, intervened; but his intervention having been rejected in the summary department, he sued to set aside the summary order, and to establish his vendor's right in the property. The vendor having admitted the sale to the plaintiff, the first Court thought it unnecessary to examine the witnesses to and the writer of the deed of sale, and, finding the plaintiff in possession, decreed the suit. This decision was reversed in appeal.

Held that the lower Appellate Court did wrong in presuming collusion between B. and his vendee (the plaintiff), and ought not to have rejected the deed without examining the writer and witnesses; and that it should have decided whether plaintiff was in possession at any time under the deed of sale. *Ram Lall Jha* v. *Issur Chunder Dey and others*, 10 W. R., 451.

In a suit to recover the value of plundered property, when a question arose as to the amount of the property misappropriated, it was ruled that, unless the defendant produced the property and showed it not to be of the value stated by plaintiff, the strongest presumption should be made against him, and the highest value assumed. *Soonder Monee Chowdhrain* v. *Bhoobun Mohun Chowdry*, 11 W. R., 536.

In a suit for recovery of possession and for opening a water-course (defendant having raised the land and stopped the water-course), plaintiff's assent to defendant's acts cannot be presumed from the fact of his not having objected. *Oodoyessuree* v. *Huro Kishore Dutt*, 4 W. R., 107.

The difference between Rs. 11-13 and Rs. 13-4 was held sufficient to destroy the presumption of a

uniform payment of rent. *Besseshur Chuckerbutty and others* v. *Woomachurn Roy*, 7 W. R., 44.

An unexplained variation of one rupee in a total jumma of sixty rupees is not a material variation, and does not deprive the tenant of the benefit of the presumption of uniform payment from the Permanent Settlement. *Anundloll Chowdhry* v. *J. Hills*, 4 W. R., Act X R., 33.

When a ryot, in an enhancement suit, proves uniform payment of rent for twenty years previous to the suit, the production of a pottah dated more than twenty years before the suit, but subsequent to the Permanent Settlement, if not inconsistent with the inference that it is a continuation of a former state of things, will not interfere with or defeat the presumption of uniform payment from the Permanent Settlement. *Kishen Mohun Ghose* v. *Eshan Chunder Mitter*, 4 W. R., Act X R., 36.

A tenure which was in existence upon its present jumma in 1783, and had since paid the same amount of rent, may be presumed to have existed for some years before 1783, and to be therefore protected from enhancement. *Romesh Chunder Dutt* v. *Gooroo Doss Nundee*, W. R., 1864, 204.

The fact of the mention of a tenure in a jummabundee paper prepared seven years before the Decennial Settlement, affords the presumption of the existence of the tenure twelve years before the Decennial Settlement. *Romesh Chunder Dutt* v. *Modhoosoodun Chuckerbutty*, 5 W. R., 252.

In a suit for a kubuleut at an enhanced rent, the evidence of witnesses to the defendant's uniform payment of rent for twenty years is legally sufficient to entitle him to the presumption of Section 4, Act X of 1859. *Bykuntonath Haldar* v. *Chunder Koomar Shadookhan*, 6 W. R., Act X R., 94.

It is only when a ryot claims to hold from the Decennial Settlement that the presumption arising from twenty years' payment of uniform rent can avail him. *Sheikh Ekram* v. *Bebee Buhooran*, 2 W. R., Act X R., 69.

The antiquity of a pottah is no presumption of its genuineness. *Allucha* v. *Kashee Chunder Dutt*, 1 W. R., 131.

Where a father obtained, once and again, a lease in the name of his wife and son, paying the consideration-money out of his own funds; and on the decease of his wife obtained the lease in the joint names of the son and of his daughter by the deceased; and it was found that latterly the possession was not with the father,—*Held* that there was no error in law in the Judge's coming to the conclusion that the property was not intended by the father for his own benefit, but was given to his wife and children for their maintenance. *Teemut Aly* v. *Mussamut Alimoonissa and others*, 10 W. R., 277.

Additional rent for additional land, and the addition of a small illegal cess, are not such variations of the proper rent as deprive the tenant of the presumption arising from twenty years' payment of uniform rent. *Sumeeroodeen Lushkur* v. *Huronath Roy*, 2 W. R., Act X R., 93.

The break of one year in twenty is not sufficient to set aside the presumption that the receipts for nineteen years prove the payment of a uniform rent. *Tarinee Kant Lahooree Chowdhry* v. *Kalee Mohun Surmah Chowdhry*, 3 W. R., Act X R., 123.

A variation in the rate of rent, which does not affect the integrity of the jumma, does not rebut the presumption of a holding at a fixed ren from the Permanent Settlement. *Gopal Chunder Bose* v. *Muthoor Mohun Banerjee*, 3 W. R., Act X R., 132.

Under Regulation VII of 1799, a plaintiff could only sue for and recover the rent of the current year. No legal presumption arose from his having done so that the rent of prior years had been satisfied. *Thakoor Mitterjeet Singh* v. *Choker Narain Singh*, 2 W. R., 58.

The holding for twenty years at a fixed rent from which uniform payment from the Permanent Settlement is allowed to be presumed, must be proved by the best evidence in the tenant's power. *Kunuk Monee Debia* v. *Gunga Ram Doss*, 3 W. R., Act X R., 135.

To entitle a ryot to the benefit of the presumption of uniform payment from the Permanent Settlement, it is not necessary that he should explicitly plead a holding from the time of the Permanent Settlement. His proof of upwards of twenty years' uniform holding is sufficient. *Koonwur Raj Coomar Roy* v. *Assa Beebee*, 3 W. R., Act X R., 170.

When parties are in possession of an estate, it is generally to be presumed that they have been in possession as owners; and it lies on the party alleging that possession was of a different nature, such as that of an under-tenant, to prove the allegation. *Shahabooddeen Chowdhry and others* v. *Ram Gutty Chuckerbutty*, 9 W. R., 556.

If a ryot pleads a holding for more than twenty years at a uniform rent on a pottah subsequent to the Permanent Settlement, the defence annuls the presumption to which he might be entitled, and the case must be decided according to the pottah. *Luchmeepershad* v. *Ram Golam Singh*, 2 W. R., Act X R., 30.

Presumption of occupancy from Permanent Settlement cannot be pleaded after a pottah brought forward to strengthen the presumption is found to be fabricated. *A. J. Forbes* v. *Nund Coomar Mundul*, 2 W. R., Act X R., 35.

Where property is acquired by a Mahometan lady living in a state of wedlock, and also by her legitimate daughter, a very small amount of evidence would suffice to dispose of the presumption arising from the fact of the title-deeds being with the lady, against the supposition of a benamee purchase. *Mussamut Kundurun* v *Mussamut Lullun*, 14 S. W. R., C. R., 366.

In a suit for possession of jungle lands where there is no proof of acts of ownership having been exercised on either side, possession must be presumed to have continued with the person to whom they rightfully belong. *Rajah Leelanund Singh* v. *Mussamut Basheeroonissa*, 16 S. W. R., C. R., 102.

A thatched house, which had been used by the proprietor of the land whereon it stood as a house of prayer for himself, family, neighbours, and the public, having been blown down, a brick built one was erected in its stead by public subscription and maintained for the same purpose. After the proprietor's demise his heirs claimed the right and title to the house.

Held that the consent of the proprietor, added to the long use of the house by the public, entitled the

public by way of implied grant to the occupation of the same as a house for prayer, and the plaintiffs could not succeed. *Sufroo Shaikh Durjee* v. *Futteh Shaikh Durjee*, 15 S. W. R., C. R., 505.

Wrongful interruption does not destroy a right of user where steps are immediately taken to assert the right, but if this is not done for a length of time acquiescence may safely be presumed. *Heeralall Kooer* v. *Purmessur Kooer*, 15 S. W. R., C. R., 401.

Where a party who had enjoyed the permissive use of the water of a tank does not use it for four years from the date of its further excavation, the permission may be taken to be revoked. *Gooroo Churn Soor* v. *Sree Churn Ghose*, 15 S. W. R., C. R., 308.

Honesty and *bona fides* must be presumed in all cases in the absence of evidence to the contrary, as well in all applications for execution as in every other instance in which the conduct of a party to a civil suit or criminal prosecution is considered and has to be dealt with by a Court of justice. *Meer Lootf Ali* v. *Abboo Bibee*, 15 S. W. R., C. R., 203.

The legal presumption in favour of a child who was born in his father's house of a mother lodged and apparently treated as a wife, who was treated as a legitimate child by his father, and whose legitimacy was disputed after the father's death, was a safe and proper one to be made, and that the opposing case had not, as it ought to have been, strictly proved.

The ordinary legal and reasonable presumptions of fact must not be lost sight of in the trial of Indian cases, nor an entire history thrown aside because the evidence, or some of the evidence, of some of the witnesses was incredible or untrustworthy.

It is not the practice of the Courts in India or of the Privy Council to press against either an infant or a Hindu female a presumption by acquiescence in a rival claim from the mere non-contestation for a limited time of an adverse title. *Ramamani Ammal* v. *Kulanthi Nanchear*, 17 S. W. R., C. R., 1.

In a suit for the demolition of a privy erected in plaintiff's land, it having appeared that plaintiff was aware of the erection of the privy and had allowed it to be completed and to remain standing for at least seven years, his application was refused. *Bromo Moyee Debia Chowdrain* v. *Koomardinee Kant Banerjee*, 17 S. W. R., C. R., 467.

13.—Duty of the Court with respect to Evidence.

In examining evidence, with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they substantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. *Nana Narain Rao* v. *Hurru Punth Bhad*, Marsh., 436.

It behoves all Courts of first instance to take care that a party to a suit whose case has been finished is not permitted, without good reason, to mend that case by fresh evidence after his adversary has succeeded in impeaching it. Evidence given under such circumstances must always be in the highest degree untrustworthy. *Hurro Monee Dossee and others* v. *Onookool Chunder Mookerjee and others*, 8 W. R., 461.

Where the plaintiffs in these suits appealed in both the lower Courts to the jurisdiction for the determination of a previous suit as evidence in their favour, and embodied it in their plaints as being a material particular of the cause of action which they proposed to establish, they were not allowed in appeal to the High Court to object to the reception by the lower Appellate Court of the judgment in question as evidence in the present cause, on the ground that they were not parties to that case, although the Judge, on review, reversed the judgment he had already passed in favour of these plaintiffs on the strength of the decision of the High Court which reversed the judgment in the previous suit on which the plaintiffs had relied. *D. Panioty and others* v. *Parbutty Chowdhrain*, 8 W. R., 492.

Where a Court of first instance sets aside its own *ex-parte* judgment, and after a new trial, in which it takes fresh evidence, as well as admits that originally recorded, again gives plaintiffs a decree, it is the duty of the lower Appellate Court to enquire, under Section 57 of Act II of 1857, whether, independently of the evidence originally recorded, there was sufficient to justify the decree. *Rosul Singh and others* v. *Kishoree Lall*, 8 W. R., 499.

The production in evidence of a forged document by a party to a suit does not relieve the Court from the duty of examining the whole evidence adduced on both sides, and of deciding the case according to the truth of the matters in issue. *Goribolla Gazee* v. *Gooroodoss Roy*, 2 W. R., Act X R., 99.

In a suit for a sum alleged to be due on the balance of partnership accounts, the Sudder Court ought, under Section 16, Regulation VI of 1793, to have used the evidence to be supplied by the original account books, or to have ascertained that the sum mentioned as the balance due, subject to the objections, was a balance due without objection. *Mussamut Seetul Bohoo* v. *Hurkishen Doss*, 5 W. R., P. C., 76.

The consideration of a case upon evidence can seldom be satisfactory, unless all the presumptions for and against a claim arising on all the evidence offered, or on proofs withheld, on the course of pleadings, and tardy production of important portions of a claim or defence be viewed in connection with the oral or documentary proof, which *per se* might suffice to establish it. *Maharajah Rajendro Kishwar Singh* v. *Sheopurshun Missur*, 5 W. R., P. C., 55.

A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. *Rousseau and another* v. *Pinto*, 7 W. R., 189.

With reference to the lamentable disregard of truth prevailing amongst the natives of India, the Privy Council held that it would be very dangerous

for the Court altogether to discredit witnesses deposing *vivâ voce* by reason of the necessity imposed on the Court to sift the evidence of such witnesses with great minuteness and care. *Modhoosoodun Sandeal* v. *Suroop Chundra Sircar Chowdhry*, 7 W. R., P. C., 73.

When the first Court has decided a case in favour of a defendant, without receiving certain evidence tendered by him, the Appellate Court should allow him the opportunity of adducing that evidence. *Mokeem Sandal* v. *Nawab Syud Ali Ahmed*, 3 W. R., Act X R., 133.

The production of a forged document in evidence by a party to a suit does not exempt the Court from a full examination of the whole evidence adduced. *The Bengal Indigo Company* v. *Tarinee Pershad Ghose*, 3 W. R., Act X R., 149.

Where a suit which was filed originally before a Principal Sudder Ameen, who had fixed the issues and recorded the evidence of witnesses, is transferred by a Judge to his own file, the Judge, his Court being a Court of original jurisdiction, ought to have the witnesses before him and take their evidence *de novo*. *Mussamut Unnopoorna* v. *Hurbullub Singh and others*, 8 W. R., 465.

When a lower Court disposes of a case upon the merits as proved by evidence not legally admissible against the defendants, and the Appellate Court considers it proper to allow the plaintiff to adduce further evidence, it may either take such further evidence itself or send the case back to the lower Court to take such evidence. *Ramjoy Surmah Mojoomdar* v. *Rajah Puran Kishen Singh*, W. R., F. B., 124.

According to the practice in India, the statement in a deed of compromise of the payment of consideration-money is not conclusive evidence of payment.

In estimating the value of evidence, the testimony of a person who swears positively that a certain conversation took place, is of more value than that of one who says that it did not. *Chowdhry Dabey Pershad* v. *Chowdhry Dowlut Singh*, 6 W. R., P. C., 55.

In a suit to recover possession of land claimed by virtue of a sunnud from a rajah, in which plaintiff gave *primâ-facie* evidence of the authenticity of the sunnud and subpœnaed the rajah to prove it, it was held that the lower Court did very right in considering the plaintiff's testimony to be strengthened by defendant (rajah's) refusal to come into Court with his own story; and that the *onus* lay on the rajah to rebut the plaintiff's evidence, or to prove minority or other personal disqualification. *Radha Kisto Singh Deo* v. *Gudadhur Banerjee and others*, 8 W. R., 453.

It being objected in special appeal that the decision of the lower Appellate Court was based on documents which were neither admissible as legal evidence nor had any bearing on the point to be decided,—*Held* that though the objection to the admissibility of the evidence ought to have been taken in the Court in which the evidence was tendered, yet coming in such a shape as it did it could not be got over.

Held also (Mitter, J., *dissentiente*) that as defendant has succeeded in special appeal on an objection which he should have taken before, he ought to pay his own costs in this appeal, even should he succeed ultimately (the case being remanded), and that it is not the exclusive duty of a Court, but that of pleaders also, to see whether evidence tendered is legally admissible. *Munrakhun Roy and others* v. *Juggut Doss and others*, 10 W. R., 124.

A Court of first instance, being satisfied that plaintiff's case could not be established, refused to examine defendant's witnesses. The lower Appellate Court, differing from the Moonsiff, gave plaintiff a decree. *Held* that, although the Moonsiff had committed a great irregularity, still as that point was not raised in the lower Appellate Court it could not be taken in special appeal. *Gooroo Dass Akhoolee* v. *Poran Mundle*, 12 W. R., 363.

Every party to a suit is entitled to have all the witnesses whom he desires to call, and is ready at the trial to produce, heard by the Court, whatever opinion the Court may form by anticipation as to the probable value of the evidence when it shall be given. *Looloo Singh and others* v. *Rajender Laha*, 8 W. R., 364.

The general duties of the lower Courts in connection with the examination of witnesses pointed out. *Ramgutty and others* v. *Mumtaz Bibee and others*, 10 W. R., 280.

The defendant pleaded payment and produced a letter of acknowledgment said to have been written by the plaintiff. The plaintiff denied its genuineness, and the Principal Sudder Ameen rejected the testimony of two pyadas who deposed to the payment. On appeal the Judge remanded the case, requiring the lower Court to give the appellant the opportunity of proving the letter, and after recording a fresh finding to return the case to his Court.

Held that the lower Court was bound to pronounce a distinct opinion as to the value of the evidence, and not to have rejected it altogether. *Runpal Singh* v. *Maharajah Joy Mungle Singh and others*, 11 W. R., 106.

In a suit claiming the exclusive right to open and shut a kunwa or sluice, and to set aside the award of a Deputy Magistrate, the Court of first instance gave the plaintiff a decree; but the Principal Sudder Ameen, finding from several measurement and settlement papers that the subject of dispute was not a kunwa or sluice, but a pyne and water-course, dismissed the case.

Held that the Principal Sudder Ameen ought to have given some opinion upon the oral evidence upon which everything depended; and that he was wrong in relying upon a recital in a muntrokhal khusrah which was contrary to an entry in the original khusrah. *Ramput Tewaree and others* v. *Sheo Suhye Singh and others*, 11 W. R., 159.

The lower Appellate Court was not competent to reject the documentary evidence which had been admitted by the Court of first instance, merely because it had been admitted after the first hearing of the case, or after the date on which it had been ordered to be produced. *Honooman Singh and others* v. *H. H. Fell and others*, 3 Agra Rep., 148.

Even if the evidence upon the record is in itself insufficient, a Judge may properly decide the case upon that evidence, if the defendant consents to its being taken as sufficient. It is the duty of the party who wishes to object to evidence to object in the first instance, and not to delay doing so until the case is before the High Court in special appeal.

Seetul Pershad Mitter v. *Junmejoy Mullick*, 12 W. R., 244.

Held that the lower Appellate Court should state most fully and clearly its reasons for calling for fresh evidence; but that in point of law it was sufficient if that Court considered the matter and stated that such reasons existed without mentioning what they were. *Shib Chunder Mahtoon* v. *Kasheenath Kormokar*, 12 W. R., 245.

Before an objection to the validity of a document filed as evidence in a case can be admitted as a ground of special appeal, it must be shown to have been made at every stage in the Courts below. *Joykishen Mookerjee* v. *Rajkishen Mookerjee*, 12 W. R., 315.

A Civil Court cannot rely on evidence taken in the Criminal Court, but is bound to record its own evidence, and come to a determination on the evidence taken before it as to the fact found by the Criminal Court. *Ali Buksh* v. *Sheikh Sumeruddee*, 12 W. R., 477.

In a suit for arrears of rent for 1273 at an enhanced rate, plaintiff relied upon an agreement said to have been executed by defendant in that year. The Assistant Collector found that the agreement had not been executed by defendant. In appeal, the Judge called an expert who proved that the signatures of the attesting witnesses were not all genuine, and the decision of the Assistant Collector was affirmed.

Held that the Judge was wrong in calling for and acting upon the evidence of the expert. *Bindessuree Dutt Singh* v. *Doma Singh*, 9 W. R., 88.

Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. The manner in which evidence is to be dealt with discussed. *Bhaju Sing* v. *Kiafnath Tewari*, 3 B. L. R., A. C., 332.

The failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it, does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. *Case of Behary Lall Bose and others*, 9 W. R., Cr., 69.

Attention drawn to the neglected provision of the Code of Civil Procedure, which prohibits Courts from receiving on the record of a case, without restriction, and without discrimination, documents which are either irrelevant or inadmissible. *Issur Chunder Ghose and others* v. *Russeek Lall Mundle and others*, 11 W. R., 576.

The provision in the Code of Civil Procedure which requires Judges who admit fresh evidence on an appeal to record their reasons, though not a condition precedent to the reception of the evidence, is yet one that ought at all times to be strictly complied with. *Gunga Gobind Mundul and others* v. *The Collector of the 24-Pergunnahs; Prince Gholam Mahomed and others*, 7 W. R., P. C., 21.

Whether or not cotton fabrics bordered with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state, wrought up or not wrought up with other materials," within the meaning of Act XVIII of 1854, Section 10, is a question of fact to be decided on the evidence, not a question of law to be reserved for the opinion of the High Court, under Act IX of 1850, Section 55, and Act XXVI of 1864, Section 7.

Semble,—The proper test for a Judge to apply in such cases is to determine whether or not the value of the silk wrought up with other materials is more than half the value of the fabric. If it be not, the fabric cannot be considered to be silk within the meaning of the Act. *Lakhmidás Hiráchand* v. *The G. I. P. Railway Co.*, 4 Bom. Rep., C. J., 129.

Where the records of a case in appeal were not forthcoming, the High Court ordered the return of whatever papers had been sent up, together with such papers as the parties had respectively filed, with a direction to the lower Court to summon both parties, and to take such further evidence as either of them might think fit to adduce in support of his case, and to return such evidence with its own opinion for final disposal by the High Court. *Bunwarry Lall* v. *J. Furlong*, 8 W. R., 38.

Where plaintiff and defendant respectively put in as evidence different portions of the proceedings in a former suit, and found arguments thereon, the Court is bound to use them all as evidence. *Beer Chunder Roy* v. *Sheikh Tameezoodeen*, 12 W. R., 87.

The fact of a party putting his name as a witness to his brother's signature to a deed conveying the whole of certain property was held to be evidence against such party, either that the whole property did belong to his brother, or that he was acquiescing in his brother's act of selling the whole. When a document is tendered in evidence the Court has no right, without distinctly deciding whether it is or is not proved to be genuine, to decline to receive it for the mere general reason that it may possibly or probably be a forgery. *Thomas Oman* v. *Kumar Promotho Nath Roy and others*, 10 W. R., 256.

A bond executed between a plaintiff who sued upon it, and the defendants, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."

The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the Stamp Laws, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence. *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the Stamp Laws. The Judge might have inferred from it that it was the intention of the parties to evade the Stamp Laws, but in that case he should have heard evidence to the contrary. *Shushi Bhusan Banerjee* v. *Tarachand Kar*, 3 B. L. R., A. C., 329.

When the words of an agreement are plain and unambiguous they should not be explained away by extrinsic evidence, and still less by mere reasoning from probabilities. *Alaguja Tirrachettambala* v. *Saminada Pillai and others*, 1 Mad. Rep., A. C., 264.

It is incumbent on a Judge to look at the plaintiff's documents when they have been accepted by, and formed the basis of, the decree of the Court below. He should not reject them merely because

they have not been filed with the plaint. *Mohabeer Doss* v. *Lalla Roy*, 1 W. R., 12.

A written statement cannot be called for by an Appellate Court, or read as evidence against any party to the suit, save the person by whom it is made, and those who are bound by admissions made by him. *Juggessur Mookerjee* v. *Gopee Kishen Sen*, 5 W. R., 50.

The general fallibility of native evidence in India is no ground for concluding against a transaction when the probabilities are in favour of it.

The Privy Council, whilst lamenting the great latitude with which documentary evidence was received in India, held that it would be contrary to justice in any particular case to visit upon an individual penal consequences by way of costs, because the administration of justice was not more strictly conducted with reference to the admission of evidence. *Bunwarree Lall* v. *Hetnarain Singh*, 4 W. R., P. C., 128.

Where the evidence upon the record is not sufficient to enable the Appellate Court to pronounce a judgment upon regular appeal, it may require the Court against whose decree the appeal is made to make additional evidence defining the points to which such evidence is to be confined, in order to enable the Appellate Court finally to determine the case. *Narasimharoo Krishnaroo* v. *Ataji Virapaksh*, 2 Bom. Rep., 64.

In a case where hearsay evidence is not admissible as evidence, it should not be taken down. *Pitumber Doss* v. *Ruttun Bullub Doss*, W. R., 1864, 213.

The lower Appellate Court is not bound to receive and act on a map as genuine and correct because another Court has formerly done so. *Mahomed Ali Ahmed Khan* v. *Imdad-oor-rohoman Chowdhry*, W. R., 1864, 323.

In a case in which A. sued on a kobala, and B. relied on a deed of gift from a third party (C.), who was the vendor of the former and the donor of the latter, the lower Court was held to have committed an error in law in having looked into a written statement made by C. subsequent to defendant's deed in a case to which B. was no party, and in having taken for a standard a signature in a deed which ought to be set aside as spurious. *Poran Chunder Chatterjee* v. *Grish Chunder Chatterjee*, 9 W. R., 450.

A lower Appellate Court was held not to be wrong in reading as evidence in the suit evidence in another suit which had been read in the first Court, unless it was objected to. *Rughoo Nath Pershad* v. *Huree Mohunt*, 10 W. R., 37.

Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there is no proper trial of the case. *Boidonath Parooye* v. *Russick Lall Mitter*, 9 W. R., 274.

In a suit to obtain possession of mirâs land, the Court of original jurisdiction decreed for plaintiff on the evidence, but on appeal its decision was reversed, on the ground that the claim had not been properly valued, and plaintiff was permitted to bring a fresh action. At the trial of the second action the Moonsiff recorded his previous decree and some additional evidence, which the District Judge in appeal considered to be insufficient. *Held* that under the peculiar circumstances of the case the Judge, if not satisfied with the evidence taken at the second trial, should have allowed the plaintiff to give again the evidence adduced at the former trial. The lower Court's decree was therefore reversed, and the suit remanded in order that this might be done. *Jote bin Nimbajee and others* v. *Somajee bin Bapujee Gurare and others*, 1 Bom. Rep., 166.

A suit for arrears of rent under a kubuleut, the execution of which was denied by defendant, having been decreed in favour of plaintiff, an appeal was preferred to the Additional Judge, who sent for copies of two documents (previously filed by defendant in the Assistant Magistrate and Registrar's offices respectively), which neither of the parties had put in in the Court below, and used them as evidence in favour of the defendant.

Held that neither of the documents could be properly used as evidence between the parties to this suit, except for the purpose of cross-examination of witnesses in the Court of first instance, and that the use made of them by the lower Appellate Court was unfair to plaintiff, and caused a mis-trial. *Dwarkanath Saha and others* v. *Ram Lochun Biswas*, 10 W. R., 92.

There is no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts according to the ordinary course of human affairs and the usual habits of life. *Meer Usudoollah* v. *Bebee Imaman*, 5 W. R., P. C., 26.

The native Courts of India in receiving evidence do not proceed according to the technical rules adopted in England, and they would, by their usual practice, admit a copy of a public document authenticated by the signature of the proper officer as *primâ facie* evidence, subject to further enquiry if it were disputed. *Naragunty Luchmedavamah* v. *Vengama Naidoo*, 1 W. R., P. C., 30.

Case in which leave to appeal depended upon the value of the land in dispute. The respondent asked to be allowed to go into evidence on the question of value, but this was refused. *Mohun Loll Sookul* v. *Dabee Doss Dutt*, 2 W. R., P. C., 9.

Where a person became the purchaser of a talook under a decree for sale obtained by judgment-creditors of the owner, and an assignee of a judgment-creditor sued to have it declared that the purchase did not affect any transfer of the ownership of the talook,—*Held* that the *onus* was on the plaintiff to prove that the talook in question was still the property of the judgment-debtors, and not the property of the purchaser. In matters of this description, it is essential to take care that the decision of the Court rests, not upon suspicion, but upon legal grounds established by legal testimony.

The power given to the High Court by the Code of Civil Procedure, of taking, of its own motion, original evidence anew should be exercised very sparingly; and when exercised it is desirable that the reasons for exercising it should always be recorded or minuted by the Court in the proceedings. *Sreemunchunder Dey* v. *Gopal Chunder Chuckerbutty and others*, 7 W. R., P. C., 10.

Even additional evidence cannot be admitted in

appeal without any substantial reason being recorded in the proceedings. *R. Snadden* v. *Tod, Finlay, and Co., and others*, 7 W. R., 313.

A Court must examine the evidence put in by both parties, and state specifically the reasons upon which it accepts the evidence of the one side, or rejects that of the other. *Kissen Coomar Sein and others* v. *Ram Coomar Shome*, 6 W. R., 88.

Where evidence which was rejected by the Court of first instance is admitted in appeal, the Appellate Court is bound to state its reasons for admitting the evidence. *Lowa Jha and others* v. *Bissessur Singh and others*, 11 W. R., 6.

In a suit for rent the defendant pleaded payment and put in evidence receipts for the rent claimed. The Court of first instance disbelieved this evidence and gave a decree for the plaintiff. The Judge on appeal compared the signature of the plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed the decree and dismissed the suit. *Held* that the decision of the Judge, proceeding upon the point as to the credibility and weight of evidence, could not be objected to on special appeal. *Ramsoonder Sircar* v. *Kistobug Bug*, Marsh., 322.

In a suit for rent the defendant pleaded payment and filed a number of receipts. The plaintiff was required to examine them and acknowledge or deny them. After time had been allowed him for examining his own papers, he filed a petition admitting all the receipts except three. The Deputy Collector gave a decree disallowing the three receipts, which was reversed by the Judge and the receipts admitted. *Held* that the Deputy Collector was wrong in rejecting the three receipts without examining the plaintiff again, since the petition was no evidence; and that the Judge was wrong in admitting the receipts, but that he ought to have remitted the case to the lower Court to try whether they were genuine. *Doordaj Singh and others* v. *Dullell Singh and others*, Marsh., 277.

When a suit has been dismissed upon a preliminary point, and the decision on that point has been reversed by the Appellate Court, and the case goes down with a view to trial on its merits, evidence may properly be received even from defendants who had appeared, and *à fortiori* from a defendant who had not appeared. *Koonj Behary Awustee* v. *Tarinee Kant Lahoree*, 8 W. R., 285.

Where a Judge whose judgments have been observed to be very careful, comes to a conclusion on the weight of evidence as to a pure question of fact, the High Court would do wrong not to follow the principle laid down by the Privy Council, not to interfere in a judgment on facts, unless the conclusion be clearly shown to be a mistaken one.

In this country, where native evidence, as a general rule, is fallible, it would be safe and proper to follow another principle laid down by the Privy Council, namely, to look to the probabilities of the case. *Mussamut Edun* v. *Mussamut Bechun and others*, 11 W. R., 345.

A Judge is not bound to decide the genuineness of the receipts if he is satisfied that the rent at which the land is held has been changed within twenty years. The amount of rent paid is not conclusive evidence of the amount of rent at which land is held, but may be rebutted by showing that the actual rent is greater or less. *Anund Moyee Dossee* v. *Ranee Shurno Mayee*, 6 W. R., Act X R., 83.

In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. *Tiluckdharee Singh* v. *Somoodha Singh*, 6 W. R., 9.

When the Court of first instance admitted without objection unstamped receipts in evidence, but the Judge on appeal rejected the documents, and reversed the decision of the lower Court,—*Held* that the documents once received without objection were wrongly rejected, and the decision below wrongly reversed on appeal, as the irregularity was not one affecting the merits of the case under Section 350, Act VIII of 1859; and that the Court had no power to receive the documents on payment of the stamp duty and penalty under Section 17, Act X of 1862.

Section 17 of Act X of 1862 only applies to the reception of documents under Section 15 which have been insufficiently stamped, not to documents on which there is no stamp. Such documents should not be received at all. *Lalji Singh* v. *Syad Akram Ser*, 3 B. L. R., A. C., 235; S. C., 12 W. R., 47.

A Civil Court is not bound by the admission or rejection of documents by a Revenue Court. *Raj Chunder Roy Chowdhry* v. *Sheikh Abbas*, 5 W. R., 186.

A Civil Court is not bound by a Magistrate's view of the genuineness of a document. *Nittyanund Surmah* v. *Kasheenath Nyalunkar*, 5 W. R., 26.

Manner in which Judges should record the evidence of witnesses. *Shah Suheeoodd.en and others* v. *Luchmeeput Doogur*, 6 W. R., 112.

The plaintiff not having shown any *bonâ-fide* intention to examine as witnesses two of the parties to the suit, and not having complained of the refusal of the Court below to add them to the list of witnesses until the arguments on the appeal were concluded, and decision was about to be given, the High Court declined to allow the plaintiff to put in fresh evidence at such a stage of the proceedings. *Keenoo Singh Roy* v. *Eshan Chunder Roy and others*, 6 W. R., 213.

Where an Appellate Court received additional evidence, recording only that the papers were material and important, there was held to be no sufficient compliance with the proviso of Section 355, Civil Procedure Code, which requires the reason for admitting additional evidence to be stated. *Maharajah Juggut Indur Bunwaree* v. *Bhubo Tarina Dassee*, 14 S. W. R., C. R., 19.

Where the evidence is accepted by a Subordinate Judge as sufficient to warrant a decree, and the case is only remanded for a defect of parties, his successor is justified, when the case is returned by the first Court, in respecting the former judgment and looking upon the evidence as *primâ-facie* good and sufficient. *Wise, J. P.* v. *Ishan Chunder Bonnerjee* 14 S. W. R., C. R., 380.

It is not right for the Lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to

be to impede the adjudication of the case, or otherwise to obstruct the ends of justice. *Ramdhan Mundle* v. *Rajballab Paramanick*, 6 B. L. R., Ap., 10.

Where evidence has been taken by an Appellate Court in the presence of parties or their agents, it should not be rejected on appeal merely because the Court omitted to record its reason for admitting it. *Bhugwan Chunder Ghose* v. *Rajcoomar Goho*, 13 S. W. R., C. R., 303.

When parties have had an opportunity to put in such evidence as they consider sufficient to entitle them to a judgment upon the material issues of the case, the evidence ought to be held sufficient under Section 353, Civil Procedure Code, to enable the Appellate Court to pronounce a satisfactory judgment. *Bebee Zahura* v. *Bhugwan Dass*, 16 S. W. R., C. R., 211.

In a suit for a sum of money on an unadjusted account, plaintiff filed a memorandum (A.) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court the plaintiff put in another memorandum (C) to explain memorandum A. Defendant admitted that memorandum C. was signed by him. It had reference to a period immediately preceding that for which the suit was brought. *Held*, that memorandum C. was rather evidence to support the originally stated cause of action, than an amendment of the claim or the substitution of one claim or cause of action for another. The case was one which should have been decided not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence.

The mere omission of an accountable party, framing his own account, to carry forward into a new account a balance against himself existing in a former one, can constitute no evidence in his own favour. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the cause. *Mulka Mukhdra, Begum of ex-King of Oude*, v. *Tekaeth Roy*, 14 S. W. R., P. C., 24.

A lower Court was held to be justified in rejecting a prayer by the plaintiff for the examination of witnesses after his case had been closed and defendant's case had almost come to a termination. *Syud Abdool Ali* v. *Mullick Sudderooden Ahmed*, 14 S. W. R., C. R., 493.

Where credit has been given to witnesses by the Court of first instance before which they have been examined, the Appellate Court is not at liberty to say that it disbelieves them without stating reasons. *Mussamut Hujumbuttee Dassee* v. *Sreekissen Nundy*, 14 S. W. R., C. R., 58.

The rule limiting the right to call evidence to contradict witnesses in collateral questions excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute, the test being whether the fact is one which the party proposing to contradict would have been allowed himself to prove in evidence. *Kazi Gulâm Alli bin Kazi Ismail* v. *H. H. Agâ Khan*, 6 Bom. Rep., O. C. J., 93.

It is the duty of the Judge of an Appellate Court to allow the parties or their pleaders to submit the evidence to him at the hearing in open Court, and to make upon the evidence so submitted every comment, and found upon it every argument they may think necessary. *Lalla Juggeshur Sahay* v. *Gopal Lall*, 15 S. W. R., C. R., 54.

14.—Account Sales.

A. at Calcutta consigned goods through B. at Calcutta to C. at London, for sale on his (A.'s) own account and risk. B. advanced money thereon to A. The goods were sold in London by C., who sent the account sale to B. in Calcutta. In a suit by B. against A. in Calcutta for the balance due to him on account of the money so advanced after giving credit to A. for the amount realized by the sale of the goods according to the account sale,—*Held* that the account sale was *primâ-facie* conclusive of the amount realized; and if A. wished to falsify the account, the *onus* lay upon him. *Sheikh Doomun and others* v. *Ambrose Stevens and others*, 2 Ind. Jur., N. S., 5.

Account-sales furnished by plaintiff to the defendant are *primâ-facie* evidence of the amount realized by the sale of the goods mentioned therein. *Stearman* v. *Fleming*, 5 B. L. R., p. 619.

Where goods are consigned to be disposed of in a foreign market, it is an implied term of the agreement by the consignor that the account-sales furnished by the correspondents abroad shall be taken as *primâ-facie* evidence of what the goods realized. *Held* that this was so even though the consignor objected to the correctness of the account-sales when furnished to him. *Hodgson et al.* v. *Rupchaund Hazarimul*, 6 Bom. Rep., O. C. J., 39.

15.—Privileged Communications.

The question whether a communication between the accused and witness is privileged is a question of law for the Judge to decide. Communications between mookhtears and their clients are not privileged within Section 24 of Act II of 1855. *Queen* v. *Chundracant Chuckerbutty*, 1 B. L. R., A. Cr., 8; 10 W. R., Cr., 14.

On questions of caste a lower Appellate Court has a right to come to a finding based on history or the custom of the country. *Roghoonath Dass Mohaputur* v. *Bydonath Dass Maharatha*, 14 S. W. R., C. R., 364.

Where there is conflict between a Judge's memoranda of evidence and the recorded depositions of the witnesses, the Court must be guided by the latter. *Held* (by Jackson, J.) that where the right of succession to a raj or zemindaree (dignity and estates) depends upon the custom which regulates the devolution of the raj, the true question as between rival claimants is which of them is favoured by the custom as known to the public functionaries of the district, as recognized by the family itself of the late rajah, and as established by precedents. *Held* (by Jackson, J.) that for the purpose of ascertaining the custom of any given family on particular points, there can be no more important source of information than the declaration of successive heads of the family on solemn occasions. *Held* (by Markby, J.) that where the impartibility of the dignity and estates of a raj had its origin not in any custom, family or local, but in the peculiar character of the raj itself, and which by its very nature was indivisible, the nature of the raj would not exclude from

inheritance any person of either sex if without physical or intellectual infirmity. *Held* (by Markby, J.) that in order to establish a koolachar, or family custom of descent, there must be shown either a clear, distinct, and positive tradition in the family that the custom exists, or a long series of instances of anomalous inheritance from which the koolachar may be inferred. *Held* (by Markby, J.) that to establish a local custom to exclude females from inheritance by instances of exclusion in a certain district, the district must be stated and described geographically in which the custom is now and for a long time has been prevalent, and which includes the property in question. A sufficient number of instances of exclusion within that locality must then be adduced to establish that the custom extends to the whole district, and therefore governs the succession in dispute. Until some connection, geographical or political, is shown to exist between two districts, there is no ground for inferring the custom of one district from its existence in another. *Moharanee Heeranath Kooeree* v. *Baboo Burm Narain Singh*, 15 S. W. R., C. R., 375.

16.—WITNESSES.

The Court will extend the privileges of purdah to women, who, though not purdah, are not accustomed generally to appear before the public. *Kistomohun Mookerjee* v. *Audermonee Dabee*, 2 Hyde's Rep., 88.

An *à priori* consent to abide by the testimony of a certain witness cannot bind the consenting party to hearsay testimony, but only to such evidence as is legally admissible, *i.e.*, evidence as to such facts as the witness can directly speak to. *Luckeemonee Dossee* v. *Shunkurree Dossee*, 2 W. R., 252.

In a civil proceeding a husband or wife can give evidence for or against each other. *Suleemollah* v. *Subeea*, 4 W. R., 83.

Act VIII of 1859 confers no authority upon a Judge to issue a summons to a witness to attend on the settlement of issues. *Annund Chunder Banerjee* v. *Womes Chunder Roy*, 1 Hyde's Rep., 147.

Held by the majority of the Court (*dissentiente*, Jackson, J.) that there ought to be a *locus pœnitentiæ* for witnesses who have deposed falsely to retract their false statements. *Queen* v. *Gullie Mullick*, W. R., 1864, Cr., 10.

The denial by a witness of any relationship to his brother, whose witness he was, was held to be the mildest form in which false evidence could be given, and to merit only a mild punishment. *Queen* v. *Govind Sahoo*, W. R., 1864, Cr., 14.

A lower Court having allowed some of the witnesses of the plaintiff to depart without taking their evidence, the plaintiff objected to its taking the evidence of more of the defendant's witnesses than of his own. Upon this the Court allowed some of the defendant's witnesses to leave the Court without examining them. The case was remanded for examination of all the remaining witnesses and a fresh decision. *Gopee Ojah* v. *Hur Gobind Singh*, 12 W. R., 229.

The arrest under civil process of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under Section 78, Penal Code. *Thacoordass Nundee* v. *Shunkur Roy*, 3 W. R., Cr., 53.

A party who calls a witness to give testimony on his behalf (*e.g.*, to prove the execution of a document) is not necessarily bound by the evidence which that witness gives; but if such evidence is at variance with the truth of his case (*e.g.*, if the witness swears that the document was not executed and has the means of knowing the fact), it throws such a suspicion upon the case as to render the clearest testimony necessary before its truth can be established. *Fuzeelun Bibee* v. *Omda Bibee and Shah Jonab Ali*, 10 W. R., 469.

No action for the expenses of a witness will lie. Explanation of the manner of providing for the payment of such expenses. *Edward Dubois De Saran* v. *Hurrish Chunder Biswas*, 5 W. R., S. C. C. Ref., 6.

Where an attesting witness is unable to write, and either makes a mark or has his name written for him in a deed, the style of execution of the attestation cannot invalidate the deed. *Agum Misra* v. *Pullukdharee Misra*, W. R., 1864, 87.

When a witness has been examined on behalf of the plaintiff he cannot be recalled as a witness for the defendant without leave obtained at the end of the first examination. *Mackintosh* v. *Nobinmoney Dossee and others*, 2 Ind. Jur., N. S., 160.

If the Court, when specially prayed to take the evidence of a witness, without good reason refuses to do so, the party calling the witness has ground for complaint. But the Court is not bound to examine a person as a witness merely because he has been summoned and is in attendance. *Sreemutty Ranee Doorga Soondery* v. *Ranee Huru Monee*, 2 W. R., 166.

A Court ought not to reject any witnesses in attendance whom the parties wish to call. *R. Watson and Co.* v. *Nukee Mundul*, 6 W. R., Act X R., 83.

Where a day has been fixed for hearing the witnesses, the Court is not competent to decide the case without waiting for that day, in the absence of the witnesses, on the ground that no amount of witnesses would be believed. *Ranee Oojulla Koomaree Dhujamonee Debee* v. *Gholam Mostafa Khan, alias Modhoo Khan and others*, 6 W. R., 60.

As a general rule, all the witnesses brought forward by a party ought to be examined. But when an objection is made in special appeal that the Judge below has omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case. *Nilkant Surma and others* v. *Soosela Debia and others*, 6 W. R., 324.

It is not the business of a Court to determine what witnesses shall be examined. The parties must select their own witnesses, and call upon the Court to examine such of them as they may offer for examination; and it is their own fault if they do not take the necessary steps to have the witnesses examined, or to compel them to be present for examination at the proper time. *Moono Moyee Debee and others* v. *Bheem Koomar Chowdhry*, 6 W. R., 231.

The fact of a witness not having been named in the plaintiff's list of witnesses is no ground for

refusing to examine him when produced. *Rakkal Doss Mundle* v. *Protap Chunder Hujra*, 12 W. R., 455.

A witness called by the Court is liable to be cross-examined by any of the parties to a suit. *Tarinee Churn Chowdhry* v. *Saroda Soondery Dasee*, 3 B. L. R., A. C., 145; 11 W. R., 468.

A Court cannot refuse an application for summonses for witnesses at any time before a case is tried. *Gora Chand Ghose* v. *Raj Koomar Doss*, 5 W. R., 111.

A Court is not bound, on the mere statement of a party that he has more witnesses, to issue a warrant for their apprehension. It is the duty of the Court, when an application is made to enforce the attendance of witnesses on whom summonses have been served, to pass some definite order on the application, and not merely to order that the petition be filed with the record. *Nilmoney Chowdhry* v. *Hossein Ali*, 5 W. R., 222.

It is not incumbent on a Court to give detailed legal reasons for its refusal to comply with an application to enforce the attendance of a party to a suit as a witness. *Siddhessurree Debia* v. *Denobundhoo Koondoo*, 6 W. R., 65.

A Court is not bound to issue a proclamation against absent witnesses in a case where it was not satisfied that the witnesses were material, or that they had really absconded to avoid attendance. *Bhoobun Moyee Dossee* v. *Kishore Dossee and others*, 6 W. R., 235.

Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses.

The Judge below having, without the slightest reference to the interests of the parties concerned and to the facts of the case, refused to grant a coercive process to enforce the attendance of the plaintiff's witnesses upon the irrelevant ground that, sitting as a Civil Court, he could not criminally punish the witnesses for non-attendance, the High Court interfered and remanded the case to the Judge, with directions to give the plaintiff an opportunity of producing his evidence. *Nilmonee Banerjee* v. *Shurbo Mongola Debee*, 6 W. R., 14.

The proclamation issuable under Section 159, Act VIII of 1859, cannot be legally affixed to the mâl cutcherry of a defaulting witness. Before the provisions of that section can come into play personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt, under Section 174 of the Penal Code, and Section 168 of the Code of Criminal Procedure, was quashed. *Queen* v. *Hurynath Chowdhry*, 7 W. R., Cr., 58.

A re-examination of witnesses and taking of fresh evidence is not necessary in a suit when the record of a former suit, in which the same point was at issue between the same parties, has, by the consent of all the parties, become the record in the present suit. *Maharajah Jugutendur Bunwaree* v. *Din Doyal Chatterjee*, 1 W. R., 310.

The credibility of witnesses is a matter altogether for the Court of first instance and the Court which hears a regular appeal; and if these Courts are satisfied that the witnesses are not to be believed, their decision cannot be set aside by the High Court, even though upon a general view of the case it should think that, if it had tried the case originally, it might have come to a different conclusion. *Gouree Persaud Koondoo* v. *Prannath Surmah*, 10 W. R., 365.

A Court is not bound to act on the inconclusive evidence of two witnesses, on whose testimony defendant had stated his readiness to rest his case. *Munno Singh* v. *Amrut Lall*, 5 W. R., 234.

A suit to recover money having been commenced against P. and others, an attachment was applied for, and certain goods, supposed to be the defendants', were attached by order of the Court. Two other persons coming forward and claiming the attached goods as their property, plaintiffs concluded them to be partners with the original defendants, and made them also defendants. The lower Court at the trial held that the proof of partnership failed.

Held, in appeal, that the plaintiffs' case could not at this stage be supplemented by examining parties whom the plaintiffs did not think fit to call, or by books which they did not produce, in the Court below. *Velaet Aly Khan and others* v. *Matadeen and others*, 10 W. R., 402.

A defendant cannot be deprived of his right to summon a plaintiff to give evidence, by the Court examining the plaintiff's agent. *Soopun Khan* v. *Huro Pershad Paul*, 4 W. R., Act X R., 50.

In a suit to recover arrears of rent, in which the genuineness of the kubuleut was in issue, and the defendant asked the Deputy Collector to summon certain witnesses to prove that he had been paying at a particular rate,—*Held* that the witnesses should have been summoned according to the directions of Section 66, Act X of 1859.

Under Section 351, Act VIII of 1859 (extended to Revenue Courts by Section 67, Act X of 1859), the defendant was not bound to pay into Court the costs of summoning and defraying the expenses of the witnesses, until the Court had fixed what was reasonable. *Mohun Mundur* v. *Brij Bhookun Singh*, 9 W. R., 127.

When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance; and when a Commission is issued for the examination of witnesses, the Court must be moved to wait for the return. *Nund Mohun Chowdry* v. *Goluck Nath Neogee*, 11 W. R., 99.

A lower Appellate Court does right in refusing to summon witnesses whom the first Court was neither asked to hear, nor refused to hear. *Chunder Nath Sein* v. *Anundmoyee Dossee and others*, 11 W. R., 289.

A Judge's discretion in not compelling the attendance of witnesses named by one of the parties, must be exercised on reasonable grounds distinctly stated in the judgment. *Oseer Mahomed* v. *Bydnath Doss Chowdhry*, 5 W. R., Act X R., 6.

Where defendant's counsel did not go into evidence, but had not intimated his intention to call witnesses, the plaintiff's counsel has a right to reply. *Kiasvami Chetti* v. *Appasvami Chetti*, 1 Mad. Rep., 377.

Although, under the Civil Procedure Code, the Court is bound to take into consideration all the rights of the parties to the suit, whether legal or equitable, and by its decree to give effect to those

rights as far as possible, the Court should confine itself to granting such relief as is prayed in the plaint. *Virasvami Gramini* v. *Ayyasvaya Gramini*, 1 Mad. Rep., 471.

A witness (an attorney) cannot refer to his documents' receipt book, in order to enable him to say whether a document of a particular character and date was in his possession on a particular day. A receipt by the defendant for documents relating to his title in a suit is receivable in evidence as being in the nature of an admission signed by the defendant. *Madhub Chundra Dutt* v. *Rajkisto Sett and others*, Cor. Rep., 148.

Act VIII of 1859 makes no provision for compensation of witnesses for loss of time. *Nawab Nazim of Bengal* v. *Prossono Deb*, 2 Hyde's Rep., 236.

Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed *suo motu* to further the production of the witnesses, though the Court may issue attachment under Section 168, Code of Civil Procedure, if it is shown that the witnesses are absconding or keeping out of the way. *Bachman, J. G.* v. *Lall Beharee Panday*, 13 S, W. R., C. R., 324.

It is the duty of a plaintiff or defendant to tender such witnesses as he considers necessary to prove his case, notwithstanding the report of the nazir that such and such witnesses are in attendance. *Deen Dyal Singh* v. *Dunee Roy*, 13 S. W. R., C. R., 185.

Upon trial of a prisoner it is illegal to read over to witnesses their depositions taken at a former trial, and ask them if they are true. Such witnesses will be held not to have been duly examined, and a conviction founded upon their evidence will be quashed. *Queen* v. *Kalundar Dass*, 2 N. W. R., 100.

Where a defendant, after asking the lower Appellate Court to summon plaintiff as a witness, and consenting to abide by his deposition, had again petitioned the Court that the plaintiff should not be examined,—*Held* that defendant should not have been bound solely and absolutely by the plaintiff's deposition, but that the other evidence on the record should also have been considered. *Jugdeo Singh* v. *Sheik Molazim Hossein*, 13 S. W. R., C. R., 108.

The circumstance of a witness being a servant or a defendant of the plaintiff does not of itself disentitle him to credit. *Shoobul Chunder Kulleah* v. *Koylash Chunder Mal*, 14 S. W. R., C. R., 23.

Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern, and as such liable, certain witnesses were examined in four of the cases in which the plaintiff in one of the suits was not a party, and at his request the evidence taken in those cases was allowed to be used as evidence in his case, and then the witnesses were discharged. Two days after this he applied to have the witnesses re-examined, giving no reason for his application, which was refused. *Held* that the refusal was justified in the absence of any new reason for the re-examination. *Tranauth Roy* v. *Goluck Chunder Sein*, 15 S. W. R., C. R., 348.

A Court has no power to refuse to summon witnesses when expressly requested by a party to do so, unless the witnesses are required to be summoned in such a manner, or in such numbers, as clearly indicates a vexatious desire of obstructing the course of justice. *Ram Phal Pandey* v. *Wahed Ali Téhan*, 14 S. W. R., C. R., 66.

Instead also of dismissing plaintiff's suit on account of his pleader's inability on the day of trial to prove which of his absent witnesses, against whom he had applied for further processes to be issued, were material, the proper course for the Judge was to allow the plaintiff a certain time to produce evidence upon this point, upon payment by him of all the costs of adjournment. *Pearee Mohun Bose* v. *Hurrish Chunder Ghose*, 17 S. W. R., C. R., 141.

It is the bounden duty of a Court, unless where it sees that there is a clear intention to delay or obstruct justice, to examine all witnesses whom the parties wish to be examined. *Chowdry Khoorjo Roy* v. *Shib Tehul Roy*, 17 S. W. R., C. R., 173.

A Civil Court has no power to bind witnesses by recognizances to attend to give evidence on a future day.

A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. *Venkatappoá* v. *Papammah*, 5 Mad. Rep., 132.

A Court is not authorized to issue a proclamation and attachment mentioned in Section 159, Code of Civil Procedure, unless it is proved to its satisfaction that the evidence of the witness is material, and that he is avoiding the summons; and after these circumstances have been shown, it is a matter of discretion to issue the proclamation and attachment, and after issue to let the case stand over. *Kalee Dass Chuckerbutty* v. *Eshan Chunder Chuttjee*, 13 S. W. R., C. R., 416.

A Judge was held to have done wrong in throwing out the evidence of witnesses tendered by the defendant in a civil action merely because they have been found untrustworthy when examined with reference to a charge of breach of trust against the same defendant in a criminal case. *Lall Chund Roy* v. *Brindabun Chunder Roy*, 13 S. W. R., C. R., 226.

Where an application was made at a very late stage of a case to enforce the provisions of Section 159 of the Code of Civil Procedure, without proffer of any proof that the witness was absconding or keeping out of the way for the purpose of avoiding the service of the summons, the lower Appellate Court was *held* to have been justified in not postponing the case to secure the attendance of the witness, although material. *Ajoodhya Dass* v. *Bibee Misran*, 15 S. W. R., C. R., 176.

Section 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and subsequent orders for attachment; but such Court is bound to exercise a reasonable discretion. *Poran Chunder Ghose and others* v. *Gopee Nath Singh and others*, 8 W. R., 505.

A party to a suit requiring the examination of another party may, under Section 165, Act VIII of 1859, after the expiration of the given time to show cause why he should not attend and give evidence, apply for an order to compel him to do so. *Allad Singh Roy* v. *Ram Pershad Singh*, 2 W. R., 218.

Section 162 of the Code of Civil Procedure does not give the lower Court an absolute power either to allow or refuse the issue of a summons against a party to appear as a witness. If the Court exercises the power adversely to the petitioner, its order is not final, except when it gives reasonable grounds for its decision. *Hara Chand Paramanick* v. *Krishto Mohun Giree*, 1 W. R., 298.

The order of a Court dismissing a petition, under Sections 162 and 163, Act VIII of 1859, is final. But the Court is bound to show on the face of its judgment that judicial discretion has been used, and the limit of its powers not exceeded. *Ram Surun Singh* v. *Goorvo Dyal Singh*, 1 W. R., 83.

A Court in refusing to summon a material witness without special reason, but merely because other material witnesses are relied on, or may be called, does not properly exercise the discretion vested in it by Section 162 of Act VIII of 1859. *Matungunee Dabea* v. *Kalee Dabea*, 2 W. R., 4.

Act VIII of 1859 confers no authority upon a Judge to issue summonses to witnesses to attend on the settlement of issues.

The written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence. *Anund Chunder Banerjee* v. *Woomes Chunder Ray*, 1 Ind. Jur., O. S., 15; 1 Hyde's Rep., 147.

Though there is no appeal against an order of a Judge refusing to comply with an application under Section 162, Act VIII of 1859, requiring the attendance of a party to a suit as a witness, yet the Judge is bound to exercise the discretion vested in him by that section upon a correct assumption of the facts. This not having been done in the present case, the case was remanded to the Judge. *Neemchand Dey* v. *Anundcoomar Roy Chowdhry and others*, 7 W. R., 147.

Section 168 of the Civil Procedure Code requires that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence is without lawful excuse before issuing a warrant for the arrest of such witnesses. But it is not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. *Periyanna Chetty* v. *Govinda Gounden*, 5 Mad. Rep., 104.

Case of recusant witnesses who were ordered to be proceeded with under Section 168, Act VIII of 1859 (by attachment and sale of their property), and to be tried by the criminal authorities under the Penal Code. *Sreemutty Saroda Dossee* v. *Rajah Baroda Kant Roy*, 5 W. R., Act X R., 49.

Cross-examination—Witness for defence. *Queen* v. *Ishun Chunder Dutt*, 6 B. L. R., Ap., 88; and 15 S. W. R., Cr. R., 34.

Unless a defendant has subjected himself to cross-examination, no statement which he may volunteer can be used as any evidence in his own case. *Shaikh Shurfuruz Mollah* v. *Shaikh Dhunos*, 16 S. W. R., C. R., 257.

17.—Examination of Witness under Commission.

An examination *de bene esse*, being on the same footing as the examination of a witness in a cause, can only be conducted by counsel. *J. A. Hoffman* v. *P. Framjee*, Cor. Rep., 7.

The Court will not issue a commission for the examination of an infant of tender years. *Re Sreemutty Beehodeeny Dassee, an infant*, 2 Hyde's Rep., 152; S. C., 1 Cor. Rep., 78.

Commission granted on application of the plaintiffs, who resided in Madras, to examine witness in Madras. Costs of commission to be costs in the cause. *Gahan* v. *Owen*, Cor. Rep., 11.

A Commission for the examination of witnesses will be issued, even though the cause is entered upon the Peremptory Board of the day, if the issuing of such Commission is not calculated to prejudice the defendants, or to subject them to loss or inconvenience. *Janseh* v. *Dundas*, 1 Hyde's Rep., 269.

The Court is invested with discretionary power to grant or to refuse applications made under Section 175, Act VIII of 1859, for the examination by Commission of witnesses resident more than 100 miles distant from Calcutta. *Burney* v. *Eyre*, 1 Hyde's Rep., 68.

A Commission will be granted nearly as a matter of course to examine a material witness who is out of the jurisdiction of the Court, if the witness cannot be brought into Court by its ordinary process.

But the Commission will not be granted, at the instance of either party, to enable him to give evidence himself under a Commission, except under very strong circumstances indeed, such as where he is seriously ill. *Douccett* v. *Wise*, 1 Ind. Jur., N. S., 357.

A Magistrate is not bound to execute a Commission of a Small Cause Court, directing him to take the evidence of prisoners in jail, in a case in which none of the circumstances existed authorizing that Court to issue the Commission. *Gopal Chundra Sircar* v. *Kurnodhar Moochee and others*, 7 W. R., 349.

The issue of a Commission for the examination of an absent witness without notice to the opposite party, even if not illegal, is objectionable. *Tarucknath Mookerjee* v. *Gouree Churn Mookerjee*, 3 W. R., 147.

The kingdom of Ava is not the territory of a Native Prince or State in alliance with the British Government within the meaning of Section 177 of Act VIII of 1859.

A Commission for the examination of a witness at Mandalay can only issue from the High Court.

The consent of parties is not requisite to the admissibility of evidence taken under such Commission, if the examination have been upon oath or affirmation. *Aga Mahomed Jaffer Tehran* v. *Mirza Nazirullah*, 2 B. L. R., A. C., 73.

A *de bene esse* examination of a witness about to leave the jurisdiction of the Court must be taken by the Court, unless the parties consent to the evidence being taken under a commission. *Edwards* v. *Muller*, 5 B. L. R., 252.

Where a Commissioner took the evidence of witnesses when the last return day of the Commission had expired, it was held that the depositions of the witnesses were not admissible in evidence in the cause. *Gregory* v. *Dooley Chund Kandary*, 14 S. W. R., A. O., 17.

A party who has not joined in a commission is entitled to cross-examine the witnesses who are ex-

amined under the commission. *Gregory* v. *Dooley Chund Kandary*, 14 S. W. R., A. O., 17.

Practice—Examination under Commission—Barrister—Attorney. *Prankrishna Chandra* v. *Bissonath Chandra*, 8 B. L. R., Ap., 101.

It is the duty of the party obtaining a commission for the examination of witnesses to take such steps as may be necessary to s cure the attendance before the Commissioner of the witnesses he desires to examine.

Where parties require the production of telegraphic messages, it is for them, and not the Court, to obtain the necessary sanction of Government to the disclosal of such messages. *Leckraj* v. *Pala Ram*, 2 N. W. R., 210.

Commission for examination of witnesses. Obligation in Court to issue. *Haridas Baisakh* v. *Mir Moazam Hossein*, 8 B. L. R., Ap., 16; and 15 S. W. R., C. R., 446.

Act VIII of 1859, S. 179—Practice—Use by one party of evidence under commission issued at the instance of another party. *Dwarkanauth Dutt* v. *Gunga Daji*, 8 B. L. R., Ap., 102.

18.—Parties as Witnesses.

A party summoned by the Court to give evidence is not only required to give answer to the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible unless the opposite party has had the opportunity of cross-examining him. *Gooroodass Roy and another* v. *Greedhur Sein and others*, 11 W. R., 110.

It is within the discretion of a Judge to refuse to summon a plaintiff whom defendant desires to have before the Court as his witness, and that discretion will not be interfered with in special appeal unless shown to have been exercised illegally. *Indro Lochun Ghose and another* v. *Grish Chunder Roy Chowdhry and others*, 10 W. R., 134.

Under the Indian Divorce Act a respondent can be a witness. By Section 52 she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offer herself as a witness. *Kelly* v. *Kelly and Saunders*, 3 B. L. R., Ap., 6.

Where some of the witnesses (defendants) in a suit had been examined, and plaintiff petitioned the Court to have the remaining defendants examined as witnesses, he was held not to have taken the necessary steps required by law to enforce their attendance, because he did not make any special application to the Court, or show sufficient grounds in support of his petition. *Ram Luhul Thakoor* v. *Oodit Narain Singh*, 12 W. R., 36.

A Court is not bound to dismiss a case on account of the non-appearance of a plaintiff summoned by the defendant to attend as a witness, when the defendant did not petition for attachment or other legal process to be made by the Court to compel the plaintiff's appearance. *Bustee Narain Roy* v. *Sham Soonder Nundee*, 2 W. R., Act X R., 43.

A judgment passed against a plaintiff, under Section 126 of Act VIII of 1859, was reversed by the High Court in special appeal, as there was nothing on the record to show that the party refused to answer any material question relating to the suit. *Krishnaji A. Nunkor* v. *Vishnu A. Nunkor and another*, 2 Bom. Rep., 260.

When a defendant specially summoned to attend and give evidence under Sections 162 and 163, Code of Civil Procedure, failed to attend, and there was evidence to support the plaintiff's case, the Court acted rightly in deciding against the defendant under Section 170. *Ishan Chunder Ghose* v. *Hurish Chunder Buya*, 12 W. R., 369.

An appeal lies from a decision dismissing a suit for default under Section 170, Act VIII of 1859, and it is in the discretion of the lower Appellate Court to remit the case to the Court of first instance to consider the other evidence in the case. *Kedarnath Bhuttacharjee* v. *Kripa Ram Bhuttacharjee*, 5 W. R., 270.

A plaintiff required to appear, but not to give evidence, does not fall within Section 170, Act VIII of 1859. *Goor Chunder Puteetundo* v. *Joogul Chunder*, 1 W. R., 81.

Where there are several plaintiffs, the refusal or failure of any of them to attend and give evidence does not render all liable under Section 170, Act VIII of 1859, to have judgment passed against them, but only those who fail or refuse to appear after summons served on them. *Binode Ram Sein* v. *Brohmo Moyee Debia*, 1 W. R., 168.

Section 170, Act VIII of 1859, authorizes dismissal for default only against the plaintiff who fails or refuses to attend, not against the plaintiffs who appear. *Prosunno Coomar Shaha* v. *Gooroo Pershad Roy*, 1 W. R., 25.

A defendant failed to appear when ordered to attend under Section 170, Act VIII of 1859. The Judge did not at once pass judgment against him, but called the plaintiff's witnesses, and refused to allow the defendant's vakeel, who was present, to cross-examine them. *Held* that the Judge ought to have allowed the defendant's vakeel to cross-examine the plaintiff's witnesses. *Shahzada Pakuktar* v. *Jakriram Bhukut*, 2 B. L. R., Ap., 12.

Section 170 is discretionary. Under it the first Court may decide against a defendant, on the ground of his failure to appear, even without going into the plaintiff's evidence, and the lower Appellate Court is equally within the law in going into the whole case on its merits. *Gopal Lall Bose* v. *Kaleenath Mookerjee*, 5 W. R., 89.

A Court may avail itself in an execution case of the power given by Section 170, Act VIII of 1859, to summon a party to give evidence; and on his failing to comply with that order to pass judgment against him. *Syud Deshan Hossein* v. *Mussamut Khodija and others*, 8 W. R., 64.

It is not imperative on, but discretionary with, the Court, under Section 170, Act VIII of 1859, to give a decree against the non-attending party. *Rajchunder Ghose* v. *Koylashchunder Banerjee*, 6 W. R., Act X R., 86.

The stringent provisions of Section 170, Act VIII of 1859, ought to be applied only in the case of contumacious litigants, and not to plaintiffs on whose part there is no proof of cognizance of the issue of a commission for their examination, or no proof of wilful default. *Data Hurrukman Pyne* v. *Oodoychand Pyne and others*, 6 W. R., 247.

Section 170 is applicable to the procedure in

suits under Act X. *Chunder Mohun Mojoomdar* v. *Ketooram Bose*, 4 W. R., Act X R., 18.

Sections 166 and 170 are applicable to suits under Act X, having been extended thereto by Section 67 of the latter Act. *Soopun Khan* v. *Huro Pershad Paul*, 4 W. R., Act X R., 50.

To render a person liable to the penalty prescribed by Section 170, Act VIII of 1859, it must be shown that notice had been duly served on him, and that he had failed to comply with the requisition contained in that notice. *Gooroodass Roy* v. *Greedhur Sein and others*, 11 W. R., 110.

The High Court will not interfere on appeal with the decree of the lower Court dismissing a plaintiff's suit (under Section 170, Act VIII of 1859), on the ground of his refusing to answer a question material to the case when duly required to do so.

Semble,—It might be otherwise had plaintiff since decree endeavoured to purge his contempt. *Jeshta Ramji Shett* v. *Awaker Mullandegata Kunhi*, 3 Mad. Rep., A. C., 299.

A defendant who has been ordered to attend and give evidence under Act VIII of 1859, Section 170, and has failed to do so, is not precluded from appealing against a decree in favour of the plaintiff. *Khomkur Abdool Guffoor* v. *Cazee Khoda Newaz*, Marsh., 568.

Section 170, Act VIII of 1859, was not intended to empower a Court to decree a claim which on the face of it is barred by limitation. *Doorga Dutt Singh* v. *Kalika Sookul*, 7 W. R., 46.

When a plaintiff was summoned as a witness and did not attend, and the first Court, instead of enforcing his attendance or proceeding to pass a decree against him under Section 170, Act VIII of 1859, tried the case on the merits and gave the plaintiff a modified decree,—*Held* that the lower Appellate Court, instead of reversing the decision and dismissing the plaintiff's claim on the ground of non-attendance, should have again summoned the plaintiff and then acted under Section 170. *Kisto Coomar Chowdhry* v. *Gobind Coomar*, W. R., 1864, 133.

The first Court having decreed against the special respondent on the ground of his refusal to come forward and give evidence after being summoned by the special appellant, the lower Appellate Court was not authorized by law (with reference to Section 170, Act VIII of 1859) to come to a contrary decision, without insisting on the absentee's evidence being recorded, or giving any reasons for dispensing with it. *Mussamut Bukhson* v. *Haruk Chand Sahoo*, 1 W. R., 114.

When a plaintiff cites defendants as witnesses, and is unable to prove his case without them, his suit ought not to be dismissed without proof, but the procedure laid down in Section 170, Act VIII of 1850, should be followed. *Hemanginee Dossee* v. *Ram Nidhee Koondoo and others*, 10 W. R., 158.

Under Section 170, Act VIII of 1859, it is discretionary with a Court to pass such orders as it thinks proper in regard to a plaintiff who disobeys its summons to attend, and it is no ground of special appeal that further steps were not taken by the first or the lower Appellate Court. *Narain Doss Chela* v. *Maharajah Mahatab Chand Bahadoor*, 10 W. R., 174.

The non-attendance of defendant when cited as a witness to give evidence is not alone sufficient to justify the decision of the suit against him under Section 170 of the Civil Procedure Code. His absence may be an unfavourable circumstance, but the Court will not always be disposed to attach to it such weight as to regard it as justifying a decree in the plaintiff's favour. *Roob Narain Misser* v. *Kasbi Ram Singh Timbiram*, 2 N. W. R., 67.

In a suit to recover a sum of money being the balance of purchase money alleged to be due on a bill of sale executed by defendant No. 1, but said to have been fraudulently taken possession of by him before payment of the stipulated price from defendant No. 2, in whose custody it had been left and with whom the portion paid had been deposited,—*Held* that defendant No. 2 could not be exempted from liability without satisfactory explanation of his neglect to keep the deed entrusted to his custody. Where the plaintiff himself is present, the lower Appellate Court may in its discretion examine him if it considers his evidence material. The requirements of the law are sufficiently fulfilled if the Court records that it considers his examination necessary. *Bibee Hafiza* v. *Azhur Hossein*, 13 S. W. R., C. R., 328.

An order under Section 165 of the Civil Procedure Code, requiring a party to a suit to attend and give evidence, may be served on such party's pleader and need not be served personally. *Shivrudráppá* v. *Kashinath Vishna*, 6 Bom. Rep., A. C. J., 141.

Where a defendant when summoned as a witness does not appear, the Court is bound to adjudicate upon the question of the sufficiency of his excuse for not appearing. *Bhally Mahomed Bukshu* v. *Nobin Chunder Roy Chowdry*, 15 S. W. R., C. R., 269.

In a suit by the putneedar for rent due under a durputnee, defendant was summoned to produce the durputnee pottah and a bynamah which he had produced on a former occasion in a different suit. On his representing that they were lost, plaintiff put in a certified copy of the bynamah obtained from the office of the Registrar of Deeds. *Held* that as the defendant failed to produce the bynamah or to prove that it was out of his power to do so, the Judge might have passed judgment against him at once under Section 170, Act VIII of 1859. As the defendant gave no clear evidence to rebut the bynamah put in by the plaintiff, the copy of the bynamah was good evidence in support of the plaintiff's case. *Tara Chaund Banerjee* v. *Boistub Churn Bhudro*, 16 S. W. R., C. R., 196.

Where a defendant contumaciously refuses to appear in answer to a summons, the Court ought to apply the provisions of Section 170, Civil Procedure Code. *Thakoor Lall Misser* v. *Brohomonerje Dabee*, 15 S. W. R., C. R., 253.

Where the defendant, when called upon by the plaintiff to give evidence, persistently refused to do so, and the first Court came to the conclusion that the case set up by the plaintiff was true, and the lower Appellate Court reversed the first Court's decision without taking any notice of that point, the lower Appellate Court's decision was reversed as wrong in law, and that of the first Court restored. *Sin Buroda Moyee Dassee* v. *Rughoonath Chuckerbutty*, 16 S. W. R., C. R., 295.

A Court is bound, under Section 162, Act VIII of 1859, before summoning a plaintiff to give evidence, to record the reasons of its being satisfied

that the evidence of the plaintiff is essential to the defendant's case. Where, however, the Court does not give reasons of its satisfaction that the presence of the plaintiff is necessary, it does not follow that the defendants had failed to satisfy the Court that there was sufficient grounds for the application. *Mokoond Adit* v. *Rajah Sutoorghun Andit*, 17 S. W. R., C. R., 507.

There is nothing in the Code of Civil Procedure or any other law which says that the provisions of Section 170, Act VIII of 1859, apply to those cases only in which the party summoning his opponent is not in a position to prove his case otherwise than by the evidence of that opponent. *Kasheenath Sahu* v. *Dwarkanauth Sircar*, 17 S. W. R., C. R., 550.

Where the plaintiff gave no evidence at all in support of her case, it was *held* not just to put in force against the defendant who, when summoned to appear and give evidence, deliberately declined to do so, the stringent provisions of Section 170, Act VIII of 1859. The exercise of the discretion conferred by that section must be reasonable and judicial. *Syud Shah Aleh Ahmed Saffadanusheen* v. *Bebee Nussebun*, 17 S. W. R., C. R., 563.

The Court of first instance refused to grant plaintiff's application to be allowed to examine second defendant as a witness on her behalf, thinking the grounds of such application insufficient for the exercise of its discretion under Section 162 of the Civil Procedure Code. On the adjourned date of hearing plaintiff failed to produce any other witness, and the suit was dismissed under Section 148. On regular appeal, the Civil Judge considered that the Court of first instance ought not to have refused plaintiff's application, but *held* that the refusal was a final order not open to question in appeal. On special appeal,—*Held* that the Civil Judge was wrong on the latter point. That if the plaintiff had been prevented from examining the 2nd defendant on sufficient grounds, she had not committed default under Section 148; that the decree on the finding of the Civil Court was not maintainable without enabling plaintiff to examine 2nd defendant; and that that finding was conclusive in the special appeal. The decrees of both the lower Courts were consequently set aside and the case remanded. *Latchmana Ran Saib* v. *Rogunatha Ran*, 6 Mad. Rep., 299.

The first hearing of a suit was fixed for the 10th July, 1867. Neither of the parties nor their vakils appeared. Thereupon the Court dismissed the suit under Section 148 of the Civil Procedure Code, but afterwards, upon the application of the plaintiff's vakil, restored it to the file for hearing, under Section 119. Plaintiff obtained further adjournments, to produce witnesses, the last being an adjournment to the 28th September. On that day the vakils of both parties appeared, but no witnesses, and the Court again dismissed the suit under Section 148, for failure to produce witnesses. On the 22nd of October the suit was again, under Section 119, restored to the file on the application of the plaintiff's vakil, and a decision was afterwards come to for the plaintiff, upon the merits. On appeal the last mentioned decree was reversed, and the decree passed under Section 148 (whether the first or second decree was not specified) upheld, upon the ground that as Section 119 was inapplicable to a decree passed under Section 148, the Court of first instance had acted without jurisdiction in restoring the suit to the file. *Held*, on special appeal, reversing the decision of the lower Appellate Court, that the first decree of dismissal being a decree which might have been made under Section 147, was one to which Section 119 might be applied. That the second decree of dismissal was one to which Section 148 alone applied, consequently one subject only to review or to an appeal, and the proceeding had in October, 1867, being substantially an application for review, was one which the Court had power to grant. *Ambalavanee Padeiyátchi* v. *Sabramánia Padeiyátchi*, 6 Mad. Rep., 262.

A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put on cross-examination, is liable to be dealt with under Section 169 of the Civil Procedure Code.

"Without lawful excuse," means such an excuse as would in law justify the refusal to give evidence.

In a proceeding for contempt it is, under Section 21 of Act XXIII of 1861, fatal to the conviction if the Judge fail to record with the finding and sentence the statement of the offender. *Lekh Raj* v. *Palee Ram*, 1 N. W. Rep., Par. 9, p. 162.

The Civil Judge, on appeal, reversing the decree of the district Moonsiff, dismissed a suit brought by two plaintiffs, under Section 173 of the Code of Civil Procedure, on the ground that the first plaintiff had without lawful excuse failed to comply with the order of the Court requiring his attendance to give evidence.

There was no order or summons to the first plaintiff to attend to give evidence in this suit, but a summons was issued to the plaintiff to attend to give evidence in another suit to which the second plaintiff was no party, and which was heard together with this appeal.

Held (reversing the decision of the Sessions Judge) that non-compliance with the summons to give evidence in the other appeal was not enough to warrant the exercise of the power in this case. The section requires that there should be a failure to comply with an order to attend to give evidence in the particular suit. *Arunachella Mudaly* v. *Vencatachella Mudaly*, 5 Mad. Rep., 269.

The provisions of Section 170 of the Code of Civil Procedure ought to be exercised with the most temperate discretion.

Where the Court might have treated one of the defendants as in default, and passed judgment against him under the above section, but instead of doing so passed over the default and made an order adjourning the further hearing of the suit, and on the day to which the hearing was adjourned disposed of the suit under Section 170,—*Held* that the Court by its own act was not in a position to treat the defendant as in default. *Pudiyar Vasadavan Nambudrissen* v. *Kayaka Kovilagutha Valia Rany*, 4 Mad. Rep., 231.

A defendant in a suit summoned by and examined as a witness for the plaintiff is entitled to protection from arrest on civil process during the time reasonably occupied in going to, attending at, and returning from the place of trial. *Appasamy Pattar* v. *Govinen Nambier*, 4 Mad. Rep., 145.

19.—ESTOPPEL.

(a) *By Admissions.*

In a suit by a co-sharer, who is also a purchaser of the rights of several of the other co-sharers, against all the shareholders, the fact of the shares of each partner being differently described in another suit against the present plaintiff will not bar the present suit if the plaintiff is holding according to his allegation in his plaint. Nor will a partition made by some of the heirs of half of the property, in opposition to the description of the shares now given by the plaintiff, bar his suit to the share he is legally entitled to in virtue of his own rights and those of his vendors, if the shareholders who made the partition do not hold according to that portion.

Because the decree in a former suit against the present plaintiff and the alleged holders of a separate half share awarded to another co-sharer who was the plaintiff in that case, owing to a mistake of that plaintiff, supported by the admission of the present plaintiff, less than he was legally entitled to, the mistake need not be perpetuated, nor will his former admission estop the present plaintiff. *Ram Surohee Singh and others* v. *Kashee Roy and others*, 6 W. R., 176.

There must be some intentional misstatement and consequential prejudice before proof of the real state of things can be shut out. As purchaser of what had been sold in execution, a party is bound to exercise all due caution. *Girwar Narain Singh* v. *Roghoonath Shahee and others*, 6 W. R., 163.

A party is not bound by an erroneous admission of a petition. *Kristo Prea Dossee* v. *Puddo Lochun Mytee*, 6 W. R., 288.

The allegation of a plaintiff in a former suit, which was referred to arbitration, having been overruled by the arbitrators, and another state of things found by them to exist, he is not estopped by his former allegation from bringing a further suit founded on the finding of the arbitrators. *Ram Chunder Dey* v. *Kissen Mohun Shaha*, 6 W. R., 68.

A false admission made by a serishtadar to avoid losing his appointment, does not estop his heirs from afterwards setting up the truth. *Shaikh Mahomed Wayez and another* v. *Mussamut Sugeeroonissa*, 6 W. R., 38.

Where A. sued B. for moneys alleged to be due under certain documents, and B. pleaded that the demands had been included in a settlement of accounts, embodied in a document which he set forth in his answer, and the suit was dismissed, on the ground that being included in the settlement the demands no longer existed as causes of action,—*Held* that A.'s representative was not estopped from disputing the document in a subsequent action brought by him against the representative of B. *Tiramala Rasaheb* v. *Pingala Sunkura Raee*, 1 Mad. Rep., A. C., 312.

In proceedings under Act XXVII of 1860, the plaintiff, a widow, called herself the guardian and trustee of her minor adopted son, but the certificate was granted to the defendant, who claimed under the husband's will. The plaintiff afterwards sued as her husband's widow, without an adopted son, to call in question the will set up by the defendant, the so-called adopted son supporting her action. *Held* that the plaintiff's former statement in the Act XXVII case was no bar to her present action. *Soorj Monee Dossee* v. *Suroop Chunder Shah*, W. R., 1864, 198.

A plaintiff is not estopped by an evidently false statement in his plaint as to possession, but the Court may look behind the statement and determine upon its truth or otherwise, and affirm or disallow it, as may seem right and proper. *Choonee Lall* v. *Shaikh Keramut Ali*, W. R., 1864, 282.

Parties who by false representations induce others to enter into contracts, are estopped from afterwards falsifying their statements, and if necessary may be compelled to make them good. *Radhakishen* v. *Mussamut Shureefunnissa*, W. R., 1864, 11.

A ryot is estopped from pleading, in a suit for a kubuleut and for determination of the rate at which such kubuleut is to be delivered, a pottah which he denied in a former suit for rent. *Syud Mahomed Hossein* v. *Peeroo Mullick*, W. R., 1864, Act X R., 115.

When, in answer to a suit, two parties combine to make a statement to defeat a third party, it is competent to either of those parties, when they are opposed to each other in a suit, to say that the combined statement was false, and intended as a fraud against the third party. The admission in the former suit is not to be regarded as an estoppel against either of the two parties in the present suit, but the Court is competent to enquire into the character of the transaction, and to declare it void, if it is satisfied that the transaction is not a *bonâ-fide* one. *Ram Sarun Singh* v. *Mussamut Pran Pearee*, 1 W. R., 156.

Suit for share of joint ancestral property. Plaintiff claims under a man who when sued in 1812 as trustee for the defendant's father, then a minor, never pleaded that he was a co-parcener. *Held* that the plaintiff, if not estopped from now contending that the property is joint, has still the full burden of proving that it is joint. *Surnomoyee Debia* v. *Gunga Gobind Roy*, 2 W. R., 264.

An admission made by a party in another case, involving other parties, cannot operate as an estoppel in a suit against parties who were not affected by it. *Chunder Kant Chuckerbutty Christian* v. *Pearee Mohun Dutt*, 5 W. R., 209.

A plaintiff is not estopped by a statement made by him in a former pleading. *Bisseesuree Dabee* v. *Jankee Doss Mohunt*, 1 W. R., 162.

In a suit for property it was held that the plaintiffs were not bound by an Act IV award against a person in whose name the property had been purchased by the father of the plaintiffs, but who had not either title or interest in the property, and did not conduct the Act IV proceeding with any authority from the plaintiffs.

Held, too, that plaintiffs were not estopped by statements made by them as parties in another suit, which did not affect their *status*, nor by their failure to set forth their title in a former suit brought against them for mesne profits of the land in dispute. *Mohendra Nath Mullick and others* v. *Rakhal Doss Sircar and others*, 10 W. R., 344.

Held that the former statement of the plaintiff, which was at variance with the one now made, was

not an estoppel, but the Court ought to have determined which of the two statements was correct. *Joy Narain* v. *Sheikh Torabun and others*, 3 Agra Rep., 216.

When an ekrar (providing for payment of rent by deduction from larger profits) which might have been pleaded as a bar to a suit for rent has not been so pleaded, and a decree has been obtained under Act X, the matter cannot be reopened in a subsequent civil suit. *Kylash Chunder Ghose* v. *Khettermonee Dossee*, 2 W. R., Act X R., 57.

Plaintiff sued before on a kubuleut of 1864, and did not admit in his plaint that he had cancelled a former kubuleut of 1862, but merely alleged that the defendant had executed the kubuleut of 1864, which recited that the kubuleut of 1862 had been voluntarily cancelled by the defendant. The defendant denied the kubuleut of 1864, and the plaintiff having failed from inability to prove it, is not estopped now from suing on the kubuleut of 1862, and saying that that kubuleut was not legally cancelled by him. *J. J. Doyne* v. *Khoodee Ram Mundul*, 5 W. R., S. C. C. Ref., 16.

A party whose application to intervene in a suit has been refused, is not bound by the decree in that suit. *Tarakant Bannerjea* v. *Puddomonee Dossee*, W. R., 1864, P. C., 63.

The fact of a mokurruree pottah coming collaterally in issue in an Act X suit for the purpose of enabling the Court to adjudicate upon the question of the amount of rent due, does not imply such a decision upon the validity or otherwise of the mokurruree as would be an estoppel to a suit in a Civil Court. *Janessur Dass* v. *Goolzaree Lall*, W. R., 1864, 216.

Held that the plaintiff's assertion in a former suit claiming in "malikana" the land now in dispute, even if the identity of the land now claimed with the land then in suit be established (which has not been done), does not absolutely preclude him from asserting "mouroosee" right to the same land, and the Court from adjudging his true right. *Ram Sahai Misser* v. *Bisraj Singh*, 1 Agra Rep., R. A., 19.

A plaintiff's statement in a former suit held not to bind him conclusively. *Maharajah Jugutendur Bunwaree* v. *Din Dyal Chatterjee*, 1 W. R., 310.

Where a defendant, having the means of proving the real value of property, made no objection to the plaintiff's under-valuation, and also herself in special appeal knowingly under-valued the property by valuing the subject-matter at Rs. 675,— *Held* that she could not be heard to represent the real value of the property to be over Rs. 10,000 for the purpose of securing admission for an appeal to her Majesty in Council. *Ranee Bhuggobutty Debia, in the matter of*, 14 S. W. R., C. R., 62.

An admission made in a verified petition by an intervenor in an Act X suit, and repeated in a verified plaint filed by him in a regular suit, was held to be binding in a subsequent suit on the party who made it. *Grish Chunder Lahoree* v. *Shuma Churn Sandyal*, 15 S. W. R., C. R., 437.

A defendant who has executed a mortgage and formally acknowledged under his hand and seal the receipt of the consideration-money may, in a suit for foreclosure by the mortgagee out of possession, deny that the money was advanced, the mortgage deed not creating an estoppel. *Ram Surun Singh* v. *Mussamut Pran Pearee*, 15 S. W. R., P. C., 14.

Held that a party was not estopped from bringing a suit to bar sale of a property in which he had a reversionary right by the fact that he had admitted on previous occasions that he had no present right in the property. *Musst. Saujbaree* v. *Payag Patuk*, 1 N. W. R., Par. 2, p. 5.

(*b*) *By Pleadings.*

In a former suit A. G. (appellant) sought to establish his right, in execution of his decree against R. R., to have a talook sold as belonging to R. R.; D. S., a defendant in that suit, pleaded that the whole talook had been conveyed to him absolutely by his father, R. R., under a hibbanamah. An issue was raised and tried whether the talook belonged to D. S. or not; and it was expressly decided that it did not, and that the zemindaree was liable to be attached and sold in execution of A. G.'s decree as belonging to R. R. *Held* that it was not open to D. S. or to plaintiff claiming under him now to come into Court and ask for a declaration of his right to a half share of the talook as against A. G. *Moonshee Abdool Gunnée*, v. *Kishanund Dass*, 17 S. W. R., C. R., 350.

Plaintiff's father was by a decree of 1848 declared entitled to his cousin's estate as reversioner. When the reversion opened out plaintiff's father was insane, and plaintiff, as representative of his father, having endeavoured to obtain possession under the decree, was successfully opposed by the defendants, who obtained a judgment of the High Court in their favour on the ground that the plaintiff's father was no longer heir under the Hindoo law in consequence of supervenient insanity. Plaintiff was then obliged to bring this suit to establish his own title as heir, and defendants dispute his right on the ground that his father is not disqualified by insanity which was not congenital. *Held* that defendants were estopped by their former defence from pleading their present defence. *Brij Bhookun Lall Awuster* v. *Mohadeo Dobey*, 17 S. W. R., C. R., 422.

(*c*) *By Conduct.*

Plaintiffs who have in a former case allowed property attached as theirs by their creditors to be claimed and taken by the defendants, are estopped in a subsequent suit from making a contrary averment. *Erskine and Co.* v. *Okhoy Chunder Dutt*, W. R., 1864, 58.

The failure of a party to put in an answer in a former suit, which in no way threatened his title as a reversioner, cannot be construed into a consent on his part to an alienation made by a Hindu widow, which has been found in a subsequent suit to be illegal on an issue raised to contest its validity as made without legal necessity. *Bisheshur Mookerjee* v. *Judoonath Lose*, W. R., 1864, 48.

A. executed a deed of sale of a house in favour of B., which was duly registered. B. afterwards mortgaged the house to C. *Held* that A. and those claiming through him were estopped as against C. from setting up that the sale of the house to B. was a benamee transaction, and that A. continued notwithstanding to be the true owner. *Rackhaldass Moduck* v. *Bindoo Bashinee Debia*, Marsh., 293.

When a person wilfully induces another to believe the existence of a certain state of things, and to deal with him on the faith of it, he and those who claim under him are conclusively bound by the representation so made. *Moonshee Syud Ameer Ali* v. *Syet Ali*, 5 W. R., 289.

As no law of feudal escheat exists in this country, and the title of Government to property on failure of heirs rests on grounds of general or universal law, the Government by not entering upon the lands of a deceased person, by allowing another to enter, and by accepting revenue from him, is not estopped from calling his title into question. *The Government* v. *Greedharee Lall Roy*, 4 W. R., 13.

A defendant is not estopped as to a plaintiff who is a vendee from a co-defendant in a former case in which a third party was plaintiff by anything that may have occurred in that case. *Dinonessa Ahalya* v. *Asgur Ali*, 5 W. R., 181.

A., who was in partnership with B., C., and D., brought a suit in the Zillah Court of Jessore against B., C., and D., for an account and division of the partnership estate. An arrangement was come to between the parties, on the faith of which A. filed a razeenamah, stating that his claim was satisfied, and allowed a decree to go against him in terms of the razeenamah. The defendants failed to carry out their part of the arrangement. A. petitioned the Zillah Court for leave to withdraw his petition of compromise, and that the suit might proceed as if no decree had been passed, but the Court refused the petition. The principal place of business of the defendants was in Calcutta. *Held* that A. was not barred from bringing a suit in the High Court to compel the defendants to perform the agreement upon the basis of which the decree was obtained in the Zillah Court, either by the fact of the consideration of the agreement being the consent of A. to the compromise of the suit, or by the decree of the Zillah Judge.

The fact of A.'s plaint not showing when the cause of action arose, is ground for rejecting the plaint, but no ground for finding on the trial that the suit is barred upon an issue raised as to limitation. *Kallynauth Shaw* v. *Rajeeblochun Mozoomdar and others*, 2 Ind. Jur., N. S., 343.

When a purchaser of land lies by for five years, allowing another person to occupy the land, and afterwards to sell it, he is estopped by his own conduct from afterwards claiming the land from a *bonâ-fide* purchaser without notice. *Mohesh Chunder Chatterjea* v. *Issur Chunder Chatterjea*, 1 Ind. Jur., N. S., 266.

Withdrawal from a former suit for possession of certain land does not bar a subsequent suit for resumption of the same land as invalid lakheraj. *Issur Chunder Shaha* v. *Saroda Soonduree Debia*, 3 W. R., Act X R., 18.

The registry of transfer of a holding by one ryot to another, when recognized by the existing farmer of a Government khas mehal, and not objected to by the Government, is a complete estoppel to a succeeding farmer. *Huromohun Mookerjee* v. *Goluck Mundul*, 1 W. R., 351.

When a creditor files a petition of satisfaction, on the condition that the judgment-debtor withdraws a special appeal then pending, the intention of the parties must be looked to. If the special appeal, instead of being withdrawn, is carried to a hearing, and is dismissed, the creditor is not estopped from suing out execution. *Dwarkanath Surma Mozoomdar* v. *Unnoda Soonduree*, 5 W. R., Mis., 30.

As land may pass by mere parol between a Hindu vendor and purchaser, the sale by auction by the Sheriff is enough, without his bill of sale, to complete the transaction as between vendor and purchaser, for the purpose of the Law of Limitation; therefore, where the suit was brought within the time fixed by the Law of Limitation, counting from the date of the Sheriff's bill of sale, but too late, counting from the time of the actual auction-sale,—*Held* that the plaintiff was barred. Where a purchaser of land lies by for five years, allowing another person to occupy the land, and afterwards to sell it, he is estopped by his own conduct from afterwards claiming the land from a *bonâ-fide* purchaser without notice. *Mohesh Chunder Chatterjee* v. *Issur Chunder Chatterjee*, 1 Ind. Jur., N. S., 266.

The circumstance that the plaintiff preferred a criminal charge against the defendant for the taking of his goods, which charge was dismissed, does not prevent the plaintiff from afterwards suing in the Civil Court to recover damages for the taking or detention of the goods, notwithstanding the Criminal Court may have jurisdiction upon a conviction to impose a fine and award it to the protector as compensation. *Mussamut Roopu Bewa* v. *Ramcoomar Sandyal and others*, Marsh., 248.

Held that the plaintiffs who had received rents from the mortgagee were estopped from pleading the invalidity of the mortgage. *Gunga Bishen and others* v. *Ram Guti Rai*, 1 Agra Rep., 49.

A party by whom malikana was payable obtained a decree against the maliks, and executed it by selling their right to malikana. The purchaser then sued the decree-holder for arrears of malikana, and the plea set up by defendant was limitation. *Held* that as defendant had caused the right to malikana to be sold he could not avail himself in equity of the plea of limitation, and say that what was purchased was not a substantial right actually existing at the time. *Syud Alai Ahmed* v. *Bodhoo Singh*, 14 S. W. R., C. R., 214.

A plaintiff is bound to put forward all the titles which he has existing at the time of his suit; failing to do so, he is estopped from adducing in a future suit a title which he ought to have urged in a former. *Dudsar Bibee* v. *Shukir Burkundeez*, 15 S. W. R., C. R., 169.

If the person who asks for redress is a party who has countenanced the acts of which he complains, the Court is bound to refuse him any redress or assistance. *Bhyro Dutt* v. *Mussamut Lekhranee Rooer*, 16 S. W. R., C. R., 123.

A person who has deliberately executed a deed by which his own property is bound is not at liberty to set up as a plea for evading obligation that he did so for the purpose of defrauding other people, but is bound by such deed. *Kylash Chunder Mitter* v. *Dhun Monee Dassia*, 15 S. W. R., C. R., 273.

Parties holding a permanent settlement from Government cannot question the validity of a mokurruree pottah previously granted by themselves when they held the property under a temporary settlement. *Khajee Abdool Mannah* v. *Buroda Kant Bannerjee*, 15 S. W. R., C. R., 394.

Suit for possession of certain property as part of

a joint-family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property. Having failed in this character, the Court declined to allow him in special appeal to come in as a reversioner, and ask for a decree declaring the widow's act void as against reversioner. *Madho Pershad* v. *Lalla Jeetun Lall*, 17 S. W. R., C. R., 98.

Plaintiff, after failing in a former suit to establish her right to certain land as belonging to her putnee talook, was not allowed to fall back on a different title and bring a separate suit claiming the same land as belonging to her mowrosee, the cause of action in both cases being really the same. *Anungo Mohun Deb* v. *Unnoda Dassee*, 17 S. W. R., C. R., 351.

Under special circumstances, a widow who had asserted a proprietary right in certain property, without putting forward any claim for maintenance, not allowed afterwards to enforce her claim for maintenance against such property in the hands of a purchaser. *Mussamut Goolabee* v. *Ramtahal Rai*, 1 N. W. P., Par. 12, p. 191.

The plaintiff sued for a quantity of land which was family property in the possession of his brother, the defendant. The defendant in a former suit declared that the land sued for was not family property but belonged to his sister, and in this suit he claimed the property under her will. The lower Court found that the property was family property, but that the plaintiff was entitled to a decree for the whole property on the ground that the disclaimer of the defendant in the former suit amounted to an estoppel and forfeiture of his share. *Held* that the effect of the defendant's conduct did not operate either as an estoppel or a forfeiture, and that the plaintiff was only entitled to a decree for a moiety of the property. *Vellavan Chetty* v. *Thundavamurty*, 4 Mad. Rep., 374.

A judgment-creditor, by putting up the rights and interests of his judgment-debtor in a talook for sale in execution, is not estopped from afterwards claiming a portion of that talook under a different title, *e.g.*, under a mortgage. *Chunder Kant Gangooly* v. *P. Wise*, 17 S. W. R., C. R., 342.

As a general rule where a person takes land from another and pays rent to him he cannot deny the title of his landlord; but he is not precluded or stopped from proving, when sued for rent, that that title has expired. He is not warranted, however, in refusing to pay rent simply on the apprehension that he may be called on to pay the rent by a party who is said to have obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. *Burn and Co.* v. *Busho Moyee Dassee*, 14 S. W. R., C. R., 85.

(*d*) *By Decree.*

The decision of a Collector on a question of possession and of the right to receive the rent, does not bar an action in the Civil Courts to try the title of the parties. *Kalidass Ghose* v. *Chundramohini Dasi*, 8 W. R., 68.

In a foreclosure suit in which A. was plaintiff, and B., C., and D. were defendants,—*Held* that A. was estopped by a previous verdict on the point in issue in an ejectment in which C. and D. were plaintiffs, and B. was defendant. *Modin* v. *Mahomed*, 1 Mad. Rep., O. C., 254.

The plaintiff sued the defendant for rent, basing his claim upon a kubuleut bearing date 6th Srabun 1258, B. S. His suit was dismissed, and the kubuleut pronounced to be spurious. *Held* that he was not estopped from afterwards suing the same defendant to set aside a pottah of the 27th Aughran 1244, B. S., under which the defendant claimed, the validity of the pottah not being in issue in the former suit. *Oomanath Roy Chowdhry* v. *Raghoonath Mitter*, Marsh., 43.

A suit for rent was brought against the guardian of a minor, and the Court gave a decree founded on a kubuleut given by the ancestor of the minor. After the minor had come of age a suit was brought against him for subsequent arrears under the kubuleut. *Held* that he was estopped by the decree in the former suit from denying the validity of the kubuleut. *Tarineepersaud Ghose* v. *Sreegopaul Paul Chowdhry and others*, Marsh., 476.

A decree in a resumption suit estops only the parties to that suit and those claiming under them. *Joy Kishen Mookerjee* v. *Kisken Gusain*, 5 W. R., Act X R., 82.

The dismissal of a suit for the declaration of plaintiff's right to receive rent from a tenant of a portion of an estate cannot be pleaded as an estoppel in a suit to establish plaintiff's general right as proprietor of the whole estate. *Kishen Dhun Nundee* v. *Bhookto Polly and others*, 9 W. R., 461.

A suit for a kubuleut in which the rate of rent is the subject-matter and the question of the right of occupancy is not the main point, is not an estoppel to a suit for repossession, under Clause 6, Section 23, Act X of 1859. *Khoda Buksh* v. *Akool Gazee*, 9 W. R., 595.

In a former suit for assessment, in which the defence was that the land in question formed a part of the defendant's istemrarce talook, the Collector found that it was not a part of such talook, and decreed the assessment. *Held* that the then defendant could not now sue in the Civil Court to establish his istemrarce talookdarce rights. *Mahomed Azim* v. *Ramkant Chowdhry and others*, 6 W. R., Act X R., 101.

Held that a former judgment, by a Court of competent jurisdiction, upon the same cause of action, was conclusive between the same parties in a subsequent suit brought in another Court, notwithstanding the pendency of an appeal against it; but that the Judge passing a decree in the subsequent suit might, upon application made to him, and security being given, stay the execution of it, until the appeal in the former suit was decided, and might, if the decree in the former suit was reversed, entertain an application for the review of his own decision in the subsequent suit. *Bulkirúm Nathurúm* v. *The Gujarát Mercantile Association, Limited*, 4 Bom. Rep., A. C. J., 81.

A. brought a suit against B. in the Collector's Court for rent. In answer, B. set up a bond, by

the terms of which A., in consideration of a loan of Rs. 10,000, stipulated that B. should apply a certain portion of the annual rent to the reduction of the loan, and the payment of the interest thereon. A. alleged that the bond was false. The Collector, in an issue directed by the High Court, decided that it was genuine, and this decision was affirmed on appeal. B. afterwards sued A. in the Civil Court upon the bond. *Held* per Peacock, C. J., and Phear, J., (Campbell, J. *dissentiente*) that the Collector's decision as to the genuineness of the bond did not operate as an estoppel. The two Courts are not Courts of concurrent jurisdiction.

Per Peacock, C. J., *Quære*,—Is a judgment of a Court of concurrent jurisdiction between the same parties on the same point conclusive between the parties in another Court in the country? *Mussamut Eedun* v. *Mussamut Bechun and others*, 2 Ind. Jur., N. S., 264.

A suit on the same cause of action, and between the same parties, as a former suit which was summarily dismissed without being tried on its merits, is not one on a cause of action which has been heard and determined by a Court of competent jurisdiction in a former suit. *Shokhee Bewa* v. *Mehdee Mundul*, 9 W. R., 327.

A suit was brought by A. to recover property, in which, on appeal to the Privy Council, two questions arose, *viz.*, whether the property was to pass as divided or undivided property, and whether such property was conveyed away to A.'s father by a deed of testamentary disposition. The lower Court had decided only the latter point, and the Privy Council remanded the case for determination of the former point. On a second appeal to the Privy Council, that Committee were about to enter upon the question as to the validity of the testamentary paper, when A. gave up the point that the paper was in any sense testamentary in its character, and disclaimed having any title under it as a testamentary devise, and the Privy Council therefore did not decide that question.

Held that a subsequent suit by A., in which he sought to recover the property by setting up the paper as a valid will and testament, was a suit instituted without *bona fides*, and could not be allowed to proceed, because, first, the nature of the paper was in issue in the former suit, and what was in issue must be taken to have been decided by the judgment; and, secondly, because A. having used the document and abandoned all right to it as a will, he could not again use it for a different purpose. *Sreemuthoo Raghoonadha Perya Oodya Taver* v. *Kattama Nauchear*, 10 W. R., P. C., 1.

T. claimed a zemindary as the representative of a devisee under a will. In 1845 A., one of the zemindar's widows, had sued T.'s father for the zemindary, and he in his answer had set up the will. In 1856 K., the zemindar's second daughter, and A.'s successor according to Hindu law, had sued T.'s guardian for the zemindary, and he in his rejoinder also relied on the will. Both suits were decided against the plaintiff, but in one the parties were restricted to evidence on a point which was raised as to division, and in the other no points nor issues were settled. On an appeal by K. to the Privy Council against the decrees of 1845 and 1856, the will was not relied on, because as such it was admitted to be untenable, and the Privy Council decided against T., reversing the former decrees. T. now sued K. for the zemindary, grounding his claim on the will. The Civil Judge rejected his plaint under Act VIII of 1859, Section 2.

Held, on regular appeal, that although the Privy Council had given no direct decision upon the will, their judgment and final order involved the decision of all claim of title under that will, and must be considered, as between the parties, tantamount to an express adjudication upon such claim.

To give effect to the plea of *res-judicata*, the Court must be satisfied that the ground of legal right on which the plaintiff sues was a point raised and opened for decision in the former suit, and that it was finally dealt with by the judgment and decree therein. *Udaiya Tévar* v. *Katama Nâchiyar and others*, 2 Mad. Rep., 131.

When a Court of Justice states a fact, that fact is conclusive in the case. *Petumber Manikjee* v. *Moteechand Manikjee*, 5 W. R., P. C., 53.

Two applications before a Collector, the one by defendants, asking an amendment of the collectorate record by expunging therefrom plaintiffs' names, as being out of possession, and which, after evidence taken, was ordered to be done; and the other by plaintiffs, praying a partition under Act XIX of 1863, which was refused, on the ground that they had not established their possession, cannot be considered such an adjudication of rights as to be a bar to a suit by the plaintiffs for establishment of right to and possession of the land referred to in such application. *Kishun Sahai* v. *Rughoo Singh*, 2 N. W. R., 64.

A. executed a kubuliat for a term of years to B. as zemindar. B. gave a putni of the zemindari to C. C. instituted a suit for arrears of rent under the lease for a term of years against A., the lessee. A. in defence admitted the execution of the lease to B., but denied that B. was his real lessor and beneficially entitled to the rent, alleging that B. was only a benamidar for a third party.

Held that in India the English doctrine of estoppel did not apply, and that A. was competent in a suit for rent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. *Denzelle, B.* v. *Kadernauth Chuckerbutty*, 7 B. L. R., 720, and 16 S. W. R., C. R., 186.

The doctrine laid down in the Duchess of Kingston's case as to estoppel by judgment, is applicable to cases tried under the Civil Procedure Code of India, the 2nd Section of which is consistent with that rule.

But the Judicial Committee, reversing the decision of the Court below, considered that the doctrine had no application in the present case, the judgment relied on not being the judgment of a Court of concurrent jurisdiction directly upon the point upon the same matter; and after an examination of the whole evidence restored the judgment of the first Court. *Khugowlee Sing* v. *Hossein Bux Khan*, 7 B. L. R., 673, and 15 S. W. R., P. C., 30.

S. died in 1865, leaving two sons, N. and G. M. took possession of the property of S. under a will alleged by her to have been executed by S. In

1867 G. brought his suit, as one of the heirs of S., to set aside the will, and made his brother N. a co-defendant. The principal Sudder Ameen dismissed the suit, finding on the evidence that the will was genuine. In 1869 N. brought this suit for his share as heir of S., against M. The first Court found that the will was a forgery, and gave the plaintiff a decree. On appeal the Judge held that N.'s claim was barred by the decision in the former suit brought by his brother, and reversed the decision of the first Court.

Held on special appeal that it was not barred by the finding of the Court in G.'s suit, as N. was no party to that suit, and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share. *Nabin Chundra Mazumdar* v. *Mukta Sundari Debi*, 7 B. L. R., Ap., 38, and 15 S. W. R., C. R., 309.

Where the whole question of plaintiff's title is raised and decided in a suit for possession of land, that decision is conclusive between the parties as to every portion of land held under that title. *Nund Kishore Singh* v. *Huree Persaud Mundle*, 13 S. W. R., C. R., 64.

Plaintiff, as the purchaser of a resumed milik, ejected the defendants, who brought a suit under Section 23, Act X of 1859, to recover possession, on the ground that they held under a pottah from plaintiff's vendors, and that the period of the pottah had not expired. The Collector found their plea good, and restored them to possession. Plaintiff then brought the present suit to set aside the pottah and recover possession.

Held that the question between the parties having been already determined by the Collector, who had jurisdiction, it was a *res-judicata*. *Hur Lall Saha* v. *Tirthanund Thakoor*, 13 S. W. R., C. R., 417.

Where a suit for rent has been dismissed on the ground that the defendants were trespassers, the latter cannot bring a suit for possession in a Revenue Court. *Radha Churn Roy* v. *Moran and Co.*, 13 S. W. R., C. R., 342.

Where application is made to a Collector for a tenure liable to pay revenue on account of an estate which applicant has carved out of unoccupied waste, and it is found that Government is not in a position to create such a tenure, the applicant is not bound by his offer made under an erroneous impression, nor is he estopped thereby from pleading as against the landlord that he is not liable to pay any rent. *Brijonath Chowdry* v. *Lall Meah Munneepooree*, 14 S. W. R., C. R., 391.

Where a suit for arrears of rent, at enhanced rates for a certain year, was dismissed for want of notice, but the Court also found that the pottah set up by defendant was not genuine, *held* that the decision was no bar to a subsequent suit by the same plaintiff for arrears of rent at enhanced rates for a subsequent year.

A matter which is directly adjudicated upon by a Court of competent jurisdiction can be treated as *res-adjudicata*, but not matters determined for collateral or incidental purposes only. *Jardine Skinner* v. *Dwarkanauth Chuckerbutty*, 14 S. W. R., C. R., 412.

Where a plaintiff's claim to have a property declared ijmalee had been dismissed in a former suit, his suit for a partition of the same property was held to be barred against a defendant who had been a party to that suit, as well as against defendants who are not in possession. *Shaikh Besharectoollah* v. *Shaikh Ajoo*, 14 S. W. R., C. R., 195.

In a suit for removal of an alleged nuisance, which was dismissed because plaintiff did not produce his witnesses, and failed to prove his case, it was *held* that there had been an adjudication, and that another suit would not lie on the same cause of action. *Sahadeo Pandey* v. *Nokhid Pandey*, 15 S. W. R., C. R., 573.

The plea of set-off is one form of bringing a suit, the defendant becoming in regard thereto a plaintiff, and he cannot therefore be allowed to set up a claim for which a suit had been previously brought by him and dismissed. *Abdoollah Khan* v. *Sreekanto Pershad Hajrah*, 15 S. W. R., C. R., 252.

The cause of action between two parties cannot be said to be a *res-adjudicata* if the first case was disposed of on appeal on a purely technical point, even though the suit was decided on its merits in the Court of first instance. *Rajah Mokoond Narain Deo* v. *Jonardun Dey Burnick*, 15 S. W. R., C. R., 208.

The plaintiff sued to raise an attachment placed upon a certain house, but failed in the lower Court, and the decision of the lower Court was confirmed upon appeal. The house was then sold. The plaintiff sued the purchaser to recover possession of it.

Held that he was not estopped from suing by the decision in the former suit refusing to raise the attachment, and that such decision could not be given in evidence in the latter suit. *Moro Balkrishna Male* v. *Shek Saheb Valad Badruddeen Kambhe*, 5 Bom. Rep., A. C. P., 199.

Where for the purposes of a rent suit a Revenue Court finds that a kubuleut propounded by the plaintiff is a genuine document, such finding is no bar to a Civil Court trying the question of right between the parties, and for that purpose trying the validity and genuineness of the kubuleut. *Boistub Chunder Sen* v. *Traburam Sein*, 15 S. W. R., C. R., 32.

Such matters only as are decided between the parties by the decree in the suit ought to be treated as binding against them in subsequent litigation. No part of the reasoning on the findings of facts which have induced the Court to come to its decision is binding as between the parties further than for the purposes of the particular decision. *Aukhil Chunder Mookerjee* v. *Sib Narain Ghose*, 15 S. W. R., C. R., 527.

The plaintiff sued to recover two villages from the defendants, claiming title from C., the purchaser. The first defendant alleged that her husband, not C., was the purchaser. This question was determined in a former suit, in which the present first defendant was plaintiff, and the present plaintiff defendant, in favour of the present plaintiff by the Civil Judge, and the decision was confirmed on appeal by the Sadr Court. An appeal to her Majesty in Council was dismissed for want of prosecution. *Held* that the matter in issue was *res-judicata*. *Quære*,—Whether the former judgment could be deemed conclusive whilst an appeal was pending. *Sri Raja Karkarlapudi Suriyanarayanarazu Guru* v. *Chellamkuri Chellamma*, 5 Mad. Rep., 176.

A widow claiming to be a trustee of property

endowed by her husband is not bound by a decision adverse to a claim set up by her husband's grandfather in respect of that property, if she was not a party to the litigation. *Fegredo, I.* v. *Mahomed Mudessur*, 15 S. W. R., C. R., 75.

(*e*) *Nature of the Bar.*

To conclude a plaintiff by a plea of *res-judicata*, it is sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. *Saikappa Chitti* v. *Rani Kaloondapuri*, 3 Mad. Rep., A. C., 84.

An estoppel *in pais* need not be pleaded in order to make it obligatory.

With the Indian system of pleading, a party's statement in a judicial proceeding cannot be excluded like allegations in bills in equity and pleadings at common law. But mere statements for the purpose of a particular judicial proceeding can only be conclusive evidence in another proceeding, as to such material facts embodied therein as must have been found affirmatively to warrant the judgment of the Court upon the issues joinder. They are then conclusive between the same parties; but because, for all purposes of present and prospective litigation, they must be taken as truth.

A. brought a pauper suit, and virtually denied possession of certain property. B. petitioned to dispauper A., alleging that A. was possessed of such property. The Court decided that A. was in possession, and rejected her prayer to be allowed to sue as a pauper. *Held*, in a subsequent suit by A.'s representative against B.'s representative for the property, that even if A.'s allegation found to be false could be treated as an estoppel, B.'s allegation found to be true would also be an estoppel; and "estoppel against estoppel setteth the matter at large;" but that, although A.'s allegation was receivable evidence against A. and her representative, they were not concluded by such allegation and the decision thereon. *Civa Ran Nanaji* v. *Jevana Ran*, 2 Mad. Rep., 31.

The strict technical doctrine of English law as to estoppels in the case of deeds under seal does not apply to the written instruments ordinarily in use amongst the natives of India. *Zemindar Sre Matu Gaurevallaba Ramchundra* v. *Verappa Chetti*, 2 Mad. Rep., 124.

A party to a suit is not estopped, merely by the reasons which a Judge may give for his decision. In order to make out that a decision in a former suit is an estoppel, it must be established that the same identical question has been formally raised and finally decided. *Rajah Nugendur Narain* v. *Rughoonath Narain Dey*, W. R., 1864, 20.

A stipulation in a bond that all payments should be endorsed on the back thereof, and that all other pleas of repayment would be futile, does not estop the defendant from proving by other means that the debt, or part of it, has been satisfied. *Kaleedass Mittra* v. *Tarachand Roy*, 8 W. R., 316.

Estoppels must be made out clearly. *J. Tweedie* v. *Poonochunder Gangooly and others*, 8 W. R., 125.

A decision in a former suit cannot operate as an estoppel as between co-defendants in that suit, or parties claiming under them. *Mudhoo Mookee Dabee* v. *Gunga Govind Mundle*, W. R., 1864, 299.

To constitute a *res-adjudicata* with regard to a plaintiff's claim, it must have been raised by a previous suit in a Court competent to entertain it, and been determined by the judgment of the Court in that suit; or if it never has been expressly raised in a previous suit, it must be such as the plaintiff might and ought to have combined with the claim which was actually made and decided in such suit, if he ever intended to avail himself of it. *Chunder Shekhur Deb Roy* v. *Doorgendro Deb*, 3 W. R., 39.

Section 16 of Regulation III of 1793 applies only to cases in which the question to be determined in the cause is the same as has been already heard and determined, and not to cases in which new circumstances have intervened and altered the nature and character of the question to be determined. *Doorga Pershad Roy Chowdry* v. *Tara Pershad Roy Chowdry*, 3 W. R., P. C., 11.

To conclude a plaintiff by a plea of *res-judicata*, it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. *Saikappa Chetti* v. *Rani Kalanda Purichiyar*, 3 Mad. Rep., A. J., 84.

The force of *res-judicata* attaches not only to the bare condemnation or discharge of defendant, but to all the objection grounds distinctly found by the Judge as the basis of his decision. *Ramasami Padeiyatchi* v. *Virasami Padeiyatchi*, 3 Mad. Rep., A. J., 272.

A defendant, after having waived his plea of *res-judicata* in the Court below and consented to a trial of the suit on the merits, may revive the plea in the Court of Appeal on the appeal of the plaintiff. When, however, the plea is waived, and the Court, with the consent of both parties, goes on with the suit, its decision will be binding as between the parties. *Mugno Moye Debya* v. *Hur Chunder Raoot*, 3 W. R., Act X R., 146.

Quære,—Whether the *dictum* of a Revenue Court under Act X of 1859, with reference to the *bona fides* or otherwise of a pottah, is in any way binding upon a Civil Court in a suit in which the *bona fides* of the pottah is put in issue. *Kumer Ali* v. *Dhoya Bibee*, 5 W. R., Act X R., 61.

A decision between a ryot and a body of co-sharers is not binding upon the several co-sharers *inter se*. *Nobin Chunder Dass* v. *Nim Chund Dass*, 17 S. W. R., C. R., 191.

(*f*) *Where Suit is Barred.*

A right of enhancement decided in a former suit must be considered as *res-adjudicata* in this suit for enhanced rent. *Bhuggobutty Debia* v. *Ram Kanaye Laha*, 1 W. R., 167.

That a ryot's holding was of a date prior to 1790 once decided in a zemindar's suit under Section 28, Act X of 1859, must be considered as *res-adjudicata*

in a subsequent suit under Section 30, Regulation II of 1819. *Kalee Pershad Holdar* v. *Sreemutty Soobhogea Dabea*, 1 W. R., 218.

Section 54, Act X of 1859, does not apply to a case in which (both parties being present) the Court held that in the absence of documentary evidence, the plaintiff's claim must be dismissed. The decision being a dismissal of the suit after adjudication of the merits, the matter must be considered as *res-adjudicata*. *Mohanund Chowdhry* v. *H. A. Eglinton*, 1 W. R., 343.

Certain property having been sold in execution of a money decree against the representative of a mortgagee, a suit was instituted and a decree obtained in setting aside the sale as being that of land in which the mortgagee had no interest. The holders of the original money decree then again brought a suit to obtain a declaration that the said property was liable to be sold in satisfaction of the said decree.

Held that the matter in issue having been heard and determined by a Court of competent jurisdiction, the suit was barred by Section 2, Act VIII of 1859. *Nufur Chunder Paul Chowdhry* v. *Luckhee Monee Dabee and others*, 9 W. R., 300.

Where a widow who had taken possession of her husband's property was ejected by means of a suit in which her defence raised no right of lien for dower, in which suit an absolute decree of right was given to his heirs, the right of lien, as between her and them, is a *res-adjudicata*. *Mussamut Wafea* v. *Mussamut Sahiba*, 8 W. R., 307.

A decree made in favour of a plaintiff in a suit is binding upon the defendants collectively and severally, notwithstanding any of them was made a defendant only *ikhteatun*, *i.e.*, by way of precaution. Any issue which is material to the rights of parties in the matter of the suit between them, whether actually contested or not, shall not afterwards be raised in a subsequent suit between the same parties. *Deokee Nundun Roy* v. *Kalee Pershad and others*, 8 W. R., 366.

In a suit by a tenant to recover possession of land from which he had been dispossessed by defendant under colour of a sub-lease alleged to have been extorted by force, it appeared that plaintiff had, on this very cause of action, sued the defendant in the Court of the Collector, who had found the sub-lease to be good and valid, and had dismissed the suit. *Held* that the suit, having once been dismissed by a Court of competent jurisdiction, could not again be entertained by the Civil Court. *F. Holloway* v. *Ashman Roy*, 10 W. R., 325.

A suit to have a registered kobala declared fictitious and void as against plaintiffs was held to disclose no good cause of action, seeing that, on a petition preferred according to the provisions of Section 84, Act XX of 1866, a competent Court had already decided that the defendant was entitled to obtain registration of the deed. *Ram Chunder Paul* v. *Becharam Dey*, 10 W. R., 329.

When a suit for rent due on a certain stipulation in a putnee lease was dismissed in the Revenue Courts,—*Held* that another suit could not be brought in the Civil Court as for damages laid at the amount of rent which would have been realized. *Gopalkisto Mookerjee* v. *Modhoosoodun Paul Chowdhry*, W. R., 1864, Act X R., 82.

A. sued B. and C. in the Civil Court to recover possession of certain lands, of which he alleged that they had dispossessed him, under a decree obtained by them in a suit in which he had previously sued B. in the Civil Court, before Act X of 1859 had been passed, for rent, in which suit C. had been added as a party, and had proved his title to the lands against A.

Held that A.'s suit must fail, on the ground that it involved a material issue of fact which had already been determined by a Court of concurrent jurisdiction in the former suit, which was between the same parties, and which issue disposed of the present suit. Also held on the facts that A. was barred by limitation. *Chowdhuri Nilcunt Prosad Singh* v. *Dignarayan Singh*, 1 B. L. R., A. C., 30; 10 W. R., 75.

A Deputy Collector having in a suit for rent given plaintiff (M.) a decree, determining adversely to defendant (K.) an issue which he had raised as to an arrangement of tenancy,—*Held* that K. cannot succeed as plaintiff in a new suit in the same Court in which he sets up the same arrangement and asks to have it declared as that under which he holds the land from M. *Kalee Doss Ghosal* v. *Modhoosoodun Roy and others*, 10 W. R., 465.

When once a Civil Court has passed a final decision between the parties it loses jurisdiction over the suit, except for the purposes of executing the decree; and it cannot hold a new trial of the same unless, for some reason within the Procedure Act, the first trial appears to have been unfair between the two parties. *Lolit Mohun Roy Chowdhry and others* v. *Sowtra Bibee*, 10 W. R., 42.

The purchaser at the sale of a talook, sold under a judgment upon a decree, sued to reverse the order of a Judge annulling the sale, and in that suit he craved confirmation of the sale, that he might be put into possession of the talook, and for a decree for mesne profits. This suit being dismissed on the merits, he instituted another suit, in which he craved a bynamah, or certificate of sale.

Held that the second suit was brought for the same causes and subject-matter as the first, and that the plaintiff was therefore precluded by the dismissal of the first suit from obtaining it. *Lamb and others* v. *Dewan Puddum Lochun*, Marsh., 96; W. R., F. B., 1862, 28.

A point raised in issue and tried in a previous suit between the parties having been re-opened by the Judge below in the present case, the High Court reversed the Judge's order, on the principle of *res-judicata*. *Meer Bahadoor Ali and others* v. *Mussamut Suneerchuroo and others*, 6 W. R., 157.

It having been decided in a suit between the same parties as a material issue that the plaintiffs were not the illegitimate sons of the deceased, as they alleged, and entitled to maintenance,—*Held* that they could not again raise the issue on a fresh suit to establish their right to maintenance. *Ram Sookh and others* v. *Tara Singh and others*, 4 Agra Rep., A. C., 40.

Held that the plaintiff having failed in a regular suit in 1853 to establish his right to rent, his present suit for rent was not admissible, as from that date no rent was paid, nor was his title in any way recognized. *Sookhobund* v. *Nundo Singh*, 2 Agra Rep., A. C., 221.

A case decided by a Collector under Regulation

V of 1822, from whose decision no appeal was made, is *res-judicata*, and cannot be re-opened before a Small Cause Court Judge. *Sriraja Uppalapati Ganakaya Garu* v. *Baliviramnon*, 2 Mad. Rep., 475.

A plaintiff suing for the recovery of land is bound to put forward his whole case at once, and cannot be allowed to maintain a second suit for the same cause of action, merely by alleging that the Collector's order sought to be set aside is of a different date and description from that which was sought to be set aside in the former suit. *Luchmun Doss* v. *Priag Dutt and others*, 3 Agra Rep., 305.

A person who buys with her eyes open, *pendente lite*, cannot maintain a suit involving a revival and re-trial of the very question decided in her vendor's suit. *Naduroonissa Bibee* v. *Aghar Ali Chowdhry and others*, 7 W. R., 103.

Possession of certain lands having been given to a decree-holder in execution, the judgment-debtor appeared before the Court which had jurisdiction to execute the decree and complained that illegal possession had been taken of land not covered by the decree. The Court determined that the decree did not cover the land, and rejected the complaint. The judgment-debtor then brought the present suit to recover possession of the excess land which had been made over to the decree-holder. *Held* that the question was one which arose in the former suit between the parties and which related to the execution of the decree in that suit, and must therefore, under Section 11 of Act XXIII of 1861, have been determined by the Court executing the decree, and could not be gone into in this separate suit. *Jogendro Narain Koonwar* v. *Ranee Surnomoye*, 14 S. W. R., C. R., 39.

(g) *Where Suit is not Barred.*

Where a third party objected to the auction-sale of certain immoveable property which had been attached by the Revenue authorities, it was held that his right to bring an action to prove that the property was his was not barred by Section 184, Act XXXII of 1860, because he had omitted to deposit the money demanded by Government or to file security. *Sheo Pershad Singh* v. *Gopal Lall*, 14 S. W. R., C. R., 276.

A former judgment which, after deciding the issues both of limitation and right in favour of the plaintiff, non-suited him, is not conclusive in a subsequent suit as regards limitation. *Muddun Mohun Chunder Chowdhry* v. *Brindabun Chunder Sircar Chowdhry*, 4 W. R., 104.

In a former suit against a party and his vendor, in which an intervenor was made a defendant, plaintiffs obtained a decree with a reservation of intervenor's rights. The decree was not a *res-adjudicata* in the present suit by a purchaser from the intervenor against the said vendee, the reservation being a mere *obiter dictum*. *Buksh Ali* v. *Nittyanund Doss*, 5 W. R., 227.

Plaintiff purchased an estate from L. (defendant No. 1) during the pendency of a suit on the part of F. against his vendor, G. (defendant No. 2), for confirmation of possession and registration of name. L.'s suit against G. was dismissed for default. Plaintiff then sued for possession on the ground of having been dispossessed after the decision in the other case.

Held that the cause of action in that other case is not the same as the cause of action in the present suit. *Mohabeer Pershad* v. *Lalla Ram Bahadoor and others*, 11 W. R., 193.

After the partners of a trading firm had dissolved partnership and divided assets and liabilities, a suit was brought against the firm by a creditor, and decreed, notwithstanding the plea put in by one of the partners (M.) that by the private arrangement among the partners the debt sued for pertained to the other partner's (L.'s) share of the liabilities.

When a Court of competent jurisdiction in deciding upon a particular subject-matter thinks it necessary to go into collateral facts for the purposes of its decision, its opinion on those facts is not conclusively binding in a subsequent suit which relates to a different subject-matter. *Modhoo Ram Dey* v. *Boydonath Doss and others*, 9 W. R., 592.

A., on the 1st of February, 1868, entered into a contract with B. to supply him with straw for twelve months, the supplies to be sent as ordered daily. On the 12th of March B. brought an action in the Small Cause Court against A. for damages sustained by the plaintiff by reason of A.'s having failed to supply straw as agreed upon. The Judge decided the questions in issue (namely, of the *factum* of the contract and the authority of the person who executed it in A.'s behalf) in favour of B., and gave him a decree. On the 21st of April a second suit was brought by B. against A. on the same contract. The claim was for damages sustained by the plaintiff by reason of A.'s having failed to supply straw as agreed from the 20th of February to the 17th April. That suit was dismissed, the Judge holding that the matter was *res-adjudicata*, as he considered that the contract was an entire one, and that B. had shown by suing on it for general damages that he treated it as such, and had elected to rescind it. On the 9th of May a rule *nisi* was granted for a new trial, and on the 16th of May the rule was made absolute. On the 12th June, at the new trial, a decree was made in favour of B. for so much of the damages claimed as had been sustained subsequently to the date of the decree of the 25th March. In an action brought by B. on the same contract for damages sustained between the 17th April and the 16th of June, by reason of A. having failed to supply straw according to the terms of the same contract, A. denied that there had been any such contract, and further pleaded that the matter of the contract, if there had been one, had already been adjudicated upon. On reference from the Small Cause Court,—*Held* that the finding of the Judge upon the contract in the action brought on the 12th of March was conclusive between the parties, and that A.'s plea of *res-adjudicata* was not well founded. *Cock and others* v. *Jadub Chunder Nundi*, 2 B. L. R., O. C., 48.

A case struck off on the ground of discrepancy between the plaint and the plaintiff's deposition cannot operate as a *res-judicata*. *Gunga Narain Doss* v. *Punchanunee Dossee*, W. R., 1864, 163.

A decision in a former case, in which a mere question as to the use of the water in a water-course arose, cannot operate as *res-judicata* in a subsequent case, in which the subject-matter is

whether the defendants have the right of throwing up an embankment and obstructing the water-way. *Monmohun Singh* v. *Amritnath Chowdhry*, W. R., 1864, 167.

A. and his brothers made consignments of indigo to B., who sued A. for the balance of an account due to him in respect of advances made by him to A. and his brothers, and that suit was dismissed on the ground that no balance was proved to be due. A. now sues to recover the proceeds of the indigo, or his share of such proceeds. *Held* that the dismissal of the former suit was not a bar to the institution of the present suit. *Punchanun Roy* v. *Modhoosoodun Roy*, W. R., 1864, 245.

A previous rent suit which can only decide the question of liability to rent, is not *res-judicata* in a suit for abatement of rent on the ground of decrease of area, as to the question of what is the proper measuring rod. *Sreemunt Mundul* v. *Meer Athur Ali*, 6 W. R., Act X R., 193.

Where a suit for damages for the cutting down of certain trees on land alleged to belong to plaintiff was dismissed by a Small Cause Court which found that the plaintiff had no right to the land,—*Held* that the decision did not conclude the plaintiff in the matter of his title, but gave him a new cause of action against the defendant. *Chunder Narain Mozoomdar* v. *Prithanund Asrum*, 12 W. R., 290.

Held that the plaintiff's title to be maintained in possession of an orchard as planter of trees, or the digger of a tank, not having been adjudicated upon in a former suit, cannot be considered as a *res-judicata*, and should be decided on the merits. *Goshain Jugoopooree* v. *Kishen Doyal Chand*, 1 Agra Rep., 32.

A former decree decided that the plaintiff (a widow) always received a certain fixed amount, and was not entitled to recover more in the shape of profits in respect of the share claimed. *Held* that it was not a decision that such fixed payment represented a mere claim to maintenance, and not a substantial right or interest in the property itself, so that on partition she must be regarded as having no claim to share in the land.

It should be enquired into (the decree being so construed) whether the acceptance of a fixed payment was on forfeiture of all rights to the property, and whether it extended only so far as the widow's right is concerned, or whether it affected the son's right likewise. *Mussamut Man Koonwar* v. *Dilawur Hossein Khan*, 1 Agra Rep., R. A., 36.

Where a Court in a former suit against the present plaintiffs decided as to the validity of the mortgage now in suit, although it was not a matter for adjudication then before the Court,—*Held* that that decision was no bar to the plaintiffs' present suit, and that the question of the genuineness or otherwise of the mortgage by defendants to plaintiffs was open to be decided on merits. *Bustee Ram and others* v. *Newaj Singh and others*, 1 Agra Rep., 63.

Held that a former suit which decided the question of relinquishment of the land by defendant, a ryot, does not bar the present suit, which is brought on the allegation that the land being seer land, the defendant, the occupant, has no right of occupancy, and should consequently be ejected. *Held*, further, that in computing the period of twelve years' holding which creates a right of occupancy, all such time during which the land was subject to litigation should be excluded. *Naipal Singh and others* v. *Ram Narain*, 2 Agra Rep., A. C., 93.

Held that the judgment of the Lucknow Civil Court, in a former suit for property situate within the jurisdiction of that Court, was no bar to the present suit, in respect to property situate at Allahabad. There was no splitting of the claim, inasmuch as the former suit was for the entire property situate in Lucknow and Allahabad. *Thakoor Pershad* v. *Kalika Pershad and others*, 2 Agra Rep., A. C., 104.

Held that a decree of the Revenue Court, in a suit for possession brought by one lessee against the zemindar, was no bar to a suit in the Civil Court brought by another lessee to obtain possession against both the zemindar and the first lessee. *Run Singh* v. *Mahomed Abid and others*, 2 Agra Rep., A. C., 127.

In a suit to recover, with mesne profits and other incidents, a jerayati village alleged by the plaintiff to form part of the zemindari, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of Northern Circars passed in 1844, the defendant pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the Permanent Settlement, and that the quit rent had been received from him by the plaintiff. The Agent dismissed the suit, on the ground that the matter had become *res-judicata* against the plaintiff by a former decree in 1807.

Held that the matter of the present claim was not *res-judicata*, because the question of the existence and validity of the alleged grant, on which the defendant relied, was not determined in the former decree. *Vairicharla Surya Norayana Raj Bahadoor* v. *Nadiminti Bhagavat Patanjali Shastri*, 3 Mad. Rep., A. J., 120.

In 1856 the plaintiff, the zemindar of Tarla (who had attained his majority in 1853), instituted suits for the recovery of the two villages claimed in the present suit, on the ground that the villages were jerayati, and had been temporarily alienated, and he claimed a right of resumption. It was decided that the villages had formed a mokasa jagheer from a date prior to that of the Permanent Settlement, and that, as they did not constitute a portion of the assets of the zemindary at the date of the settlement, there was no right of resumption. Pending those suits, an order was issued by Government which plaintiff construed as a transfer to him of the Government right in the villages, and he founded the present suit upon the lapse of the mokasa to Government, and the order transferring the right to him.

Held that the present suit is not *res-judicata*. *Sri Sri Rama Chundra Surya* v. *Darvad Ramanna Chundiri*, 3 Mad. Rep., A. J., 207.

In a suit brought to set aside the adoption of the first defendant, to declare plaintiff's title to certain lands and for possession, the first defendant pleaded that the question of his adoption was *res-judicata* in a former suit. In that suit, between the present plaintiff's son as plaintiff and his father (the present plaintiff) as the first defendant, and the present first defendant, the alleged adopted son as second defendant, the latter was found to be the adopted son of the undivided brother of the present plain-

tiff,—*Held* that the first defendant's adoption was not *res-judicata*. *Gopálayyan* v. *Rághapati Ayyan*, 3 Mad. Rep., A. J., 217.

Plaintiff claiming as grandson of one Subapati Mudali, the only undivided brother of Subraya Mudali, sought to recover half of the village sold by Subraya to first defendant's father in 1855; the village having been (as alleged) family property, and sold without the consent of plaintiff's father, who succeeded his father, Subapati, and not for family purposes.

In a former suit (No. 3 of 1855), brought by the plaintiff's father against Subraya and Ramanya, the father of the present first defendant, and the present second defendant, the paternal nephew of the first defendant, for possession of the whole of the family property belonging to him, and Subraya as co-parcener, and to rescind the sale to Ramanya, the plaint stated, amongst other things, that Subraya was imbecile; and that the sale deed was obtained by taking a fraudulent advantage of his imbecility; and that it was invalid as being made without plaintiff's consent. The Court decided that Subraya was "both physically and mentally qualified to manage, and legally competent to deal with the estate, supposing it to be undivided to the extent of his own share," and dismissed the suit.

In 1862 plaintiff again sued the present defendant for the whole of the village on the same ground of imbecility and fraud. The Civil Court decided that the suit was barred by the decree in the first suit, and on appeal the decree was affirmed.

Held that the present cause of action, namely, the plaintiff's right as co-parcener to a moiety of the property, and the invalidity of the instrument of sale to pass that right to the defendant, was not *res-judicata*. *Chinniya Mudali* v. *Venkatachella Pillai*, 3 Mad. Rep., 320.

In an action to recover fees claimed for services as an hereditary family and village priest, it appeared that a deceased brother of the plaintiff had recovered judgment against one of the defendants and others in an action for similar fees. *Held* that the former judgment was not conclusive in favour of the plaintiff, nor as against a brother of one of the original defendants. *Krishnumbut bin Shibrambhut* v. *Lukshnumbhut bin Gunnesbhut*, 1 Bom. Rep., 141.

K. sued to establish his title to a house purchased by him from D. D.'s guardians during minority, alleging that the greater part of the purchase-money was employed in paying off a mortgage claim upon the house; that after he had obtained possession under his deed one D. S., the holder of a decree against D. D.'s guardians, attached the house; and that he brought the suit to raise the attachment, in which having failed he paid into Court the amount of D. S.'s claim.

Held that K. was not estopped from bringing this suit against D. D. by the decree in his former suit to raise the attachment, which declared that the deed of sale now relied upon was fraudulent and void as against D. S. *Dagom* v. *Kamble*, 2 Bom. Rep., 369.

A suit struck off by reason of the defendant being then in jail on a criminal charge, cannot be set up as *res-judicata* in a subsequent suit, there having been no determination in favour of one party or the other, nor can it be treated as a case of withdrawal under Section 97, Act VIII of 1859. *Luckhee Ram Dass and others* v. *Joy Sunkar Gooho*, 7 W. R., 236.

A suit to establish the plaintiff's right to a share of ancestral property, part of which was in his sole possession, cannot operate as a *res-judicata* in a subsequent suit to recover possession of a part of the ancestral property which was, as he alleges, in his sole possession, and from which he was forcibly evicted by the defendant during the pendency of that suit. *Huronath Roy and others* v. *Gooroo Doss Roy*, 7 W. R., 423.

Five brothers, A., B., C., D., and E., executed an ikrar, by which talook N. and others were to remain in their possession, and under the management of A. On refusal to give his brothers their shares of the profits, they sued separately and obtained decrees against him for the amount due to them. A.'s son now sues B. for the sums which his father was compelled under the ikrar to pay his other brothers, on the allegation that B. alone was in possession of talook N. and appropriated the rents wrongfully. *Held* that the present suit was not barred by the former suits under the ikrar, except so far as B.'s share in talook N. was concerned. *Khettro Nath Dey* v. *Gossain Doss Dey and others*, 7 W. R., 188.

A suit which was brought by A. against B. and C., and dismissed, cannot be pleaded as *res-judicata* in a subsequent suit brought by B. against C. *Huro Monee Debia* v. *Tumeezoodeen Chowdhry and others*, 7 W. R., 181.

A former judgment, which proceeded wholly upon a technical defect or irregularity in the proceedings, and not upon the merits of the case, is not a bar to a subsequent suit for the same cause of action. *Ram Nath Roy Chowdhry* v. *Bhagbut Mohapattur*, 3 W. R., Act X R., 140.

The decision in a suit under Act X of 1859 against the defendants as the plaintiff's tenants will not bar a suit brought in the Civil Court against the same defendants as the plaintiff's vendees, the parties being accidentally the same persons, but legally different persons, with different rights and interests. *Sheikh Gholam Ahmed* v. *Sham Soondur Roy*, 5 W. R., Act X R., 9.

A mere decree for rent of certain lands in a suit in which no question as to the lands being lakheraj was put in issue or decided, cannot operate as an estoppel to a suit to obtain a declaration that the same lands are lakheraj. *Dukheena Mohun Roy Chowdhry* v. *Kasheenath Chatterjee and others*, 6 W. R., 37.

A finding of possession in a miscellaneous proceeding under Section 25, Act X of 1859, is not binding on the Civil Court. *Cazee Ramzun Ali* v. *Chowdhry Chuttersal Singh*, 6 W. R., Act X R., 13.

Where a person apparently holds a tenure in a zemindary he is recorded in the sherishtah, and is nominally in possession, though in a suit for rent, or as to the state of the property, the zemindar is, at any particular time, unable to prove that such person is holding benamee for others, really interested; or if, in any future years, such zemindar can show that these persons are then really enjoying the profits, paying the rents, and acting as owners, he is not prevented by a decision as to the rents or title in former years from showing what is the state of things in any subsequent years. *Ram Dhun*

Mookerjee v. *Monee Cornica Debee and others*, 6 W. R., 266.

Plaintiffs sued for their share in the property of their family. The Judge rejected their claim, mainly on the ground that when parties in a former suit respecting the same property they had pleaded division, and the Court found that the family was undivided. *Held* that the Judge was wrong in attributing to the plaintiff the plea of division in the former suit, and, even if such plea had been raised, the judgment in that suit, pronouncing the *status* of the family to be that of non-division, was conclusive on that subject, and that it was open to the plaintiffs to sue for enforcement of their rights to effect a division. *Sangoovin* v. *Kollathoorayen*, 1 Ind. Jur., O. S., 116.

The survivor of several Hindu sisters is not bound by decrees obtained against her sisters during their lives, whose interest was only a life-interest in their father's property, which on their death passed to the survivor as heir of her father. *Joygobind Shahoy* v. *Mahtub Koonwar*, 7 W. R., 1.

A Collector's judgment as to the genuineness of a pottah cannot be pleaded as an estoppel in the Civil Court in an action for ejectment on account of trespass. *Aradhun Dey and others* v. *Golam Hossein and others*, 8 W. R., 487.

In a former suit for rent brought before the Collector by A. against B., A. set up a bond authorizing B. to deduct a certain portion of his rent, and apply it in reduction of the amount due to him on the bond. The Collector held that the bond was genuine. B. now sues in the Civil Court under the bond. *Held* by the majority of the Court (Campbell, J., dissenting) that the decision of the Collector was not conclusive, except upon the question relating to the rent, concurrency of jurisdiction being a necessary part of the rule creating an estoppel in such a case. *Mussamut Edun* v. *Mussamut Bechun*, 8 W. R., 175.

In an action for rent defendant pleaded by way of estoppel to part of the plaintiff's claim that, in a prior action for rent previously due, brought by the plaintiff against the defendant, it had been found that the defendant was tenant to the plaintiff of a less quantity of land only than that in respect of which the plaintiff claimed rent in his suit. *Held* that there was no estoppel, and that the plaintiff might show, notwithstanding such previous judgment, that the defendant was in occupation of the larger quantity. *Ojoodhya Persad* v. *Bhugwantajah*, Marsh., 12.

A finding in one suit to which A. was a party is no bar against A. in another suit, unless it is shown that the issue in question in the latter was raised in the former suit, and was a material issue in it. *Dahoo Munder* v. *Gopee Nund Jha*, 2 W. R., 79.

If a man takes out probate of a will his heirs are not estopped from disputing the will. *Mahomed Mudun* v. *Khodezunnissa*, 2 W. R., 181.

A. claimed certain property as the adopted son of B., and it was decided in that suit that A. had failed to prove that he was the adopted son of B. *Held* that this decision was no legal bar to A.'s proving in another suit that he was the adopted son of B., in which A. sought to obtain a different property upon a different cause of action, though the parties to the suit were the same. *Kriparam* v. *Bhagawan Das*, 1 B. L. R., A. C., 68; S. C., 10 W. R., 100.

An affirmation in general terms of the right of a plaintiff in a suit, which was based in some measure upon certain documents, is not such a decision between the parties as precludes the defendant from raising a question as to the genuineness of these documents in a subsequent suit between the same parties. *Hurreehur Mookerjee* v. *Oomamoye Dossee*, 12 W. R., 525.

A possessory suit under Clause 6, Section 23, Act X of 1859, by a ryot against his zemindar, cannot bar a suit for confirmation of title by the intervenor in that suit. *Tarachand Ghose* v. *Radhamony Dosse and others*, 7 W. R., 469.

Where a Deputy Collector declined jurisdiction in a suit for ejectment under Section 28, Act X of 1859, and the appeal against this decision to the Judge was dismissed,—*Held* that that decision was no bar to a suit for ouster in the Civil Court, either in the way of *res-judicata* or otherwise. *Baser Mahamed* v. *Sudder Gazee and others*, 7 W. R., 97.

In a suit brought in the Civil Court to enforce a summary decree for rent against the immoveable property of the defendant, that Court is not estopped by the decision of the Collector that the remedy upon that summary decree was bound by limitation, but it is the duty of the Court to decide whether the suit to enforce the decree against the immoveable property is barred or not. *Gyanchundra Roy Chowdhry* v. *Kalee Churn Roy Chowdhry*, 7 W. R., 481.

A summary order rejecting plaintiff's claim in an execution case to the property in dispute, when it had been attached by a decree-holder, which order was not followed by the sale of the property attached, cannot in any manner affect the present suit against parties other than the decree-holder brought for a different purpose and on a different cause of action. *Booa Rusoolee and others* v. *The Nawab Nazim of Bengal*, 11 W. R., 382.

The proceedings in a suit under Act X of 1859, in which the Collector did not finally adjudicate upon the genuineness of a pottah, although he accepted it as genuine, are no bar to a subsequent suit in the Civil Court for a declaration that the pottah is a forgery. *Petumber Shaha and others* v. *Ramjoy Ghosh and others*, 7 W. R., 92.

Dismissal of suit for rent is no bar to suit for title and possession with mesne profits. *Gour Huree Doss* v. *Mutteeoolah*, 1 W. R., 99.

An admission made by a party in other cases may be taken as evidence against him, but cannot operate against him as an estoppel in a case in which his opponents are persons to whom the admission was not made, and who are not proved to have ever heard of it, or to have been misled by it, or to have acted in reliance upon it. *Chunderkant Chuckerbutty, Christian* v. *Pearee Mohun Dutt*, 5 W. R., 209.

A decision as to the validity of a will under the provisions of Act XXVII of 1860 will not bar a regular suit under Act VIII of 1859, between the same parties, to contest the validity of the same will. *Anund Chunder Mitter* v. *Baney Madhub Mitter and others*, 11 W. R., 127.

An heir is not deprived of what he is entitled

to, as such, by having, in proceedings taken against the property claimed, repudiated heirship, and denied that he had inherited. *Khemunkuree Dossee* v. *Gooroo Prosad Mytee and others*, 11 W. R., 379.

The finding of a Civil Court as to the execution of a will is not conclusive evidence on the point, if the question of its execution was not a material issue in the suit. *Beer Chunder Roy* v. *Sheikh Tumeezoodeen*, 12 W. R., 87.

A judgment-debtor did not oppose a claim successfully made by a third party to property of the debtor which was seized in execution of a decree. *Held* that, in the absence of fraud in the debtor as against his judgment-creditor, the debtor's not opposing the claim of the third party was no bar to his suing the latter to recover from him the property he had claimed. *Bindoo Bassinee Dabea* v. *Taraprosono Banerjee*, 2 W. R., 3.

When a suit has been remanded by the Appellate Court and then dismissed by the Court of first instance for non-appearance of the parties, the plaintiff is not debarred thereby from bringing another suit upon the same cause of action against the same defendant. *Raghunath Singh* v. *Ram Kumar Mundle*, 5 B. L. R., Ap., 64.

The judgment of a Moonsiff's Court (confirmed by the lower Appellate Court) in a suit for arrears of rent, as to the validity of the same lease which plaintiff there set up, and of the same mukurruree pottah which defendants then brought into Court, was not conclusive evidence in the present case, for though an inferior Court has jurisdiction to try every matter which is necessary for the adjudication of the point in contest before it, its decision is not final as regards other facts not in contest before it. *Sekaitnee Gouree Coomaree* v. *The Bengal Coal Co.*, 13 S. W. R., C. R., 129.

A suit for enhanced rent after notice having been dismissed in appeal, plaintiff sued to recover rent for the same year at the rate admitted by the defendant in the former suit. *Held* that the cause of action in the present suit was not the same as in the former, and that the law of *res-judicata* did not apply in bar. *K'hedaroonissa Bibee* v. *Boodhee Bibee*, 13 S. W. R., C. R., 317.

A previous suit against the same defendant on a bond having been dismissed on the ground that plaintiff had failed to prove the execution of the bond, defendant sued to recover the identical sum as a balance due on a khatta account. *Held* that the second suit was not brought on a cause of action previously tried and determined between the parties, and was cognizable by the Court of Small Causes. *Anghore Nath Ghossal* v. *Roop Chund Mundle*, 13 S. W. R., C. R., 97.

J. and B. borrowed a sum of money on a mortgage of property. Shortly after this they granted a mokurruree of the property to plaintiff and afterwards sold their rights as proprietors to one R. R. Subsequently to this the mortgagee brought a suit against the mortgagors, and obtained a decree declaring the property liable to be sold in satisfaction of his debt. The property was accordingly sold in execution and purchased by one R. D., and the sale proceeds were made over to the judgment-creditor. Plaintiff as mokurrureedar now sues to obtain possession on the ground that the debt being paid off the mortgage is no longer in existence. The Judge having found that the purchase by R. D. was not *bonâ fide*, but for and on the part of R. R. who was in actual possession,—*Held* that Section 260 of the Code of Civil Procedure was no bar to the suit, the ground of fraud alone giving plaintiff sufficient right to question the legality of the sale. *Mussamut Shama Kessy* v. *Mussamut Raj Kishore*, 14 S. W. R., C. R., 179.

Decisions against one heir are not final or binding against other heirs. Nor are decisions against one person in any way conclusive or binding against other persons who do not derive their title from him and who come into Court upon an independent title or independent right of their own. *Abdool Guffer Khan* v. *Golam Nufur*, 16 S. W. R., C. R., 298.

A decision on a collateral issue as to the rights of the parties prior to a decree in a suit for enhancement of rent, is no bar to another suit on the point so decided. *Salahmunissa Khatoon* v. *Mohesh Chunder Roy*, 16 S. W. R., C. R., 85.

A suit is not barred by the principle of *res-judicata* because, in a former case between the same parties and on the same cause of action, the plaintiff, after the evidence had been recorded but before final judgment was passed, obtained the Court's permission to withdraw the case, with reservation of leave to bring another suit. Observations on decision of Privy Council in *Watson* v. *Collector of Rajshaye*, 12 W. R. (P. C.), p. 43. *Sreemotee Mona Bibee* v. *Oomed Ali*, 16 S. W. R., C. R., 276.

An incidental finding of a Revenue Court as to the genuineness of a pottah is no bar to the jurisdiction of a Civil Court to try the same question on a distinct issue in a regular suit. *Shib Pershad Panah* v. *Mudden Mohun Doss*, 15 S. W. R., C. R., 415.

The Court declined to concur in a decision which should deny to plaintiff money now evidently due, and which defendant has failed or omitted to pay, upon the ground that in a previous suit it appeared that defendant was willing to pay and consequently that suit was unnecessary. *Ram Soondur Sein* v. *Krishno Chunder Goopto*, 17 S. W. R., C. R., 380.

Plaintiff's former suit in the Revenue Court for arrears of rent at enhanced rates, to which defendant set up a plea of lakheraj, was dismissed on the ground that the kubuleut propounded by plaintiff was not proved. *Held* that plaintiff was now entitled to bring this action for a declaration of his title to the disputed lands as part and parcel of the mâl lands of his zemindaree. *Issur Chunder Roy* v. *Juggessur Ghose*, 17 S. W. R., C. R., 184.

(*h*) *Estoppel by Acquiescence.*

In a suit to recover possession of land where it appeared that the defendant's father had in A. D. 1801 obtained possession on a lease of 280 bigahs from the Government of Kulabo, and that the plaintiff's father had in 1806 obtained a grant of ten unspecified bigahs of the same land, but that he never asked to have them marked out and given to him *in speci*, and that he, and subsequently his sons, the plaintiffs, were content up to the year 1856 to receive from the defendant's family in respect of their grant the rent formerly paid by them to the Government for the same. The District Court reversed the decree of the Moonsiff, and

threw out the claim to recover possession of the land on the ground that the plaintiffs must be taken after such a lapse of time to have acquiesced in the arrangement that a yearly rent was to be received without any particular land being marked out as theirs.

Held that it is competent for the Assistant Judge to come to that conclusion under the circumstances, and that there was no ground for saying that there was any error of law in his decision, which was accordingly affirmed. *Suli* v. *Dhundaraj Venayak*, 3 Bom. Rep., A. C., 55.

Acquiescence must be inferred when a person stands by and allows another to erect a *pucka* building on his land, and a suit would not lie for the demolition of the building, but only for damages or rent of land. *Hurro Chunder Mookerjee* v. *Hullodhur Mookerjee*, W. R., 1864, 166.

The sending of an agent by a tenant to settle with the landlord as to the rent is not a virtual acquiescence in the rate of rent demanded. *John Stalkart and J. Cox* v. *Lalla Bhurrut Lall*, W. R., 1864, Act X, Rul. 115.

A consent by the vakeel of a party to a decree being made binding on property other than what the parties to the suit may have an interest in, is a consent to what is beyond the scope of the suit, and can neither be binding on the party nor acted upon by the Court. *Abul Khadar* v. *Andhu Set*, 2 Mad. Rep., 423.

Where a mortgage was made by a lumberdar of his own share and shares of his co-sharers as agent on their part in order to raise a sum required to pay the Government revenue,—*Held* that the co-sharers, being aware of the fact of mortgage, and not having at the time repudiated it, and moreover having acquiesced in the decree of the Court of first instance which awarded their shares on payment of their quota of the mortgage debt and interest, must be taken to have thereby consented to the act of the lumberdar which was done on their behalf.

The mortgage being made by the lumberdar for himself and as agent for other sharers, it was necessary to issue notice of foreclosure both to the lumberdar and his co-sharers, and that the latter should also have been made parties to the suit for possession. *Punchum Singh and others* v. *Mungle Singh and others*, 2 Agra Rep., 207.

(*j*) *Rulings under Section* 2 *of Act VIII of* 1859.

A plaintiff's failure in a former suit to establish his claim with reference to a different property from which he was dispossessed on a different date, cannot render his present suit inadmissible under the provisions of Section 2, Act VIII of 1859, even though the title set forth in both the suits is identical. *Booa Rusoalee* v. *The Nawab Nazim of Bengal*, 11 W. R., 382.

Where a suit against several defendants for a joint jumma is dismissed on the ground that the jumma is several and not joint, the plaintiff is not precluded by Act VIII of 1859, Section 2, from afterwards suing each of them severally for the separate jumma. *Telokdharee Saha* v. *Bissendro Narain Sahie*, Marsh., 418.

In a suit for redemption of mortgage the plaintiff may implead other persons who claim the right of redemption in opposition to him.

Where D. sued for redemption, and obtained a conditional decree, and subsequently the plaintiff sued D. to establish his right to the mortgaged property and obtained a decree,—*Held* that a suit by the plaintiff for redemption was not barred by Section 2, Act VIII of 1859. *Bhoop Singh* v. *Nursingh Rai and others*, 4 Agra Rep., 144.

A. sued B. to recover possession of certain land, claiming it as part of her talook. In a former suit A. had sued B. to recover possession of the same land, claiming it as *towfir* (or excess), and her suit had been dismissed. *Held* that A.'s present suit was barred under Section 2 of Act VIII of 1859. *Umatara Debi* v. *Krishna Kamini Dossi and others*, 2 B. L. R., A. C., 102; 10 W. R., 426.

Where the plaintiffs in a former suit were H., R., L., and K., and the plaintiffs in the present suit O., R., and L., it was held that the former suit was not between the same parties as the latter, or brought by parties under whom the present plaintiffs claim, and therefore that the present suit was not barred by Section 2, Act VIII of 1859, whether some of the parties were trustees for the others or not. *Woomesh Chunder Roy and others* v. *Nobin Chunder Mozoomdar and others*, 10 W. R., 457.

To plead *res-judicata* under Section 2, Act VIII of 1859, it is necessary that the parties should be the same or their representatives, that the subject-matter of the suit should be the same, and the cause of action the same. *Maharaj Singh* v. *Mussamut Beela Kooer*, W. R., 1864, 320.

The plaintiff sued to recover possession of land and for wasilat from the period at which he alleged he was dispossessed; and he obtained a decree for possession of the lands and for wasilat from the date of the plaint. He afterwards sued the defendant for wasilat from the date of the alleged dispossession to the date of the plaint.

Held that wasilat having been claimed in the previous plaint for that period, and there having been an adjudication upon his claim of wasilat, and no evidence that wasilat was withheld for the period for which it was now claimed, through inadvertence or by mistake, the case was within Act VIII of 1859, Section 2, excluding from the jurisdiction of the Court causes of action "which shall have been heard and determined by a Court of competent jurisdiction to a former suit between the same parties." *Luteefoonissa Bibee* v. *Luckeemoney Dossee and others*, Marsh., 93.

A suit for wasilat is not barred under Section 2, Act VIII of 1859, although in a previous suit the plaintiff prayed for possession and wasilat, and got a decree for possession only, no issue having been raised in that suit as to wasilat, and the plaintiff's right to it not having been tried or determined. *Balum Bhutt alias Rajah Ram Bhutt* v. *Bhoobun Lall and others*, 6 W. R., 78.

In a suit for possession, wasilat was not treated as one of the matters in issue, and the right to recover it was not decided one way or other, although the plaint contained a prayer for wasilat. *Held* that the question of wasilat could not be regarded as a cause of action "heard and determined in that suit" within the meaning of Section 2, Act VIII of 1859.

Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action does not arise until the end of the year.

Parties in possession are liable for wasilat to the legal owners whom they keep out of possession, even though there was no *mala fides* on their part. *Byj Nath Persaud* v. *Radhoo Singh and others*, 10 W. R., 486.

The Tipperah Rajah's Court is a Court of competent jurisdiction within the meaning of Section 2, Act VIII of 1859. A decision given there bars a fresh suit in respect of the same matter in a British Court. *Sreemutty Modhoo Bebee* v. *Ram Manicko Dey and others*, 6 W. R., 31.

In a suit to recover, in virtue of a right of inheritance, a share of a deceased father's estate from which plaintiff had been ousted in 1858,—*Held* that as the plaintiff had brought a suit in 1853 in which she claimed the same properties as belonging to her father's estate, and had accepted and acted upon the decree then passed, which excluded the property in question from her claim, her present suit was barred by Section 2, Act VIII of 1859; and further that she could not claim the property on the ground of a solenamah by which it was admitted and declared that the property belonged to her father's estate, when it had been already decided in the former suit that it ought not to appertain to that estate. *Mussamut Syudoonissa* v. *Feda Hossein and others*, 12 W. R., 182.

A suit is not barred under Section 2, Act VIII of 1859, as *res-adjudicata*, unless the parties or their privies, the subject-matter of suit and the cause of action, are the same. *Mussamut Munna Jhunna Koonwar* v. *Laljee Roy*, 1 W. R., 121.

Section 2, Act VIII of 1859, does not bar a suit to enforce a joint liability under a bond against several persons, when the object of a former suit was to make one of such persons alone liable. *Ramnath Roy Chowdhry* v. *Chunder Sekur Mohaputtur*, 4 W. R., 50.

A landlord sued his tenants and his tenants' surety in the Collector's Court for arrears of rent, the surety being merely treated as a nominal party, and the decree being given against the tenants. He afterwards sued the surety in the Civil Court on the bond given by him, and in the lower Court obtained a decree, not only for the arrears of rent, but also for the costs in the Act X suit. *Held* in special appeal that the suit was, as regards the arrears of rent, not barred by Section 2, Act VIII of 1859, but that the costs in the Collector's Court could not be recovered. *Ramtan Acharjee* v. *Komal Lochan Roy*, 3 B. L. R., Ap., 37.

Where the right to possession as evidenced by the title of the parties was in issue in a former case under Act X of 1859, and the right to possession as between the same parties under their several titles is also the point in issue in a subsequent suit in the Civil Court, the causes of action in the two cases are identical, and the latter suit is barred under Section 2, Act VIII of 1859. *Tara Chand Ghose* v. *Radha Monee Dossee*, 5 W. R., Act X R., 9.

Plaintiffs having purchased the rights of a widow in certain properties, sued the defendants for partition of the share purchased; defendants admitted the widow's right to a certain extent, but the suit was dismissed on the ground that plaintiffs before they obtain partition must establish the extent of their right and the validity of the purchase. *Held*, on plaintiffs' second suit, that it being between the same parties, and for the same property on the same cause of action, was barred by Section 2, Act VIII of 1859; that defendants' admission, which was merely an admission in plaintiffs' favour, gives no new cause of action; and that if the Courts failed to decide all the matters in dispute which they had before them in the former suit, their judgment cannot be revised in a new suit; such revision being contrary to the provisions of Section 3, Act VIII of 1859. *Ghazee Khan and others* v. *Kulloo and others*, 1 Agra Rep., A. C., 152.

A suit between two brothers, A. and B., respecting ancestral property, was compromised, and the particulars of the compromise embodied in a rázináma presented in Court by both parties. A. having died, his widow and B. presented in Court another rázináma embodying the particulars of an arrangement respecting the property in which she had become interested as widow, and which was comprised in the former rázináma; and of this second rázináma, they subsequently put in an amended copy.

Held that a claim arising out of such arrangement could not, within the meaning of Act VIII of 1859, Section 2, be considered to have been a cause of action heard and determined in the former suit. *Lakshmi Ammal* v. *Tikaram Tovaji*, 1 Mad. Rep., A. C., 240.

The defendant had obtained an order under Section 25, Act X of 1859, to eject the plaintiff who now sued in the Civil Court for recovery of possession. *Held* that Section 2, Act VIII of 1859, does not bar the suit. *Amanat Aly Chowdry* v. *Mussne Ali*, 2 B. L. R., Ap., 36; S. C., 11 W. R., 145.

Held that Section 2, Act VIII of 1859, does not bar the present suit, as the former suit did not raise the question of joint ownership now in dispute. *Narain Rao* v. *Mussamut Jumna Baee and others*, 2 Agra Rep., A. C., 192.

A previous decision against one member of a family suing to recover his own share of certain property is no bar, under Section 2, Act VIII of 1859, to a suit by the receiver in the name of the whole family to recover the whole property. *Jugurnnath Proshad Dutt* v. *C. S. Hogg and others*, 12 W. R., 117.

Held that, as plaintiff had brought a suit in 1853, in which she claimed the same properties as belonging to her father's estate, and had accepted and acted upon the decree then passed, which excluded the property in question from her claim, her present suit was barred by Section 2, Act VIII of 1859, and further that she could not claim the property, on the ground of a solehnamah, by which it was admitted and declared that the property belonged to her father's estate, when it had been already decided in the former suit that it ought not to appertain to that estate. *Mussamut Syudoonissa* v. *Feda Hossain and others*, 12 W. R., 182.

A Collector's refusal to give assistance under Section 25, Act X of 1859, is not a determination by a Court of competent civil jurisdiction in a former suit within the meaning of Section 2, Act VIII of 1859. *Gocool Chundra and others* v. *Ali Mahomed*, 10 W. R., 6.

In execution of a decree, the right, title, and interest of A. in a certain property were sold and purchased by B. In execution of another decree, the

right, title, and interest of A. and C. in the same property were sold and purchased by D. In a suit by A. the sale to B. was set aside, but on appeal the decision of the Court of first instance was, upon consent of the parties, set aside and the sale allowed to stand good. D. sued for possession of the share of A. and C. in the property purchased by him, and obtained a decree for possession of the share of C. only. D. now sued to set aside the sale to B. and for possession of the share of A. *Held* that the suit was not barred by Section 2, Act VIII of 1859. *Channa Lal Sahu* v. *Maun Lal*, 5 B. L. R., 220; 13 S. W. R., C. R., 343.

A., a Hindu of Gya, died, leaving a sister, B., and C., the son of a deceased sister. On A.'s death B. took possession of the property left by A. In a suit by C. against B. for recovery of possession thereof as heir to his maternal uncle, the Court of first instance *held* that B. should retain possession of the property during her lifetime, without power of waste, and that on her death C. should be entitled to the possession thereof. This was reversed by the High Court on appeal, who held that the decree should have been simply a decree of dismissal of the plaintiff's suit. B. died, leaving an adopted son, D. C. sued D. for recovery of possession of the property, the subject-matter of the former suit, on the ground that D. was not the adopted son of B., and that C., who came within the class of bandhus, was entitled to succeed to the property left by A. and B., there being no nearer heir in existence. *Held* that Section 2, Act VIII of 1859, did not bar the suit. *Mohun Lal Bhayu Gyal* v. *Lachman Lal*, 5 B. L. R., 663, and 14 S. W. R., C. R., 73.

A suit founded on the allegation of a joint title with several other persons to enjoy certain property as part of a particular talook having been decided against the plaintiff, he brought another suit against the same defendant claiming the property on a joint title with one other person as part of another talook. *Held* that under Sections 2 and 7, Code of Civil Procedure, plaintiff had lost his right by any title that existed at the time of his bringing the first suit to insist upon having possession of the land as against the defendant. *Shib Sunkur Neoghy* v. *Huro Soonduree Goopta*, 13 S. W. R., C. R., 209.

A suit in which the plaintiff obtained a decree was appealed and resulted in a remand. On the remand no one appeared either for plaintiff or defendant, and the suit was dismissed on default. *Held* that the plaintiff was not precluded by Section 2 of the Code of Civil Procedure from bringing a fresh suit. *Rughoonath Singh* v. *Ram Coomar Mundle*, 14 S. W. R., C. R., 81.

A decree in a suit for kubuleut at an enhanced rate is no bar, under Section 2, Act VIII of 1859, to a suit for a declaration of the rights of the present plaintiff to hold the land in lieu of maintenance on payment of a quit rent, which cannot be tried by a Collector. *Rajah Kristo Chunder Murdraj* v. *Poorosuttum Dass*, 15 S. W. R., C. R., 424.

A suit for possession as the heir of S. is not barred by Section 2, Act VIII of 1859, because plaintiff's former claim to the same property as the heir of S.'s father was dismissed. *Gooroo Dutt* v. *Sooroo and others*, 16 S. W. R., C. R., 264.

Held (Mitter, J., *dubitante*) that a suit claiming property by a title on inheritance is barred by Sections 2 and 7, Code of Civil Procedure, where plaintiff's claim on a title derived by gift has already been adjudicated. *Dudsar Bibee* v. *Shukir Burkundaz*, 15 S. W. R., C. R., 168.

A. B. instituted a suit against V. B. to recover possession of one-half of a field. S. N. and B. N., on their application, were made plaintiffs in that suit, but no alteration in the amount either of stamp or claim was made in the plaint.

The Principal Sudder Ameen awarded to A. B. one-fourth of the field, and to S. N. and B. N. conjointly he awarded one-fourth, but as to the remaining one-half he passed no decree, as it had not been claimed in the plaint. S. N. and B. N. thereupon filed a fresh suit to recover possession of their remaining one-fourth of the field, and the principal Sudder Ameen passed a decree in their favour. This decree was confirmed by the joint Judge.

Held that the decrees of the lower Courts were erroneous, and that the claim of the plaintiffs was barred by the provisions of Section 2 of the Civil Procedure Code, but leave was granted to them to apply to the Court below for a review of the decree passed in the former suit. *Vyasráv Báláji* v. *Subháji Naráyán*, 5 B. R. A. C., 173.

Two purchasers of holdings in the defendant's zemindari at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zemindar's sherista, under Act X of 1859, Section 27. Their application was refused; and then they brought a suit in the Civil Court to set aside the Collector's order and register their names.

Held that proceedings authorized to be taken in the Collector's Court under Section 27, Act X of 1859, are not proceedings in a suit; and consequently that such proceedings are no bar to a suit in the Civil Court under Section 2, Act VIII of 1859. *Chundra Narayan Ghose* v. *Kasi Nath Roy Chowdry*, 4 B. L. R., F. B., 43, and 12 S. W. R., F. B., 30.

Where a party has a good objection, such as an absence of tender before suits to urge to the prosecution of a suit, his omission to do so in the first instance is fatal to his availing himself of it as an objection on appeal.

Where a woman is in possession of her husband's estate as security for unpaid dower, the proper decree, in a suit against her for possession by the heir, is a decree for possession, subject to the amount due, with a direction for an account as to mesne profits received by her.

A Mahometan died, leaving among others a widow and a sister entitled to shares in his estate. The widow got possession of the whole. The sister died; and after her death her husband, on behalf of himself and grandson, sued the widow to obtain the shares to which the deceased sister was entitled, and obtained a decree for payment of the same, after satisfaction of the widow's lien for dower, in certain proportions to himself and grandson. The husband's interest in the decree was subsequently confiscated by Government for having taken with the enemy in the mutiny. He subsequently died, leaving his grandson. The widow died during the mutiny, and her brother was put into possession of the property by the Government as her heir. The grandson now sued the widow's brother to recover his own and his grandfather's share, alleging that the lien for dower had been

satisfied. *Held* the suit was not barred by Act VIII of 1859, Section 2. *Nawab Mahomed Ameenoodeen Khan* v. *Moozuffur Hossein Khan*, 5 B. L. R., 570; 14 S. W. R., P. C., 5.

20.—Onus Probandi.

(*a*) *Miscellaneous.*

In cases of alleged benamee sales effect should be given to the evidence of possession and enjoyment since the purchase, as showing who is the substantial owner.

The burden of proof lies on the person who maintains that the apparent state of things is not the real state of things, and the apparent purchaser must be regarded as the real purchaser until the contrary be proved. *Deo Nath and others* v. *Peer Khan and Ramzan Khan*, 3 Agra Rep., A. C., 16.

When a person grants a bill of sale to another person absolute in its terms, he cannot sue to have it set aside on the ground that he has all along remained in possession; and if he alleges fraud in the contract, and adduces the fact of non-payment of the consideration-money as evidence of fraud, he will be bound to show proof of non-payment. *Tekait Megraj Singh* v. *Raj Jaymungul Singh*, 1 Ind. Jur., N. S., 78.

A donee, under a deed of gift, brought a suit to recover a piece of land which he alleged his donors had given for a temporary purchase to the defendant in possession six years before; and the Moonsiff found that it was so, and allowed the claim. But the District Judge, in appeal, considering that the plaintiff had failed to prove his donors' title to the land, reversed the Moonsiff's decree. *Held* that the Judge was in error in requiring the plaintiff to establish the title of the donors, without enquiring whether the defendant had obtained possession merely by their permission; and that the suit must be remanded for a finding by the District Judge on that point. *Sakalchand Savaichand* v. *Dayabhai Ichhachand*, 4 Bom. Rep., A. C. J., 70.

In a suit to obtain possession of land held under attachment by the Magistrate after enquiry according to Section 3, Act IV of 1840, the Principal Sudder Ameen decided that the defendant equally with the plaintiff was bound to prove his title. *Held* (reversing the decision of the lower Court) that the fact of the land being under attachment did not absolve the plaintiff from the necessity of clearly proving his title to lands which, being out of possession, he sued to recover; nor did it justify the lower Court in giving him a decree because the defendant failed to make out his counter-claim. *Maharajah Moheshur Singh* v. *Ramuput Singh*, 1 Ind. Jur., O. S., 35.

In a suit against an heir for debts of his ancestor, in the absence of special circumstances, it lies upon the plaintiff in the first instance to give such evidence as would *primâ-facie* afford reasonable ground for an inference that assets had or ought to have come to the hands of the defendant. Plaintiff having laid his foundation for his case, it then lies upon the defendant to show that the amount of such assets is not sufficient to satisfy the plaintiff's claim, or that he was entitled to be satisfied out of them, or that there were no assets, or that they had been disposed of in satisfaction of other claims. *Kottola Uppi* v. *Shangara Varma Rajah of Kattayath Padinhuri Kovilagam*, 3 Mad. Rep., A. C., 161.

It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place. *Ramasamy* v. *Bhanani Ayyar*, 3 Mad. Rep., A. C., 247.

Where a purchaser of immovable property deals with a person having a qualified power of dealing with that property, it lies upon the purchaser to give some reason of the need which actually existed, or was alleged to exist, for the sale. *Vadali Ramakristanama* v. *Nanda Appaiya*, 2 Mad. Rep., 407.

A person who seeks to bar one who is *primâ facie* the legal owner, by evidence of ratification, or of facts cogent enough to prove one not a formal to be a substantial party, must make and prove such a case, for he is one who seeks to displace a legal title. *Rajan* v. *Basuva Chetti*, 2 Mad. Rep., 428.

The burthen of proving an allegation as to the lunacy of any person rests on the Collector, or the person who makes the allegation. *Sheikh Busharutoollah* v. *The Collector of Tipperah*, 8 W. R., 375.

Suit by a late Rajah's brother for maintenance allowance, which the present Rajah opposed on the ground that, as the plaintiff was no longer the ruling Rajah's brother, his allowance must be diminished. *Held* that the *onus* was on the defendant to prove a custom of entitling him to diminish the allowance heretofore enjoyed in right of plaintiff's position in the family. *Rajah Mookoond Narain Deb* v. *Mooralee Mohun Baboo*, 6 W. R., 91.

An admission by one defendant against another, which admission the Court finds to be collusive, cannot relieve the plaintiff from the burden of starting his case against the repudiating defendant, nor can it shift the burden of proof to the shoulders of the latter from off the plaintiff. *Sheikh Shyhamut Ali* v. *Monohur Doss and others*, 6 W. R., 299.

When it is averred that the consent of one of the parties to an arbitration was obtained by threats and through undue influence exerted by persons in authority, the *onus probandi* is on the person making the averment. *Ranee Purvatha Vardhay Nauchiar* v. *Jayavera Ramakomara Ettyapa Naicker*, 4 W. R., P. C., 31.

Before a plaintiff is entitled to recover any damages from a defaulting witness in a former suit, he must prove that he was endamaged by the omission of the defendant to appear. The mere failure of the defendant to appear as a witness is not *per se* a sufficient proof of his liability to damages. *Dwarkanath Kooree* v. *Anundo Chunder Sannel*, 5 W. R., S. C. C. Ref., 18.

Where a plaintiff alleged that subsequent to his purchase of a tank, at a period specified, defendants had commenced to take water from it and had opened a channel for the discharge of the water,—*Held* that the *onus* lay on the plaintiff to prove the assertion on the part of the defendants of any new right. *Bunsee Dhur Thakoor* v. *Khettormonee Dabee and others*, 11 W. R., 15.

In a suit to recover advances alleged to be due from a discharged gomastah, who pleaded acquittance at the time of his discharge,—*Held* that plaintiff was bound to prove the payments to, and

the receipts from, the gomastah, and to put in original documents, and not mere transcripts, even if the defendant had remained silent. *Robert Watson and Co.* v. *Sreedhur Mundle*, 10 W. R., 421.

A decree-holder, in execution of his decree, put up for sale certain property of his judgment-debtor which was purchased by plaintiff ostensibly on his own account. Having reason, however, to believe that the purchase was benamee for the judgment-debtor, the decree-holder again took out execution against the same property, and advertised it for sale. Plaintiff intervened, but his objections were disallowed by the Court, which found the judgment-debtor in *bonâ-fide* possession on his own account. The property was then sold, and one of the defendants bought it. Plaintiff then sued to have the execution proceedings set aside, and to have it declared that the property had been bought on his own account and with his own money. *Held* that the *onus* of proof lay on the plaintiff. *Muddun Mohun Shaha* v. *Bhurut Chunder Roy*, 11 W. R., 249.

Unless a plaintiff who alleges that he gave the property sued for to the defendant in trust, makes out at least a *primâ-facie* case of trust, he is not entitled to call upon the defendants for their defence, or to get a decree, merely because the defendants fail in proving the case set up by them. *Khoodeejannissa Bebee* v. *Assur Hossein*, 2 W. R., 58.

Suit for share of income tax by a co-sharer who, the lower Court found, was the defendant's manager. *Held* that the mere production of a deed showing that the defendant had in it nominated other persons to collect the rents of her share, without proof of cessation of possession, did not shift the *onus* from the plaintiff of proving that he had ceased to hold possession of the defendant's share as her manager, or that the defendant, and not the plaintiff, had actually collected the rents. *Ramnath Ghose* v. *Amrit Moyee Dossee*, 5 W. R., 168.

Suit for title-deeds. The defendant (plaintiff's maternal aunt) pleaded that she had purchased the property in the plaintiff's name, but that she was the party beneficially interested in it. *Held* that if the plaintiff could show that he had held possession from the time of the purchase to the institution of the suit, the defendant must prove that she had herself purchased the property, otherwise the *onus* would be on the plaintiff to prove that the property was purchased from his own funds. *Nilmonee Banerjee* v. *Surbo Mungula Debia*, 2 W. R., 31.

Where a suit was brought to redeem a mortgage, and the defendants pleaded possession under a sale, —*Held*, under the circumstances, there having been long undisputed possession, that the *onus* of proving that the possession was less than a proprietary possession and was referable to a mortgage, lies on the person who claims to redeem it.

Uninterrupted possession for a long time is *primâ-facie* sufficient proof of title, and the security which being in possession affords should not be weakened. *Rughoo Nath Rai and others* v. *Chundoo Lall and others*, 3 Agra Rep., 195.

In a suit for confirmation of possession and declaration of title (the principal defendants admitting plaintiff's possession and title), in which a vendee from such defendants intervenes and claims the property on the allegation of being in possession,—*Held* that such vendee must prove possession before he could question the plaintiff's title. *Lalla Ram Suhae Singh* v. *Lalla Oojoodhya Pershad*, 5 W. R., 233.

In a suit by the alleged purchaser of the original proprietor's equity of redemption to establish his right to redeem against a subsequent purchaser of the same proprietary rights, the plaintiff is bound both to establish his original deed of purchase, and to prove either actual possession or receipt of *huk ajiri*, or some portion of the proceeds of the property. *Syud Fuzlool Ruhman* v. *'Ali Kureem*, 5 W. R., 163.

An ejectment alleged to have taken place under direct action of Court, and supported by documents issued by and filed in the Court, must be presumed to have been real and *bonâ fide*, until the party ejected proves that all these proceedings were fictitious, and that he never lost possession of the land, but still holds it. *Sheikh Buduroodeen* v. *Haniff Mullick*, 5 W. R., 180.

When a judgment-debtor sues to set aside a sale in execution of a decree, on the ground of irregularity, the *onus* of proving the irregularity is on him. *Mussamut Nufusa* v. *Syud Mahomed Akbar Gazee*, 2 W. R., 74.

The mere admission by a widow of a debt of her husband as the cause of the sale of his property is not evidence that the debt really was the husband's, in the face of a recorded protest by his relations, the reversioners. It lies on the purchasers to prove that it was so. *Casseemuddeen Ahmed* v. *Ram Doss Gossain*, 2 W. R., 170.

Where a plaintiff sues for a specific sum of money due on a balance of account, it is for him to start his case and show what sum is due on the account; and until he has done so the defendant need not be called upon to rebut him. *Ruttun Chand Bysack* v. *Bocha Bibee*, 12 W. R., 529.

In a suit to recover possession of a tank which was included in an undivided mehal of which plaintiffs were the shareholders, where defendants contended that the tank had for more than twelve years before the suit been separate and in their separate possession and enjoyment,—*Held* that as there was *primâ-facie* proof that the shareholders or certain of them had enjoyed the use of the tank, the burden lay on the defendants to prove their separate enjoyment. *Brojonauth Pal Chowdhry* v. *Sreegopaul Paul Chowdhry*, 12 W. R., 468.

In a suit on a bond, it is for the plaintiff to prove the amount of the debt, and this will be done sufficiently in the first instance by proof of the execution of the bond. It is for the defendant to prove in answer, if he can, that such amount is less than the sum sued for. *Sivâramaiyar* v. *Sâum Aujar*, 1 Mad. Rep., A. C., 447.

It is not necessary for a plaintiff to prove that he was dispossessed on the date mentioned in the plaint. *Obhoy Churn Mahatta and others* v. *Unnoda Pershad Mookerjee*, 9 W. R., 348.

One shareholder, being dispossessed by the other of a certain jalkar, in execution of his decree, brought a suit under Section 230, Act VIII of 1859, alleging that the jalkar had been a part of their joint mehal; and that, on partition thereof, the jalkar was left ijmali. The decree-holder set up that the jalkar had been formed after the partition, and by diluvion

of one of his own villages. *Held* that the *onus* was upon the claimant to prove his case. *Udai Tara Chowdhrain* v. *Khaja Abdul Gani*, 3 B. L. R., Ap., 90; S. C., 12 W. R., 16.

When a widow dies possessed of property, it is for those who claim it adversely to the natural heirs, and against the presumption that the widow has acquired at least the nucleus from her husband, to prove their special pleas, and to show that it came into her hands from other sources.

In a suit by the natural heirs, if the defendant sets up a preferential hereditary right by virtue of adoption, he must prove his adoption. *Bissessur Chuckerbutty* v. *Ram Joy Mozoomdar*, 2 W. R., 326.

When a defendant admits execution of a bond, but denies receipt of consideration, the *onus* of proving receipt is on the plaintiff. When a defendant admits having written a letter of assignment directing the plaintiff to pay certain sums of money due by the defendant to the third parties named in the letter, the plaintiff is bound to prove such payment. *Takaet Roop Mungle Singh* v. *Anund Roy*, 3 W. R., 111.

Where it is alleged that a deed of compromise was beneficial to a minor in a transaction involving a surrender of the minor's title in a large estate for a very inadequate maintenance, and her waivor of the rights of appeal and cross-appeal, the *onus* of proving that such a deed was beneficial to the minor is on the party making the allegation. *Ranee Roshun Jahan* v. *Rajah Syud Enaet Hossein*, 5 W. R., 5.

Conduct which defeats an ordinary presumption and shifts the *onus probandi*, does not necessarily invalidate all the evidence which is offered in proof. *Nowbut Ram Bhukut* v. *Shuklee Dayee*, 5 W. R., 34.

When a Collector in exercise of his lawful functions has assumed the jurisdiction to sell a putnee, it lies on the plaintiff who impugns that official act to show that it is done without jurisdiction. *Kalee Koomar Mookerjee* v. *The Maharajah of Burdwan*, 5 W. R., 39.

Where a defendant in a bond suit denies receipt of the consideration *in toto*, the *onus* of proving the receipt thereof is on the plaintiff. When the defendant denies receipt of the consideration in part, the *onus* is on the plaintiff to prove payment of the consideration to the extent of the sum not admitted by the defendant. *Mussamut Jhaloo* v. *Sheikh Furzoond Ali*, 5 W. R., 203.

Where a party claiming the right of pre-emption impugns the correctness of the price stated in the deed of sale, the burden of proof is on him to show that the property was in fact sold below the stated price. *Mahomed Morul Hossein* v. *Hyder Buksh*, W. R., 1864, 304.

In a suit to recover the amount of excess payments of Government revenue made by the plaintiffs on account of their co-sharers to save the estate from sale (each proprietor holding a well-defined although not actually separated share),—*Held* that the *onus* was on the plaintiffs to prove their shares and amount of revenue payable on them. *Aghoree Ram Sahoy* v. *Ramolee Sahoo*, W. R., 1864, 309.

In a suit on a bond, the plaintiff is entitled to recover upon showing that it was executed by the defendant. The *onus* lies on the defendant of showing the want of consideration. *Juggut Chunder Chowdhry* v. *Bhugwan Chunder Futtehdur*, Marsh., 27.

Where a plaintiff establishes a *primâ-facie* case of the identity of ayma land which he claims through his ancestor, who had been allowed by the Collector to retain it, it will rest with defendant to prove that the land is his own, or that it is not the ayma land which the plaintiff's ancestor once held. *Molla Abdoor Rub and others* v. *Hurryhur Mookerjee and others*, 1 Ind. Jur., N. S., 50.

Where a plaintiff sets up a case of an exceptional neem-ousut howala, alleging it to be not transferable, the plaintiff should be called on to prove the allegation, before a defendant in possession, under an order of a Revenue Court, can be called on to prove title. *Mussamut Hurro Soondery Debia and others* v. *Mussamut Ameena Begum*, 1 Ind. Jur., N. S., 188.

In a suit by a wife to recover valuable real and personal property of which she has been fraudulently and violently deprived by her husband, the principal defendant, the defence was *bonâ-fide* sale and payment of consideration-money. *Held* that the *onus probandi* was on the defendant, and that the mere endorsement of Government securities (which in the case of strangers or third parties would throw the *onus* on the person alleging fraud) did not apply when the relation was that of husband and wife. A trustee who misapplies trust funds should be compelled to compensate the *cestuique trust*, and is liable to heavy interest. *Buzul Ruhim* v. *Shumsheorunissa Begum*, W. R., 1862, F. B., 62.

Where the plaintiff's allegation is met, not by a denial, but by a counter allegation, the defendant is bound to prove such counter allegation. *Mahomed Hoshein* v. *Kaleechurn Banerjee*, 13 S. W. R., C. R., 91.

In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and want of reasonable or probable cause, before the defendant can be called upon to show that he acted *bonâ fide* and upon reasonable grounds, believing that the charge which he instituted was a valid one. *Mohant Gaur Huri Das Adhikari* v. *Hayagrib Das Mohant*, 6 B. L. R., 371, and 14 S. W. R., C. R., 425.

The plaintiff sued on a bond, which recited that the defendant had received the consideration mentioned in the bond. *Held* that the *onus* was on the defendant to show that the recitals in the bond were not correct. *Fulli Bibi* v. *Bussierdi Midha*, 4 B. L. R., F. B. R., 54, and 12 S. W. R., F. B., 25.

Where an heir's title to an estate is uncontested, and his possession is only obstructed by an alleged conveyance on the part of an ancestor, it lies upon the party holding possession, and who causes the obstruction, to prove that such a conveyance has taken place. *Kaminee Mohun Chuckerbutty* v. *Kalee Kant Sein*, 14 S. W. R., C. R., 275.

A party claiming to erect a bund in a natural flowing river, so as entirely to cut off the water from another party, is bound to prove that he has acquired the legal right to do so by user. *Heeranund Sahoo* v. *Mussamut Khubeeroonissa*, 15 S. W. R., C. R., 516.

In a suit for the removal of certain outlets made by

defendant in an aqueduct, on the ground that plaintiff was entitled to the exclusive use of the water of the aqueduct, where the defence set up was that the portion of the aqueduct to which the dispute related was where water flowed through the lands of the defendant's zemindaree,—*Held* that it was for plaintiff to make good the title he alleged. *Onraet* v. *Kishen Soonduree Dassee*, 15 S. W. R., C. R., 83.

In a suit by a judgment-creditor to recover the amount of certain decrees by attachment and sale, and to have a certain deed of bye-mokasa, which was set up by the judgment-debtor's wife, set aside as executed in fraud of creditors; where plaintiff showed the existence in the mind of the judgment-debtor of a sufficient motive for the fraud, and also that the said debtor was in the management of the estate claimed and in the receipt of its rents, it was *held* that plaintiff had started a *primâ-facie* case, which shifted the *onus* on the defendant to prove the *bona fides* of the deed. *Gowhur Ali Khan* v. *Mussamut Sakheena Khanum*, 15 S. W. R., C. R., 507.

(*b*) *In respect of Title.*

In a suit to prevent the defendants from obstructing the plaintiff in his enjoyment of fruits of certain trees, which he claimed as heir of a person who purchased that right, the defendants denied the existence of the right, and alleged possession and enjoyment in themselves.

Held that the District Judge, in appeal, having found the possession and enjoyments to be in the defendants, was right in throwing upon the plaintiff the burden of proving his title to the trees or their produce.

Rule of evidence with reference to ancient documents stated. *Lalldass Ramdass* v. *Kashiram*, 4 Bom. Rep., A. C., 60.

In a suit for possession of alleged lakheraj land, if the alleged lakherajdar proves possession as purchaser of the alleged lakheraj land, the Court ought not to put upon him the burden of proving a title; but if the zemindar wishes that point to be tried in this or another suit, he must accept the *onus* of proving that the lakheraj is held on an invalid title, by proving that he collected mâl rents from the land, and that he is not barred by limitation. *Hossain Sheo Suhaye Geer* v. *Mohadeo Suhaye and others*, 6 W. R., 294.

The plaintiffs having to prove not only their relationship (which was not disputed), but their heirship, which depended upon the illegitimacy of the defendant, were held bound to give sufficient general evidence in support of their case, to throw upon defendant the *onus* of proving his legitimacy. *Khajah Mahomed Gour Ali Khan* v. *Ashruffoonissa*, 2 W. R., P. C., 13.

Lands situate within a zemindary must *primâ facie* be considered as part of the zemindary; and it is for those who insist on the separation of lands from the general lands of the zemindary and on their settlement as a shikmee talook to establish their title. *Wise and others* v. *Bhoobun Moyee Debia*, 3 W. R., P. C., 5.

It would be monstrous to make the title to land in a purchaser depend, years after it has accrued and possession has been enjoyed under it, on his proving the same affirmatively. *Rajah Mohesh Narain Singh* v. *Krishnanund Misser*, 5 W. R., P. C., 7.

Where a party alleges a raj to be indivisible, and that he is, as heir, entitled to succeed to the whole, the *onus* of proof is on him. *Girdharee Singh* v. *Koolahul Singh and others*, 6 W. R., P. C., 1.

In a suit for confirmation of possession of certain lands sold in execution of a decree as lakheraj, the *onus* was held to lie on the plaintiff to prove his title, notwithstanding the defendant's admission that the lands in question were within the boundaries of the plaintiff's zemindary. *Purseed Narain Singh and others* v. *Bisseshur Dyal Singh and others*, 7 W. R., 148.

In a suit to recover possession of lands which plaintiffs alleged to be lakheraj, and of which they had been dispossessed by the defendants (zemindars),—*Held* that, as plaintiffs had purchased the land as lakheraj, and had been admittedly in possession of them as such for a very long time, it was for the zemindar, who pleaded a right to oust them summarily, under Section 10, Regulation XIX of 1793, to prove that the lakheraj title was invalid as having been created subsequent to 1790. *Munsaram Doss Kormokur* v. *Gridharee Ram Doss*, 10 W. R., 278.

In a suit for confirmation of right and possession in respect of lands alleged to be within plaintiff's permanently-settled talook, where plaintiff incidentally remarked that defendant (as intervenor in a previous rent suit) had claimed the lands as appertaining to another talook which plaintiff alleged had no existence,—*Held* that it was an error of law in the lower Appellate Court to place on the defendant the *onus* of proving the existence of that other talook, instead of following the usual and recognized course of requiring the plaintiff to prove that the lands in suit belonged to his talook. *Gungamala Chowdhrain* v. *Madhub Chundra Roy*, 10 W. R., 413.

Where A. was illegally dispossessed by B. of land for which A. obtained a decree in a suit with C., and A. brought a suit to recover possession,—*Held* that the dispossession being proved, the *onus* of proving the title was in the first instance on B., and that the mere fact of the land being identical with that decreed to A. in his suit with C. could not entitle him to a decree in his suit with B. *Jadub Nath and another* v. *Ram Sundur Surma and another*, 7 W. R., 174.

In a suit to recover possession, on the allegation of a previous possession and forcible ouster, both being denied by defendants, who set up a title of their own, it is for plaintiffs to prove the alleged ouster. If they do so to the satisfaction of the Court, the burden of proof will be on the defendants to show the title on which they ousted the plaintiffs. Should the defendants prove such a *primâ-facie* title, then it will be the duty of the Judge to call upon the plaintiffs to establish their title. *Gour Parey* v. *Waomasoondery Debia*, 12 W. R., 472.

In a suit to establish title and recover possession from a person who has obtained possession under Section 15, Act XIV of 1859, the defendant need not prove his title, and his possession cannot be disturbed, unless the plaintiff gives proof of a better title; the *onus* being on the plaintiff to prove everything. *Maenoddeen* v. *Greesh Chunder Roy Chowdhry and others*, 7 W. R., 230.

The plaintiff having alleged a distinct title under a deed of sale in lieu of dower was held bound to prove her title, and not entitled to claim the benefit of a decision to which she was not a party, nor of an admission by her husband as binding on the defendants. *Mussamut Sobrattun* v. *Mussamut Toova and others*, 7 W. R., 273.

In a suit under the Civil Procedure Code in which the plaintiffs allege that the defendants wrongfully and forcibly took away and were detaining timber which had been in the plaintiffs' constructive possession, and to which they are entitled, and the relief asked for is the restitution of the timber with costs of suit, if it be proved that the defendants had forcibly and wrongfully taken property in the plaintiffs' actual or constructive possession, it would then be for the defendants to show that they were entitled to the timber. In the present case, the plaintiffs having failed to show their possession of the timber or the forcible or wrongful dispossession or conversion of the goods, and the defendants having made good their title to the timber,—*Held* that the judgment should have been for the defendants. *R. Snadden* v. *Todd, Findlay, and Co.*, 7 W. R., 286.

Where a plaintiff comes into Court to prove a lakheraj title, no proof of possession for years (unless it be carried beyond 1790) as apparent lakheraj can excuse him from proving his title. *Ram Jeebun Chuckerbutty and another* v. *Persaud Shar and others*, 7 W. R., 458.

Where a ryot holds lands of considerable extent under a zemindar, and alleges that one or two plots occupied by him are held under a different title, the *onus* is on him to prove his allegation. *Ram Koomar Roy* v. *Bejoy Gobind Bural and others*, 7 W. R., 535.

In a suit to recover possession, where plaintiff proves possession and illegal dispossession, the *onus* of proving the title is shifted upon the defendant in the first instance, and if the latter establishes his title, the plaintiff must then be required to prove his. *Radha Bullub Gossain* v. *Kishen Gobind Gossain*, 9 W. R., 71.

The *onus* in a suit in which the plaintiff seeks to obtain a declaration that the defendants held a tenure under him lies on the plaintiff, who must prove strictly the title under which he seeks that declaration. *Royes Mollah and others* v. *Modhoosoodun Mundul*, 9 W. R., 154.

Where a plaintiff claims, not under any general right of inheritance, but expressly under a deed, he must prove that deed : no legal presumption as to the contents of the deed can arise from a consideration of what the party, through whom he claims, would have been entitled to by the law of inheritance, had there been such a deed. *Mooad Mullick* v. *Belat Mullick*, 9 W. R., 385.

In a suit for possession, where plaintiff had a clear title as heir to her deceased husband as against defendant,—*Held* that the latter was bound to show adoption or some other matter which would prevent the plaintiff from succeeding. *Teelucko Kooer* v. *Nirban Singh*, 9 W. R., 439.

In a suit to establish a right of pre-emption on the ground of ownership of contiguous land, no amount of mis-statement on the part of the defendant as to the ownership of such land can relieve plaintiff of the *onus* of proving his ownership. *Beharee Ram* v. *Mussamut Shoobhodra*, 9 W. R., 455.

In a suit to recover possession of property of which the plaintiff alleges he has been illegally dispossessed by the defendant, in which the defendant pleads limitation, the *onus* is on the plaintiff to prove that the cause of action accrued to him on a dispossession within twelve years of the commencement of suit *Jogodumba Chowdhrain and others* v. *Ram Chunder Deo Bukshee and others*, 6 W. R., 327.

In a suit to recover a share of a tank, on the allegation of its being joint family property,—*Held* that the mere fact of plaintiff's having at some previous time been in possession could be no proof of his title, or shift the *onus* on defendant. *Hurish Chunder Bhuttacharjee* v. *Nufur Chunder Kooer and others*, 9 W. R., 461.

Where a plaintiff brings a suit for a declaration of his title as owner, he is bound to establish his title affirmatively. He is in the same position as any other plaintiff and must make out his case, and the *onus probandi* that he is in possession as owner is upon him. *Rassonada Rayar* v. *Sitarama Pillai*, 2 Mad. Rep., 171.

In a suit in which plaintiff claimed, four plots of land as belonging to his putnee, and defendant alleged that they formed part of the resumed land of a jote for which he had obtained a decree in a resumption suit and of which he had ever since been in possession, the parties went to trial on the issue whether the land was mâl as beyond the limits of the decree, or lakheraj as included in the chittahs, according to which possession was given to the defendant in execution. On a consideration of what the latter had received under the decree, the first Court held that he was not entitled to retain the disputed land. The Appellate Court did not look beyond the plaintiff's chittahs. *Held* that the circumstances justified the first Court in deviating somewhat from the usual rule of law as regards the *onus probandi*, and that the course taken by it was most consonant with justice. *Sreemuttee Dassee* v. *Ram Nidhee Koondoo*, 15 S. W. R., C. R., 183.

The plaintiff sued for declaration of her title to property, of which the defendant was in possession, but of which she produced the title-deeds in favour of herself. *Held* the *onus* was on the defendant to disprove the plaintiff's title.

On the evidence, the defendant wished to raise issues as to the unchastity and inability of the plaintiff to succeed, and as to her suing on behalf of another person, not having alleged that she was doing so, neither of which matters were referred to in his written statement, but leave to raise them was refused, and the Court held that the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. *Swarnamayi Raur* v. *Srinibush Rayal*, 6 B L. R., 144.

Where a party, who asserts that he is in possession without adducing any evidence in support of his title, sues for confirmation of title as against a *bonâ-fide* purchaser for valuable consideration, without notice from the party in whose name the property stood, who exercised acts of ownership and gave himself out to the world as the real proprietor, plaintiff cannot put the defendant to proof of his

title till he has proved his own. *Lekhraj Raj* v. *Matty Madhub Sur*, 14 S. W. R., C. R., 95.

(*c*) *Genuineness of Deeds.*

In a suit for a declaration of plaintiff's reversionary title as heir to his late uncle's property, and for reversal of a deed of sale from that uncle set up by the defendant, the widow not having been made a party to the suit, and her consent to or dissent from the alleged conveyance not having been ascertained, the issue tried was whether the deed was genuine and whether defendant has possession under it. *Held* that the *onus* was rightly placed on the defendant. *Bykunt Nath Roy* v. *Greesh Chunder Mookerjee*, 15 S. W. R., C. R., 96.

Where the execution of a mortgage deed was admitted and long possession of the mortgagee under that decree was established,—*Held* that the *onus* of proving that the transaction was impeachable lies on the person who impugns it, and denies that the money which was consideration for its execution was paid. *Hurpaul Singh* v. *Mussamut Zahoorun*, 2 Agra Rep., A. C., 202.

The plaintiffs on being served with notice of foreclosure by the mortgagees brought a suit for a declaration that the mortgage was not genuine. *Held* that the *onus* did not lie on the plaintiffs to prove the fabrication of the mortgage deed. *Gujadhur Mowar and others* v. *Zinda Mowar and others*, 6 W. R., 69.

The mere production of a document is no proof of its genuineness. The party who seeks to put it in evidence must prove that it is what it purports to be. *George Mears* v. *Dass Monee Dassia*, 5 W. R., Act X R., 11.

Where a son purchased a property sold for arrears of rent, on account of the default of his father, and both father and son were living together at the time of the purchase,—*Held* that the *onus* was on the son to prove that his purchase was *bonâ fide*. *Hur Suhaye Misser* v. *Deen Dyal Singh*, 7 W. R., 275.

Plaintiff alleging that an attachment subsisted, and that therefore the mortgage under which defendant claims is invalid, is bound to prove his allegation, and the *onus* is not discharged by showing that the attachment was made some years previous to the alienation. *Toolshee Dutt Misser* v. *Brojo Mohun Thakoor*, 9 W. R., 332.

The Court will generally presume that proceedings in a suit are *bonâ fide*, and it lies on the party who impugns them to show or suggest some thing from which the Court may infer that they were not *bonâ fide*. *Tabhur Singh and others* v. *Mottee Singh and others*, 9 W. R., 443.

A plaintiff suing for a declaration that an adoption is invalid is bound to prove the invalidity. *Brojokishoree Dassee* v. *Sreenath Bose*, 9 W. R., 463.

Where a plaintiff in a civil suit relies upon a kobala which has been held by a Court of Small Causes to be *malâ fide*, the *onus* lies upon him to prove that the deed was executed, and that it represented a real and honest transaction between the parties. *Eshan Chunder Doss and others* v. *Rokeemoodeen Sowdagur*, 10 W. R., 412.

In a case of purchase after a decree, when the vendor is only a benameedar, and the vendor's husband (supposed to be the real owner) wrote the deed and received the purchase-money (thereby making himself a consenting party), the *onus* lies on the plaintiff to prove that he is a *bonâ-fide* purchaser for value, exercising due care and diligence. *Man Turunginee Dabee* v. *Boistub Churn Bhudder*, 1 W. R., 110.

The object of Section 54, Act XI of 1859, is to protect, not every incumbrance which may be set up, but only *bonâ-fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *bonâ-fide* character. *Monohur Mookerjee* v. *Joykishen Mookerjee*, 5 W. R., 1.

In a suit for a declaration that a document propounded by the defendant is false, it lies upon the plaintiff to prove that allegation. *Ram Nidhee Koondoo* v. *Goluck Chunder Moshanto and others*, 11 W. R., 280.

In a suit to establish title, unsuccessfully asserted in an execution case, to property sold in satisfaction of a decree, where plaintiff claims under a gift and other titles originating with the judgment-debtor, it is not sufficient for plaintiff to make out a *primâ-facie* case, leaving it to defendant to demonstrate fraud; plaintiff is bound to satisfy the Court of the genuine *bonâ-fide* nature of the transfer. *Ram Kishore Singh and others* v. *Ramsurbo Chatterjee and others*, 11 W. R., 454.

(*d*) *In Suits for Possession.*

In a suit to recover possession of certain property from plaintiff's vendor (who did not substantially resist the claim), a third party who came in and claimed the property was made a defendant. It was held that the *onus* of proof as against the plaintiff lay entirely on the intervenor. *Juggodanund Misser* v. *Hameed Rusool and others*, 10 W. R., 52.

Held (Mookerjee, J., *dissentiente*), that the rule that in suits for confirmation of possession by adjudication of title the plaintiff is bound to prove that he was in possession at the time he preferred the suit, is not so inflexible a rule that it cannot be departed from; as for example, where plaintiff sues for confirmation of possession and proves that he was in possession for many years, and until within a few months of the institution of the suit, he should not be required to bring a fresh suit, merely changing the prayer for confirmation of possession into one for recovery of possession. *Moulvie Abdoollah* v. *Shaha Mujeesoodeen*, 15 S. W. R., C. R., 286.

Where an unsuccessful claimant, under Section 246, Code of Civil Procedure, sues for confirmation of alleged possession and adjudication of title, the *onus* in the first instance is on plaintiff, and an important question in the case is, who was in possession at the time of the attachment. *Toofana Dass* v. *R. Mun Rukhun Roy*, 15 S. W. R., C. R., 202.

Where plaintiff, as heir of the ostensible auction-purchaser, sued to oust defendant who had been twelve years in possession, and the latter pleaded that the sale was made benamee,—*Held* that the long possession would go to prove the truth of defendant's allegation that the auction-purchaser

was merely a trustee for him, and it would be for plaintiff to show that his ancestor paid for the purchased property. *Zoolficar Ali* v. *Mahomed Tukee and others*, 9 W. R., 438.

The plaintiff sued for possession under the allegation that the property in dispute was under the management of the defendant. The defendant having denied management, and set up a title by purchase and his possession for more than thirty years having been proved,—*Held* that the *onus* of showing a possession for his benefit was rightly thrown on the plaintiff. *Kirat Singh* v. *Ram Doss*, W. R., F. B., 1862, 8.

In a suit for possession of land attached by the Magistrate, under Section 3 of Act IV of 1840, the *onus probandi* is on the plaintiff. *Maharajah Moheshur Singh* v. *Ramaput Singh*, W. R., F. B., 1862, 7.

In a suit to recover possession of certain property, on proof that the plaintiff had been dispossessed by a benameedar, in whose favour a conveyance had been executed by the plaintiff's father, —*Held* that the presumption arising from the defendant's recent and unexplained possession being rebutted by the plaintiff's prior continuous and peaceful possession, the defendant must show affirmatively that his title was a valid one, and could not raise the defence that the plaintiff was prevented from showing it to be invalid. *Mohesh Chandra Banerjee* v. *Srimati Barada Debi*, 2 B. L. R., A. C., 274; S. C., 11 W. R., 185.

In a suit by a Mahometan wife, who had left her husband's protection on account of ill-usage, for recovery, among other property, of certain securities belonging to her which had got into the husband's possession, and the detention of which he justified on the ground that he had purchased them from her, and on their endorsement and delivery to him had paid the full value for them, the correct principle as to the *onus* of the proof is that, although the wife may have failed to establish affirmatively the precise case alleged by her, her husband having admitted the receipt of the securities from her, was bound to show something more than mere endorsement and delivery; that the relation of the parties being what it was, it lay upon him to prove that the transactions which he set up were *bonâ-fide* sales and purchases, and that he actually gave full value for what he received from her; and where it was proved that the wife had the securities while under her husband's protection, and some had passed from her to him and others to his creditors, and that the wife left her husband's house in destitution, the proof adduced by the husband as to the sale for full consideration to him must be full and clear, and such as to satisfy a Court of Justice that the transactions were conducted fairly and properly, and with a due regard to the rights and interests of the wife. *Judoonath Bose* v. *Shumsoonissa Begum*, 8 W. R., P. C., 3.

In a suit for confirmation of possession of, and declaration of title to, land alleged to have been purchased at a private sale from the wife (S. S.) of a judgment-debtor who had come into possession of the land by gift from her husband, defendants claimed to be *bonâ-fide* purchasers from S. S. to whom, they alleged, the property really belonged, and who had been all along in possession. The substance of the defence was that, "even granting that any such papers" (as a hibbah and a deed of sale) "were written between the parties, this can avail the plaintiff nothing, as the deeds were fraudulent."

Held that there was no such admission on the part of the defendants as shifted the burden of proof upon themselves. *Hurish Chunder Paul and others* v. *Radhanath Sein and others*, 11 W. R., 328.

In a suit to obtain possession of certain lands, on the ground that they had been assigned to plaintiffs by a partition made by the Collector,—*Held* in the matter of certain of the plots which plaintiffs alleged to be included in particular daghs in the butwarra chittahs, that as defendants denied that they were so included, it was on the plaintiffs to prove their allegation.

Held in respect to a dagh in which plaintiffs were admitted to be entitled to a certain quantity of land, it was their business to prove that the particular lands which they claimed had been assigned to them by the butwarra proceedings. *Bhuggobutty Goopta* v. *Saroda Soondery Debea and others*, 11 W. R., 337.

The plaintiffs' ancestors having been declared by a decree of the Peshwa's Government in A.D. 1722, to be entitled to the whole of the *Patelki watan* of Panderai, and the defendants having produced a *watanpatra* from the Rajah of Sàtàrà, in A.D. 1742, in favour of their claim to a half share, but being unable to show that their ancestors had any concern with the watan for a period of ninety-six years subsequent thereto, during which the plaintiffs' ancestors were recognized as the sole owners,—*Held* that the District Judge did not act contrary to law in throwing upon defendants the burden of proving possession as proprietors for more than thirty years without interruption before the institution of the suit.

A rule to show cause why the decree of the High Court should not be reviewed on the ground of the discovery of new evidence was discharged, as the applicants failed to show that the document brought forward was admissible as evidence, and that it was not within their knowledge or could not be adduced by them at the time when such decree was passed. *Kokoli* v. *Jagtap*, 4 Bom. Rep., A. C. J., 49.

A plaintiff suing for confirmation of possession must prove that he was actually in possession. *Mussamut Luteefoonissa Bibee* v. *Syud Rajoor Ruhman and others*, 8 W. R., 84.

When a landlord sues for possession of land within his estate, the *onus* is on him to prove that he is entitled to that possession. *Gudadhur Banerjee* v. *Kanye Dekhooria and others*, 8 W. R., 191.

Where a tenant is found to have taken steps required by law in furtherance of his intended relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it khas, or by letting it to others. *James Erskine* v. *Ram Coomar Roy and others*, 8 W. R., 220.

In a suit between two zemindars, the appellant sought to disturb the admitted possession for about eleven years of the defendant. The defendant insisted on a possession of much longer duration as a

statutory bar to the suit. *Held* that the *onus* was on the appellant to prove that the cause of action accrued to him on a dispossession within twelve years before suit, and that he, or some other person through whom he claims, was in possession during that period. *Maharajah Koonwar Mitrasur Singh* v. *Nund Loll*, 1 W. R., P. C., 51.

When an heir of a deceased judgment-debtor admits possession of some of the latter's property, the *onus* is on the heir and not on the decree-holder to prove the extent of that property. *Matunginee Debea* v. *Gugun Chunder Bhooy*, 2 W. R., Mis., 41.

In a suit to recover possession of land and wasilat under a ganti jumma, which had originally belonged to the defendants, the main question was as to ten katas, of which possession by receipt of rent only was claimed from the defendants, whose dwelling-house was thereon. The defendants alleged that the ten katas were not included in the ganti jumma under which plaintiffs claimed.

Held that the *onus* was on the plaintiffs to prove that the ten katas were included in the ganti jumma under which they claimed. It was not on the defendants to show the extent of that tenure while it was in their possession and when it was transferred to the plaintiffs, although the fact was one peculiarly within their knowledge. *Girdhar Hari* v. *Kalikant Roy Chowdhry*, 3 B. L. R., A. C., 161.

In a suit to eject a tenant holding over after the expiry of a pottah which was merely for a number of years, the *onus* is on the landlord to show that the tenure was such that the express limit of years may be fairly applied to the possession and construed to give the right of re-entry. *Roy Odyte Narain Singh* v. *Ubhuron Roy*, 4 W. R., Act X R., 1.

In a suit for possession of land on the ground that it belonged to plaintiff's talook, where defendant pleaded limitation,—*Held* that the burden lay with the plaintiff to prove that he had possessed (*i.e.*, enjoyed the land) within twelve years of the suit. *Ram Lochun Chowdhry* v. *Joy Doorga Dossia and others*, 11 W. R., 283.

In a suit to recover certain property on the allegation that plaintiff's father had obtained it in gift from his wife Lalun, and that it had been in the possession of father and son more than thirty years, defendant having had his name recorded in the Collectorate as heir to Lalun,—*Held*, with reference to the fact that there had been a tenancy of husband and wife together, that it was incumbent on plaintiff to prove that his possession was possession on his own account, and not that of an agent. *Velayet Aly Khan and others* v. *Mussamut Aznum*, 11 W. R., 513.

Where a defendant pleads partly title and partly purchase, and asserts his own possession on ancient titles, denying that the plaintiff's father or ancestor had been in possession of any portion of the land in dispute for a very long period, the *onus* of proving possession within the period of limitation is on the plaintiff. *Ishur Chunder Biswas* v. *Bissumbhur Biswas*, W. R., 1864, 107.

In a suit by a Hindu widow for confirmation of her title to certain land in right of her husband, the defendant, who had a possessory award of the property given to her under Section 15, Act XIV of 1859, pleaded that the plaintiff was never in possession. *Held* that the *onus* was on the plaintiff to show that she was in possession within the period of limitation. *Santo Moonee Gooptah* v. *Shutto Bhama Gooptah*, 7 W. R., 34.

In a suit to recover possession on the allegation that the plaintiff had been dispossessed by the defendant, the *onus* is on the plaintiff to prove his possession of the land in dispute within twelve years preceding the suit. *Boole Singh and others* v. *Hurobuns Naran Singh and others*, 7 W. R., 212.

Plaintiff sued for confirmation of possession and registration of certain property which had been mortgaged to him by defendants. The transaction on the face of the deed was an absolute sale, but an ikrar was executed at the same time as the mortgage which reserved the equity of redemption to the mortgagor. This ikrar was made over to the defendant, the mortgagor. Plaintiff's allegation was that the ikrarnamah was returned to him by the mortgagor, who thus surrendered the equity of redemption. Defendant alleged that the ikrar had been lost and had somehow found its way to the plaintiff. *Held* that the presumption of law was in favour of the plaintiff who had possession of the ikrar, and that the *onus* of proving its loss lay upon the defendant. *Raj Coomar Singh and others* v. *Ram Suhye Roy and others*, 11 W. R., 151.

In a suit for possession, the defendant being admittedly in possession, and claiming to be so under a bill of sale dated forty-five years ago, the plaintiff is bound to displace the defendant's *primâ-facie* title by showing that he has been in possession within twelve years prior to the suit. *Kedarnath Mookerjee* v. *Mohesh Chunder Paulit*, 1 W. R., 67.

In a suit by a ryot to recover possession under Clause 6, Section 23, Act X of 1859, the zemindar admitting a tenancy at some former time should show that it has been determined. The judgment of the lower Court merely stating that the plaintiff's tenure had lapsed and assigning no reasons was set aside, and the suit remanded for trial. *Sheo Pursan Lall* v. *Ram Narain Singh*, 1 W. R., 361.

When a plaintiff sues for possession admitting that he was dispossessed more than ten years before suit, the *onus* is on him to prove that he, or some person through whom he claims, was in possession at some time within twelve years. *Nawab Nazir Sidhee Nujeer Ali Khan Bahadoor* v. *Woomesh Chunder Mitter*, 2 W. R., 75.

When a defendant in possession pleads limitation, the plaintiff must prove a possession of the property by himself within twelve years prior to the date of suit, whatever may be the date of dispossession which he states in his plaint. *Mirza Mahomed Hossein* v. *Surahtoonissa Khanum*, 2 W. R., 89.

Suit by a lakherajdar to set aside an Act IV award, retaining the defendant in possession of certain lands belonging to a Hindu temple. The plaintiff alleged that the defendant's brother was cook to the temple, and that on his death the land in dispute (which formed his wages) was given to another. The defendant claimed the land in hereditary right as servant of the temple. *Held* that the *onus* of proving a right to the possession of the land, of which the plaintiff was the acknowledged owner, lay on the defendant who claimed such right. *Moorolee Dhur Pandar* v. *Mothooranund Doss*, 2 W. R., 152.

When a plaintiff sues to recover possession upon

a distinct allegation that he was in possession, and that on a certain date he was forcibly and wrongfully dispossessed by the defendants, the *onus* is on him to prove his allegation before the defendants can be called upon to substantiate their claim. *Gooroodoss Roy* v. *Huronath Roy*, 2 W. R., 246.

In a suit by Government against ghatwals, the defendants were found to have been in possession "for a very long time," and although they had failed to prove possession in excess of sixty years, the *onus* was held to lie on the Government to prove possession within sixty years. *Bromanund Gossain* v. *The Government*, 5 W. R., 136.

In a suit for possession of land, where plaintiff's title and previous possession are both denied, it is not proper for a Court to start with the case put forward by the defendant, the *onus* of proof being primarily on plaintiff. *Walker* v. *Atnu Ram Mundur*, 14 S. W. R., C. R., 478.

In a suit for possession it is always for the plaintiff to remove the bar of limitation, whenever that bar is set up by the defendant in possession, although the latter possession is not admitted to have existed for eleven years. *Busseroonissa Chowdrain* v. *Rajah Leelanum Singh*, 14 S. W. R., C. R., 135.

In a suit by the lessee of the purchaser of the rights and interests of the first defendant to obtain possession of some portions of land alleged to fall within the share of the zemindary so purchased, defendants contended that the plots which were the subject of suit, although falling within the ambit of the zemindary, did not in fact form a portion of it, but were lakheraj lands belonging to themselves by a title independent of the title to the zemindary. The evidence showed the principal defendant to have been in receipt of the rents and profits of the land in suit, as well as of his share of the zemindary. *Held* that the *onus* lay upon the defendants to show the alleged independent title; failing to do so, the *primâ-facie* title made out by the plaintiff ought to prevail. *Shumdan Ali* v. *Muthoornauth Dass*, 14 S. W. R., C. R., 226.

A talookdar who had purchased in execution sale the under-tenure of one of his tenants, sued him to obtain possession of the land contained in the purchased holding, of some of which he said he had been dispossessed, and in regard to the remainder of which his title was disputed. *Held* that the deputation of an Ameen was improper, and that the *onus* lay on the plaintiff to prove his case. *Shustu Ram Paul* v. *Nobo Kant Roy*, 14 S. W. R., C. R., 190.

In a suit by a zemindar to obtain khas possession of land within his estate, if a defendant is a middleman the right of plaintiff follows as a matter of course, unless defendant can make out his claim to exclude the zemindar; but if defendant is a ryot plaintiff must show some cause of action beyond the bare circumstance of defendant's refusal to quit after notice under Act X of 1859. He must show that the ryot is of a class liable to eviction. *Lalla Jeynath Sahee Deo* v. *Lutchun Christian*, 16 S. W. R., C. R., 158.

In a suit for possession where plaintiff claims under a pottah, the execution of which is not denied by defendant, whose contention is that the lessor has no power to grant it, the *onus* is on the defendant to prove his plea. *Rajah Mokoom Narain Deo* v. *Janardun Dey Burnick*, 15 S. W. R., C. R., 208.

In a suit to recover possession of land within plaintiff's estate, in which defendant sets up a rent-free title, all that plaintiff is required to show is that either he or his predecessor had received rent for the land at some time subsequent to the perpetual settlement, in which case the *onus* of proving title falls on the defendant. *Ram Narain Singh Deo Bahadoor* v. *Bistoo Thakoor*, 15 S. W. R., C. R., 299.

A party holding a decree for a share of a mouzah brought a suit for possession and damages in the allegation that he found the defendant in occupation of a part of the land on which indigo plants were standing, and permitted him to continue for a time till the plants should be removed, defendant promising then to give over possession, but that when the time came defendant refused to give over possession and was still occupying the land. *Held* that it lay upon the plaintiff to show wrongful occupancy on the part of the defendant. *Gour Sarun Dass* v. *Serondey, W.*, 15 S. W. R., C. R., 144.

In a suit between the two rival zemindars about certain lands hitherto occupied but now relinquished by Government for salt manufacturing purposes, the real question at issue was held to be whether these lands appertained to the zemindaree of the plaintiff or of the defendant; and as the latter was now in possession under a possessory award of the criminal authorities, the *onus* was on plaintiff to show that the land belonged to his zemindaree. *Rajah Luchmun Persad* v. *Maharanee of Burdwan*, 17 S. W. R., C. R., 181.

In a suit for possession, with mesne profits, on the ground that the lands claimed were allotted to plaintiff's share by a butwarrah under Regulation XIX of 1814, where defendant, admitting the allegation, urged that plaintiff had given up possession as soon as the butwarrah was completed,—*Held* that it was for plaintiff to prove that defendant had interfered with the possession awarded to him by the Collector. *Syud Mobaruk Ali* v. *Syud Imdad Ali*, 16 S. W. R., C. R., 200.

In a suit for possession of a portion of land on the allegation that it had belonged to plaintiff as his ancestral property up to the date of his being ousted, when the defendant, admitting the alleged possession, contended that it had been not that of an owner, but only permissive possession as that of a tenant,—*Held* that the burden of proof lay on the defendant. *Boistub Churn Sein* v. *Grahu Ram Sein*, 15 S. W. R., C. R., 32.

(*e*) *In Suits for Rent.*

In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma, if thereupon the tenant pleads payment, and payment is denied, the *onus* is on the tenant to prove his allegation. *Oojan Dewan and others* v. *Prannath Mundul*, 8 W. R., 219.

The *onus* in a case in which the plaintiff is an ordinary zemindar, suing to assess lands which he asserts to have been illegally usurped or alienated by a dependent lakherajdar subsequent to the Permanent Settlement, rests on the plaintiff. *Be-*

haree Lall Roy v. *Kalee Doss Chunder*, 8 W. R., 451.

In a suit for arrears of rent on account of a certain quantity of land, at a specified rate, plaintiff is bound to prove that defendant held the said land for which he was liable to pay at the rate sued for. *Sheikh Newajee and others* v. *L. Lloyd*, 8 W. R., 464.

In a suit for rent alleged to be due under a particular arrangement, the existence of which is repudiated by defendant, it is for plaintiff to prove the arrangement. *Shumbhoo Geer Sossain* v. *Ram Jewan Lall and others*, 8 W. R., 509.

Suit by purchaser of a mootah at a sale for arrears of revenue for the rents and profits of a hamlet, consisting of lands which, when uncultivated, were given by the then zemindar to the defendant (respondent). The plaintiff alleged that the lands were included in the assets upon which the permanent assessment was fixed, but being unable to prove his allegation, his suit was dismissed. *Sree Raja Row Vencata Niladry Row* v. *Vatchaoory Vencataputty Raj*, 5 W. R., P. C., 80.

In a suit for arrears of rent, the defendant is entitled to a deduction for lands washed away, but the *onus* lies on him of proving to what deduction he is entitled, and of showing precisely what lands have disappeared. *Momas Savi* v. *Obhoy Nath Dose*, 2 W. R., Act X R., 27.

When a debtor pleads tender of payment as a ground for not being saddled with interest, the *onus* is on him to prove that he made such tender. *Ranee Shurut Soondery Debia* v. *The Collector of Mymensing*, 5 W. R., Act X R., 69.

Where a plaintiff claims rent on account of lands as mâl from defendants, who set up a lakheraj title and produced lakheraj sunnuds in support, he has first of all to prove that he has collected rents from the lands as mâl within twelve years of the suit; and in calculating the period of limitation, the plaintiff is not entitled to deduction on account of the periods of pendency of suits for rent and for small portions of the land. *Prodhan Gopaul Singh* v. *Bhoop Roy Ojha*, 9 W. R., 510.

When defendant in a suit for arrears of rent alleges remission, the *onus probandi* lies on him in regard to the remission. *Bunwarry Lall* v. *J. Furlong*, 9 W. R., 239.

In a suit for rent under a kubuleut, if a third party intervenes and supports the defendant's case that the rents have been paid, not to the plaintiff, but to the intervenor, the *onus* of proving such previous receipt and enjoyment is altogether on the intervenor; and until his intervention is disposed of, the plaintiff need not prove his title or the kubuleut. *Ram Bhurose Singh and others* v. *Jewa Mahatoon*, 11 W. R., 319.

The tenant is entitled to the presumption under Section 4, Act X of 1859, on proof of his uniform payment of rent for twenty years. If he fails to prove this, the *onus* is on the plaintiff to prove increase in the value of the produce, or in the productive power of the land. *Shib Narain Ghose* v. *Kasaee Pershad Mookerjee*, 1 W. R., 226.

If a ryot shows payment of rent for 1265 and 1266, it is to be presumed that all previous claims have been satisfied; to entitle the landlord to carry to the credit of 1264 any of the payments made in 1266, he must show that, at the close of 1264, there was an arrear due to him. *Ranee Sooruth Soondery Dabee* v. *K. Brodie*, 1 W. R., 274.

In a suit for enhanced rent of a talook, the existence of which, as an ancient talook, is undoubted, and in which the only question is whether the rent is fixed or variable, the *onus* is first on the defendant to prove that he has held at a uniform rate for twenty years, and (if the defendant prove so much) then on the plaintiff to prove that the rent has varied since the Permanent Settlement. *Rashmonee Debea* v. *Hurronath Roy*, 1 W. R., 280.

In a suit to assess or resume invalid lakheraj created subsequent to December 1, 1790, the *onus* is on the plaintiff to show that the case is one falling within Section 10, Regulation XIX of 1793; or, in other words, that the grant was subsequent to December 1, 1790. *Sonaton Ghos* v. *Abdool Turrub*, 2 W. R., 205.

In a suit for rent, where a deed of sale is the foundation of plaintiff's right, he is bound to prove the deed, even if it is not objected to in defendant's written statement. *Zemut Hossein and others* v. *Kuneez Futeema*, 12 W. R., 5.

In a suit for rent and damages, in which the amount of rent payable is in issue, the *onus* is on the plaintiff of proving that the defendant has paid in past years what the plaintiff is now demanding, and the best evidence is requisite to prove these past payments. *Ram Jeebun Lall* v. *Nund Lall*, 2 W. R., Act X R., 43.

In a suit for rent, when the ryot pleads that part of the land is waste and lakheraj, the *onus* is on the landlord to prove that such land has paid rent to him in previous years. *Motee Lall Aduck* v. *Judooputtee Doss*, 2 W. R., Act X R., 44.

The fact alone of variations in the amount of rent paid between one year and another does not necessarily establish the plaintiff's right to enhance. The *onus* of accounting for such variations is with defendant. *Horonath Roy* v. *Chittramonee Dossee*, 3 W. R., Act X R., 122.

(*f*) *In Suits with respect to Tenures and Rights in Land.*

In a question of boundary between a lakheraj tenure and a zemindar's mâl land, there is no presumption in favour of one or the other, but the *onus* is on the plaintiff to prove his case. *Beer Chunder Joobraj* v. *Ram Gutty Dutt and others*, 8 W. R., 209.

In a suit for a kubuleut on an alleged right to assess lands which have accreted to a permanent zimma tenure, it is for plaintiff to prove that under the Law of Accretion (Section 4, Regulation XI of 1825), the accretions are either by custom or agreement liable to assessment. *Juggut Chunder Dutt and others* v. *Despino Panioty and others*, 8 W. R., 427.

Where a defendant pleads a putnee tenure, the *onus* of proof is on him in the first instance. But when he sets up and proves by credible evidence the creation by the plaintiffs of an inferior tenure entitling him to hold the estate, he has discharged the burden, and it then lies on the plaintiffs to displace or explain away that evidence. *Opendro Narain Ghose* v. *Bajpyee Rajah Keshub Chunder Deb and others*, 6 W. R., 25.

Where persons have long held as khadims under

the superior holders or managers of endowed property, and claim to hold a permanent khadim tenure from which they are not liable to be ejected except for misconduct, the *onus probandi* is on them. *Chand Meen* v. *Khandkar Ashrutollah and others*, 6 W. R., 89.

When a plaintiff, suing for land as mâl, adds in his plaint that the defendant will set up an invalid lakheraj title, and the defendant really does plead a sunnud, the legal rule as to the burden of proof is not altered, *i.e.*, that the plaintiff who affirms the land to be his mâl must prove that affirmation. *Issur Chunder Shaha* v. *Baroda Soondery Debia*, 3 W. R., Act X R., 18.

In a suit for enhanced rent, where the plaintiff alleges that the defendant abandoned a mokurruree tenure, established by him and accepted a variable tenure, the *onus* is on the plaintiff to prove his allegation. *Goluck Chunder Roy* v. *F. C. Sandes*, 5 W. R. Act X R., 32.

In a suit to set aside a neem-ousat howala subtenure, on the specific allegations of the temporary and extraordinary (*i.e.*, non-transferable) character of the tenure, when the defendant is in possession under a decision of the Revenue Courts passed under Clause 6, Section 23, Act X of 1859, the *onus* is on the plaintiff to prove his specific allegation. *Hurro Soondery Debia* v. *Ameena Begum*, 5 W. R., Act X R., 72.

In a suit to assess land which the defendant proves that he purchased as lakheraj, and of which he is in possession, the *onus* of proving that it is rent-paying lies on the plaintiff. *Raj Kishore Mookerjee* v. *Hurreehor Mookerjee*, 10 W. R., 117.

Where plaintiffs sued for declaration that certain lands were lakheraj, on the ground that defendant had obtained a decree in the Collector's Court against them for rent,—*Held* that the *onus* lay upon the plaintiffs to show that they were holding the land as true lakheraj, and that the Collector's decree was wrong. *Hurrendra Kishore Bahadoor* v. *Kedarnath Mitter*, 10 W. R., 188.

In a suit to recover possession of land under a mokurruree lease granted to plaintiff by the zemindar (defendant who admitted its validity) from the other defendant who had been in possession twenty years, and who also claimed a mokurruree interest, —*Held* that the *onus* lay with the substantive defendant to show that his lease was mokurruree. *Rughoonath Dobey* v. *Poresh Ram Mahata*, 10 W. R., 9.

In a suit to recover khas possession, where the defendant's plea is that his holding is a permanent holding, it is not sufficient for him to show that it was the exact permanent right at issue between the parties. *Doorga Soondery* v. *Brindabun Sircar and others*, 11 W. R., 162.

There is no presumption that orchard lands in Behar are held on a bhaolee tenure, there being many instances of orchards there being held on a nukdee tenure. The *onus* of proving the special nature of the tenure is on the zemindar suing for the value of trees cut down, and not on the tenant defendant. *Domun Singh* v. *Sookun Lall*, 2 W. R., 12.

In a suit against the purchaser of a howala, who has been in possession more than twenty-five years, the plaintiff is bound to prove that he acquired the howala in the way he alleges, *viz.*, in the exercise of his zemindary right upon the relinquishment or abandonment of the howala by the party of whom the defendant afterwards bought it. *Madhub Chunder Ghose* v. *Nilkant Shaha Roy*, 2 W. R., 42.

The Government, when acting as agent of a zemindar, can only sue to resume invalid lakheraj lands under 100 beegahs. The *onus* of proof of its being mâl, when so claimed, is on the zemindar. *Ram Lochun Sircar* v. *Denonath Paul*, 2 W. R., 279.

In a suit to assess more than 100 beegahs of land, though stated to be under Section 30, Regulation II of 1819, but on the allegation that they are the plaintiff's mâl lands, the plaintiff is bound to prove that the lands were his mâl lands on or before December 1st, 1790, before the other party can be called upon to prove his title. *Sookhoda Debia* v. *Sheikh Ajeenooddeen*, 2 W. R., 302.

A zemindar who, under the provisions of Section 10, Regulation XIX of 1793, ousts a party who held long possession as a lakherajdar, is bound to prove his right to exercise that power before the lakherajdar is called upon to prove his title to hold the land as a valid rent-free grant. *Mohunt Prem Shewuk Doss* v. *Isree Pershad*, 2 W. R., 303.

In a suit by an auction-purchaser to assess rent on land claimed as valid lakheraj, the *onus* is on the ryot to prove that the land has been held as lakheraj from the year 1790. *Sham Lall Ghose* v. *Sekunder Khan*, 3 W. R., 182.

Long possession of lands as chowkeedaree chakeran affords ground for the presumption that the lands were set apart as such at the Decennial Settlement. The *onus* of proof that the lands were the private lands of the zemindar not set apart at the Decennial Settlement as chowkeedaree chakeran is on the zemindar. *Mooktakeshee Debia Chowdhrain* v. *The Collector of Moorshedabad*, 4 W. R., 30.

In a suit for possession of land from which the plaintiff has been dispossessed by the defendant, if the defendant admits the plaintiff's possession as lakherajdar up to the time of dispossession, and justifies his proceedings by pleading that the lakheraj was created subsequent to 1790, and that the land is part of his mâl land, it is not necessary to try the plaintiff's title, but the *onus* is on the defendant to prove his allegation. *Oottum Churn Dutt* v. *Ram Lall Dun*, 5 W. R., 91.

When a lakherajdar, suing for possession of a land of which he has been dispossessed by the present putneedar, is, from his having been the former putneedar of the village in which the land in question is situate, able to show the exact position of the village during his tenure of it, the *onus* is on him to prove that the land was lakheraj during the period that he held the village in putnee. *Nubakishen Mookerjee* v. *Promothonath Ghose*, 5 W. R., 148.

Whether a defendant admits the existence of the superior tenure of a plaintiff over the whole or only a part of the under-tenure under which the defendant pleads to hold under the tenure of the plaintiff, and whether the defendant pleads the existence over a part of his own under-tenure of tenures independent of the plaintiff's under-tenure, but within the same talook in which the tenure of the plaintiff is situated, the *onus* is on the defendant to prove that he has collected rent direct from the

ryot in possession. *Raj Chunder Roy Chowdhry* v. *Sheikh Abbas*, 5 W. R., 185.

After the zemindar has made out a *primâ-facie* case, the *onus* is on the judgment-creditor, who attaches a tenure as liable for his debt, and who desires the same to be sold in execution, to prove the liability of the tenure to satisfy that decree. *Aluck Monee Dassia* v. *Chundra Kant Mookerjee*, 5 W. R., 233.

Where a ryot claims protection from ejectment by an auction-purchaser under the proviso to Section 37, Act XI of 1859, the *onus* is on the ryot to prove the character of his holding. *Domun Lall* v. *Pudmun Singh*, W. R., 1864, Act X R., 129.

In a suit between two rival tenants claiming to hold under the same landlord, where one of them admitted the tenancy of the other, but pleaded resignation by him of his tenancy and a lease to himself, the *onus* of proof was held to rest upon him who made the allegation. *Kishen Chunder Shaha* v. *Hookoom Chand Shaha*, W. R., 1864, 47.

A suit to resume a lakeraj tenure under Section 28, Act X of 1859, will not lie upon the ground that the tenure is invalid, but merely upon the ground that the lakheraj was granted after 1st December, 1790; and the *onus probandi* in such case is on the plaintiff. A special appeal will lie if the decree and the judgment taken together show that the decision is erroneous. *Maharance Indurjeet Koonwar* v. *Choken Sahoo*, W. R., F. B., 81.

Suit to recover possession of land from which the plaintiff had been ousted by the defendant under Section 10, Regulation XIX of 1793, on the ground that it was an invalid lakerhaj created after 1st December, 1790,—*Held* that the zemindar having no right to oust the lakerhajdar, unless the lakerhaj was created after 1st December, 1790, must prove that the lakheraj was created subsequently to that date, and that it was not for the lakherajdar to prove that the lakheraj was created prior to that date. *Mon Mohinee Dossee* v. *Joykissen Mookerjee*, W. R., F. B., 174.

Although generally it may be taken that land whereon an orchard is planted belongs to the zemindar, and has been granted to a stranger to plant trees thereon, in which case it reverts to the zemindar after the trees have disappeared and the land has become arable, yet when it is asserted that the land belongs to the planter of the orchard, having been acquired by purchase, it is for the zemindar to prove that the land belongs to him and was given for plantation; and in the absence of such proof the holder or occupant may rely on his long possession. *Dhunee Ram* v. *Amanut Hossein and others*, 3 Agra Rep., 161.

(*g*) *In respect of Fraud.*

Where a mother conveyed property to a daughter, and the property was afterwards attached in execution of a decree against the daughter,—*Held* that the mother could not obtain a reconveyance of the property, on the ground that the conveyance to the daughter was for the purpose of defrauding the mother's creditors, and that the *onus* was on the mother to prove that the decree against the daughter was a fraudulent contrivance to deprive the mother of possession of the property. *Keshub Chundra Sein* v. *Vyasmonee Dossia*, 7 W. R., 118.

In a suit by three brothers to recover an estate sold by their two brothers as their guardians during their minority, as they alleged, without necessity and in collusion with the purchaser,—*Held* that the *onus* was on the plaintiff to prove the sale fraudulent and collusive. *Achunth Singh* v. *Kishen Pershad Singh*, W. R., 1864, 37.

The plaintiffs having purchased from a mortgagee after foreclosure, and the mortgagor and mortgagee both admitting their title,—*Held* that the *onus* of proving that the transaction was a fraudulent one was on the defendants who alleged it to be so. *Mussamut Sahoodur Kooer* v. *Joy Narain Singh*, 1 W. R., 326.

The plaintiff suing to recover money voluntarily paid by her to the defendant, alleged that the payment had been obtained by fraud. *Held* that the *onus* was on the plaintiff to prove her allegations, and not on the defendant to prove them untrue. *Anund Moyee Debia* v. *Shib Dyal Bunwaree*, 2 W. R., 2.

Where a defendant does not specifically allege fraud otherwise than when, generally denying the truth of the plaintiff's allegations, he states the plaintiff's claim to be not true, the *onus probandi* is on the plaintiff. *Lala Arbunt Doss* v. *Lalla Mothoora Lall and others*, 6 W. R., 195.

N., as reversionary heir of the former proprietor, and as now entitled to possession on the death of that proprietor's mother, sues for land in the possession of C., who obtained it by purchase at a sale in execution of a decree passed on a bond granted by O., which bond and decree are alleged by N. to be fraudulent and collusive transactions.

Held that the burden is on the plaintiff to prove that the decree was fraudulently obtained. *Greesh Chunder Chatterjee and another* v. *Mohesh Chunder Nyalunker*, 10 W. R., 173.

In a suit against a purchaser to set aside a sale in execution of a decree on the ground of fraud, the *onus* lies upon the plaintiff to make out that the sale was fraudulent. *Ram Gutty and others* v. *Mumtaj Bibee and others*, 10 W. R., 280.

Where an appellant alleges that a razeenamah was obtained from him by duress or fraud, the *onus* is on him to prove his allegation. Where also an appellant complains that he had not an opportunity of giving his evidence to the Court below, the *onus* is on him to show that he tendered evidence which the Court rejected. *Motee Lall Opadhiya* v. *Juggurnath Gurg*, 5 W. R., P. C., 25.

(*h*) *In respect to Limitation.*

Where a plaintiff sued to reverse a survey award more than three years after it was passed, and the defendant specially alleged that the suit was not in time, the *onus* was held to be on the plaintiff to remove the bar to his suit. *Kumola Dossee and others* v. *Syud Azmur Aly*, 7 W. R., 13.

In deciding the plea of limitation, it is for the plaintiff to prove that he has been in possession within twelve years of date of suit, and not for the defendant to prove adverse possession for twelve years. *Denobundhoo Suyaye* v. *James Furlong*, 9 W. R., 155.

When a defendant pleads limitation, the *onus probandi* is on the plaintiff. *Brojendro Coomar*

Roy Chowdhry v. *Badha Gobindo Shah*, 1 W. R., 235.

In a suit by Government to establish its right and title to a julkur, when limitation is pleaded by the defendant, the *onus* is on the plaintiff to remove the bar of limitation by showing that he had possession within the period proscribed by law. *The Collector of Rungpore* v. *Prosunno Coomar Tagore*, 5 W. R., 115.

(*j*) *In Suits with regard to Wrongful Alienation.*

Upon those who claim under an alienation from a Hindu widow rests the *onus* of showing that the transaction was within her limited power. *The Collector of Masulipatam* v. *Cavaly Vencata Narainapah*, 2 W. R., P. C., 61.

Suit by the purchaser of a certain annual payment by Government, called *tora garas huk*, sold in satisfaction of a decree. *Held* that the *onus* was on the Government to prove that there was something in the nature of this payment which made it incapable of alienation, and that the Government had failed to give such proof. *Shumbhoo Lall Girdhur Lall* v. *The Collector of Surat*, 4 W. R., P. C., 55.

Where it was in proof that a portion of the immoveable property of the wife had passed to a *bonâ-fide* purchaser under conveyances executed by the wife to her husband or to such purchaser, the burden of proof in a suit by her to recover the property is upon her, as she seeks to be relieved from the effect of her own conveyances, the execution of which she does not dispute, against one who, if not an absolute stranger, stands in no fiduciary relation to her. *Judoonath Bose* v. *Shumsoonnissa Begum*, 8 W. R., P. C., 3.

Where a mooktear sued his client, a Hindu widow, upon a perwannah bearing the client's seal and purporting to give away valuable properties without any substantial consideration,—*Held* that the *onus* was on the plaintiff to satisfy the Court fully as to the circumstances under which the client's seal was obtained, and to prove that the gift was made advisedly. *Ram Persaud Misser* v. *Ranee Phoolputee*, 7 W. R., 98.

Held that the *onus* of proving that a sale by his guardians of a minor's property was necessary and for his benefit lies upon the purchaser, and that adequacy of price is an important point to be considered in determining this question. *Dagdu* v. *Kamble*, 2 Bom. Rep., 369.

In a suit by a Mahometan widow against the brother of her deceased husband for her share of the property of her husband, the defendant set up a tumliknamah by which the deceased conveyed the property away to the son of the defendant,—*Held* that the burden of proof was on the defendant, and that he was bound to adduce the very strictest proof of the conveyance, as it cut away property from the natural heir. The tumliknamah was rejected, having regard to its terms and to the probabilities and facts of the case. *Saduk Ali Khan* v. *Bibee Pearee and others*, 9 W. R., 142.

When a person, after attaining majority, questions any sale of his property made by his guardian during his minority, the burden lies on the person who upholds the purchase, not only to show that, under the circumstances of the case, either the guardian had the power to sell or that the purchaser reasonably supposed he had such power, but, further, that the whole transaction, so far as regarded the purchaser's part in it, was *bonâ fide*. Following the principle laid down by the Court in the case of *Kanye Lall Juhoree* v. *Kameenee Dabee*, it was held that when either the person who sells labours under disqualification, or the purchaser stands in a fiduciary relation to the owner of the property, the *bona fides* of the dealing cannot be presumed, but must be made out by the purchaser. *Roop Narain Singh* v. *Gudadhur Pershad Garain and others*, 9 W. R., 297.

Where a party, entitled to impede an alienation by a widow of her husband's estate, sues to set aside such an alienation, and the defendant establishes not only that he had a charge on the estate in virtue of a mortgage deed executed by the widow, but that the debt to him was on account of advances made to her for purposes for which she would have been entitled to alienate the estate as against the next heirs, it does not follow that because plaintiff had a right to demand this peculiar proof of the ordinary rule which requires the party who alleges payment to prove payment, is to be inverted in his favour, or that the debt is to be presumed to be satisfied, unless the contrary is shown by the creditor; and if he alleges that the mortgage deed was not *bonâ fide*, the burthen lies on him to prove his allegation. *Cavaly Vencate Narainapah* v. *The Collector of Masulipatam*, 10 W. R., P. C., 47.

In a suit for the sale of certain property in satisfaction of a decree against a judgment-debtor (since deceased), where it was found that the judgment-debtor had made over the property to his wife in lieu of her dower, and that she had transferred it to defendant,—*Held* that the *onus* was on the plaintiff. *Liakut Aly and others* v. *The Court of Wards*, 10 W. R., 423.

In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only a portion, where defendant pleaded that the whole property had been made over by the grandfather, by a deed of gift, to the judgment-debtor,—*Held* that the plaintiff was entitled to the presumption of co-partnership, and the *onus* lay with the defence to prove that the property had passed absolutely to the judgment-debtor. *Gopee Lall* v. *Mohunt Bhugwan Doss and others*, 12 W. R., 7.

(*k*) *In Suits for Enhancement.*

The suit was for enhancement of rent. The defendant set up that certain plots of land, rent of which was sought to be enhanced, were lakheraj, and therefore not liable to pay rent. *Held* that the *onus* was not upon the defendant to prove that the land was lakheraj, but upon the plaintiff to prove that the land was mâl or rent-paying.

Semble,—The Courts are accustomed to require some *primâ-facie* evidence from defendants raising such defence, that they hold some lakheraj lands. *Sridhar Nandi* v. *Braja Nath Kundu*, 2 B. L. R., A. C., 211.

In a suit brought by a ryot under Section 14, Act X of 1859, to contest a notice of enhancement, the *onus probandi* is on the ryot. *Prithee Ram*

Chowdhry Roy Bahadoor v. *Chidam Chunder Shaha*, 8 W. R., 8.

Where there is *primâ-facie* evidence that a tenant holds part of the land sought to be enhanced as paying rent and part as rent-free, the *onus* is shifted from the ryot to the landlord. *Nehal Chunder Mistree* v. *Huree Pershad Mundul*, 8 W. R., 183.

To entitle a plaintiff to recover enhanced rent for that portion of the land which the defendant pleads is lakheraj, the *onus* is on the plaintiff to prove that it is his mâl land. If the plaintiff makes out a *primâ-facie* case, then the Court is to look, not to the validity of the defendant's title, but to his possession of the land as lakheraj. *Mirtoonjoy Chuckerbutty* v. *Rajah Boroda Kant Roy*, 6 W. R., Act X R., 18.

In a suit for enhancement, where the defendant pleads a lakheraj holding as to a portion of the land, the *onus* is on the plaintiff to prove whether the disputed land ever paid rent. *Sheeb Narain Roy* v. *Chidam Doss Byragee and others*, 6 W. R., Act X R., 45.

In a suit for enhancement, where the defendant pleads that rent has been assessed on lands covered by hedges and ditches and forming boundaries between fields, and that according to custom such land was not liable to pay rent at all, the *onus* is on the defendant to prove the custom. *Karoo Chowdhry and another* v. *Joyessur Nundee*, 6 W. R., Act X R., 46.

In a suit for enhancement, where the defence is that part of the land is mâl, the plaintiff should prove that he has collected rents from such part as mâl land, before he can call upon the defendant to prove his lakheraj title; and even then the plaintiff must sue subject to the Law of Limitations. *Ram Coomar Ghossal* v. *Debee Pershad Chatterjee*, 6 W. R., Act X R., 87.

In a suit for enhancement, in which the defendant adduced in evidence a decree in a suit in 1820 between the predecessors of both parties, to show that he and his ancestors had held at a rate fixed by a sunnud prior to the Permanent Settlement, the *onus* was held to be on the plaintiff to prove that that decree was not applicable to the particular holding in dispute. *Bhobosoonderee Debia* v. *Gour Kishore Dutt*, 6 W. R., Act X R., 96.

Where a ryot is sued for enhanced rent in respect of lands part of which he admits to be rent-paying and the remainder lakheraj, the *onus* of proving that any part was exempted is not shifted from the zemindar to the ryot. *Dhun Monee Debia* v. *Suttorgun Seal and others*, 6 W. R., Act X R., 100.

Where a plaintiff sues for enhancement, on the ground that the defendant did not pay the rents paid by others in the neighbourhood for similar lands, and the defendant denies his liability to pay such rents owing to his having mokurruree pottahs, the *onus* is on the defendant to prove those pottahs. *Prannath Roy Chowdhry* v. *Mohehoodeen Ahmed*, 6 W. R., Act X R., 39.

The *onus* in a suit by a landlord for enhancement under Section 17, Act X of 1859, on the ground that the productiveness of the land has increased, rests on the plaintiff, who must prove that the productiveness was increased otherwise than by the agency or at the expense of the ryot.

The general rule of evidence is that if, in order to make out a title, it is necessary to prove a negative, the party who avers a title must prove it. A written statement put in by a defendant is not a plea by way of confession and avoidance, and the whole statement must be taken together. *Poolin Behary Sein* v. *R. Watson and Co.*, 9 W. R., 190.

In a suit for enhancement, where the defendant replies that the land in question does not belong to the plaintiff's estate, the *onus* is on the plaintiff (who seeks to disturb the previously existing arrangement) to prove that it does do so. *Mirza Mahomed Ali* v. *Radha Romun Mundul*, 4 W. R., Act X R., 18.

When a landlord sues for enhanced rent and is met by an allegation that certain plots of land never paid any rent at all, the *onus* is on him to prove that the lands did at some former time pay him rent. *Gungadhur Singh* v. *Bimola Dossee*, 5 W. R., Act X R., 37.

Held that it lay upon the plaintiff to make out distinctly the different grounds on which he rested his right to enhance, *viz.*, excess of area, increase of productiveness apart from the tenant's agency, and increase in the value of produce. *Golam Ali* v. *Gopal Lall Thakoor*, 9 W. R., 65.

In a suit for enhancement of rent, where defendant gives *primâ-facie* proof of a rent-free title, such as a proceeding of the resumption authorities releasing his lands under Section 48, Regulation XIX of 1793, the *onus* is on the plaintiff to prove receipt of rent. *Heera Ram Bhuttacharjee* v. *Ashruf Ali*, 9 W. R., 103.

In a suit for a kubuleut at an enhanced rate for land which defendant claims as lakheraj, he is not bound to give *primâ-facie* proof of the land being lakheraj before the *onus* is put on the landlord. *Umbica Churn Mundle* v. *Ramdhone Mohurrir.*

In a suit for enhancement of rent, where defendant pleads that a parcel of it is debutter land, the property of another party, the *onus* lies on the plaintiff to prove that the land is mâl, even though the alleged owner puts forward no claim. *Prem Chand Darick* v. *Brojonath Koondoo Chowdhry and others*, 10 W. R., 205.

A plaintiff who sues for enhanced rent is bound to prove that the present rate is not fair and equitable. *J. Hills* v. *Jendur Mundul*, 1 W. R., 3.

In a suit for enhancement, if the defendant pleads that the productive powers of the land have been increased by his own exertions, the *onus* of proof is on him. *Nobeen Kishen Bose* v. *Shofatoollah*, 1 W. R., 24.

When a ryot sues to contest a notice of enhancement, the *onus* is on the landlord to prove his grounds of enhancement; but the Court is bound to find clearly that an Ameen's report, adverse in the main to the landlord's claim, supports the defendant's special grounds. *Dinnonath Mose Mullick* v. *Juggessur Mundul*, 1 W. R., 154.

In a suit for enhancement of rent brought by an auction-purchaser against a ryot before Act X of 1859, the ryot cannot avail himself of the presumption arising under Section 4 of that Act from a uniform payment for 20 years, but must prove uniform payment for 12 years before the Decennial Settlement. Notwithstanding proof of such payment, he will still be liable to enhancement in respect of lands

held by him in excess of the quantity mentioned in his lease. *Showdaminee Dossia* v. *Gooroo Pershad Dutt*, 3 W. R., 14.

In a suit for assessment at enhanced rates, in which the defendant admits that the main portion of the lands in dispute are mâl, but does not separate the rent-free lands, the plaintiff is not bound to prove that the lands are mâl until the defendant points out their precise situation. *Rajah Sutto Churn Ghosal* v. *Tarinee Churn Ghose*, 3 W. R., 178.

Where a ryot on whom notice of enhancement has been served sues under Section 14, Act X of 1859, and fails to show that any excessive rate is demanded from him, or that he is not liable to pay the rent demanded, his suit ought to be dismissed. The Court ought not to go on to try defendant's case as if he were suing for enhancement. *Gunga Narain Chowdhry* v. *Kofa Pali*, 11 W. R., 377.

(*l*) *In regard to Defamation.*

In a suit for damages for a false charge,—*Held* that an accusation which has been held by a Criminal Court to be unfounded is sufficient *primâ-facie* evidence that the accusation was maliciously brought, and that it is for the accuser (defendant) to rebut that evidence by showing that he had reasonable and probable cause for making the accusation. *Heera Chand Banerjee* v. *Banee Madhub Chatterjee*, 6 W. R., 29.

Act XVIII of 1862 refers only to the High Court in its original criminal jurisdiction, and is not applicable to mofussil Courts. Section 27 of that Act requires proof of the existence of the circumstances relied on as a defence before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9, Section 499 of the Penal Code, he must show that he has exercised due care and caution. *Sealey* v. *Ramnarain Bose*, 4 W. R., Cr., 22.

In a suit for damages for malicious prosecution, where it was proved that plaintiff, a man of property and respectability, had been charged by defendant with theft, and that he had been convicted before the Magistrate, but acquitted by the Sessions Judge,—*Held* that the mere fact of acquittal did not prove that the charge was malicious; that property having been found in plaintiff's house which defendant claimed as his stolen property, plaintiff could not recover damages, unless it was certain that the property in question was not stolen but his own; and that it was for plaintiff to show that there was no ground or reasonable cause for bringing the charge. *Doongussee Byde* v. *Gridharee Mull Doogur*, 10 W. R., 439.

Held that the best evidence of enmity is the evidence of the parties between whom it exists; and that in the absence of the plaintiff's own testimony, there was no sufficient evidence of malice to make it incumbent on the other side to show reasonable ground for the charge. *Roshun Sircar* v. *Nobin Ghuttuck*, 12 W. R. 402.

In a suit for damages for defamation of character, the plaintiff must start his case by showing he was not guilty of the offence charged, and it will then be upon the defendant to show that he made the imputation in good faith and for the public good. *Mohendro Chunder Chuckerbutty* v. *Surbo Mohye Dabia*, 11 W. R., 534.

Although a suit cannot be maintained for damages for defamation of character, when it is substantially a suit for damages against witnesses in respect of evidence given by them upon oath in a judicial proceeding, yet it may be supported when, though called a suit for defamation of character, it is substantially a suit for a malicious prosecution. In the latter case the burden is on the plaintiff to prove (1) that the defendants were the prosecutors of the criminal proceeding against him; (2) that they were actuated by malice; and (3) that their proceeding was without any reasonable or probable cause; and the Privy Council agreed with the High Court in thinking that there was no evidence on the part of the plaintiff of want of reasonable and proper cause for the institution of this prosecution. *Gunnesh Dutt Singh* v. *Magneeram Chowdry and others*, 17 S. W. R., C. R., 283.

XII.

INSOLVENCY

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1.—INSOLVENT COURT.

Insolvent Act (11 & 12 Vict., c. 21.) *In re Manuel Grant Costello*, 8 B. L. R., Ap., 57.

Section 342 of Act VIII of 1859 does not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. The right of appeal is given by Section 73 of the Indian Insolvent Act, and the Court cannot impose on the appellant a condition that he shall give security for the costs of such an appeal. *Ram Sebak Misser, in the matter of*, 5 B. L. R., 179.

Proceedings in the Insolvent Court do not necessarily abate by the death of the party who institutes such proceedings. There is nothing in the Indian Insolvent Act, or in the rules of the Court, which prevents the Commissioner from allowing the proceedings to be carried on by the representative of such deceased party, he being interested in them. *In the matter of Ram Sabuck Misser; Shaikh Paltu* v. *Janki Prasad; Sheikh Ranizan Ali* v. *Janki Prasad*, 6 B. L. R., 119.

When an insolvent has obtained his discharge, a Commissioner has no jurisdiction on the application of some of the creditors to make an order dismissing his petition, and ordering the estate and effects of the insolvent in the hands of the official assignee to be made over to certain persons on behalf of the creditors. The petition being dismissed, the property re-vested in the insolvents. The Court which passed the order dismissing the petition, upon finding such order had been obtained by fraud, has power to set aside the order. *Ram Sabuck Misser, in the matter of the petition of*, 6 B. L. R., 310.

The Insolvent Court has no power to allow an insolvent to withdraw his petition of insolvency, on the ground that he has made a compromise with his creditors. Where, however, the Court is satisfied that all parties concerned desire to take the matter out of the hands of the Court, it will dismiss the petition, even though there is no ground arising out of the facts of the case why the petition should be dismissed. *Pyarichand Mitter, in the matter of*, 6 B. L. R., 558.

Where the evidence has not been taken down in writing, as provided by Section 72 of the Insolvent Act, the evidence cannot be gone into on an appeal under Section 73.

Per Norman, J. (Paul, J., dissenting).—The Insolvent Court has power, under Section 26 of 11 and 12 Vict., Chap. 21, to order any person who is in possession of, or has under his control, any property alleged to belong to the insolvent, to deliver such property to the official assignee. *In the matter of Adjudhia Pershad; Mohant Jairam Gir* v. *A. B. Miller*, 7 B. L. R., 74, and 15 S. W. R., A. O., 16.

A Commissioner sitting in Insolvency, while sentencing an insolvent to imprisonment on the criminal side, under Section 50 of the Insolvent Debtors' Act, has power, in addition, to order that the further hearing of the insolvent's petition be adjourned, with or without protection, under Section 47, beyond the expiration of such term of imprisonment. *In re Mánikji Shápurji Káku*, 5 Bom. Rep., O. C., 61.

Where, under Section 51 of the Insolvent Debtors' Act (11 and 12 Vict., Chap. 21), it has been adjudged that an insolvent shall be forthwith discharged from all his debts, &c., except as to certain specified debts, and as to these that he shall be discharged so soon as he shall have been in custody, at the suit of the person or persons who shall be creditor or creditors for the same respectively, for such period as the Court shall direct; such an order of adjudication does not in itself operate as an order for the imprisonment of the insolvent, but the detaining creditor, if he wishes to arrest or detain the insolvent for such period, must (if he have not already done so) place himself in a position to issue execution against the insolvent. *In re Mancharji Hirji Readymoney*, 5 Bom. Rep., O. C., 55.

Section 49 of the Insolvent Act was not intended to give the Court power merely on the occurrence of insolvency to set aside a sale which has rightly

and clearly taken place upon process of execution. *Aga Mahomed Ali Shiruji* v. *S. E. Judah*, 17 S. W. R., C. R., 234.

The power of the Court to attach the property of an insolvent is confined strictly to the provisions of the Insolvent Act. *In re Khettsey Das*, 3 B. B. L. R., Ap., 14.

The petitioner came down from Cawnpore, where he had resided for some time, to Calcutta, to file his petition. He stated that he intended to settle in Calcutta on obtaining his discharge.

Held that his being in Calcutta under these circumstances did not constitute residence. *Held* also that, by Section 18 of the Letters Patent, the jurisdiction of the Insolvent Court has been narrowed by the Bengal Division of the Presidency of Fort William, *i.e.*, that portion of the Presidency over which the authority of the Lieutenant-Governor of Bengal extends.

Semble,—Under Section 5 of the Insolvent Act, the residence of the petitioner must be within the local limits of the ordinary original jurisdiction of the High Court. *In the matter of Tietkins, an insolvent*, 1 B. L. R., O. C., 84.

Where a person applied for the benefit of the provisions of the Insolvent Act on a petition in which he described himself as "William Cockburn, of Doomrah Factory in Tirhoot," and stated in his petition "that he is now residing at No. 19, Garden Reach, in the Suburbs of Calcutta, within the jurisdiction of the High Court,"—*Held* the petition was rightly dismissed for want of jurisdiction. *In re William Cockburn*, 2 Ind. Jur., N. S., 326.

A Commissioner has no power, under Section 73 of the Insolvent Act, to extend the time for presenting a petition of appeal from an order of the Insolvent Court. *In re Gholam Rusal Khan*, 1 B. L. R., O.C., 130.

2.—Insolvent Debtor.

An insolvent, J. A., executed the following document in Calcutta, dated May 16th, 1867, in favour of M., L., and Co.: "Dear Sirs,—In consideration of your having advanced to me the sum of Rs. 8,700, I hereby assign to you the whole of the furniture and fittings now lying at my house, Fairy Hall, Dum-Dum, the whole of which I declare to be my property, free and unencumbered, and hereby authorize you to proceed to a sale of the said property by auction, should I fail to refund the amount of Rs. 8,700 on or before the 10th day of July next." The document was duly stamped and registered under Section 53 of the Registration Act. J. A. failed to pay the Rs. 8,700; and on the following day, M., L., and Co. placed a durwan, their own servant, on the premises at Fairy Hall, to assert their right to the possession of the furniture, and to prevent its removal without their permission. An inventory was being made, and other steps taken preparatory to a sale. J. A. continued to reside in the house, and to use and enjoy the furniture as before, with the knowledge and consent of M., L., and Co. Before any sale took place, J. A. filed his petition in the Insolvent Court, and the usual vesting order was made. *Held* that the furniture was in the "possession, order, and disposition" of the insolvent within the meaning of Section 23 of the Insolvent Act. *In the matter of Agabeg*, 2 Ind. Jur., N. S., 340.

The agent of a company or private individual who procures and receives parcels for transmission by his employers, or who by his personal exertions obtains passengers for their dâk, although he may be entrusted with the receipt or price of carriage, and is paid by commission, is not a broker or trader within the meaning of the Insolvent Act. *Re Campbell, an insolvent*, 2 Hyde's Rep., 177.

The annulling of the fiat contemplated by the proviso of 11 Vict., Chap. 21, Section 8, applies only to cases in which the original judgment has been the result of mistake of fact, misapprehension, or fraud. *Re Sreenarain Bysack*, 2 Hyde's Rep., 180.

Held, that Rule 14 of the Insolvent Court at Bombay, requiring a special application on affidavit and notice to opposing creditors, before a fresh petition can be filed, has reference to a dismissal upon hearing, and not to the case of a petition dismissed under Rule 10. *In re Manekji Framji, an insolvent*, 3 Bom. Rep., O. C. J., 167.

When an insolvent was brought up for the purpose of obtaining his discharge,—*Held* that the "bad faith" mentioned in Section 281, Act VIII of 1859, must be in respect of the debt for which he was imprisoned, and with regard to which the application was made. *Oriental Bank* v. *Rammadhub Sen*, 3 B. L. R., Ap., 14.

Defendant, who had taken the benefit of the Insolvent Act, was sued by plaintiff for a debt contracted previously to his insolvency, the debt not having been entered in the insolvent's schedule at the time of his final discharge.

Held, insolvent being a trader, that, under the provisions of Section 60 of the Indian Insolvency Act, taken in connection with 5 and 6 Vict., Chap. 122, the discharge was good and valid, and that subsequently acquired property could not be attached for any debt discharged under the insolvency. *Brett* v. *Schenersted*, 2 Hyde's Rep., 1.

An insolvent debtor in the mofussil may assign all his property to trustees for the benefit of the creditors who may assent to the conditions of the assignment; and such an assignment will be valid, although it may operate to defeat an expected execution, if it be the intention of the assignor to confer on the assenting creditors a substantial interest in the property assigned, and not merely to defeat or hinder a judgment creditor.

Such an assignment may be made to trustees, but it is not requisite that it should be made to trustees; and it is not requisite that it should be made directly to the assenting creditors. It will confer on the trustees a title to the property assigned superior to that of a judgment-creditor, who has obtained an order for attachment subsequently to the assignment.

It is not invalid if made subject to a condition requiring assenting creditors to execute a release of the debtor, nor is it invalid if it declares a resulting trust in favour of the debtor; but, *semble*, that the Court might order such resulting trust to be executed for the benefit of judgment-creditors who decline to assent to the assignment.

Nor is it invalid if it empowers the trustees to permit the debtor to retain such portion of his furniture, linen, &c., as they may think fit; but this power should be exercised only when the other

assets are insufficient to discharge the primary objects of the trust.

Nor is it invalid if it contain a power for the trustees to continue the business, if the power so given is ancillary to winding-up the business and realizing the assets of the estate; nor is it invalid if executed only by a minority of the creditors. Nor can it be invalidated by subsequent negligence on the part of trustees.

The question as to the intention of the debtor, in executing such an assignment, is a question of fact rather than of law; and in determining this question the conditions and trust subject to which the assignment is made may be considered.

The valuation for stamp duty of a suit brought by the trustees to set aside an attachment, should be calculated on the value of the lien claimed by the judgment-creditor. To such a suit it is not necessary to make all the creditors parties. *Cecil Stephenson and others* v. *Baumgartner*, 3 Agra Rep., 104.

An insolvent obtained his final discharge in April, 1863. *Held* that he was not still liable, under the provisions of the English Bankrupt Act, 1861, Section B. 4, for the ascertained value of certain premia on a policy of insurance which he had undertaken. *Gray* v. *Chick*, Cor. Rep., 136.

Certificate refused where insolvent had been guilty of fraudulent practices in trade. Certificate suspended in the case of a partner at home who, though innocent of the fraudulent practices, omitted to give notice to the parties intended to be defrauded. The Insolvency Court has no power to punish criminally for fraudulent practices in trade. This is left to the action of creditors through the channel of the criminal law. *Re Janssen* v. *Reuss*, Cor. Rep., 13.

The insolvent, who was born in England, of English parents, was the widow of a surgeon, and resided at Salam for some time before, and at the time of the presentation of her petition to the Court. —*Held* that the 5th Section of the Insolvent Debtors' Act is as applicable to a "British subject" (in the sense in which that appellation is used in the Charter of the late Supreme Court) resident within the jurisdiction of the High Court of Madras, as to an inhabitant within the local limits of the town of Madras. *In the matter of Dorothea Ricks, an insolvent*, 3 Mad. Rep., Ind. Jur., 151.

Reckless trading, although unaccompanied by any legal or moral fraud, is a ground for suspending protection. *In re W. M. Baggot*, Bourke's Rep., Ins., 5.

An adjournment on the ground that the insolvent is unable to attend the Court by reason of ill health, will only be granted when the insolvent enjoys the benefit of the Court's order granting him personal protection. *In re Odoytoo Churn Roy*, Bourke's Rep., Ins., 3.

In 1862 the plaintiff's former firm of J. S. B. and B., of Manchester, entered into an agreement with S. and Co., of London, and B. and Co., of Calcutta, to purchase and ship, on the joint account of the three firms, certain goods to B. and Co., each firm taking one-third share of the profit or loss in the transaction; and by the agreement it was stipulated as follows :—

"J. S. B. and B. to draw at six months on S. and Co. for cost of goods, including packing charges; said bills to be discounted (and domiciled) at Overend, Gurney, and Co.'s at 1½ per cent. in excess of bank minimum rate. B. and Co. to remit their three months' or six months' drafts as may appear most desirable on S. and Co., in favour of J. S. B. and B., which Overend, Gurney, and Co. agree to take at 1½ per cent. above bank minimum rate for three months, and 1½ per cent. for six months as provision for said six months' drafts. B. and Co., on sale of goods, to specially remit proceeds to Overend, Gurney, and Co., in first-class bills drawn in favour of Overend, Gurney, and Co. Overend, Gurney, and Co. agree to give up B. and Co.'s drafts on S. and Co. on receipt of the said remittances under rebate. In the event of S. and Co. being brought under cash advances, J. S. B. and B. agree to find cash to the extent of one-third the amount." In 1863 J. S. B., one of the members of the firm of J. S. B. and B., retired from the firm, which was carried on under the name of T. B. and Bro., and the agreement of 1862 was continued by that firm with the two other firms of S. and Co. and B. and Co. Under it certain goods were, in September, October, and November, 1866, purchased by the plaintiff, and shipped to B. and Co., on triplicate account, and bills were drawn by the plaintiff on S. and Co., as agreed, and were deposited with A. C. and Co., not with O. S. and Co. On the 2nd January, 1867, in consideration of the plaintiff taking on himself all the risk attaching to the said goods, S. and Co. and B. and Co. transferred all their right, title, and interest in the said goods to the plaintiff. This agreement was signed on behalf of B. and Co. by L. B. in his own name, one of the members of the firm then in London, who stated that he had the authority of his partners for so doing. On this agreement being made, B. and Co., by the direction of the plaintiff, handed over the goods and documents relating thereto to B. B. and Co., of Calcutta, on the 16th January, 1867. B. and Co. stopped payment on the 27th December, 1866, and J. H. and R., the only partner of that firm then in Calcutta, filed his petition in the Insolvent Court there on the 7th February, 1867. L. B. filed his petition in the said Court on the 18th May, 1867. S. and Co. stopped payment in December, 1866. On the 16th March, 1867, an order of the Insolvent Court was made in the matter of the petition of J. H. R., and in pursuance of this order B. B. and Co. delivered to the defendant, as official assignee of the estate of the said J. H. R., the unsold goods in their hands, which had been transferred to them by B. and Co., and the net proceeds of those which they had sold. *Held* by Norman, J., that the agreement of January 2nd was fraudulent and void against the creditors of B. and Co., under 13 Eliz., c. 5, if not void under Section 24 of the Indian Insolvent Act.

On appeal, *held* by Peacock, C. J.—That the goods were sent to B. and Co. on a special trust, and there was a specific appropriation of the proceeds binding in the case either of insolvency or bankruptcy; that the agreement of January 2nd was valid and binding on the assignee of B. and Co.; that by it the property in the goods passed to T. B. and Bro.; but if it did not, the proceeds were specifically appropriated to taking up the bills of B. and Co. on S. and Co.; and until they were paid B. and Co. had no interest in the goods which could justify their assignee in stopping the remittance of

the proceeds or of taking the property out of the possession of B. B. and Co.; that the plaintiff was entitled to the proceeds with interest from the time the proceeds and goods were handed over to the assignee, and that the goods were not in the order and disposition of J. H. R. at the time of his filing his petition within Section 23 of the Indian Insolvent Act.

Per Markby, J.—Each of the two firms and Barlow were in the outset part owners of these goods, and each became liable to the others to contribute his share towards the cost price thereof. In November, 1866, there ceased to be a binding agreement to remit the proceeds to O., G., and Co., and no new agreement was substituted. The agreement of 2nd January did not renew the right to have the proceeds remitted for special appropriation, and it was moreover a fraudulent preference and void so far as B. and Co. were concerned. On 16th January, when the goods were transferred to plaintiff, he was merely a creditor, and therefore a transfer for his benefit, within two months of filing petition of insolvency, was void under Section 24 of the Insolvent Act.

Per Peacock, C. J., and Markby, J.—That an order under Section 26 of the Indian Insolvent Act does not prevent the owner of the property which is the subject of the order from suing the assignee to establish his right to it. *Barlow* v. *Cochrane*, 2 B. L. R., O. C., 56.

The order of discharge of an insolvent trader, under Section 60 of the Indian Insolvent Debtors' Act, operates to discharge such trader from all debts that could be proved in the matter of his insolvency, whether they are specified in his schedule or not. *Dúdábhái Nasarvánji* v. *Mánikji Shápurji Káka*, 7 Bom. Rep., O. C., 22.

Held that a judgment-debtor who had been in prison for two years under the Code of Civil Procedure was liable to be adjudicated an insolvent in respect of the same judgment-debt, where the petition for adjudication was presented before he was released from prison under Section 278 of the Code. *In the matter of Raghubhui Ram Chandra*, 6 Bom. Rep., O. C. J., 86.

In order to enable an insolvent to appeal from an order passed in the matter of his petition, notes of the evidence must be taken at the hearing by an officer of the Court.

In the time allowed for appealing, the vacation is to be computed, unless such time expire during the vacation, in which case the petition of appeal must be presented to the Court or a Judge on the first day after the vacation. *In re Lakhmidás Hanzráj*, 5 Bom. Rep., O. C., 63.

An authority (assuming it to be sufficient) given by the official assignee to settle the outstandings of one who has filed a petition of insolvency does not enure after the dismissal of the petition, and cannot entitle the person so authorized to sue at all.

The mere fact that a payment was made to a person at a time when his petition was upon the file of the Insolvent Court, which petition was afterwards dismissed, does not invalidate the payment.

Semble,—The general notice published by the chief clerk of the Insolvent Court is not sufficient, but a special notice of insolvency is necessary, to prevent a payment made to the insolvent from being *bonâ fide*. *Rajkristo Singh* v. *Shaikh Sefatoollah*, 17 S. W. R., C. R., 85.

It is not illegal for a debtor to execute a security, or make an assignment in favour of one creditor over others. The provisions of the bankrupt laws, made to promote the equal distribution of the trader's assets among all his creditors, are not in force in these provinces. *Buldeo Dass* v. *Noonna Lall*, 1 N. W. R., Par. 1, p. 23.

3.—Creditors.

A distress levied after the filing of the petition of insolvency, but before the vesting order is drawn up, is invalid as against the official assignee.

A vesting order is made when it is given by the Court, and not at the time it is drawn up, signed and sealed. *Bodey, J., in the matter of*, 5 B. L. R., 309.

St. & Co., merchants carrying on business at Glasgow, brought a suit against I. C., official assignee, who resided in Calcutta, as assignee of the estate of B. & Co., merchants carrying on business at Calcutta, and Sm. & Co., merchants carrying on business at London. St. & Co. alleged in their plaint that they were the owners of certain goods, and sold the same to B. & C. and Sm. & Co., and drew for the price on Sm. & Co., who accepted the drafts; that the goods were shipped to B. & Co. at Calcutta; that at the time when the acceptances were given it was agreed upon between St. & Co., Sm. & Co., and B. & Co., that they should be met and paid out of the sale proceeds of the goods, "which were thereupon specially appropriated thereto;" that Sm. & Co. and B. & Co. subsequently suspended payment, namely, in December, 1866, and January, 1867; that in February, 1867, B. & Co. filed their petition in the Court for the relief of insolvent debtors at Calcutta, having previously delivered a portion of the goods, and endorsed the bills of lading for the remainder to I. S. & Co., who had notice of the insolvent state of Sm. & Co. and B. & Co., without any consideration and without the consent or authority of St. & Co., although the acceptances had not been met or returned, or the goods in any way paid for; that the proceeds arising from the sale of the goods had been handed over by I. S. & Co. to I. C., who threatened and intended to apply the same in payment of the general body of creditors of B. & Co. St. & Co. prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had been received by I. C. in respect of the proceeds of such sale; that I. C. might be directed to pay to St. & Co. what on taking such account might be found due to them; that a receiver might be appointed; that meanwhile I. C. might be restrained by injunction from paying over the same to any one except St. & Co. On the case coming on for settlement of issues, the suit was dismissed by Norman, J., on the ground that, from the facts alleged in the plaint, the inference was that the goods were in the possession, order, and disposition of B. & Co. as reputed owners, with the consent of St. & Co., within the meaning of Section 23 of the Insolvent Act; and therefore the goods and the sale proceeds rightly passed to I. C. as

assignee; and further that the Court had not jurisdiction to declare the rights of all parties as prayed for; that the cause of action did not wholly arise within the jurisdiction, and it was not shown that leave had been granted to institute the suit.

Held on appeal that the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. St. & Co. had a right to have it tried whether they had an equitable charge upon the proceeds for the purpose of paying the bills. *Sterling* v. *Cochrane*, 1 B. L. R., O. C., 114.

Ever since the year 1843 it has been well established in bankruptcy that if the estate is more than sufficient to pay the creditors twenty shillings in the pound, the surplus is to be applied to the payment of interest on debts bearing interest by contract. *In the matter of Thomas Pereira*, 1 Mad. Rep., 221.

Under a vesting order an insolvent's estate became vested in the official assignee, who paid the scheduled creditors the principal of their debts. A discharging order was then made under Section 59 of the Indian Insolvent Debtors' Act (11 Vict., c. 21). At the date of such order the official assignee had Rs. 143-1-8 to the credit of the insolvent's estate. He subsequently received the interest on certain securities which had been bequeathed to the insolvent for his life before the date of the vesting order. *Held* that the discharging order did not make the vesting order void; nor as regarded the estate vested in the official assignee did it re-vest immediately the right of property in the insolvent. That creditors are entitled to interest carrying debts out of a surplus remaining in the official assignee's hands after payment of the scheduled amount of debts. That, notwithstanding the discharging order, the Court might direct the Rs. 143-1-8 and the interest subsequently received, to be paid to the insolvent's creditors rateably in respect of interest on their debts calculated down to the date of the discharging order, and that the balance should be paid to the insolvent or his representative. That the interest subsequently received by the official assignee was "neither after-acquired property" within the meaning of Section 59, nor "a debt growing due to the insolvent before the Court shall have made its order" within the meaning of Section 7 of 11 Vict., c. 21. *In the matter of Thomas Pereira*, 1 Mad. Rep., 217.

C. & Co., merchants, carrying on business at Manchester, brought a suit against I. C., official assignee, who resided in Calcutta, as assignee of the estate of B. & Co., merchants, carrying on business at Calcutta, and S. & Co., and Mc. C. and others, merchants, carrying on business in London and Glasgow, respectively. C. & Co. alleged in their plaint that under an arrangement with B. & Co. and S. & Co. they shipped, on the joint account of the three firms, goods to B. & Co. at Calcutta, drawing for the price on S. & Co., who accepted their drafts in respect thereof; that C. & Co. had a one-third share in the above joint accounts; S. & Co. had a one-third share, and B. & Co. and M. & Co. had a one-third share between them; that the whole of the goods were purchased and paid for by C. & Co.; that at the time the acceptances were given it was distinctly agreed upon by all the parties that the bills should be met and paid out of the sale proceeds of the goods, "which were thereupon specifically appropriated thereto;" that S. & Co. subsequently suspended payment in December, 1866, and B. & Co. in January, 1867; that in February, 1867, B. & Co. filed their petition in the Court for the relief of insolvent debtors at Calcutta, having previously sold a portion of the goods, and delivered the remainder to I. S. & Co., as agents, for sale on account of C. & Co. and the other parties interested, I. S. & Co. being instructed by B. & Co. to hold the same to a separate account of B. & Co.; that I. S. & Co. had received the proceeds of the sale of the whole of the goods; that the proceeds arising from the sale had been handed over by I. S. & Co. to I. C., who threatened and intended to apply the same in payment of the general body of creditors of B. & Co. C. & Co. prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had come into the hands of I. C. in respect of the goods; that I. C. might be declared answerable to C. & Co. for the amount which should be found to be due to them on such account; that C. & Co. might be declared entitled to the sum so found due for the price of the goods and other payments made by them on account of the goods; that I. C. might be directed to pay to C. & Co. what should be found due to them on taking an account; that the proceeds might be directed to be paid amongst the parties to the suit, according to their respective shares and interest therein; and that in the meantime, I. C. might be restrained, by injunction, from paying over the same to any one except C. & Co. On the case coming on for settlement of issues, the suit was dismissed by Norman, J., on the ground that the Court had not jurisdiction to declare the rights of parties as prayed, and no cause of action was disclosed against the official assignee.

Held on appeal that the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. C. & Co. had a right to have the question tried whether, by the alleged arrangement, the proceeds of the goods were specifically appropriated to payment for the goods, and the Court had clearly jurisdiction to compel I. C., the official assignee, to apply the proceeds, so far as they may have been specifically appropriated. *Collie* v. *Cochrane*, 1 B. L. R., O. C., 131.

The execution of a letter of license to an insolvent by all the creditors mentioned in the schedule to his petition in the Insolvent Court, upon which his petition in the Insolvent Court was dismissed, was held to be sufficient consideration to enforce the contract to forbear against one of the creditors, although all the creditors were designated together as one party in the deed, and there was no express declaration that each creditor executed in consideration of all the others executing. *Bundseedhur Poddar* v. *Ramjee Morarjee*, 2 Ind. Jur., N. S., 243.

In a suit for money due on three promissory notes, two of them executed by defendant and one T. in favour of plaintiff, the third by defendant alone, the defence was that the plaintiff agreed to give up three notes sued upon, and to take in lieu thereof a single note signed by T., while a petitioner in insolvency, in favour of defendant, and by defendant endorsed to plaintiff. *Held*, as the consideration for the making of that note by T. was

the defendant's withdrawing his opposition in the Insolvent Court, that that arrangement was brought about by plaintiff to secure to himself and defendant an undue share of the insolvent's property, and was an arrangement contrary to the policy of the Insolvent Act, and therefore void. *Agar Chand* v. *P. Vtrarâghavahe*, 3 Mad. Rep., O. J., 172.

When A., a holder of a hoondee drawn up and accepted by the firm of B., procured that firm, when it was on the verge of insolvency, to sell him certain property in payment of the hoondee; but, before his obtaining possession, C., another creditor of, and decree-holder against, the firm, got it sold in satisfaction of his debt,—*Held* on A.'s suit that the sale in his favour cannot, in the absence of any finding of fraud, be set aside merely on the ground that the effect of it has been to deprive the other creditors of their powers to have recourse to the property. *Daloo Ram* v. *Shiva Pershad*, 2 Agra Rep., A. C., 71.

Claims of European Assistants and Native Establishments and Workmen of Insolvent Firm. *In the matter of Parke Pittar and another, insolvents (Charles Nephew and Co.)*, 6 B. L. R., Ap., 144.

A claim was made against the estate of an insolvent in respect of certain bills of exchange, on which dividends had been declared in favour of the present claimant by the official assignee, on the estates of two other insolvents, but which bills of exchange were also included in the present claim. *Held* that the dividends declared on the two other insolvencies must be deducted from the amount of the claim, though no payment in respect of the dividends declared had been actually made. *In the matter of Parke Pittar*, 8 B. L. R., 118.

In 1870 the firm of S. M. and Co., of Calcutta, authorized A., of the firm of C. N. and Co., also of Calcutta, to indent for them for iron from England. In pursuance of such authority, C. N. and Co. ordered through their London agents, P. P. and Co., a shipment of iron; which was duly shipped by P. P. and Co., who drew against the said shipment two bills of exchange for Rs. 10,000 and Rs. 1,484-10 respectively on the firm of S. M. and Co., in favour of C. N. and Co. The bills on presentation were duly accepted by S. M. and Co., and afterwards discounted by C. N. and Co. with the Chartered Mercantile Bank, C. N. and Co. at the same time depositing with the bank as collateral security for the payment of the bills the bill of lading for the iron shipped from England by P. P. and Co. Subsequently both S. M. and Co. and C. N. and Co. filed their petitions in the Insolvent Court, and were adjudicated insolvents. In the schedule of S. M. and Co. the bank was inserted as a creditor in respect of this transaction for Rs. 11,484-10. When the bills of exchange became due they were duly presented for payment to the acceptors, but were dishonoured and protested by the bank for non-payment, and on such non-payment the bank sold the shipment of iron for which it held the bills of lading, and realized the sum of Rs. 10,073-12-6. The bank claimed to prove for the whole amount in the schedule against the estate of S. and Co. *Held* that the bank was only entitled to prove for so much as was due to it on the bills of exchange after deducting the amount realized by the sale of the iron. In the circumstances of the case, C. N. and Co. were interested in the shipment of iron as well as S. M. and Co., and therefore there was no obligation on the bank to give up the security before proving its claim, but it might have proved for the whole amount of the debt and retained the security. *In the matter of Shib Chandra Mullick*, 8 B. L. R., 30.

To an action brought, prosecuted, or defended by the official assignee, it cannot be objected that such action was brought, prosecuted, or defended without leave first obtained from the Court. Should, however, the official assignee bring, prosecute, or defend any such action without leave first obtained from the Court, he will do so at his own risk in regard to the matter of costs. *Cochrane* v. *Owen*, 2 Hyde's Rep., 150.

Where money due to an insolvent is deposited in Court, and the Court orders it to be paid to creditors who had attached the money, instead of the official assignee, the remedy open to the latter is a suit for an injunction to restrain the creditors, and an application for an order under Section 92 of Act VIII of 1859. *In the matter of A. B. Miller*, 12 W. R., 103.

4.—Official Assignee and Vesting Order.

On the 15th of March, 1862, the petitioner brought an action in the Supreme Court against the insolvent to recover a sum of money, and on the 17th of that month the usual summons was served on the insolvent. On the last-mentioned day the insolvent was committed to prison on a charge of murder, notwithstanding which, on the 21st March, 1862, he filed his petition in the Insolvent Court. The usual order was then passed, vesting all the insolvent's estate and effects in the official assignee from the date of the filing of the petition. On the 26th March, 1862, the present petitioner recovered judgment in his action in the Supreme Court. The insolvent was tried and convicted and sentenced to death, and on the 14th of April, 1862, before the insolvent filed his schedule in the Insolvent Court, the sentence was carried into execution. *Held*, first, that Section 6 of 2 Vic., c. 21, is not imperative; and, secondly, that Sections 21 and 26 of the same Act give the official assignee ample powers for the ascertainment and realization of an insolvent's estate without the aid of a schedule. *In re Kallee Churn Khettry*, 1 Ind. Jur., O. S., 16.

R. carried on business in Calcutta in partnership with B. and C., under the style and firm of B. and Co. Goods were consigned on triplicate account to B. and Co., B., B., and Co., and another. The consignors wrote to B. and Co.: "You will please hand over the goods, as per annexed list, to B., B., and Co., Calcutta; they are bought, as you are aware, under special agreement on triplicate account." Before the goods had arrived B. and Co. stopped payment. B., B., and Co. were creditors of B. and Co. After B. and Co. had stopped payment, on the application of B., B., and Co., R. endorsed over, without consideration, the bills of lading to B., B., and Co., who thereby obtained delivery of the goods, and proceeded to sell the same. Within two months of the endorsement T. R. filed his petition of insolvency. *Held* that, under Section 24 of the Insolvent Act, it appearing on the evidence that at the time of the filing his petition

the goods were, as to one-third, the insolvent's property, the official assignee was entitled to have the goods, &c., handed over to him, and an account in respect of such of the goods as had already been sold. *In the matter of Robinson*, 2 Ind. Jur., N. S., 273.

A vesting order in insolvency is in effect an assignment in trust for the benefit of creditors, and is paramount to the right of an attachment before judgment-creditor, as it is more equitable that property under the control of the Court should be applied for the benefit of all the creditors than for the exclusive advantage of one. *Sava Ramji* v. *Jadhavji Nathu; Ex-parte Gamble, Official Assignee*, 2 Bom. Rep., 165.

Held as to an objection taken, that the vesting orders relied upon by the official assignee were signed by himself and not by the clerk of the Insolvent Court (as directed by Rule 57); that in the face of an established practice of the office, that the clerk and the official assignee should, in the absence of either, and in the transaction of official business, sign one for the other, and no attempt having been made to set aside the vesting orders for irregularity, the District Court, as well as the High Court on appeal, was bound to regard such orders as in full force and effect. The High Court, however, considered the practice, so far as it permitted the official assignee to sign vesting orders, objectionable and requiring alteration. *Gamble* v. *Bholagir and others*, 2 Bom. Rep., 147.

It is not necessary for the assignee to obtain the leave of the Court before commencing an action; the absence of such permission is matter of objection only between the assignee and the Court of Bankruptcy, and not between the assignee and the other party to the suit. *Re Latapie*, Cor. Rep., 4.

A mortgage executed by an insolvent (who has not obtained a certificate and discharge) is subject to the lien of the mortgagee in priority to the claim of the official assignee under the insolvency. *Moses Karakoose* v. *Benjamin Brooks*, 4 W. R., P. C., 62.

Property attached before decree passes to the official assignee under an insolvency where the adjudication and vesting order are obtained after decree, and where the attaching creditor has not proceeded to sell.

Semble,—The official assignee has priority over the execution creditor, unless the latter has actually sold under the attachment, and received the proceeds from the officer of the Court. *Rampershaud Roy and others* v. *Kallachand Dass, an insolvent*, 1 Ind. Jur., N. S., 373.

The debts on which interest ought to be allowed to creditors out of a surplus remaining in the official assignee's hands, after payment of the scheduled amount of debts, are such only as bear interest by the contract of the parties, either express or implied; not upon judgments or any other debts with respect to which interest could only be recovered *quâ* damages. *Peranmal* v. *Venkatammal*, 1 Mad. Rep., 223.

On the 22nd July A. brought an action in the Calcutta Court of Small Causes against the members of the firm of B. and Co., and obtained judgment on the same day. On the 23rd July property belonging to B. and Co. was seized by a bailiff of the Court in execution of the decree. On the 26th July the members of the firm of B. and Co. were adjudicated insolvents, and the usual vesting order was made. On the 30th July the official assignee gave notice to the seizing bailiff of his claim to the property seized. *Held* (*per* Norman, J., on a reference from the Small Cause Court) that the official assignee was entitled to the property in priority to A. *Cochrane* v. *Gladstone, Wyllie, and Co.*, 2 Ind. Jur., N. S., 337.

A. obtained a decree against B., and in execution attached property of B. in Zillah Dinagepore, January, 1868, which was sold on the 19th of March. In the meantime B. had been adjudicated an insolvent, and the usual vesting order was made on March 6th. Notice of this order reached the Judge of Dinagepore after the sale, but before the sale had been confirmed, and the proceeds handed over. *Held* that the official assignee was entitled to the proceeds of the sale. *Indra Chand Dogar* v. *Tarachand Dogar*, 2 B. L. R., A. C., 61.; S. C., 10 W. R., 353.

Leave granted to official assignee, under Rule 25 of the Insolvent Court, to defend a suit without paying Court fees. *Hiralall Seal* v. *Schiller*, 7 B. L. R., Ap., 61.

In September, 1867, A. obtained a decree against B., and on 12th January, 1868, caused a piece of land to be attached in execution. On 17th April, 1868, it was sold by order of the Zillah Judge, and bought by C. Before this, however, the judgment-debtor, B., had filed his petition in the Insolvent Court, and on the 6th March, 1868, a vesting order was made. On 24th July, 1868, the official assignee sold the premises by the order of the Insolvent Court.

The purchaser at the last-mentioned sale now sued to recover the property from the purchaser at the sale in execution of A.'s decree.

Held (*per* Couch, C. J., Bayley, Kemp, and Jackson, JJ.),—that the vesting order passed the property to the official assignee, subject to being divested by a sale in execution of the decree; that the sale in execution by order of the Zillah Judge was legal notwithstanding the vesting order; that the purchaser at the sale by order of the Insolvent Court had no right to recover it from him. The attaching creditor had a right to have the attached property sold, and the money realized by the sale paid to him.

Per Phear, J.—The jurisdiction of the Zillah Judge to order the sale was not affected by the vesting order; but before making the order for sale the official assignee should be heard; and unless special reason be shown upon the official assignee's application, the execution proceedings should be stayed or set aside. In the present case it must be assumed that the Judge made the order for sale in due course, and consequently that sale operated to pass the property out of the hands of the official assignee into those of the auction-purchaser. *Anand Chandra Pal* v. *Panchilal*, 5 B. L. R., 691.

In execution of a decree of the Small Cause Court, certain goods belonging to the judgment-debtor, together with a sum of Rs. 227 in cash, were seized on the 22nd November; and on the 30th the Rs. 227, together with the proceeds of sale of some of the goods, were placed to the credit of the decree-holder in the books of the Court. On the 25th November the judgment-debtor was

declared an insolvent, and by a vesting order of the same date his estate was transferred to the official assignee. *Held* that the execution was complete by the seizure of the money, and that the official assignee was not entitled to the sum of Rs. 227 as against the execution-creditor. *Grish Chandra Roy* v. *Prasanna Kumar China*, 4 B. L. R., O. C., 94.

The Insolvent Court has a discretionary power, under Section 26 of the Insolvent Act, to order any person who has the possession of, or has under his power or control, any property of the insolvent, to deliver over such property to the official assignee. *In re Dwarkanauth Mitter, S. M. Rutanmani Dasi* v. *A. B. Miller*, 4 B. L. R., O. C., 63.

A widow, as administratrix of her husband's estate, sued to recover certain articles of moveable property belonging to that estate, which had been wrongfully appropriated by her son. Defendant pleaded that if the articles belonged to his father's estate they had been fraudulently kept out of the father's schedule when the latter had passed through the Insolvent Court; and that the widow could not claim the property, as she would thereby be taking advantage of her husband's fraud. He also pleaded a set-off on account of a claim against his father. *Held* that as the official assignee refused to make any claim to the property in dispute, no third party was competent to set up a claim. The creditors had their remedy against the official assignee. The right of ownership was still vested in the plaintiff, notwithstanding the alleged fraud. *Manly* v. *Manly*, 14 S. W. R., C. R., 136.

The official assignee of the Insolvent Court is entitled, under the vesting order, to possession of the insolvent's estate even when that estate has been attached in execution of a decree, and an order directing the sale of it has been passed. But if a sale has taken place before the vesting order, the property in the subject of the attachment has passed from the judgment-debtor to the auction-purchaser, and the proceeds of the sale are primarily charged with the satisfaction of the decree or decrees in execution of which the sale has been made.

The expression "private alienation," in Section 240 of the Code of Civil Procedure, does not refer to an alienation effected by a vesting order of the Insolvent Court under Section 7 of the Indian Insolvent Act; such an alienation is rather an alienation by operation of law than one by the judgment-debtor.

Semble,—That Section 89 of the Code of Civil Procedure was introduced, not for the purpose of restraining the ordinary effect of attachment, but for the purpose of preventing the same view being taken of attachments before judgment as had been taken by the Indian Courts of the writ of sequestration.

When attachment of property has preceded decree no fresh attachment is necessary subsequent to decree. *Sarkies* v. *Musst. Bundoo Baee*, 1, 6, N. W. R., 81.

In a suit by the official assignee of an Insolvent Court, such official assignee should be made the plaintiff, and the law then allows him to sue by his recognized agent, but the law does not allow the recognized agent to sue as plaintiff.

In a suit so incorrectly instituted the plaint should be returned for amendment. *Carter* v. *Misree Lal*, 2 N. W. R., 179.

The vesting of an insolvent's property in the official assignee is liable to be divested by a sale in pursuance of an attachment subsisting at the time of the vesting order. *Annund Chunder Paul* v. *Puncha Lall Soor*, 15 S. W. R., C. R., 257.

5.—Act XXVIII of 1865.

An order made under Act XXVIII of 1865 for the winding-up of the estate of a trader not only stays the further prosecution of suits, &c., against him, but also prevents the completion of an execution against his immoveable or ordinary moveable property, if such execution have not been consummated by seizure and sale before the filing in Court of the resolution passed at the meeting of the creditors, unless the leave of the Court be given to the execution-creditor to proceed notwithstanding the winding-up order.

Such leave ought not to be given except upon special grounds. Laches of the execution-creditor will be an obstacle to his obtaining such leave.

Under the Insolvent Debtors' Act (1 & 2 Vic., c. 110, English Repealed Act; 11 & 12 Vic., c. 21, India) the mere delivery of the writ of *fi. fa.* to the Sheriff or his deputy for execution bound the goods as against the assignees in insolvency, subject to the right of the execution-creditor to have satisfaction of his debt by sale. But in bankruptcy the law is otherwise. The execution must be levied by seizure and sale before the date of the fiat or the filing of the petition for adjudication; otherwise the execution-creditor is entitled only to a rateable part of his debt with the other creditors.

The practice of the High Court under the Civil Procedure Code, on the execution of decrees for money, either against immoveable estate, has been, in the first instance, to issue a writ of attachment, and subsequently, on its return by the Sheriff duly executed, to issue a writ directing a sale. The writ of *fi. fa.* which issued from the Supreme Court was an authority to the Sheriff not only to seize, but also to sell. Section 250 of the Civil Procedure Code applies neither to executions against immoveable property nor to executions against debts due to the defendant; and in order to give to third parties full opportunity of vindicating their right before sale, and also to give the defendant an opportunity of paying, it has not been usual to issue process of attachment and sale simultaneously even against personal property, and it would not seem to be proper to do so, except under special circumstances. *Financial Association of India and China* v. *Pránjivandás Harjivandás and another*, 3 Bom. Rep., O. C., 25.

XIII.

JOINT-STOCK COMPANIES.

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1.—SHARES AND THEIR TRANSFER.

Where a contract has been made for the sale of shares deposited with a bank as security for an advance, the vendor is not bound to disclose the fact to the purchaser when there can be no reason to anticipate such a depreciation of value in the shares as would entitle the bank to refuse to transfer. *Narayan Succaram* v. *Dr. Bhawoo Dajee*, 1 Ind. Jur., N. S., 154.

On the 19th April, plaintiff sold to defendants sixty shares in the N. Bank, to be delivered and paid for on Thursday, April 26th. The sold note was as follows :—

Calcutta, 19th April, 1866.

BABOO LALL MOHUN MULLICK.

Sold by your order, and on your account, to Messrs. Peary Chand Mittra and Sons (Metcalfe Hall) sixty shares in the N. Bank at rupees four premium per share.

(Signed) SREE COOMAR SIRCAR, *Broker*.

The bought note exactly corresponded.

On the 23rd April, plaintiff received from defendants the following :—

From Peary Chand Mittra and Sons, to Baboo Lall Mohun Mullick.

With reference to the sixty N. Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, *viz.*, two for twenty-five shares each, and one for ten shares.

(Signed) PEARY CHAND MITTRA AND SONS.

On the 26th April, plaintiff sent to defendants sixty N. Bank shares, some standing in the name of H., and some in the name of P., accompanied by transfers, all executed by P. alone. These shares were all returned by the defendants, with the following memorandum :—

From Peary Chand Mittra and Sons, to Baboo Lall Mohun Mullick.

Calcutta, 26th April, 1866.

The accompanying shares in the N. Bank purchased for delivery to-day are not in order.

(Signed) PEARY CHAND MITTRA AND SONS.

Later in the same day, the 26th, plaintiff took personally to defendants the same sixty shares with transfers, executed some by H. and some by P., the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transferee was left blank. These shares were also rejected by the defendants as not in order. Plaintiff then, on April 27th, about 1 P.M., had the shares registered in his own name, and, within two hours afterwards, sent them to the defendants with corresponding transfers, and with the following letter :—

To Messrs. Peary Chand Mittra and Sons.

DEAR SIRS,—In compliance with request in your memorandum of the 23rd instant, I now send you the sixty shares N. Bank, with three transfer deeds, and will feel obliged by your paying the amount to the bearer. Yours faithfully,

(Signed) LALL MOHUN MULLICK.

Calcutta, 27th April, 1866.

The defendants declined to receive the shares, and they were re-sold at a loss.

The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benamee holder for H. and P.

The articles of association of the N. Bank required transfers to be in the form F. appended to Act XIX of 1857. The transfers tendered by plaintiff were on each occasion in that form.

The above facts were found by the First Judge of the Small Cause Court in Calcutta, who referred the case for the opinion of the High Court, under Act XXVI of 1864, Section 7.

He also stated that the defendant swore that the "Friday, the 27th April, mentioned in their memorandum of the 23rd April, was inserted by accident, instead of Thursday," the 26th April, and that they consequently rejected the tender on the 27th.

Held, 1, that the contract as it stood on the bought and sold notes was a contract by the vendor (as in Stephen *v.* De Medina) that "in consideration of such a sum, I will execute any proper conveyance which you tender me."

2. That the memorandum of April 23rd, coupled with the fact of the vendor having made tenders of

transfers of the shares, was evidence enough to show that the vendor bound himself to tender a proper conveyance to his vendees.

3. That the document of conveyance must be complete at the time of tender, or capable of being then made complete.

4. The transfers, with a blank for the name of the transferee, were incomplete and insufficient, the vendor showing no authority from H. and P.

5. That the Court below must deal with the question of fact, whether or no the mention of Friday, the 27th, instead of Thursday, the 26th, was a mistake; and, *semble*, that, if the defendants had received the blank transfers, and acted upon them, the waiver would have rendered them complete. *Lall Mohun Mullick* v. *Peary Chand Mitter and others*, 1 Ind. Jur., N. S., 383.

Held that a contract to deliver shares in a public company is sufficiently performed when the vendor places the vendee in such a position as enables him to become the legal owner of them.

A share in a company signifies a definite portion of its capital, and does not necessarily mean the right of a person whose name is then actually on a register of shareholders. *Parbhudas Pranjvandas* v. *Rámlal Bhágirath*, 3 Bom. Rep., O. C. J., 69.

In a suit to recover damages for the non-acceptance of shares, where the vendor had contracted to execute proper transfers and do all other things necessary on his part to transfer the shares, and to bear the expense of such transfer,—*Held* on the issue whether the plaintiff was ready and willing to perform his part of the contract, that it was sufficient to show that he had in his possession at the time fixed for the performance of the contract on his part such certificates of the shares contracted to be sold as were required by the law, and that he tendered the same with a deed of transfer to the purchaser, to effect the transfer; but that it was the duty of the purchaser himself, in such case, having accepted the shares, to have the transfer made into his name in the books of the company.

The finding of the Court below on the first issue being therefore reversed, the suit was remanded for trial of the issue whether the contract was a wagering one, the Judge having omitted to determine that, and the defendant not having given the evidence upon it, in consequence of the first issue being found for him on the evidence given by the plaintiff. *Maganbhai Hemchand* v. *Manchabhai Kallianchand*, 3 Bom. Rep., O. C. J., 79.

In an action by A. against B. for damages for non-acceptance of shares by B. alleged to have been bought by him of A., it was shown that the shares were bought by C., who after the purchase entered into an arrangement with B. that the purchase should be on their (B. and C.'s) joint account. *Held* there was no contract between A. and B., and the suit was dismissed. *Barrow* v. *Stewart*, 1 Ind. Jur., 226.

Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer. This Bank applied to the National Bank, without producing a letter from the pledgor, to register their lien, and on its refusal sold the shares to the plaintiff and delivered to him the transfer, also in blank. The plaintiff inserted his own name in the transfer, and requested the National Bank to register the shares in his name

In an action against the National Bank to recover the price of the shares,—*Held* that they were justified in refusing to register. *Held* also that the plaintiff, having received back from his vendors the price of his shares, had no cause of action. *Knowles* v. *The National Bank of India*, 2 B. L. R., O. C., 158.

A. contracts with B. to sell him three numbered shares to be transferred upon payment of the price on or before a certain day.

Held that the covenants to transfer and to pay the price are concurrent; and that the ability of A. to constitute B. the legal owner of the shares contracted to be sold together with willingness to do so, amounts to "readiness and willingness" on the part of A. to fulfil his part of the contract. *Imperial Banking and Trading Co.* v, *Almura Madhaovji*, 2 Bom. Rep., 260.

Plaintiffs contracted with defendant to sell him 250 shares in the Alliance Financial Corporation, and 10 shares in the Mazagan Reclamation Co., delivery to be made at defendant's option within six months from date of contract, and cash to be paid on due delivery to defendant or his order. On the last day for delivery plaintiff produced allotment receipt papers, all bearing date prior to the date of the contract, for the numbered shares contracted to be sold in both companies. The Alliance Financial papers were endorsed by the original allottees; but neither transfers nor applications for transfers signed by the original allottees were offered, nor had any such been executed, although the Corporation had opened transfer-books long before. Of the Mazagan Reclamation receipts, nine were endorsed by the allottees, one had no endorsement, and over the allottee of it and of another receipt plaintiffs had no power to enforce delivery. The Mazagan Reclamation Co. had not opened transfer books until long after the last day of delivery. On the issue whether plaintiffs were ready and willing to deliver the shares,—*Held* as to the Alliance Financial shares, that plaintiffs not being in a position to have constituted defendant as owner thereof, must fail in their suit in respect to them; and as to the Mazagan Reclamation shares, that although plaintiffs had done all that they were required to do by the usage of the market to transfer the interest in eight of them, yet the contract being an entire one, they must fail in respect to them also. If a party, bound to do an act upon request, is ready to do it when required, he will have performed his part of the contract, although he might have happened not to have been ready had he been called upon at some anterior period. *Jivaraj Megji and another* v. *Paulton*, 2 Bom. Rep., 267.

Plaintiffs contracted with defendants to sell them two hundred shares, on payment of the price by defendants on or before the 1st of July, 1865. Plaintiffs were in possession of the shares at the time of the contract, and continued so until they sold them after default made by defendants, and they were registered as holders of the shares on the 1st July, when the share certificates with transfer deeds in blank were tendered to defendants, who

refused to accept them or to pay the purchase-money.

On the issue whether plaintiffs were ready and willing to perform the contract on their part,—*Held* that the acts necessary to be done on the 1st July were current; and that plaintiffs, being able and willing on that day to make a valid transfer, if defendants had been ready to pay the price, were not bound to take any further steps until the purchase-money was paid by defendants. There is nothing in the Code of Civil Procedure which imposes upon the Judge the duty of allowing an issue to be raised on a point of law which he considers to be perfectly clear. *Imperial Banking and Trading Co.* v. *Pranjivandas Harijvandas*, 2 Bom. Rep., 272.

A plaintiff cannot recover on an account stated which springs out of transactions coming under Act XXI of 1848. *Nobinchunder Mookerjee* v. *Prosunno Coomar Bannerjee*, 1 Ind. Jur., O. S. 126.

2.—Shareholders and Contributories.

A. and B., proprietors of indigo factories, sold them to the E. B. Company, receiving in part payment 1,000 fully paid-up shares of the company, which was a company registered under Act XIX of 1857, A. and B. covenanting to indemnify the company from all loss, and to guarantee a dividend of 8 per cent. for the term of two years. A., being indebted to C., deposited the shares with him as a security for the debt. C. gave notice of this to the company before he made the advance to A., and the company assented to the deposit.

A. and B. afterwards became jointly indebted to the company, in respect of the covenant and guarantee.

Held that C. was entitled to have the deposit of the shares registered in the books of the company, and to be paid dividends upon them. But where the deposit by A. was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend,—*Held* that, under this contract of A., C. could not receive the dividend, though he could under a contemporaneous general power of attorney from A. *Pietsch* v. *Eastern Bengal Indigo Company, Limited*, 1 Ind. Jur., N. S., 278.

In a suit brought by a transferee of shares, in a joint-stock banking company formed after the passing of Act VII of 1860, and neither incorporated nor registered when the plaint was filed to compel the directors, trustees, and public officers of the company to give up the share certificates which had come into the possession of the bank, or to pay damages to the plaintiff,—*Held* (by Couch, C. J., and Sargent, J., affirming in appeal the decree of Arnauld, J.) that the company being illegal under Section 2, Act XIX of 1857, the suit was not maintainable. *Manikji Sorabji* v. *C. N. Cama and others*, 3 Bom. Rep., O. C. J., 159.

Where a company refused to register a transfer of shares purchased by an execution creditor, on the ground that no share certificate had been produced, but the sale had been confirmed, and transfer signed by a Judge of the High Court under Act VIII of 1859, Section 267, a writ of *mandamus* was directed to issue out of the Court, ordering the company to register the transfer of such shares, and to issue fresh share certificates in respect of them. *Queen* v. *The East Indian Railway Co.*, Bourke's Rep., O. C., 395.

In June, 1865, was projected the Pegu Saw Mills Company, Limited, appellants being amongst the projectors, and having signed the prospectus, and entered their names in a list (attached to the prospectus) of intending shareholders, each to a specified extent. Their names were also entered as such shareholders in the registration of the company under Act X of 1866. In January, 1867, certain contributors (amongst whom appellants were not) and certain creditors applied to the Recorder of Rangoon, under Clauses 4 and 5, Section 191, to have the company wound up, and an official liquidator appointed. A liquidator having been appointed, he applied to the Court to call upon each of the contributories, named in a list which he presented, to pay up his contribution. Accordingly the Recorder declared the appellants to be contributories, and directed each of them to pay the amount appearing against his name.

Held that this was a suit by the official liquidator to have appellants declared contributories, and an appeal therefore lies from the Recorder's decision so declaring them.

Held that the liability, under Sections 6, 11, 18, 22, 36, and 37 of a registered shareholder, as member of a company, to contribute is a *primâ-facie* liability only; it being open to him to show that although his name is on the register yet he did not agree to become a member; and that, as appellants were not cognizant of (much less did they assent to) the registration of their names as shareholders, whilst they refused to receive any shares or pay up any calls or deposits, the sole step taken by them of joining others in putting forth the prospectus and affixing their names therein to a certain number of shares cannot be said to be an agreement to become members of the company, and so they are not contributories. *James Cotton* v. *The Pegu Saw Mills Company*, 9 W. R., 539.

The register of shareholders required by Section 14 of Act XIX of 1857 may consist of particulars entered in different books, which taken together substantially contain all the information which the Act requires.

If there be a substantial compliance with the requisitions of the Act the register is not invalidated by reason of slight deviations from its directions or by unimportant omissions or defects in particulars of information specified in Section 14.

If the certificate of registration be not forthcoming, the fact of incorporation may be proved *aliunde*. *In re Alliance Financial Corporation, Balney's case*, 3 Bom. Rep., O. C. J., 106.

Where shares in the East Indian Railway Company belonging to an execution-debtor who had absconded with the share certificates, were sold in execution, the transfer being executed by a Judge under the provisions of Act VIII of 1859, Section 267,—*Held* that although the company's deed of settlement, under which their Act of Parliament declared that the company should be regulated, gave to the Board of Directors a power of approval or disapproval of intending shareholders, they had no option as to registering a shareholder who purchased shares in execution; and that they were also

bound to grant him, under the circumstances, new share certificates. *Reg. on the prosecution of Toolsee Dass Nundy* v. *East Indian Railway Company*, 1 Ind. Jur., N. S., 258.

Defendant applied for 100 shares in a company, and on their being allotted to him paid Rs. 1,000 in deposit. His name was placed upon the register of shareholders, but he refused to sign the articles of association. *Held* that he was not liable as a shareholder. *The Goosery Cotton Mills Co.* v. *James Stey*, 2 Hyde's Rep., 238.

J. S., an allottee of 25 shares in a company registered under Act XIX of 1857, signed the memorandum and articles of association, and paid the first call on the 28th September, 1863, on which he sold the 25 shares to B. P., the chairman of the company. The purchase by B. P. was made in pursuance of an agreement entered into between B. P. and P. H., another director of the company, and two other persons, who were members of the firm of B., B., and Co., and then managers of the company, which they accordingly jointly purchased, and subsequently divided among themselves; B. P. taking for himself two-fifths of the whole, including the 25 shares of J. S.

The fact of the joint purchase was not communicated to the other directors of the company, nor was there any evidence to show that their attention had been called to certain entries in the books of the company relating to B. P. having paid the second call on his two-fifths of the joint purchase.

J. S. got no notice to pay the second call, and never applied for or obtained a certificate for the 25 shares; but such a certificate was obtained by B. P. on the 10th of October, 1864, certifying that J. S. was the shareholder. J. S. had signed a blank form of transfer and a blank form of request to the directors to transfer, which were undated and without particulars; but B. P. never executed the transfer as transferee, and the shares never were transferred to his name on the register, nor was the sale to him ever brought to the notice of the directors as a board, or to any of his partners, of any portion of the 2,800 shares; and the articles of association required the consent in writing of the directors to every transfer.

On application by J. S. that his name should be removed from the list of contributories as framed by the official liquidator, and the names of B. P.'s trustees under Act XXVIII of 1865 substituted therein in respect of the 25 shares,—*Held* that J. S. was not exonerated, under the circumstances, from the duty of obeying the articles of association and the provision of Act XIX of 1857; that the act of an individual director in his private capacity ought not to bind the board, which had never authorized or ratified his conduct; and that the official liquidator, as representing the body of shareholders, rightly insisted upon keeping J. S.'s name on the list of shareholders. *In re East Indian and Banking Company. Jamnadar Savaklal's case*, 3 Bom. Rep., O. C. J., 113.

A company registered under Act XIX of 1857, and enabled by its memorandum of association to purchase its own shares, purchased seven thousand of them which were in scrip, share certificates having never been issued in respect of them. The letters of allotment indorsed by the allottees and receipts for the first call were made over, at the time of purchase, to the company. No transfers, however, were executed by the allottees, nor were the shares registered by the company in their own name, but they continued to stand in the names of the allottees. Two thousand of the seven thousand shares had been re-sold by the company; and the remaining five thousand were mentioned in a list, kept by the company, of shares purchased by them.

On application to the allottees to have their names removed from the list of contributories, as framed by the official liquidator,—*Held* that the company, through its directors, having, as well by the act of purchase as by their subsequent conduct, treated themselves as the owners of the shares, could not be permitted to take advantage of their own neglect, or that of their officers, in not registering the shares in the name of the company, and that the name of the company therefore be substituted as holders of the shares. *Mercantile Credit and Financial Association. In re ex-parte Dahie and others*, 3 Bom. Rep., O. C. J., 125.

No appeal lies from an order of a District Court placing the name of an alleged allottee on the list of contributories of a company wound up under Act XIX of 1857. *Jamiyatram Himatram* v. *The Gujarát Trading Company, Limited*, 6 Bom. Rep., A. C. J., 185.

A member of a duly registered company whose shares have been forfeited is as much a past member as a member whose shares have been surrendered or transferred, but he is not liable to be placed on the list of contributories until it is established that the existing members are unable to satisfy the contributions required to be made by them, in pursuance of the Indian Companies' Act, and that the debts, in respect of which he is called upon to contribute, were incurred prior to the date on which he ceased to be a member of the company. *In re the Allahabad Trading Company*, 1, 6, N. W. R., 101.

In January, 1865, the plaintiffs purchased from the defendants 2,000 shares in the defendants' company at 15 per cent. premium, for which they paid in cash Rs. 3,20,000, and the defendants simultaneously agreed to repurchase for future delivery and payment at a fixed time in July, the same 2,000 shares at 29½ per cent. premium.

The contracts for the repurchase were signed by three directors of the defendants' company, and on each was a memorandum, initialled by two of them, referring to a list of the "Share Receipts," delivered with the words "we are duly to examine and receive the same at the fixed time."

One hundred and ninety letters of allotment in the names of several persons, and for various numbers of shares, endorsed by the original allottees, and initialled by one of the three directors, were, together with receipts for the first call, handed over to the persons who acted for the plaintiffs by the three directors of the defendants' company who made the contracts.

In April the defendants' company made a fresh call, payable on the 4th May. A list of the names and addresses of the original allottees of what were called "shares in the market" (*i.e.*, other than those purchased by the company itself for cash, or held by it on mortgage) was made out from the date of settlement, and notices of forfeiture for non-payment of the call were sent by post. The original

holders of the 190 letters of allotment were included in the list, but no notice was sent to the plaintiffs. On the 27th of May all shares upon which the second call was not paid were declared to be forfeited for the benefit of the company. The defendants' company, as stated in the memorandum of association, was established among other subjects for the purchase and sale of debentures, stocks, shares of joint-stock companies (including the shares of this company), and other securities, the making loans and advances on such securities as the directors of the company may think fit.

Held that the contracts for the purchase of the 2,000 shares being within the scope of the authority of the directors, the defendants were bound by them; that the defendants were bound to treat the plaintiffs as the holders of those shares, and to give them the notice required by the articles of association; and that they were not at liberty to give that notice to the original allottees, who, by the admission of the defendants, testified by the acts of their agents in making the contracts, had parted with the shares; that the shares were, consequently, not legally forfeited, and the defendants having refused to accept them, and they being then unsaleable, the plaintiffs were entitled to recover the full price as damages. *Oriental Financial Association* v. *Mercantile Credit and Financial Association*, 3 Bom. Rep., O. C. J., 1.

In a suit brought by a joint-stock company, in liquidation against a former director of the company for Rs. 27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand; but with the words in pencil "due 4th June" put on it, the same day it was signed in accordance with an understanding between the defendant and the other directors that they would not press him for payment before the latter date, and signed by the defendant some days after the day it bore date,—*Held* that a one-anna stamp was not sufficient, under Schedule A, Clause 10 of Act X of 1862. And on the plaint being amended by claiming for the price of shares bargained and sold to the defendant, but not accepted by him, and for money found to be due on an account stated.

Held that the plaintiffs could not recover, 1st, because no shares were really bargained and sold, as the plaint alleged; and what was done was, according to the intention and understanding of the parties, a mere form gone through, for the purpose of deceiving the public, and making it appear that 10,000 shares had been sold at a certain price; and, 2ndly, because the contracts were made for the purpose of defrauding other persons.

Held also that the 9th clause of the articles of association (providing that the existing shareholders for the time being should have the option of taking and subscribing for the shares in the additional capital, rateably and in proportion to their respective shares in the existing capital of the company) being imperative, and not merely directory, a deviation from it could not be made, unless with the assent of every shareholder. *Eastern Financial Association* v. *Pestanji Curstenji, shroff*, 3 Bom. Rep., O. C. J., 9.

3.—Powers and Liabilities of Directors.

A. and M., at the request of B., agreed to get up a company which should purchase of B. the good-will, stock, and furniture of Spence's Hotel, and all outstandings due to B., for four lakhs of rupees. The scheme was made public, and shares were applied for in excess of the intended capital. On the 1st May, 1863, the memorandum of association was registered, signed *inter alios* by A. and M. On the same day the prospectus was issued, which stated *inter alia* that "the company have purchased from the former proprietor for the sum of Rs. 4,00,000 the entire stock of hotel and shop, together with the outstandings on the 30th April, 1863, the latter amounting to about Rs. 50,000. The dividend of 10 per cent. is guaranteed to the shareholders." The prospectus was signed by A. and M. and another as directors, but the last took no active part. On the same day an agreement was signed by B., whereby he agreed, in consideration of Rs. 4,00,000 paid by A. and M. as therein mentioned, part, *viz.*, Rs 1,50,000, in paid-up shares in the company, to transfer to them, or Spence's Hotel Company Limited, the good-will, furniture, outstandings, &c. The articles of association were dated 7th September, 1863. A. and M., with two others, formed the first board of directors. These directors, at an extraordinary meeting held on August 1st, presented a report which was adopted by the meeting, in which they said B. had deposited with M. and A. security sufficient to insure the payment of 10 per cent. dividend guaranteed by him to the company. On the 5th of December, 1865, a deed (E.) was executed, with the approval of the company's solicitors, by B. on the one part and A. and M. on the other, which, after reciting that as security for the guarantee of 10 per cent. dividend, B. had deposited with A. and M. 400 fully paid-up shares in the company, witnessed that B. would pay to A. and M. such sums as should be necessary to make up and pay half-yearly a dividend of 10 per cent. per annum; and that he constituted A. and M., his attorneys, to sell the 400 shares, and out of the proceeds to make good the yearly dividend of 10 per cent., and after such payment towards the guaranteed dividend to hold the remaining shares or balance of money in trust for B. absolutely. On the same day another deed (F.) prepared by A.'s private solicitor, was executed by B. on the one part and A. and M. on the other part, which, after reciting an agreement by B. with A. and M. in April that, if they would assist him in forming such company for the purchase of Spence's Hotel, &c. (which company they had, in fact, formed at the time of the execution of the deed), "he, B., would pay or secure to A. and M. such fitting and proper remuneration for their trouble and risk as might be ultimately arranged;" and after reciting deed (E.) &c., witnessed that B. covenanted with A. and M. "that, notwithstanding the trust contained in the before-mentioned indenture (deed E.) whereby the surplus mentioned was declared to belong to B. absolutely, the same surplus should belong to and be the exclusive property of A. and M. in equal shares"; and that, "if the net profits of the hotel should prove sufficient to pay the whole 10 per cent., then the whole of the 400 shares deposited with A. and M. should be retained by them for their own benefit in equal shares." This deed was not disclosed by A. and M. until the filing of their written statement in the

present suit. There was no actual deposit of the 400 shares by B., but A. and M. respectively took 200 shares in their own names. Rs. 10,947-9-6 were paid by A. and M., to make up the deficit in the guaranteed dividend to December, 1864. B., on the 5th December, 1863, also executed a further deed (D.) in which, after reciting that the outstanding debts of the hotel should realize before 1st May, 1865, Rs. 50,000 at least, and that he had deposited with the company 50 paid-up shares as security for this guarantee, he, B., covenanted to pay any deficit, and appointed the company his attorneys to realize these shares, and out of the proceeds to pay themselves the deficit, and subject to this to hold the shares or the proceeds in trust for B., fifty shares were received from B. by A., under the trusts of this deed. The outstandings fell short of the guaranteed amount by Rs. 19,255. *Held* (affirming the decision of Phear, J.) that the suit was rightly brought by the company as plaintiffs. That A. and M. were the agents of the company to effect the purchase, and as such were bound to make for the company the best bargain which they reasonably could, and forbidden to obtain personal benefit or profit.

That A. and M. were trustees of the 400 shares for the benefit of the company, and jointly and severally responsible to make them good; and whatever benefit they took under the secret deed they must make good to the company. A. to be responsible for the 50 shares (but in this respect, and in respect of the details of the accounts between the parties, the decree of the Court below slightly modified). *Anderson and others* v. *Spence's Hotel Company, Limited*, 1 Ind. Jur., N. S., 378.

Although a director of a public company is always clothed with a fiduciary character in regard to any dealings with property of the company in his capacity of director, the rule that a trustee is not allowed to make a profit of his trust does not apply to such a director, *quâ* director only. When a partner of one of the directors of a company did work for the directors as solicitor, and there was nothing to show that he had not been duly appointed by the directors, his claim in respect of such work was allowed.

Distinction drawn between a trustee and a director of a public company. *Re Port Canning Land Investment, Reclamation, and Docking Company, Limited*, 6 B. L. R., 278.

A claim against the directors of a joint-stock company to make good funds of the company expended by them, on behalf of the company, in transactions that the company was forbidden by its articles of association to engage in, is proveable under Act XXVIII of 1865. *The Liquidators of the Indian Peninsula, London, and China Bank* v. *J. L. Scott, Trustee of the estate of Kharsedji Fardemji*, 5 Bom. Rep., O. C., 167.

4.—Powers and Liabilities of Companies.

Where the articles of association of a limited company stated that the objects for which the company was established were for the purchase of the business of an hotel-keeper, confectioner, and provisioner, the future working and carrying on of the said business, and the doing of all such other things as were incidental or conducive to the attainments of the above objects, it was held that the directors had powers to bind the company by the issue of negotiable securities in the ordinary course of business.

Where a note which had been taken by the company as a security from two judgment-debtors of the company was endorsed by the company to a third party, and discounted by him, and was on the due date, not having been taken up by the makers, renewed by the company,—*Held* that such negotiation of the note by the company was within the ordinary course of the business of the company.

Also *held* upon the facts that the power of the company to issue negotiable securities was well exercised, and that the company had due notice of dishonour by the makers. *Choonilall Seal* v. *Spence's Hotel Company, Limited*, 1 B. L. R., O. C., 14.

R. G., on the faith of statements in the prospectus of a company, was induced to apply for fifty shares in the company, which were allotted to him, and he paid the deposit money thereon. At the time of issuing the prospectus there were no other members of the company besides the directors. Some of the material statements in the prospectus were untrue to the knowledge of the directors. The prospectus, which was published on the 23rd June, 1865, contained the following statements: "Capital, fifty lakhs of Rs. in 10,000 shares of Rs. 500 each, with power to increase. Rs. 50 per share to be paid on application, and the balance by calls of Rs. 100 each, to be made within not less than three months of each other. The first call will not be made within less than three months after the closing of the share list. Of these 10,000 shares, 6,000 will be reserved for England, but the operations of the company will not be delayed until they can be sent home and taken up."

On 18th July, 1865, the company advertised that "all the Indian shares being subscribed for, the share list is now closed, and the letters of allotment will be issued at an early date."

In truth, not half the number of "Indian shares" were at any time subscribed for.

On the 22nd November, 1865, the directors resolved that "a call of Rs. 100 per share be made upon the shareholders, payable at the National Bank of India on the 15th December proximo." R. G. received notice of the call, but did not pay it. On 18th April, 1866, the directors desired the secretary to write to shareholders who had not paid their first call in full, asking them to do so at once. R. G., who had not signed the articles of association, on receipt of notice from the secretary, requested to be allowed to withdraw his money, forfeiting one-fifth, or to be allowed to hold five shares instead of fifty. The request was refused by the directors, who on 18th July, 1866, passed a further resolution that the defaulters, among whom R. G. was named, "have notice sent them that unless the amount of the calls due on their respective shares, together with interest thereon at the rate of 12 per cent. per annum from the 15th December, 1865, be paid into the National Bank of India, Calcutta, on or before the 7th August, 1866, legal proceedings will be adopted against them for the recovery without further notice." R. G., on receiving notice of this resolution, wrote, through

his attorneys, informing the directors that he would apply to the High Court to have his name removed from the register of shareholders. The directors thereupon declared the shares to be forfeited. On 25th September, 1866, a resolution to wind up the company voluntarily was passed at a general meeting of the shareholders, and was afterwards confirmed. In the course of the winding-up the liquidator applied to the Court, under Section 154, Act X of 1866, to determine whether R. G. was entitled to a refund of the deposit money paid by him on the fifty shares allotted to him in the company, or whether he was liable to pay, as a contributory, the call in respect of his shares made before the shares were forfeited. It was not until the hearing of this application that R. G. became aware of the facts which proved that the directors had published material statemenls which they knew to be untrue.

Held that the issuing of a prospectus is an act comprised within the term "management and conduct of the company's business." The statements made in the prospectus were the representations of the company. R. G. was entitled to have his contract to take 50 shares set aside, and to be repaid the amount of his deposit money. *In the matter of the Indian Companies' Act*, 1866, *Romanath Gossain's case*, 2 Ind. Jur., N. S., 296.

In a suit filed on the 28th of April, 1866, and brought by a joint stock company, after registration, to recover damages for breach of a contract made with the defendants before registration,—*Held* (by Couch, C. J., and Arnauld, J., affirming on appeal the decree of Sargent, J.) that the contract was illegal under Section 2 of Act XIX of 1859, and that the plaintiffs could not sue upon it.

Where the law is altered while a suit is pending, the law as it existed when the action was commenced must decide the rights of the parties, unless the Legislature by the language used shows a clear intention to vary the mutual relations of such parties. *Guzerat Trading Company* v. *Trikamji Veliji and Co.*, 3 Bom. Rep., O. C. J., 45.

The purchase by the directors of a joint-stock company, on behalf of the company, of shares in other joint-stock companies, unless expressly authorized by the memorandum of association, is *ultra vires.*

A joint-stock company, even though it be empowered by its memorandum of association to deal in the shares of other companies, is not thereby empowered to deal in its own shares, and a purchase by the directors of the company of its own shares, on behalf of the company, is therefore, under such circumstances, *ultra vires.*

A sharer in a joint-stock company can maintain an action against the directors of such company to compel them to restore to the company funds of the company that have by them been employed in transactions that the directors have no authority to enter into, without making the company a party to the suit.

Where a shareholder purchased shares in a joint-stock company, knowing at the time that similar companies were in the habit of dealing in their own shares and those of other companies, and believing that the company in question adopted the same practice, but made no enquiry to ascertain whether or not such was the case, nor made any objections to such dealings of the company until it was discovered they had resulted in loss, it was held that he had, by his own conduct, lost his right to hold the directors personally liable in respect of such dealing, and the result was held to be the same whether the said shareholder was beneficially entitled to his shares, or merely a trustee of them for others. *Jehángir Rustumji Modi* v. *Shawji Ládhá et al.*, 4 Bom. Rep., O. C. J., 185.

An incorporated company carries on business, not in every place where it has officers, but only at the place where its principal office is, and where its affairs are transacted. *Subbaraya Mudali* v. *The Government and Cunliffe*, 1 Mad. Rep., A. C., 286.

A corporation must sue and be sued in its corporate name. *Ram Doss Sein* v. *Cecil Stephenson and another*, 10 W. R., 366.

A company was formed with the following objects, as stated in the memorandum of association, viz., "of securing valuable property in the new port and town of C. and its immediate vicinity; and of improving the property so acquired by building upon, letting, or selling it as may be deemed most advisable; and of undertaking the construction of public works calculated to facilitate trade, and also of constructing tramways, roads, docks, wharves, and jetties upon the land so to be acquired; and for all other purposes that may be essential or conducive to the attainment of or connected with the above objects." Soon after the establishment of the company the directors were induced to take a share in and become liable for the cost of a mill for husking rice, which it was induced to establish by a separate company; and a considerable sum was advanced out of the funds of the company for the building of the mill and for machinery, &c. The undertaking failed, and the directors, to avoid losing the advances of the company, resolved to take over the mill, and carry it on as the property of the company. They accordingly purchased a large quantity of rice, which was husked at the mill, and consigned to several firms in England. P. M. and Co. were appointed agents of the company in Calcutta for the purpose of shipping the rice, under letters from the directors guaranteeing that the company would pay at maturity any re-drafts which might be drawn on P. M. and Co. as their town agents in respect of the shipments. Bills of exchange were drawn by P. M. and Co. on the firms to which the respective consignments were made, and these bills were sold in the ordinary course of business in Calcutta, P. M. and Co. realizing the proceeds for the benefit of the company. These bills were honoured by the respective consignees. The rice was sold in England at a considerable loss, and re-drafts for the deficiency were drawn on P. M. and Co. or on the company. The company went into liquidation during these transactions. Some of these re-drafts had been accepted by the company, and others merely registered by the liquidators as claims against the company. Claims were now made on the company by the drawers or endorsers of these re-drafts, but the liquidators declined to pay them, stating that the proceedings, in connection with the consignment of rice, were not authorized by the memorandum and articles of association of the company, and that therefore the company was not liable for any losses

in respect of such consignments. *Held* that trading in rice was a transaction *ultra vires* of the company; the directors therefore could not bind the company, and the consignees could not recover in respect of the shipment.

The company was not liable on the redrafts; it had no power to issue bills of exchange or to accept the redrafts, and therefore the holders of those which had been in fact accepted were in no better position than the holders of those which had not been accepted. *In the matter of the Indian Companies' Act*, 1866, *and of the Port Canning Land Investment Reclamation and Dock Company, Ld.*, 7 B. L. R., 583.

The provision of law (Section 36, Act IV of 1862) which forbids the Bank of Bengal making a loan or advance on the security of immoveable property, is not intended merely to regulate its affairs as amongst shareholders and directors: it is not *ultra vires* for the bank to take the security of immoveable property as a protection against loss for a debt already incurred and due.

A written authority given to the bank by a debtor to sell his immoveable property of which the title-deeds are in deposit with it, and to apply the proceeds towards payment of his liabilities, creates an equitable lien under that property, even if the circumstances under which the deposit was originally made rendered the transactions *ultra vires* of the bank. *Ebrahim Azeem* v. *W. D. Cruickshank, Agent of Rangoon Bank*, 16 S. W. R., C. R., 203.

5.—Proceedings in Winding Up.

Where a company is being wound up under Act XIX of 1857, and its assets are collected and distributed under the 73rd Section of that Act, all creditors take *pro ratâ*. *In the matter of Act XIX of* 1857 *and the Ganges Steam Navigation Company*, 1 Ind. Jur., N. S., 394.

A bank was registered at Bombay only as an unlimited company under Act XIX of 1857, and carried on business at Bombay and Calcutta. At a meeting held before Act X of 1866 came into force, it was resolved that the company be wound up voluntarily under Act XIX of 1857, which resolution was confirmed after Act X of 1866 came into operation, and more than a month after the original resolution. *Held* that these resolutions were informal; that the company was not winding up under either Act; and that an action against it by a creditor could not be stayed.

Semble,—That an action will not be stayed against a company which is being wound up voluntarily under Act X of 1866. And *held* that a company registered at Bombay only as before mentioned cannot be wound up by the High Court in Calcutta. *In the matter of the Indian Companies' Act*, 1886, *and the East India Bank*, 1 Ind. Jur., N. S., 330.

The holder of fully paid-up shares may apply for the winding-up of a company as a contributory under the 104th Section of Act X of 1866.

The Court will not be satisfied with the bare statement of a director that a company is unable to pay its debts, so as to grant a winding-up order. *In the matter of the Indian Companies' Act*, 1866, *and the Sylhet and Cachar Tea Company, Limited*, 2 Ind. Jur., N. S., 94.

Where a Steam Tug Company was being wound up under the Indian Companies' Act, 1866, it being admitted that the vessels were in the habit of going to sea,—*Held* that the captains and crews were entitled to rank preferentially, and to be paid their wages in full, in priority to the claims of other creditors.

Semble,—They would be similarly entitled if the vessels plied substantially in tidal waters, whether plying actually on the open sea or not. *Held* also that, in the absence of any contract or custom to the contrary, the captains and crews were monthly servants of the company, and were entitled to be paid only for the month in which they were dismissed. *Held* also that servants of companies generally had no right to prove in preference to other creditors, or to be paid in full, or in priority to them. But where A. by his contract was to be paid Rs. 1,000 on any breach of its terms,—*Held* that he was entitled to prove for Rs. 1,000. *In re The Indian Companies' Act*, 1866, *and of the Calcutta Steam Tug Association, Limited*, 2 Ind. Jur., N. S., 17.

In an application, under Section 288 of the Civil Procedure Code, to execute an order of a District Court for the winding-up of a company by staying suits which had been filed against the company in the High Court,—*Held*, first, that the order can take effect only from the time when it is filed in the Court to which it shall have been transmitted for the purpose of being executed, and that suits can only be stayed from that time; secondly, that where the decree in a suit has already been actually executed by the attachment of property of the defendants, although the sum decreed may not have been realized by a sale, there is no longer a suit or action to be stayed within the meaning of Section 72 of Act XIX of 1859. *Narayen Shamjee* v. *Gujerat Trading Company*, 3 Bom. Rep., O. C. J., 20.

In an application by a creditor of a company to have it wound up under the superintendence of the Court, the Court will always be in favour of making an order for its being so wound up. The petitioning creditor is entitled to his costs as a first charge on the assets of the company, subject to any prior liens on the estate. *In re the Nabor Habi Tea Company*, 3 B. L. R., Ap., 11.

Where a company was being wound up by the Court of Chancery in England an action brought against it in this country was ordered to be stayed. *Peitsch* v. *The Commercial Banking Corporation*, 1 Ind. Jur., N. S., 363.

Under Section 174 of the Indian Companies' Act, the Court has power to sanction compromises of calls, debts, and liabilities before the list of contributories has been settled, or the competence of the shareholders has been ascertained.

The Privy Council will be reluctant to interfere with the discretion of Courts having jurisdiction to sanction a compromise by the liquidators of a company winding up under Section 174 of the Indian Companies' Act, where all the facts have been placed before the Court in India, and there is no reason to suppose that the proceedings for a compromise have been tainted with fraud. *Bank*

of Hindustan, China, and Japan v. *The Eastern Financial Association*, 3 B. L. R., P. C., 8.

Where leave had been given to certain creditors to proceed to execution in a suit against a company, while proceedings for the winding-up of the company were pending, but before winding-up order had been made;—*Held* that the leave to proceed to execution was not necessarily affected by the winding-up order. *In the matter of the Indian Companies' Act*, 1866, *and the Sylhet and Cachar Tea Company, Limited*, 2 Ind. Jur., N. S., 123.

A. had been engaged as assistant to a company for three years under articles of agreement, which contained no provision for his dismissal, except in case of A.'s failure to perform his covenants or for misconduct. Before the expiration of the three years the company was ordered to be wound up under the Indian Companies' Act, 1866. At or about the time of filing the petition to wind-up notice had been given to A. that his services were no longer required. Since then A. had been unable, though he had done his best, to obtain service elsewhere. A.'s period of contract had since expired. B. also had been similarly engaged, but had received no such notice, and was still continuing in the company's service. His period of contract had not yet expired. In a proceeding in proof of claims of creditors against the company,—*Held* that A. was entitled to his salary to the end of the period of three years. B. was also entitled to his salary to the end of the period of his contract, or should that happen first, till the company came to an end. *In the matter of the Indian Companies' Act*, 1866, *and the Seebsaugor Tea Company, Limited*, 2 Ind. Jur., N. S., 257.

Leave given to the provisional liquidator to advance money for the purpose of carrying on a certain indigo plantation mortgaged to a joint-stock bank, which was being wound up under the supervision of the Court.

A joint-stock banking company, established by deed and Royal Charter in England, under the provisions of the English Joint-Stock Companies' Act of 7 and 8 Vic., with agencies in different parts of the world, and registered under the Joint-Stock Companies' Act of 1862 (25 and 26 Vic., c. 89), but not under any Indian Act, having its principal place of business in London, though having a principal branch in Calcutta to which the other branches in India are subordinate, is not such a company as can be wound up as an "unregistered company," under the provisions of the Indian Companies' Act of 1866 (Act X of 1866), but should be wound up by the Court of Chancery, and an order of the Court of Chancery under the English Act of 1862, winding up the company in England, has the effect of winding up all branches of the company in India and elsewhere. Where it was shown that the bank was first mortgagee of certain indigo concerns, and had advanced money to the planter for the purpose of carrying on the cultivation and manufacture up to the time of the winding up, and it was still necessary that further sums should be advanced for the completion of the cultivation and manufacture; and that under the circumstances it would be clearly for the benefit of the creditors that such advances should be made,—*Held* that the provisional liquidator, supposing the winding-up of the bank and his appointment by the Court in India had not been *ultra vires*, would have been authorized by the Court to make the required advances. *In the matter of the Indian Companies' Act*, 1866, 1 Ind. Jur., N. S., 335.

A suit may be brought in the Courts in India against a company that is being wound up under "The Companies' Act, 1862," without the leave of the Court of Chancery being first obtained.

Semble,—The High Court will, in the exercise of its general power, stay the proceedings in a suit against such a company where the circumstances are such as to render it proper to do so. *Bank of Hindostan, China, and Japan* v. *Premchaund Raichaund*, 5 Bom. Rep., O. C., 83.

On 25th October, 1870, a petition for the winding-up of the B. T. E. Company of Assam was presented to the Court of Chancery in England, by one of the shareholders of the company, and a provisional liquidator was appointed. On 5th November, at an extraordinary meeting of the company, it was resolved that the company should be wound up, and liquidators were appointed. On 12th November the petition for winding-up came on for hearing, and an order was made that the voluntary winding-up should continue subject to the supervision of the Court. On 18th November, by deed under hands and seals of the liquidators, M. was appointed their attorney in India. On 27th October certain immoveable properties in Assam belonging to the company were attached in execution of decrees in certain suits in the Court of the Moonsiff of Debroghur. On 9th December the properties were put up for sale, and purchased at prices which it was alleged were considerably under their value. Applications were made in the Moonsiff's Court at Debroghur by the purchasers for confirmation of the sales, which applications were opposed by M., and, pending the Moonsiff's decision, an application was made to the Deputy Commissioner of Luckhimpore for an order to stay all proceedings in the decree-suits on the ground of the order for winding-up the company of 12th November, which application was refused on 15th February, 1871. On 16th February, 1871, the Moonsiff made an order confirming the sales. M. thereupon petitioned the High Court for the removal of the suits from Assam to the High Court, to be tried in its extraordinary original civil jurisdiction, on the ground that no appeal would lie against the order of 15th February refusing to stay the proceedings in the suits; and that if an appeal should be preferred to the Deputy Commissioner from the order of the Moonsiff confirming the sales his decision would be final. The application was opposed on behalf of the purchasers. *Held*, the Moonsiff not having had notice of the winding-up order of 12th November, had power to sell the property on 9th December, and the sale having actually taken place, and there being nothing to show that there was any irregularity in the proceedings, the High Court would have no power if the cases were brought to set aside the sale. This, therefore, was not a proper case for the exercise of the power which the High Court possesses under Clause 13 of the Letters Patent. *In the matter of certain Decree Suits of the year* 1870, *in the Court of the Moonsiff of Debroghur, &c., &c.*, 7 B. L. R., 305.

XIV.

LIMITATION.

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1.—MISCELLANEOUS.

Mere laches, or indirect acquiescence short of the period prescribed by the Statute of Limitations, is no bar to the enforcement of a right absolute vested in the plaintiff at the time of suit.

Semble,—The doctrine of acquiescence or laches will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the Legislature. *Peddamuthudaty and others* v. *N. Timma Peddy*, 2 Mad. Rep., 270.

The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. *Rama Ran* v. *Rájá Ran and others*, 2 Mad. Rep., 114.

There is no such doctrine as that acquiescence is a binding presumption of law after the lapse of several years. *Chellaperumál Pillai*, 1 Mad. Rep., A. C., 135.

Sixty years' possession is a bar under Clause 3, Section 3, Regulation II of 1805, not only to past arrears of rent, but to future assessment of rent. *James Erskine* v. *The Government and Manick Singh and others*, 8 W. R., 232.

The Government of India, taking upon themselves to pay debts due against the estate of the ex-King of Delhi out of the assets of the estate of the ex-King, are entitled to avail themselves of the Statute of Limitations in a suit brought against the estate; but if a suit could justly, and in equity and conscience, be substantiated against the ex-King, it ought to be allowed before the Government officers, irrespective of technical difficulties which might have attended legal proceedings against the King

during his sovereignty. *Narain Doss* v. *The Estate of the ex-King of Delhi*, 10 W. R., P. C., 55.

Where plaintiff sues to establish proprietary right as against a mokurrureedar, it is not necessary for him to prove that he has been in actual possession within twelve years. *Protap Narain Mookerjee* v. *Kartick Chundra Mookerjee*, 10 W. R., 192.

Parties claiming as heirs of property sold without their consent and held by the purchaser in adverse possession, are bound to appear and assert their title within the period prescribed by law. The mere fact that, by some proceedings of the settlement officers, they obtained a settlement of the estate, cannot give them a right which they have lost by limitation. *Moula Buksh Khan and others* v. *Khoshoram Pandey and others*, 10 W. R., 249.

The rejection of a claim to attached property, simply on the ground that it had been presented too late, was held to be no legal bar to the adjudication of the claim when it was again advanced after attachment made under decree. A claim of this kind may be admitted even after proclamation of sale, provided it has not been designedly and unnecessarily delayed to obstruct the ends of justice. *Mahomed Mubson* v. *Sumputee Sahoon Chowdhrain*, 10 W. R., 305.

In a suit to set aside the sale of certain lands which had been attached and sold by a decree-holder as the property of his debtor, plaintiff brought his action against the decree-holder and a party whom he supposed to be the auction-purchaser. Subsequently, finding that his supposition had been erroneous, he applied to have the real purchaser made a party, and the heirs of the decree-holder (who had died) substituted as defendants. *Held* that the suit against the heirs was not barred by lapse of time, as it was originally brought within the period of limitation against the decree-holder, of whose death the plaintiff first learnt the news from the return made to the summons. *Sree Kishen Chowdhry and others* v. *Ram Kisto Bhuttacharjee and others*, 10 W. R., 317.

In a suit for possession by the purchaser of the right of a reversioner to the estate of a widow, which was instituted within one day of extreme time of twelve years allowed by the Law of Limitation, reckoning from the alleged date of the widow's death,—*Held* that it was necessary, under such circumstances, for the plaintiff, in order to rebut the plea of limitation, to prove, not only that the widow died on the date alleged, but that she actually held possession up to the time of her death. *Kalee Nath Talookdar and another* v. *Joy Doorga Dossee and others*, 11 W. R., 173.

In a suit for a portion of land granted in trust for purposes connected with the preservation of a Mahometan saint's tomb, where the plaintiff claimed as the son of the last mutwallee, on the allegation that the (plaintiff) had been dispossessed during his minority, the defendant's case being that the grant had never been in the possession of mutwallees, but had been divided among the original grantee's heirs, from one of whom the portion in dispute had come into the possession of the defendant's vendor —

Held that, on the question of limitation, it was for the Judge to find whether plaintiff's father had been in possession within time. *Reasut Ali* v. *J. C. Abbott and others*, 12 W. R., 132.

In a suit to recover possession, where defendants plead limitation, and plaintiff proves that the commencement of the possession of the party through whom defendant's claim was as tenant, it is for those who set up the plea of limitation to show when the nature of that possession was changed, and how it became adverse. *Ramdhun Satra* v. *Nobin Chunder Chowdhry*, 12 W. R., 250.

The Indian Law of Limitation as to realty bars the remedy, but does not extinguish the right. *Doe* v. *Kuppu Pillai*, 1 Mad. Rep., 85.

A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners.

In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853, such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal.

Held that the litigation which commenced in 1851 was sufficient to prevent the Law of Limitation from barring the plaintiff's right to sue, and that the circumstance that some only of the present defendants were parties to such litigation could make no difference with regard to the limitation bar; that, though the decree of 1851 was only a judgment *inter partes*, it was, as against such of the present defendants as were not parties to the former suit, cogent evidence of the existence and validity of the custom.

Quære,—Whether, in the absence of such litigation, the Law of Limitation would have been a bar. *Sankara Subhaiyan and others* v. *Subba Ram*, 2 Mad. Rep., 1.

The only bar to the enforcement of a purely legal right is the lapse of the time required by the Law of Limitation to bar the remedy. *Venkopadhyaya* v. *Kavari Hengusu*, 2 Mad. Rep., 36.

Where a plaintiff sues upon his jenud title, having previously instituted a suit in which he unsuccessfully set up his kánam right, the latter suit cannot avail to prevent the Statute of Limitations from running against him. *Parakut Assen Cully* v. *Edapally Chennen*, 2 Mad. Rep., 266.

In a suit to recover, with mesne profits and other incidents, a jirayati village alleged by the plaintiff to form part of his zemindary, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Sirkars passed in 1844, the defendant pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the Permanent Settlement, and that the quit-rent had been received from him by the plaintiff.

Held that, as the defendant stated that the plaintiff had received kattubandi from him since 1857, the plaintiff's claim to eject could not be disposed of absolutely on the ground that it was barred by the Act of Limitations.

Held also that, as the plaint praying for the re-

covery of possession proceeded on the ground, amongst others, of the invalidity of the grant relied on by the defendant, the question as to the validity of the permanent kattubandi tenure claimed by the defendant was properly open for determination of the present suit. *Vairicharla Súrya Náráyna Ráz Bahadoor* v. *Nadiminti Bhagavat Patanjali Shástri*, 3 Mad. Rep., A. J., 120.

Held that the operation of the Law of Limitation cannot be prevented by any act of the parties or arbitrators unless as provided by law, and a suit beyond time cannot be entertained by the Courts merely because the person entitled to assert the right was by some arrangement or negotiation prevented from asserting it within the statutable period. *Jehandar Khan* v. *Mussamut Munnoo*, 1 Agra Rep., A. C., 248.

Held that the subsequent purchase of a judgment-debtor's right and entry in the Collectorate record cannot affect the right of a prior purchaser or oblige him to bring a suit within one year from the date of the second purchase. *Jaugroo Sahoo* v. *Jeydar Singh and others*, 2 Agra Rep., A. C., 231.

Where plaintiff obtained a decree, and alleged that possession was yielded to him by the party against whom decree was passed, and based his suit for possession on subsequent ejectment,—*Held* that the lower Appellate Court was wrong in holding the suit to be barred by lapse of time since the date of the decree without determining the alleged fact of possession and ejectment. *Salig Ram* v. *Meheer Lall and others*, 2 Agra Rep., A. C., 235.

One of four children set up a deed of gift and a will, in virtue of which he was, in 1842, placed, by a summary proceeding of the Courts, in possession of the whole estate left by his deceased father. The rights and interests of two other children were, subsequently, sold in execution of a decree for debt, and purchased by the present plaintiffs. A fourth child instituted a suit against the first-mentioned one, to set aside the deed of gift and will, the result of which was that, in 1855, the will which affected two-thirds of the estate was set aside as having been made without due consent of heirs, the consent alleged in the will being held to be no consent. The plaintiffs now sued to get possession of the shares of the two children whose rights and interests they had bought. *Held*, reversing the decision of the High Court, that the plaintiffs, as purchasers at an execution sale, were in no better position than claimants under any other conveyance or assignment, and their cause of action arising in 1842 they were barred by limitation. *Rajah Enayet Hossein* v. *Gridharee Lall*, 2 B. L. R., P. C., 75; S. C., 11 W. R., P. C., 29.

Possession under an erroneous order of a Magistrate does not constitute such *bonâ-fide* possession as will prevent the Law of Limitation from running. *Mooktakassee* v. *Ranee Luckee*, 2 Ind. Jur., O. S., 4.

It is not necessary that the Court below should expressly overrule a plea of limitation; it is sufficient if the Court disposes of the question of limitation by implication. *Wise* v. *Romanath Sen Luskhur*, 2 Ind. Jur., O. S., 5.

When a person lets land under a kubuleut, and subsequently grants a purwannah, undertaking not to ask for rent till a certain contingency occurs, the purwannah will not alter the original agreement so far as to take a suit for rent out of the Statute of Limitations. *Mussamut Bebee* v. *Sheikh Mahomed Chousi*, 1 Ind. Jur., N. S., 31.

The Statute of Limitations is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. *Soojan Mull* v. *Hyder Singh Bahadoor and another*, 1 Ind. Jur., O. S., 58.

The defendant in an action of ejectment cannot claim the benefit of the Statute of Limitations upon a possession obtained by fraud, actual or constructive, unless the plaintiff have been guilty of such laches as to disentitle him to the interference of the Court. *Heeraloll Shaha and another* v. *Jadub Chunder Chenchey*, Cor. Rep., 119.

Even where the validity of a lakheraj may be questionable, the lakherajdar can plead limitation on proof of his ancestors having been in possession before 1790. *Munneah Lall* v. *Mulkessur Banerjee*, 1 W. R., 297.

A suit was instituted in Pubna, and on application to the High Court for authority to proceed with it in Pubna, the High Court ordered its transfer to Dacca. Instead of merely transferring the suit to Dacca, the Pubna Court returned the plaint, in order to its being presented anew in the Dacca Court. For the purpose of computing limitation, the suit was held to have been instituted on the day when it was admitted by the Pubna Court. *Takhuroodeen Mahomed Eshhan Chowdhry* v. *Kurimbux Chowdhry*, 3 W. R., 20.

The plaintiff sued to recover a debt which became payable in 1843 by virtue of a razinamah and petition filed in Court. The razinamah had been from time to time proceeded on as a decree of the Court and process of execution enforced. In 1866 a further application for execution was rejected on the ground that no decree had been passed on the razinamah, in accordance with a previous decision of the High Court.

Held that the suit was barred by the Limitation Act. *Calapatapu Kristnayya* v. *Rajah Lakshmi Ven Rummoo Row*, 5 Mad. Rep., 93.

No Court has power to extend by indulgence the period of limitation, but when it is shown that a remedy is barred by limitation it has only to enforce the law and refuse the remedy. *Sadho Singh* v. *Musumat Kishna*, 3 N. W. P., 318.

Suit by execution, to recover, under deeds of mortgage and sale, dated respectively October, 1837, and April, 1840, executed to the testator by first defendant's deceased husband, certain villages which first defendant in 1848 and 1851 mortgaged to second and third defendants. Plea, the Act of Limitations. For the plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an equity suit, commenced by bill filed by present first defendant against testator, to set aside the deeds of October, 1837, and April, 1840, which bill was dismissed by consent in June, 1867,—*Held* (reversing the decision of the lower Court) that these proceedings had no such effect; that plaintiff might have brought ejectment at any time, and that the present suit was barred. *Tranquebar Sámi Ayyan* v. *Nathambedu Ammai Ammál*, 6 Mad. Rep., 234.

The plaintiff's suit was barred by the Limitation

Act on the 11th of May, 1870. His plaint was presented in the Court of the District Moonsiff's Court of Cudderpah on the 21st of May. He had presented his plaint on the 5th May in the Court of another District Moonsiff who had no jurisdiction, and it was returned by the latter District Moonsiff on the 7th May, in order that it might be presented to the Court having jurisdiction to determine the suit within one month from the date on which it was returned. *Held* that the plaintiff's suit was barred by the provisions of the Limitation Act (XIV of 1859). *Cheiguhangiah Gaurihangiah* v. *Pidatala Vencatuppah*, 5 Mad. Rep., 407.

A decree was passed on the 6th September, 1865. Application for execution was made on 7th September, 1868; the 6th September, 1868, was Sunday. *Held* that the fact of the last day of the three years within which application for execution might be made falling upon a Sunday, gave the Court no power to entertain such application on the day following. *Held*, also, that the day on which the application for execution is made is not to be excluded from the computation, and that the application must be made within three calendar years from the passing of the decree. *Khodie Lal* v. *Mussamut Biswasu Kunwar*, 4 B. L. R., A. C., 131; 13 S. W. R., C. R., 122.

In calculating time for the purpose of applying the Law of Limitation the computation must be made according to the English calendar.

In a suit brought on the 5th Asar, 1270 (3rd July, 1866), for recovery of a sum of money for goods sold and delivered, the debt for which the defendant acknowledged by a writing dated 8th Asar, 1270 (9th June, 1863),—*Held* that the suit was barred by lapse of time. *Maharaja Jay Manjul Sing Bahadur* v. *Lal Rung Pal*, 4 B. L. R., Ap., 53.

The Deputy Commissioner was held not justified in raising the plea of limitation, as it was no part of defendant's case and was never put forward at any state of the proceedings; and although there might be circumstances under which a Judge was bound to notice such a defect in the plaintiff's case, he could only properly do so when the bar was patent on the face of the pleadings. *Bheem Goyalla* v. *Khoobun Sahoo*, 17 S. W. R., C. R., 429.

In a suit by a Hindu widow for a declaration of right and title to dhurmutter land of which she asserted she had always been in possession, but which defendant had got registered in his own name as well as in hers, and claimed to have been in possession of with his father since the death of the husband,—*Held* that the entry of plaintiff's name conjointly with defendant's was a declaration of at least joint title such as nullified a plea of bar by limitation. *Depoo Debia* v. *Gobindo Deb*, 16 S. W. R., C. R., 42.

In a suit to recover land of which defendant had admittedly held adverse possession for upwards of eleven years, where plaintiff's cause of action was alleged to have arisen at the close of a contest between him and the Government, which had claimed to resume the land, when the Collector recorded a proceeding that the plaintiff should recover possession of his land, defendant's case was that he knew nothing of that contest, and had held possession for twenty-seven years,—*Held* that it lay upon the plaintiff to remove the statutory bar which defendant had set up, by showing that he, or some one under whom he claimed, had been in possession within twelve years next before the commencement of the suit. *Syud Ameer Ali* v. *Maharanee Inderpet Romer*, 15 S. W. R., C. R., 43.

Certain land having been settled by Government for a period of ten years, one S. bought the benefit of that settlement at an auction sale for arrears of rent, and afterwards sold his rights to one M. On the expiration of the temporary settlement, Government effected a permanent zemindary settlement with M. In the following year (1865) the zemindary title was sold, and the purchaser now (1869) sues to recover possession of certain specified land. The lower Appellate Court, finding that none of the persons above-mentioned had possession within twelve years immediately preceding the filing of the plaint, considered the suit barred,—*Held* that the question was one solely of a private right, and that the plaintiff did not stand in the position of Government in regard to the Statute of Limitations. *Kughoonauth Surmah* v. *Gobind Chunder Roy*, 14 S. W. R., C. R., 170.

2.—When Limitation does not Apply.

A brief possession for a few weeks, under a decree subsequently set aside or modified, so as not to have effect against the persons who were previously in possession, and to whom possession was restored, is not such possession as entitles the plaintiff to calculate limitation from that time. *Degumbery Dossee* v. *Rajah Anundnath Roy*, W. R., 1864, 43.

Possession by mortgagees cannot be adverse to the heir of the deceased mortgagor, so as to make limitation apply. *Mussamut Mohasha* v. *Mussamut Khoonoo*, W. R., 1864, 68.

Limitation will not count against a party who has been out of possession under temporary leases. *Calli Chunder Chowdhry* v. *Monikurnika Chowdhrain*, W. R., 1864, 149.

Pendency of litigation is a sufficient reason to save limitation. *Huro Chunder Biswas* v. *Nobo Kissen Mookerjee*, W. R., 1864, 159.

No limitation applies in the case of persons holding endowed property in trust and under accountability, but no indulgence should be shown to a plaintiff who brings forward claims so stale and antiquated that difficulty arises in finding any reliable evidence whereby to decide on their validity and extent. *Bull Rohun* v. *Lutafut Hossein*, W. R., 1864, 171.

Limitation is not applicable to a suit for exigible dower, except in a case of dissolution of marriage by death or divorce. *Mussamut Bibee Jumula* v. *Mussamut Mulleeka*, W. R., 1864, 252.

The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which limitation runs. *Shibo Sundari Dasi* v. *Kali Churan Rai*, W. R., 1864, 296.

In a suit by the purchaser of a Mahometan lady's share in her father's property against her brother, it was held that, as the property while in the hands of the brother was in the hands of a trustee, and not in adverse possession, limitation could not apply. *Bacharam Chowdry* v. *Mahtab Beebee*, W. R., 1864, 377.

The plea of limitation is not applicable to a suit for declaration of title regarding ijmallee lands

upon which temples have been built, and idols established by another co-sharer. If that shareholder claim exclusive use of the temple, he must prove a possession and enjoyment different from those of a Hindu co-sharer of joint property, particularly with regard to a temple added by him to an ancestral Poojah baree. *Kissorynath Chowdhry* v. *Hurro Kant Chowdhry*, 2 W. R., 183.

A decree was obtained against property belonging to the debtor, but in the possession of another person, under a fraudulent or insufficient title, between whom and the decree-holder litigation ensued. Execution being applied for within three years from the close of such litigation,—*Held* that limitation did not apply, also that the re-transfer of the property to the legal representatives or the original debtor did not operate to prevent its sale. *Kashee Pershad Roy* v. *Shib Chunder Deb*, 2 W. R., Mis., 3.

When a party admitting his liability for a judgment-debt of an ancestor, settles a suit in Court brought against him for the recovery of that sum by entering into a written contract by which he engages to pay the debt by instalments, the Law of Limitation cannot be applied to prevent execution being taken out within three years from the date when the suit was thus disposed of, because, previous to such written contract, the decree-holder was in laches. *Okhil Chunder Surkhel* v. *Brohmo Moyee Debia*, 4 W. R., Mis., 10.

The right to enforce decrees of Her Majesty in Council is not affected by any Law of Limitation. *Anundmoyee Dassee and another* v. *Poorno Chunder Rai and others*, 6 W. R., Mis., 69.

Limitation will not apply to a claim for a declaration of title, where the plaintiff is in possession of the land regarding which the declaration is required. *Puree Jan Khuttoon and others* v. *Bycunt Chunder Chuckerbutty and others*, 7 W. R., 96.

In a suit to recover possession, the defendant, by admitting the right of the plaintiff as the owner of the land in dispute, and acknowledging himself to be the plaintiff's tenant, precludes himself from pleading adverse possession or limitation, in whatever form it may be that the plaintiff asserts his right to the land, *i.e.*, whether he sues the defendant as a tenant or trespasser. *R. Watson and Co.* v. *Rance Shurut Soonderee Debia*, 7 W. R., 395.

In a suit for confirmation of title and possession, defendants cannot plead limitation if they have completely failed to prove their allegation of joint possession. *Rung Lall Misser* v. *Roghoobur Singh and others*, 9 W. R., 169.

In a suit to recover advances made from time to time for work and on other accounts, money having been entrusted to defendant to be accounted for by him, it was held that the matter partook of the nature of a trust to which no limitation at all would apply. *Naran Doss Chela* v. *Maharaj Mahatab Chand Bahadoor*, 10 W. R., 174.

So long as the relation of mortgagor and mortgagee exists between the parties to a suit, the Law of Limitation will not apply to the case. *Muddun Gopaul Singh* v. *Lalla Hunooman Dobay*, W. R., F. B., 37.

The Statute of Limitations is no bar to a suit for the recovery of a share of joint family property where the plaintiff and defendants, Hindus, have been living together in commensality up to within twelve years of bringing the suit; for in such a case there can have been no adverse possession so long as the family was undivided. *Rujoneekant Mitter and others* v. *Premchand Bose and others*, Marsh., 241.

In a partition suit by a widow for the recovery of her husband's share of property, held during his life-time jointly with his brother, although such suit be brought more than twelve years after her husband's death, her claim is not barred by the Statute of Limitations, unless the brother has for a period of twelve years before suit held adversely to her. *Kistomonee Chowdhry* v. *Sibchunder Chowdhry and others*, Marsh., 196.

3.—When and where Limitation should be Pleaded.

When a party does not take the ground of limitation, the Court should not take it. The party who makes such a plea is bound to put it forward at first; if he does not, he will be held to have waived it. *Sreemutty Beedhoo Dassee* v. *Muddun Gopal Rukheet*, W. R., 1864, 207.

Where the plea of limitation has not been taken in the Court below, it must not be urged in special appeal. *Bechoo Misser* v. *Ranadheen Misser*, W. R., 1864, 212.

An allegation of possession for more than thirty years, in answer to a claim to recover possession, was held clearly to raise the plea of limitation, though the actual words that the suit was barred by limitation were not used. *The Collector of East Burdwan* v. *Sheikh Imdad Ali*, W. R., 1864, 358.

A plea of limitation cannot be allowed when it is urged for the first time orally in appeal. *The Collector of Rajshahye* v. *Hursoondery Debea*, W.R., 1864, Act X R., 6.

A plea of limitation cannot be allowed in special appeal when it was not taken in either of the lower Courts, nor in the grounds of special appeal. *Brindabun Chunder Sircar Chowdhry* v. *G. Clarke*, W. R., 1864, Act X R., 9.

The order of a Judge overruling the defence of limitation, and remanding the suit for trial on the merits, if not immediately appealed against as a decree, may, as an interlocutory order, be objected to when the ultimate decision is appealed against. *Mussamut Wuzeerun Beebee* v. *Sheikh Warris Ali*, 1 W. R., 51.

The first Court having decreed the plaintiff's suit after trying the issue of limitation, the lower Appellate Court, instead of affirming the decree solely on the merits, ought to have specifically determined the issue of limitation. *Greesh Chunder Roy* v. *Narain Doss*, 1 W. R., 59.

Limitation cannot be urged in appeal if it was not pleaded in the Court below. *Digamburee Dabee* v. *Nundgopal Banerjee*, 1 W. R., Mis., 1.

Questions arising on the face of the proceedings and involving points of jurisdiction (*e.g.*, a plea of limitation) must be taken up and decided, even though not raised in the first instance. The minor son of a decree-holder who was not himself under a legal disability when his right accrued is not entitled to extra time, although he (the son) was under a legal disability at the time of his father's death. *Anunda Koonwar* v. *Thakoor Pandey*, 4 W. R., Mis., 21.

When an application for revival of execution of a decree has been admitted and acted upon without objection, and a sale takes place, and the debtor succeeds in setting aside the sale on the ground of irregularity, the Court executing the decree cannot of its own motion raise the question of limitation, nor can the debtor urge such a plea at so late a stage as after the reversal of the sale. *Gour Monee Debia* v. *Neel Madhub Gooho*, 5 W. R., Mis., 3.

Where a case was remanded by the lower Appellate Court on a point affecting the merits, and the defendant, after that point had been tried and determined against him, then for the first time raised the question of limitation,—*Held* that the lower Appellate Court properly refused to enter upon that question. *Buzul Ruhim* v. *Sreenath Bose*, 6 W. R., 178.

The lower Appellate Court was not bound to take up the plea of limitation which was raised before it for the first time on remand and after the litigation had been proceeding for a protracted period, when it did not appear from the pleadings that limitation arose in the case. *Behary Lall Roy* v. *Kaleedass Chunder*, 8 W. R., 451.

A plea of limitation overruled in the Court of first instance, and not brought before the lower Appellate Court, cannot be entertained by the High Court in special appeal. *Kashee Chunder Turkobhusun* v. *Kally Prossunno Chowdhry*, 9 W. R., 524.

A plea of limitation need not be decided before the merits of the case can be approached. *Doorga Ram Surmah Chuckerbutty* v. *Ruttun Monee*, 4 W. R., 61.

The ordinary rule of law is that a plea of limitation should be tried before a plaintiff can go into the merits, but there may be cases (*e.g.*, in a boundary dispute) in which it is right first to get at the facts and then to apply the Law of Limitation. *Mahomed Azam* v. *Sumeeroodee*, 12 W. R., 286.

* If a defendant does not raise the objection of the Statute of Limitations, but merely disputes the amount of the claim, the Court ought not in its decision to allow the Statute to affect the case. *Duttajee bin Narayyen* v. *Wamourao and Bhowrao*, 1 Bom. Rep., 15.

Where the Statute of Limitations was pleaded for the first time in a petition for review of the judgment of the lower Appellate Court,—*Held* that the review being part of the proceedings in regular appeal, the question was whether the Statute may be pleaded for the first time in regular appeal, and that where, upon the admitted facts, it is clear that the Statute is a bar, it may be pleaded for the first time in a regular appeal. *Sarasvati* v. *Pachanna Setti*, 3 Mad. Rep., A. J., 258.

Where a plea of limitation can only be properly decided with reference to facts found in connection with the question of possession and dispossession, and where appellants have omitted to press evidence on the point, though they had every opportunity before the lower Appellate Court, it cannot be admitted to be taken in special appeal. *Ramdhone Doss and others* v. *Ram Rutton Dutt*, 10 W. R., 425

There are some cases in which a Court of regular appeal has power to raise the issue of limitation, although the Court of first instance has not raised it in distinct terms. *Taroo Kylee* v. *Obhoy Koolya*, 11 W. R., 288.

Limitation cannot for the first time be raised in special appeal. *Sheo Gholam Singh* v. *Roy Dinkur Dyal*, 12 W. R., 215.

The defendant appealed on the question of the Statute of Limitations. The Judge held that the Statute did not apply, and remitted the case to be tried on the merits. The defendant again appealed upon the merits, and these being decided against him, brought a special appeal to the High Court, urging that the suit was barred by the Statute of Limitations. *Held* that he could not appeal upon this ground after the case had been remitted, but that he ought to have appealed when the point was decided. *Mussamut Beekun Koer* v. *Maharajah Bahadoor*, Marsh., 66.

A plea of limitation overruled in the Court of first instance, and not brought before the lower Appellate Court, cannot be entertained by the High Court in special appeal. *Kashee Chunder Turkobussun* v. *Kally Prossunno Chowdhry*, 9 W. R., 452.

In a suit for an account, where the defendant, while alleging the balance to be in her favour, contended that the plaintiff's claim was barred by the Limitation Act, and the accounts were afterwards referred by consent to the Commissioner, who refused without special direction to notice the defence of limitation, and the Judge of the Division Court amended the order of reference, by directing the Commissioner to investigate the accounts with reference to the operation of the Act,—*Held* on appeal (by Couch, C. J., and Westropp) that the order of amendment was justified by the circumstances of the case, and that the defendant having raised the defence of limitation, and not having subsequently abandoned it, that question should be first decided. *Pirbhai Ranije and another* v. *Neubia*, 3 Bom. Rep., O. C. J., 164.

The Statute of Limitations, if relied upon as a ground of defence, should be pleaded in every case in the original Court. *Rámánátha Mudali and others* v. *Vaithalinga Mudali*, 2 Mad. Rep., 238.

When a plaintiff sues for land in the character of owner of a lakheraj estate, though at the same time he is the owner of the revenue-paying estate containing the village in which the lakheraj land is situate, it is competent to the defendant in possession as a talookdar of the revenue-paying estate to plead limitation as against the lakherajdar. *Raj Luckee Chowdhrain* v. *Tara Monee Chowdhrain*, 5 W. R., 58.

A suit brought by *cestui que* trust to set aside as fraudulent certain alienations made by the trustee was dismissed by the lower Appellate Court as barred by limitation, merely on the ground that more than 12 years had, at the commencement of the suit, elapsed since the execution of such deeds of alienation. *Held* (1) that this was not sufficient, and that the Court should have tried whether the purchasers were cognizant at the time of their purchase of a subsisting trust affecting the property, for if so they would have taken it subject to the trust, and would stand in the shoes of the original trustee, and would not be *bonâ-fide* purchasers from trustees entitled to the benefit of the Law of Limitation; (2) that if the trustee had power to make valid grants, the grantees could have a perfectly

good title, if they took for valuable consideration, without notice of the trust. *Luteefun* v. *Bego Jan; Syud Cherag Ali* v. *Bego Jan*, 5 W. R., 120.

Dishonesty in obtaining possession will not prevent the possessor from availing himself of the Law of Limitation, which however cannot relieve him from the charge of dishonesty. *Kowar Poresh Narain Roy* v. *R. Watson and Co.*, 5 W. R., 283.

A suit for refund of income tax paid twice over in different districts is barred by limitation if brought after three months from the accrual of the cause of action, whether the Collectors acted legally or illegally in collecting the tax. *The Collector of Furreedpore* v. *Gooroo Doss Roy*, 5 W. R., 137.

A landlord who has waived his right to sue for the cancelment of a lease on the ryot's failure to pay six successive instalments, is not barred by limitation from suing for cancelment on further breaches of the covenant. *Dulli Chand and others* v. *Mohesh Chunder Sahoo and others*, 8 W. R., 138.

Though a ryot cannot plead limitation adversely to his zemindar, two ryots can do so when contending between themselves as to right of possession. *Ram Soondur Surmah* v. *Woomachurn*, 1 W. R., 265.

4.—From what Date Limitation Runs.

Where the parties intend that all goods delivered within a fixed period are not to be paid for until the end of such period of credit, limitation runs, not from the time of the purchase or delivery, but from the expiration of credit. *Satcowri Singh* v. *Kristo Bangal*, 11 W. R., 29.

In calculating the period of limitation for bringing suits, the day on which the cause of action arose should be included in the computation; and in excluding from the limitation the period during which a suit was pending, the day on which proceedings therein were commenced and the day on which they ended should both be counted. *Hurro Soonderee Dabea and others* v. *Kallymohun and others*, Marsh., 138, W. R., F. B., 46.

Limitation can be pleaded as a bar to a suit to set aside an alienation by a grandfather, the cause of action in such a case arising not from the date of the grandfather's death, but from the date of the alienation. *Seetul Pershad Singh* v. *Gour Dyal Singh*, 1 W. R., 283.

A suit to set aside alienations of ancestral property made by a childless Hindu widow during her life-tenancy, may be brought at any time within twelve years from the death of the widow. *Tiluk Roy* v. *Phooban Roy and others*, 7 W. R., 450.

In a suit for breach of contract to be performed at different times limitation will count from each breach of contract as it arises, and separate damages may be recovered for each breach. *Mohee Sahoo and others* v. *A. J. Forbes*, 6 W. R., Act X R., 61.

Three years' limitation, as provided by Clause 10, Section 1, Act XIV of 1859, is applicable to a suit under an instalment-bond; the limitation commencing from the date of the last unsatisfied payment. *Mussamut Munna Jhunna Koonwar* v. *Laljee Roy*, 1 W. R., 121.

Quære,—Whether a suit on a bond for payment by instalments, with a clause making the whole amount payable on default in payment of any instalments, must be instituted within three years from the time of the first default.

Payments made and accepted afterwards may operate to waive the effect of a default, and to restore the provision for payment by instalments. *Hullodhur Bangal* v. *C. S. Hogg*, 1 W. R., 189.

In a suit to set aside an auction sale made before the passing of Act VIII of 1859, when the recorded purchaser was made a defendant by a supplemental plaint after the period of limitation had expired,—*Held* that the date of the supplemental plaint was for purposes of limitation to be taken as the date of suit as against the recorded purchaser, and that the plaintiff was out of time as against him. But as the plaintiff had asserted that the recorded purchaser was the nominal purchaser, and the original defendant the real purchaser, the case was remanded for a decision on that point. *Nund Gopal Roy* v. *Jankeram Chuckerbutty*, W. R., 1864, 316.

Held that limitation as regards appeal would run, not from the Judge's order of remand, but from the final decision. *Sreemutty Rayie Kishoory Dossee and another* v. *Bonomally Churn Mytee*, 10 W. R., 209.

Where a decree has been confirmed in appeal the decree-holder is entitled to calculate the period of limitation from the date of the decree of the Appellate Court. *Grish Chunder Banerjee* v. *Bhanoo Motee Chowdhrain*, 11 W. R., 329.

In a suit brought by a mirasdar to recover possession of miras land, which his ancestor had resigned to Government, against a holder to whom Government had subsequently granted it, it was held that the Statute of Limitations commenced to run against the mirasdar and his heirs from the time the miras was signed, and not from the date of the subsequent grant of it by Government.

To the validity of the registration of miras land by a mirasdar to Government the consent of his heirs is not requisite. *Arjund Valad Bhivá* v. *Bhavan Valad Nimbaji et al.*, 4 Bom. Rep., A. C. J., 133.

When a defendant talookdar, holding under a temporary settlement, has that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count, but limitation will reckon from the date when the purchaser, at a sale after the Collector had ceased to hold khas, had himself made collections, and so created cause of action by dispossession of the former talook. *Moulvie Mimodeen* v. *Rammoney Chowdhrain*, 7 W. R., 182.

In a suit to set aside the adoption of a son the period of limitation is not to be reckoned from the date of the adoption, if the members of the family, who seek to set aside, have by other declaration of conduct subsequently shown that they did not know of the adoption, or did not regard it as valid, it should be reckoned from the time when there was distinct knowledge of the adoption. *Sooburnomonee Dabee and others* v. *Petumber Doby and others*, Marsh., 221.

B. being entitled to the reversion expectant on the life-estate of A., a Hindu widow, A. made a deed of gift of the estate to B., which however was not acted upon, A. remaining in possession down to the period of her death. After the death of A. B. brought a suit for the recovery of possession of

the property. *Held* that the Statute of Limitations commenced to run from the date of A.'s death, not from the date of the deed of gift. *Anund Mohun Roy* v. *Chunder Monee Dasee and others*, Marsh., 547.

If, during the pendency of an Act IV case both parties are in possession, or are struggling for possession, limitation does not begin to run against either party before the time of final ejectment under the Judge's order. *J. Lyons* v. *Raj Chunder Shikeressur Roy*, 2 W. R., 162.

A party cannot ignore an Act IV award passed against himself, and sue to establish his right to the property involved therein after the lapse of three years, as if the award was no bar to his recovery. *Sheikh Jainooddeen Ahmed* v. *Ameeroonissa*, 2 W. R., 182.

A party seeking to disturb an award passed under Act IV of 1840 must date his action, not from the Magistrate's decision confirming a previous possession, but from the actual date of dispossession. *Hurish Chunder Chowdhry* v. *Huro Soondery Debia*, 2 W. R., 300.

The period of limitation for executing a decree counts from the date on which any *bonâ-fide* act is done by the decree-holder or by the Court in furtherance of the execution of the decree. The striking off of a case is not an act in furtherance of execution. *Maharajah Dheraj Mahatab Chund Bahadoor* v. *Boloram Singh and others*, 6 W. R., Mis., 63.

Held that the limitation applicable to suits for recovery of notes lost or plundered during the mutiny is six years, and that this should be computed from the time of the losers having requisite knowledge to institute legal proceedings. *Syud Ali Nusquee* v. *Bhuwan Das*, 1 Agra Rep., A. C., 213.

In a suit for the recovery of money lent upon an agreement that it shall be payable upon demand, —*Held* that the Statute of Limitations begins to run from the date of the loan. *Hempammal* v. *Hanuman*, 2 Mad. Rep., 472.

P. S. accepted a bill of exchange at three months in October, 1865, which was endorsed to M. B., and discounted for him by J. S., but being dishonoured J. S. obtained a decree thereupon, in 1861, against M. B., who paid in July, 1864, and now sued J. S. as acceptor. The defendant pleaded limitation. Suit dismissed.

Held that limitation runs in favour of an acceptor from the date of dishonour of the bill. *Mohendro Lall Bose* v. *Jadubkissen Singh*, Bourke's Rep., O. C., 157.

In August, 1856, G. H. W., B. B., and J. W. (the two latter being sureties, and having been treated as such by the plaintiff), jointly and severally executed a promissory note to M. T. B., payable by instalments, which were irregularly paid till January, 1860, when they ceased; the instalment payable on December 19th, 1857, not having been paid till January 5th, 1858. M. T. B. instituted an action against B. B. for the balance then due, for which a decree was given. On B. B.'s moving for a new trial the Judges differed on the questions of limitation and laches of the plaintiff, and the case was referred for the opinion of the High Court, which was in favour of the defendant on the point of limitation. *Held* that a cause of action at once arises on, and limitation runs from, the non-payment of an instalment; that payment of subsequent instalments on a note so payable is not a waiver of the limitation which has so commenced to run against a surety. *Maria T. Bruce* v. *B. Balfour*, Bourke's Rep., O. C., 120.

A sale in execution of decree was resisted on the ground that a part of the property had been previously sold by the judgment-debtor more than twelve years prior to the application for sale in execution. The decree-holder alleged that the private sale was a mere collusive transaction. *Held* that if the proprietary right in the judgment-debtor's property did not pass and was never intended to pass, the judgment-creditor is at liberty at any time while his decree is in force to apply for the sale of the property as belonging to his judgment-debtor, but if the proprietary right has been transferred the limitation would run from the date of transfer. *Narain Dass* v. *Niddha Lall*, 4 Agra Rep., A. C., 19.

The doctrine of privity does not arise in questions of limitation. In the case of a sale by a Hindu widow, which takes away both her rights and the rights of all those who claim under her, limitation runs from the date of sale. *Mussamut Gouree Debea* v. *Rajah Anundnath Roy*, W. R., 1864, 34.

In a suit by the surety of a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as against the wrong-doers dates from the time when they were declared by a competent Court to have paid to a party without title, and the cause of action as against the lessee dates from the time when the surety was made to pay the rent to the rightful heir on default of the lessee. *Roy Huree Kishen* v. *Ranee Asmedh Koonwar*, W. R., 1864, 57.

Suit to recover money paid by Government to the defendant as compensation for land taken for public purposes which the plaintiff alleged to belong to him and not to the defendant. *Held* that the plaintiff's right of action against the defendant accrued at the time when the defendant first took the money from Government, and that the ignorance of the plaintiff in regard to the accrual of his right did not prevent the time from running against his suit, unless it had been brought about by the fraud of the defendant. *Azroal Singh* v. *Lalla Gopeenath and others*, 8 W. R., 23.

When a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account, no fixed period of credit being agreed upon, the cause of action for purposes of limitation must be taken to arise on the date when each item claimed was supplied. *Satcowri Singh* v. *Kristo Bangal*, 11 W. R., 529.

In a suit for the recovery of money lent upon an agreement that it shall be payable upon demand, —*Held* that the Statute of Limitations begins to run from the date of the loan. *Hempammál* v. *Hanuman and others*, 2 Mad. Rep., 472.

Held that the limit of three years in execution of decree should be reckoned (where the decree is to be paid by instalments) from the date on which execution of the decree could be taken out under the terms thereof, and not from the date

of the decree. *Sheo Jeebuh* v. *Gunesh*, 2 Agra Rep., A. C., 237.

It is not necessary for a conditional mortgagee if he be in possession at the expiry of the year of grace to bring a suit to complete his title. The limitation period should be computed from the expiry of the year of grace if the mortgagee be then in possession. *Khoob Chund* v. *Leela Dhur*, 4 Agra Rep., 103.

B., under a winding-up order, claimed salary as manager of the company. He had joined in the petition in which the order to wind up had been made. *Held* that three years was the period of limitation. If the debt was calculated in the lump sum on which his petition to wind up was passed, the period of limitation must be computed from the date of filing the petition. *In the matter of the Ganges Steam Navigation Company*, 2 Ind. Jur., 181.

In a case under the Mitackshara law, if a father and a son of full age should be dispossessed in the father's life-time of undivided ancestral property, the period of limitation against the son will begin to run from the date of dispossession. So where A., more than three years after he had attained his majority, brought a suit to set aside an absolute deed of sale of ancestral immoveable property executed by his father, under which possession had been taken more than twelve years before A. came of age,—*Held* that the suit was barred. *Held* also that in the case of a mortgage, or conditional sale, limitation ran from the time when possession under a decree for possession was taken. *Bissessur Pershad Singh Pandey* v. *Luchmun Pershad*, 2 Ind. Jur., N. S., 216.

In a suit for damages on account of a false and malicious statement made by defendant before a Magistrate, in consequence of which criminal proceedings were taken against plaintiff,—*Held* that limitation runs, not from the date on which plaintiff was acquitted and discharged, but from the time the alleged statement was made, or any of the resulting damages occurred which would constitute a cause of action. *Hurree Narain Mytee* v. *Ojoodhyah Ram Sein*, 10 W. R., 308.

According to the former procedure, when a suit before a competent tribunal ended in a nonsuit, the period of limitation was computed from the accruing of the original cause of action, the time which the first suit was pending being deducted. *Purbhoo Narain Singh* v. *Rajah Lelanund Singh*, 2 W. R., 256.

The date of dispossession is the date when the cause of action arises in suits for mesne profits. *Ekbal Ali Khan* v. *Kalee Pershad*, 3 W. R., 68.

A purchaser at a private sale cannot count limitation from the date of his purchase, but from the date of accrual of the original vendor's title. *Bhikaree Pandah* v. *Ajoodhya Pershad*, 3 W. R., 176.

Two sisters, B. and P., not being heirs, took possession of ancestral property as heirs on the death of their mother H. After a few years they quarrelled. P. adopted a son, and executed a deed of gift in his favour. B. claimed the whole property through her deceased husband as heir of B. M., who again was heir of the maternal uncle, on whose death H. had succeeded. *Held* that, in the absence of any agreement creating a life-estate in favour of the two sisters, the cause of action of the collateral heirs arose from the time that P. quarrelled with her sister and adopted a son. *Bungseedhur Ghose* v. *Tarinee Churn Singh*, 3 W. R., 195.

When a lessee cuts trees contrary to the provisions of his first lease, and the lessor renews the lease, without looking to the infringement of it in this respect, limitation is held to run from the breach of contract, and not from the lessor's knowledge of it, as he might have known of it before. *Rajah Indoobhoosun Deb Roy* v. *T. J. Kenny*, 3 W. R., S. C. C. Ref., 9.

The period of limitation for taking out execution of a decree counts from the date of the final judgment in the case. *Singh* v. *Lalla Kalee Churn*, 3 W. R., Mis., 21.

A. purchased a zemindary of which certain mouzahs were claimed and taken possession of by B. and C., as mokurruree holders of a shikmee talook created by the former zemindar before the Decennial Settlement. To a suit by A. for the recovery of the lands, B. and C. pleaded limitation, calculating the period from the time of the purchase in 1833. *Held* that limitation must be computed, not from the time of the purchase, but from the time when possession was taken from the purchaser. *Wise and others* v. *Bhoobun Moye Debia*, 3 W. R., P. C., 5.

Plaintiff, alleging that he was in possession of certain lands, sued for cancelment of a survey award demarcating the said land as a portion of lands in the defendant's possession. *Held* that the plaintiff's right to claim a declaration of title against the defendant arose when the defendant prosecuted the survey proceedings, and obtained the award, and not from the date of a previous possessory award made by a Magistrate under Regulation XV of 1824, in conformity with which the survey award was passed. *Rajkisto Roy* v. *Beer Chunder Joobraj*, 4 W. R., 100.

Limitation runs from the date of the last judgment by which the whole decree becomes final, and not from the date of an incomplete decree (*i.e.* when a case is partly decreed and partly remanded). *Shaikh Fuzl Imam* v. *Doolun Singh*, 5 W. R., Mis., 6.

In a case for possession after dispossession in pursuance of a solenamah inimical to plaintiff's interests, which was executed by his guardian when he was a minor, the cause of action was held to rise from the date of the dispossession, the last of the series of acts prejudicial to plaintiff, and not from the date on which he became aware of the solenamah, which was the first act in point of time injurious to him. *Rutnessur Pal Chowdhry* v. *Dhunnunjoy Shikdar and others*, 6 W. R., 18.

Where a wife demanded only a portion of her denmohr or dower from her husband, limitation as to her claim to the remainder will count from the date of her husband's death, and not from the date of her former demand. *Begoo Jaun* v. *Gashee Bebee*, 6 W. R., 19.

Where a servant is appointed on a fixed monthly salary, and there is nothing to show that the salary is to be paid in advance, the limitation as to each month's salary commences from the time at which the salary became due, *i.e.*, the end of the month, and not from the date of the dismissal of the servant. *Kali Churn Mitter* v. *Mahomed Soleem*, 6 W. R., 33.

A suit to enforce the right to preemption must be brought within one year from the time the purchaser has taken possession under the sale impeached, and not from the time when the person claiming the right obtains possession of that which forms the basis of his right. *Shah Mohsun Ali* v. *Neknam Singh and others*, 6 W. R., 131.

If a party has a lien on certain property as security for a loan he is bound to obtain both a decree for the money and for the realization of it by the sale of the property, pledged within three years from the date on which the money became due under the unregistered bond. *Parush Nath Misser* v. *Shaikh Bundah Ali and others*, 6 W. R., 132.

In a suit to establish a right to land the cause of action arises when the defendant sets up an adverse holding. The mere non-payment of rent does not constitute an adverse holding ; but if a tenant openly sets up an adverse title, and holds adversely, limitation runs. *Horonath Roy* v. *Jogendur Chunder Roy*, 6 W. R., 218.

In a suit to recover possession of land under a mortgage deed limitation will count as against the mortgage from the date of default, and the pendency of a foreclosure suit will not prevent limitation from running. *Khelut Chunder Ghose* v. *Tara Chund Koondoo Chowdhry*, 6 W. R., 269.

The mere absconding of an agent on a certain date is not such a determination of the agency as to cause limitation to run from that date, if the agency is one for a fixed period. *Bissessur Roy Chowdhry and others* v. *Ram Doolal Chund*, 6 W. R., Act X R., 29.

A suit against an agent for money must be brought within one year from the date on which the plaintiff obtained knowledge of the sum due to him, which in the present case was the date on which, in a previous suit for rendering of accounts, the defendant had tendered the accounts in Court. *Huro Churn Narain Singh* v. *Roochee Dobey and others*, 6 W. R., Act X R., 30.

Where a suit was brought upon an instalment bond, and not upon any fresh agreement between the parties, the period of limitation was held to run from the time when default was made in payment of the first instalment, in consequence of which the whole amount became due. *Huronath Roy* v. *Meheeroolah Mollah*, 7 W. R., 21.

The plaintiff's cause of action was held to arise when he paid the money to the Collector as Government revenue on account of his defaulting co-sharers, and not from the date when the money-lender, from whom he had obtained the money to make that payment, realized it from him under a decree of Court. *Kally Sunkur Sundyal* v. *Huro Sunkur Sundyal and others*, 7 W. R., 29.

A plaintiff is not bound to sue to enforce a summary decree against the immoveable property of the defendant pending a regular suit brought by the defendant in the Civil Court to set aside the summary decree. Limitation will count, not from the date of the summary decree, but from the date at which the suit brought in the nature of an appeal to set aside that decree is determined. *Gyan Chundra Roy Chowdhry* v. *Kally Churn Roy Chowdhry*, 7 W. R., 48.

When a dependent talookdar, holding under a temporary settlement, has that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count ; but limitation will reckon from the date when the purchaser, at a sale after the Collector has ceased to hold khas, had himself made collections, and so created a cause of action by dispossession of the former talookdar. *Myenooddeen* v. *Ram Mony Chowdhrain*, 7 W R., 182.

Limitation was held to apply in a case where it was stipulated in a lease that the tenant should clear a defined area in a certain time, the cause of action accruing when the defendant did not clear by the time specified. *Tumeezoodeen Chowdhry* v. *Meer Sharwar Khan*, 7 W. R., 209.

Suit by A., a Hindu lady and daughter of B., to declare invalid a will of B. made in favour of C., a relative. It appeared that D., the widow of B., instituted proceedings against C., the devisee, in which she claimed the property of B. Subsequently the widow, by a deed of compromise, admitted the rights of C., and abandoned her own. *Held* (*per* Seton-Karr, J.) that limitation in the present suit by A. against C., the devisee, runs from the date on which the widow admitted the devisee's rights, and not from any prior date, as during the period of the widow's dispute with the devisee she was protecting the interests of C., who claimed to be the reversioner, who would not have been heard in the matter, and had no right to sue during the pendency of such litigation. On the whole case the will was found valid by both Judges. *Soudaminee Dossee* v. *Bistoo Narain Roy and others*, 8 W. R., 323.

In a suit brought in 1272 to recover possession of certain land alleged to have been purchased in 1262, plaintiff alleged that defendant held the property up to 1265, under an ijara, and defendant pleaded that he had been in possession under a prior purchase from the same vendor in 1257. *Held* that if defendant paid rent under an ijara, limitation would reckon from the time at which the ijara expired, and not from the date of the plaintiff's purchase. *Mahomed Ahsan and others* v. *Mahomed Yasin*, 9 W. R., 106.

A suit was dismissed with costs in a Court of Small Causes, after which an application for a new trial was rejected, and subsequently another application was made for a new trial and referred by the Judge to the High Court, the result being the rejection of the application. After this defendant applied for execution for the costs. *Held* that the decree became final and conclusive when the Judge rejected the last application in accordance with the decision of the High Court, limitation beginning to run from the date of such rejection. *Pran Kisto Banerjee* v. *Nazeemoodeen*, 9 W. R., 397.

The plaintiff sued on a promissory note payable on demand, dated November 14th, 1867. He filed his plaint on November 14th, 1870, that being the first day on which the Court was open after the Durga Puja holidays. The 13th November was Sunday. *Held*, the day on which the note was made was to be excluded in computing the period of limitation, and that therefore the suit was not barred. *Munshi Abdul Ali* v. *Tarachand Ghose*, 6 B. L. R., 292.

Held in appeal that the period of limitation was to be computed from the expiration of the day on which the note was made, and therefore the suit

was not barred under Clause 9, Section 1, of Act XIV of 1859. *Tarachand Ghose* v. *Munshi Abdul Ali*, 8 B. L. R., 24; and 16 S. W. R., A. O., 1.

Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time, and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of ten per cent. on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of other shareholders in the estate to be joined in the settlement. The Collector at the request of the defendants applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession and a declaration of his right to participate in the settlement. *Held* that it was not necessary to make the Government a party; that the suit was not barred, the period of limitation commenced from the date of the settlement with the defendant. *Krishna Chandra Sandyal Chowdry* v. *Harrish Chandra Chowdry*, 8 B. L. R., 524, 17 S. W. R., C. R., 145.

Where money has been deposited by A. at interest with B. repayable on demand, and interest is paid accordingly, the cause of action arises not on the date of the deposit but on the date of demand. *Tarini Persad Ghose* v. *Ram Krishna Bannerjee*, 6 B. L. R., 160; and 14 S. W. R., C. R., 224.

J., after entering into a bond for the payment of a sum of money, adopted one S., who took the family estate at J.'s death. While in the enjoyment of the estate the bondholders brought a suit against him to realize the debt, and obtained a decree. Under the decree the obligees sought to sell the property which by the time of the execution had come into the hands of R. (a great-nephew of J.'s), who sued and eventually succeeded in having J.'s adoption declared void. R. then sued to set aside, so far as it affected him, the decree for the sale of the property, and in this suit also he eventually succeeded. The representative of the original bondholders then brought a suit against R. to recover the money due on the bond.

Held that plaintiff's right of suit first arose, not from the last decree in favour of R., but from the time when the debt became due under the terms of the bond. *Rajkristo Sing Bahadoor* v. *Huro Soonduree Chowdrain*, 13 S. W. R., C. R., 313.

N., G., and H. were three brothers living together as a joint Hindu family. After the death of N. and G. decrees were obtained against N.'s widow, and satisfied by her in respect of money borrowed by N. and H., as the managing members of the family, and spent on family purposes while G.'s widow was living in the family. In a suit by N.'s widow for contribution against G.'s widow,—*Held* that although no legal necessity had been shown for borrowing, the defendant was bound to pay her share under the circumstances of the case, as the money had been spent for family purposes while she was living in the family. The cause of action arose, not on the date of the decrees against the plaintiff, but at the time when she had to pay over their amount. *Srimati Bimalu Debi* v. *Srimati Tarasundari Debi*, 6 B. L. R., Ap., 101; and 14 S. W. R., C. R., 480.

Where a promissory note was made payable "after six months, whenever the payee should demand the same," with interest, it was held that the law of limitation began to run upon the expiration of six months from the date of the note. *Jeáunissá Ludli Begam Sáhebetal* v. *Mánikji Khúrsetji*, 7 Bom. Rep., O. J., 36.

Where a mortgagee becomes a purchaser of the mortgaged property limitation runs from the date of purchase, as against a claimant by right of pre-emption.

A person claiming the right of pre-emption in respect of property the subject of conditional sale is bound to make his claim on the expiration of the year of grace mentioned in the notice of foreclosure. And the limitation runs from the expiration of such year of grace, and not from the final decree for foreclosure. *Buddra Doss* v. *Doorga Pershad*, 2 N. W. R., 284.

Where a plaintiff has been dispossessed of lands under a judgment of the Sudder Court, subsequently reversed by the Privy Council on appeal, limitation as to his right of action for mesne profits during the period of his dispossession runs from the date of the judgment of the Privy Council. *Mashook Ali Khan* v. *Jowala Buksh*, 2 N. W. R., 290.

A sum of two lacs of rupees which had been paid by a debtor in part satisfaction of a larger sum due to the shareholders (among whom were the plaintiff and the defendants), the heirs of a deceased banker, according to their shares in the estate, was appropriated by the defendants. The several shareholders brought separate suits against the debtor for their separate shares, the result of which suits was that the two lacs were appropriated to the whole debt, and the plaintiff's claim was thereby reduced by Rs. 25,000, while the defendants received Rs. 16,000 more than that they were entitled to from the common debtor.

The present suit was brought by the plaintiff against the defendant for his full share of the two lacs. The defendants pleaded that the suit was barred by limitation, more than twelve years having elapsed from the date of the original payment of the two lacs.

Held that plaintiff's cause of action arose out of the result of the former suits against the debtor, and not out of the original payment of the two lacs, and limitation ran, not from the date of the original payment, but from the time that the defendants received more than their share.

Held also that the plaintiff was entitled to recover from the defendant not the full sum of Rs. 25,000 which he had lost as the result of the proceedings against the debtor, but the Rs. 16,000 which the defendants had received over and above their proper share, and which must be considered as money had and received by the defendants to the plaintiff's

use. *Syed Lootf Ali Khan* v. *Mussamut Afzuloonissa*, 16 S. W. R., P. C., 20.

In a suit by a dur-putneedar for the resumption of land alleged to be held as lakheraj under an invalid title, limitation must be calculated not from the date of the creation of his dur-putnee title, but from that of possession of the party from whom the putneedar originally derived his title. *Gungaram Chowdry* v. *Huru Nath Chowdry*, 15 S. W. R., C. R., 436.

Until the order is passed confirming a sale in execution, the decree-holder must be considered to be executing his decree, and limitation begins to run against him only from the date of such order. *Brojungona Dassee* v. *Shena Mooka Dassee*, 15 S. W. R., C., R., 51.

Plaintiff having received from her brothers a sum as an equivalent for her share in her father's estate, made over the money to one of the brothers (E) to be invested in the common stock for the purposes of trade, it being agreed that she was to receive her proportion of the profits. A few years after this E. died, and then a disagreement occurring in the family, resort was had to arbitration. The arbitrators found that certain sums were due to plaintiff and her sisters by the three brothers, but they were unable to settle how much. Plaintiff being unable to recover her due brought this suit for principal and profits.

Held that plaintiff's cause of action arose when she made her demand for the money after the arbitration award, and that limitation would run from no earlier date. *Bibee Hurun* v. *Bibee Mariun*, 14 S. W. R., C. R., 87.

Where a contest is raised between a decree-holder and a judgment-debtor as to service of notice, execution proceedings cannot be carried on further till the question is decided, and limitation in respect to future proceedings must run from the date of such decision. *Suroop Chunder Roy* v. *Goluck Chunder Dhur*, 14 S. W. R., C. R., 477.

A., a Hindu widow, while in possession of the property left by her husband, sold a portion thereof. After her death her daughter, B., succeeded to the property, but took no steps to set aside the alienation made by her mother. After her (B.'s) death, her sons succeeded to the property, and instituted the present suit, after a lapse of thirty-six years from the death of A., but within twelve years from the death of B., to obtain possession of the property sold by A.

Held (Mitter, J., dissenting), that the suit was barred. The cause of action arose when B. succeeded to the property. *Rajkishore Dutt Roy* v. *Girish Chundra Roy Chowdry*, 4 B. L. R., A. C., 136.

The plaintiff sought to recover certain property which she inherited from her father, and which had been taken possession of by the defendants during the lifetime of plaintiff's brother. The lower Court dismissed the suit on the ground that it was barred by the law of limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit. *Held* on special appeal that the suit was not barred. Until the death of her mother plaintiff's alleged cause of action did not arise, and her right not being derived from or through her mother, the period of limitation could not be considered as having been running against her from the commencement of the adverse possession in her mother's lifetime. *C. Atchamma* v. *J. Subba Rayuda and others*, 5 Mad. Rep., 428.

5.—When the Operation of the Act is Suspended.

Where a suit is brought and dismissed for want of jurisdiction, and an appeal is preferred in which the first decree is affirmed, if a suit be afterwards brought in the right Court, the period which elapsed between the decision of the first Court and the disposal of the appeal should be excluded in computing the period of limitation prescribed by Act XIV of 1859. *Raj Kisto Roy* v. *Beer Chunder Joobraj and others*, 6 W. R., 308.

If the last day for preferring an appeal fall on a day when the Court has been unexpectedly and unauthorizedly closed, the appellant will not be barred by limitation if he can prove that he was prepared to file the appeal on that day, and if he did file it on the first open day thereafter. *Rajah Bishen Perkash Narain Singh* v. *Babova Misser and others*, 8 W. R., 73.

The operation of the Limitation Act is not suspended during the recess of the Court. *Ramasamy Chetty* v. *Venkatachellapaty Chetty*, 2 Mad. Rep., 468.

A suit for inâm lands was instituted in 1849, the cause of action having accrued nearly twelve years before. The suit was dismissed, on the ground that the plaintiff had no certificate as required by Regulation IV of 1831. Eight years afterwards, the plaintiff, having obtained the requisite certificate, commenced a suit for the lands. *Held*, affirming the decree of the Civil Judge, that the institution of the former suit had not suspended the Statute of Limitations, and that the plaintiff was therefore barred. *Ramakristnacastrube* v. *Darba Lakshmidevamma and others*, 1 Mad. Rep., 320.

In a suit for possession by a purchaser, at a sale in execution of a decree, no deduction from the period of limitation can be allowed for the time occupied by the plaintiff in unsuccessfully preferring a summary application in the execution department. *Woomachurn Mitter* v. *Rajah Bejoy Kishore Roy Bahadoor*, W. R., 1864, 140.

A mere agreement to refer to arbitration, if it contains no acknowledgment of the plaintiff's right of possession, does not save limitation, but the time during which a case is before the arbitrators, or the plaintiff is trying to enforce the award, may be deducted from the period of limitation. *Ramdhone Sircar* v. *Seetanath Sircar*, W. R., 1864, 283.

No deduction from the period of limitation is allowable for pendency of litigation in a wrong Court. *Sham Kant Banerjee* v. *Gopal Lall Tagore*, 1 W. R., 328.

A plaintiff is entitled to deduction from the period of limitation of the period of pendency of a former suit in which he as defendant was urging the same claim as he is now preferring as plaintiff. *Maharajah Jugtender Bunwaree* v. *Din Dyal Chatterjee*, 1 W. R., 310.

In a suit for possession of moveable property by a purchaser at a sale in execution of a decree, limitation will not reckon during the time that the judgment-debtor's case to set aside the sale was

pending in the Civil Court. *Gopal Chunder Ghose* v. *Rajchunder Dutt*, 2 W. R., Mis., 9.

The time that the Courts are closed must be deducted in computing the period of limitation. *Mussamut Maneerun* v. *Mussamut Luteefun*, 3 W. R., 46.

The time of pendency of a former suit which was dismissed as not brought in due form should be deducted from the period of limitation. *Shah Keramut Hossein* v. *Golap Koonwar*, 3 W. R., 101.

The time occupied in the summary department to recover excess of jumma according to a decree should be deducted from the period of limitation for the regular suit which is afterwards brought for the same purpose, and to which the plaintiff was referred by the late Sudder Court. *Huromonee Gooptia* v. *Gobind Coomar Chowdhry*, 5 W. R., 51.

The time during which a plaintiff prosecutes an appeal *bonâ fide* and with due diligence, as well as that during which he prosecutes his case in the Court of first instance, must be deducted in computing the period of limitation. *Shumbhoonath Biswas* v. *Kisto Dhun Sircar*, 5 W. R., S. C. C. Ref., 8.

The time occupied in procuring a copy of the order appealed from should be deducted from the period of limitation. *Gopeenath Roy* v. *Gopeenath Chatterjee*, 6 W. R., Mis., 106.

In a suit which is brought under Section 33, Act X of 1859, more than seven years after the determination of the agency of the defendant, and in which no fraud is pleaded, no deduction can be allowed under Act XIV of 1859. *W. Stephen* v. *P. Gasper*, 1 W. R., 265.

Where a plaintiff sues upon his jenm title, having previously instituted a suit in which he unsuccessfully set up his kanam right, the latter suit cannot avail to prevent the Statute of Limitations from running against him. *Parakut Assen Cully* v. *Eda Pally Chennem*, 2 Mad. Rep., 266.

Where the defendant in a suit died before the plaint against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives. *Mohun Chand Kandu* v. *Azim Kazi, chowkeedar*, 3 B. L. R., A. C., 233; 12 W. R., 45.

The limitation of suits for rent in Act X of 1859 is not subject to the deductions contained in Act XIV of 1859. *Ram Sunker Sanaputty* v. *Gopal Kishen Deo*, 1 W. R., 68.

Act X of 1859 recognizes no deduction whatsoever in computing the three years' limitation prescribed by Section 32. *Dakhina Dabia* v. *Romesh Chunder Dutt*, 1 W. R., 142.

Plaintiff brought a suit within the very verge of the period of limitation, but did not obtain a decree, as it was held that no fresh order was required in that suit, and that an order passed in a former suit was sufficient for the purpose of that case. Instead of appealing from that decision he brought the present suit, which was held barred by limitation, his cause of action remaining intact. *Kalee Kishore Sen* v. *Nilumber Sen*, 17 S. W. R., C. R., 450.

The time for which suits may have been pending in Courts which had not jurisdiction should be deducted in computing the period of limitation if the Judge should find that the suits were prosecuted *bonâ fide* and with due diligence. *Nobo Coomer Chuckerbutty* v. *Koylaschunder Barooen*, 17 S. W. R., C. R., 518.

Where limitation is pleaded in a suit for arrears of rent, deduction must be allowed to the landlord for the time he was suing to eject defendants as trespassers. *Eshan Chunder Roy* v. *Khajah Apaoollah*, 16 S. W. R., C. R., 79.

In computing limitation a plaintiff is entitled to deduct the time occupied in prosecuting a suit upon the same cause of action against the same defendant *bonâ-fide*, and with due diligence in a Court, which from defect of jurisdiction or other cause was unable to decide upon it. *Khetter Paul Singh* v. *Luckhee Narain Mitter*, 15 S. W. R., C. R., 125.

6.—When a Fresh Starting-point Arises.

An admission by A. of his debt to B. contained in a *burat* given by A. to his agent may take a suit against A. out of the Statute of Limitations. *Huro Chunder Roy* v. *Monee Mohinee Dossee*, 3 W. R., S. C. C. Ref., 6.

Where a decree had awarded a sum as costs to one who turned a rebel,—*Held* that correspondence relating to the asserted right of Government to get the sum to be realized by the execution of decree did not amount to a proceeding to save limitation. *Nowab Ameenooddeen Khan* v. *Moozuffer Hossein Khan*, 4 Agra Rep., Mis., 5.

Where a plaintiff sued for a debt due under a kararnama,—*Held* that, in order to bring the case within the exception in the Law of Limitation, it was sufficient to show, by clear and positive proof, that within the period prescribed he had asserted his right to his claim under the kararnama, and that the defendant admitted this claim to be as of right. It was not necessary that a precise sum should have been mentioned by either party, or that a promise to pay should have been made by the defendant. *Gupikishen Goswami* v. *Brindabun Chandra Sirkar Chowdhry*, 3 B. L. R., P. C., 37; S. C., 12 W. R., P. C., 36.

The admission to a third party in writing that a sum is due is not such an acknowledgment of a debt as to remove such debt out of the Statute of Limitations. *Pershad Doss* v. *Denonath Dey*, 2 Hyde's Rep., 14.

A judgment of a Court altering a pure legal misapprehension as to rights and *status* between A. and B., and passed in a suit to which C. was not a party, is not binding on C., nor will it give A. a fresh cause of action as against C. in order to put him in the position in which he would have been had he never misconceived his correct legal claim; nor does a new period of limitation run from the time of the judgment between A. and B. *Syed Lotf Ali Khan* v. *Afzuloonissa Begum*, 3 W. R., 113.

In calculating the period of limitation in a case where it is sought to extend the time by reason of a pauper suit having been commenced, the suit is commenced for this purpose when the plaint is presented to the Court, and not merely at the date of its allowance. *Seetaram Gower and others* v. *Golucknath Dutt and others*, Marsh., 174, W. R., F. B., 53.

A son has no new cause of action on succeeding to his father; the limitation that bars the father bars the son. *Mohesh Chunder Chowdhry* v. *Buneead Khan*, 3 W. R., Act X R., 121.

The admission of a debt after execution is taken out gives a judgment-creditor a fresh starting-point from which to reckon limitation. *Digamburee Debia* v. *Sharoda Pershad Roy*, 3 W. R., Mis., 27, and *Joteeram Doss* v. *Shaikh Hurufu and another*, 6 W. R., Mis., 115, and *Luchmee Narain* v. *Shudasheo Singh*, 5 W. R., Mis., 12, and *Prosunno Commar Roy Chowdhry* v. *Kashee Kant Bhuttacharjee*, 5 W. R., Mis., 31.

A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting-point for the operation of the Statute. *Subbaráma* v. *Eastulu Muttusámi*, 3 Mad. Rep., O. J., 378.

An appeal struck off the file for default does not give the decree-holder a fresh point from which to start in calculating the period of limitation when he seeks to execute his decree. *Gour Chunder Shaha* v. *Gour Mohun Ghose*, 5 W. R., Mis., 11.

The striking-off of an execution case gives the decree-holder no fresh starting-point from which to count limitation. *Tarinee Churn Gangooly* v. *Tiluck Chunder Ghose*, 6 W. R., Mis., 63.

After adverse possession of immoveable property for more than twelve years, a new period of limitation cannot commence to run by the mere circumstance of a transfer of rights or supposed rights. *Brindabu Chunder Sircar* v. *Bhoopal Chunder Biswas*, 17 S. W. R., C. R., 377.

The burden of proof that a creditor by agreeing to an arrangement whereby a firm indebted to him conveyed to two of the partners thereof certain property in trust to pay off his and certain other debts, thereby released the remaining members of the partnership, lies upon the parties who were originally liable to such creditor.

Act XIV of 1859 requires a distinct acknowledgment of a debt as due by the person who makes the acknowledgment to entitle the creditor to a fresh period of limitation. *Kalai Khan* v. *Madho Pershad*, 3 N. W. R., 129.

When a debt is by a bond made payable by instalments, subject to a condition that in default of payment of any one instalment the whole debt shall become payable, the period of limitation commences to run as to the whole debt from the date of default, being made in the payment of an instalment.

Where a default having been made in payment of an instalment the debtor subsequently filed a suit to compel his creditor to receive his debt by instalments as they should become due, and in his plaint set out the provisions of the bond, and stated that he had tendered the instalments as they became due to his creditor, which the latter had refused to receive, and that thereupon the debtor had deposited the amount with a third person,—

It was *held* that the plaint did not contain such an acknowledgment of the whole debt being due as to give a new starting-point from which the limitation commenced to run. *Náráyanáppá bin Appá Hegde* v. *Bháskar Parmayá*, 7 Bom. Rep., A. C. J., 125.

In a suit against a widow for acts of waste and lienations alleged to have taken place during the lives of the plaintiffs' mothers who were then the next heirs to the property,—*Held* that as the mothers allowed more than 12 years to elapse, their cause of action expired, and that it did not revive in favour of the plaintiffs who had since been born and had now arrived at majority. *Held* that if by the death of the widow a new cause of action accrued to the plaintiffs as reversioners entitled to the property, they might sue again; but they could not succeed in the present suit. *Pershad Singh* v. *Chedee Lall*, 15 S. W. R., C. R., 1.

7.—Regarding Minors.

Act XIV of 1859 contains no provision by which the execution of a decree is barred by limitation on account of minority or other legal disability.

A mere application for execution of a decree is not a proceeding which keeps alive the decree. *Chunder Coomar Roy and others* v. *Ranee Shurut Soondery Debia*, 6 W. R., Mis., 37.

A suit having been instituted on behalf of minors by their guardian, he subsequently, in fraud of the minors, sold their decree to a third party, who was merely benamee for the defendant in that suit. No execution ever was had of that decree. The minors when they came of age sued to have the sale of their decree declared fraudulent and void, and to have their name substituted on the record for that of the benamee purchaser, and they prayed that they might be allowed to take out execution of this decree. *Held* that the whole transaction being fraudulent, execution might be issued by the minors, although more than three years had elapsed since any proceeding had been taken under the decree. *Abdool Ali* v. *Meer Mahomed Mozuffur Hossein Chowdhry*, 5 W. R., 173.

A minor is not bound to sue within three years after the attainment of his majority, but may sue within twelve years of the cause of action, if such time has not expired. *Hurris Chunder Nag* v. *Abbas Ali*, 5 W. R., 204.

The mere fact of a plaintiff not suing within three years after his attaining majority will not, in cases where there is a general limitation of twelve years, bar his suit, if brought within twelve years of the time at which his cause of action accrued. *Poorun Singh, pauper*, v. *Kashee Nath Singh*, 6 W. R., 20.

A dispossession by a stranger to a family of a portion of the family estate is only one cause of action to the family arising on the date of dispossession, and though in consequence of the minority of a certain member of the family living at the time the period of limitation may under the law be enlarged, still no new cause of action accrues to a subsequently born son at the date of his birth, so as to enable him to postpone again the period of limitation which has begun to run against the family. *Gobind Coomar Chowdhry and others* v. *Hurro Chunder Chowdhry*, 7 W. R., 134.

A mother and guardian of a minor is entitled to a deduction from the computation of limitation of the period of the minor's legal disability. *Ram Chundra Roy* v. *Umbica Dossia*, 7 W. R., 161.

A suit to set aside alienation of ancestral property, where a period of twelve years from the date of such alienation had elapsed during plaintiff's minority, may be brought within three years (not

twelve) from the time of his attaining majority. *Chowdhry Zuhoorul Huq* v. *Mussamut Bagoo Jan*, 11 W. R., 532.

The mere fact of a plaintiff not suing within three years of his attaining majority will not, in cases where Act XIV of 1859 allows a general limitation of twelve years, bar his suit if brought within twelve years of the time when the cause of action accrued. *Radhamohun Gouree* v. *Mohesh Chundra Kotwal and others*, 7 W. R., 3.

8.—Mutual Dealings.

The rule that mutual accounts, if they contain some item or items within twelve years, will not be barred by limitation, though the rest of the items be beyond time, is confined to accounts between two parties which show a reciprocity of dealings; or, in other words, to transactions in which there is a mutual credit founded on a subsisting debt, or an express or implied agreement for a set-off of mutual debts.

When two co-sharers collect their rents separately, if one realizes more than his rightful share he gives a cause of action to the other from the commencement of the year following that in which the surplus collection was made, against which the Statute of Limitations would run. *Rajah Syud Ahmed Reza* v. *Syud Enayet Hossein*, W. R., 1864, 235.

The defendant in 1865 and 1866 indented on the plaintiffs for large quantities of merchandize, which were shipped to Calcutta from time to time by the plaintiffs' agents in London, who drew bills on the defendant for each shipment, forwarding such bills and the shipping documents to the plaintiffs in Calcutta. The bills were presented to the defendant by the plaintiffs and accepted by him. In the course of the transactions several of the acceptances were dishonoured by the defendant, and the plaintiffs at his request allowed him to renew the bills. Some renewals took place in August and September, 1866. In March, May, and July, 1866, the defendant made purchases from the plaintiffs, and the plaintiffs made purchases from the defendant. The plaintiffs were in the habit of closing their accounts on 30th June in each year. In an action for balance of account brought on 24th February, 1870, *Held* that the parties were merchants and traders having mutual dealings under Section 8 of Act XIV of 1859. The year mentioned in Section 8 of Act XIV of 1859 is intended to be reckoned from the time when the balance of accounts is struck. In this case that was the 30th June, 1867; the suit therefore was not barred.

Quære,—What would be the operation of the Section in those cases in which the merchant or trader balances his accounts at the lapse of a period of less than one year? *Srinath Das* v. *Pittar P.*, 5 B. L. R., 550; 14 S. W. R., A. O., 41.

The parties to this suit have had mutual dealings, each paying to the other money and receiving from the other an equivalent in bills. In a former litigation the present defendant sued the present plaintiff upon what he averred to be an adjusted account. The Court, finding that the account had not been adjusted, dismissed the suit, but incidentally found that there was a balance rather to the present plaintiff, who now sues for that balance. *Held* that the decree of the Court could not be said to be any adjustment of the balance which it found to be due, so as that plaintiff could date his cause of action from such adjustment. *Held* that the present suit, although for balance of account between merchants and traders who had mutual dealings, under the description in Section 8, Act XIV of 1859, was in reality founded upon a contract; and as that contract was not in writing the plaintiff's cause of action would ordinarily have arisen when there was a breach of the contract, and he would have had 3 years from such breach. But in this particular case the law gave plaintiff 3 years from the close of the year in the accounts of which the last item occurred showing the continuance of the mutual dealings, *i.e.*, of the contract. *Luchmee Narain* v. *Choomun Meah*, 14 S. W. R., C. R. 184.

9.—Computation of the Statutory Period.

The decree provided that the amount should be paid in three instalments, and in default of payment of one instalment the decree-holder was empowered to execute his decree for the whole amount. When the instalment for December, 1865, fell due, the judgment-debtor paid a portion, and obtained an extension of time up to December, 1866. On application on 21st September, 1869, for execution of the decree for the instalments of 1866 and 1867, —*Held* that the instalment for 1866 was not barred by lapse of time. *Krishna Chundra Shaha* v. *Omed Ali*, 6 B. L. R., Ap., 31; and 14 S. W. R., C. R., 414.

The day mentioned in a bond for the repayment of money as that on which the money is to be repaid is to be excluded from the period of computation under the Limitation Act. The borrower in such case has until the last moment of the day mentioned for the payment, and the right to sue accrues not on, but from that day. *Palany Andy Pillay*, 4 Mad. Rep., 330.

In calculating the period of limitation for bringing suits provided by Act XIV of 1859, the day on which the cause of action arose should be excluded from the computation. *Mundy Chinna Comarappa Setti* v. *Ramasamy Chetti*, 4 Mad. Rep., 409.

The date on which a contract is made is to be excluded in computing the time allowed for its performance.

The date on which a debt becomes payable is to be excluded in calculating the period of limitation. *Lakshumar Sakharam* v. *Ranee bin Siji, et al.*, 6 Bom. Rep., A. C. J., 51.

10.—Limitation under Early Acts and Regulations.

(*a*) *Regulations of* 1793 *and* 1799.

A suit for the recovery of malikana is barred by limitation if the malikana has not been received for a period of twelve years.

Quære.—Whether under Regulation VIII of 1793, Section 46, such suit will lie at all. *Bhuli Singh* v. *Mussamut Nimu Behu*, 4 B. L. R., A. C., 29; and 12 S. W. R., C. R., 498.

Discussion of the evidence required to prove admissions of indebtedness and promises to pay money for the purpose of obtaining the benefit of

the saving clauses of the old Limitation Law (Regulation III of 1793, Section 14). *Gopeekishen Gossain* v. *Bindabun Chunder Sircar Chowdhry*, 2 W. R., 221.

The plaintiffs as heirs of Ramtonoo, the husband of one Bhugobuttee, more than 12 years after her death sued to recover lands alienated by her. As an answer to the plea of limitation, they alleged that, in a suit for other property brought against Bhugobuttee in her life-time, they presented a petition after her death praying to be allowed to appear as her representatives, and were opposed by one Beharry Lall, claiming to be an adopted son of Ramtonoo; that in March, 1847, and within 12 years before suit, the Principal Sudder Ameen ordered the plaintiffs' names to be substituted for that of Bhugobuttee as defendants in that suit,—*Held* by the majority of the Court (*dissentiente*, Glover, J.) that these proceedings did not bar the operation of the old Law of Limitation (Section 14, Regulation III of 1793). *Ramgopal Roy* v. *Chunder Coomar Mundul*, 2 W. R., 65.

In a suit by a minor after attaining majority, no allowance can be made, under Regulation III of 1793, for the period of pendency of a suit brought by his guardian and eventually nonsuited. *Luchmun Pershad* v. *Juggernath Doss*, W. R., 1864, 2.

A suit for proprietary right in certain rent-free land in respect of which the plaintiff had instituted a suit for rent before the Collector, which was dismissed, and the plaintiff referred to a civil suit, —*Held* that the date of accrual of plaintiff's right, and not that of the Collector's order of reference, was the cause of action in this case, and that the plaintiff's suit is barred by limitation, under Section 14, Regulation III of 1793. *Hossain Khan* v. *Dinnobundhoo Pundah*, 1 W. R., 35.

Suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Statutes 3 and 4 Wm. 4, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing.

The admission by a defendant that a demand was claimable from some quarter or other, but not as against the property in question, is not an admission within the meaning of Regulation III of 1793, excepting a suit from limitation under that Regulation. The Government having neglected for thirteen years to commence a regular suit, no "good and sufficient cause" precluding them from obtaining redress, according to the exception provided by the aforesaid Regulation, could be presumed to justify the exemption of their suit from limitation. The recovery of their costs does not constitute a "public right" exempting from limitation. *The Government of Bengal* v. *Shurruffutoonissa*, 3 W. R., P. C., 31.

A party who had been endeavouring, by resort to competent Courts, to recover his rights, was held to be entitled to avail himself of the exception in the former Law of Limitation (Regulation III of 1793, Sec. 14) although part of the proceedings was erroneous in enforcing an order made by a single Judge of the Sudder Court, which was ineffectual by reason of its not being confirmed by a second Judge. *Daorgapersad Roy Chowdhry* v. *Tarapersad Roy Chowdhry*, 4 W. R., P. C., 163.

In a suit for mesne profits, under Section 14, Regulation III of 1793, the plaintiff is entitled to wasilat for twelve years before suit, excluding from such computation the period of pendency of the suit for possession from the date of the plaint till the final decree (Steer and Kemp, JJ. *dissentientibus*). *Obhoy Gobind Chowdhry* v. *Ranee Surnomoyee*, W. R., F. B., 163.

The pendency of a suit to set aside a revenue sale is not a legal reason within the meaning of Section 14, Regulation III, 1793, to support a plea of limitation. *Munnoo Bebee* v. *Nundkishore Lall and others*, 6 W. R., 57.

Where a party in possession of an estate is a *bonâ-fide* purchaser for valuable consideration without notice, and the real owner had neglected for 25 years to assert her right to the estate, mere distant residence was held not to be a sufficient cause to preclude the owner from making an earlier assertion of her right so as to save her from limitation by bringing her within the exceptions of Section 14, Regulation III, 1793, and Section 3, Regulation II of 1805. *Sheikh Imdad Ali and others* v. *Mussamut Koothy Begum*, 6 W. R., P. C., 24.

A zemindar suing for resumption of alleged invalid lakheraj land under Section 19, Regulation X of 1793, is not limited to time, provided he can prove that, at some time subsequent to the Decennial Settlement, the land sought to be resumed was part of his mâl estate, and had paid rent. *Gopal Chunder Shah and others* v. *Bhobo Tarinee Dossee, mother and guardian of Ashootosh Chundra and others, minors*, 7 W. R., 240.

A previous suit was brought in 1859, which was not finally decided in appeal by the High Court until December, 1865, the effect of which decision was to take the talook then in dispute out of the class of those protected by Section 51, Regulation VIII, 1793, and to make it liable to enhancement.

Held that the plaintiff's cause of action for rent did not accrue until ascertainment of the rent by that decision, and that her present suit for about five years' rent from 1st July, 1859, having been brought within one year from the date of that decision, could be maintained. *Madhub Chunder Ghose* v. *Radhika Chowdhrain*, 6 W. R., Act X R., 42.

A claim to immoveable property cannot be barred if not brought within one year of the proclamation issued under Section 7, Regulation V of 1799, which applies only to moveable property. *Shib Ram Lall and others* v. *Raj Coomar Mitter and others*, 6 W. R., 48.

(*b*) *Regulation* 1, 1802 (*Bombay Code*).

The offer of a specific sum of money by way of compromise, in no way involving an admission of the justice of the plaintiff's demand further than what may be inferred from the offer of any compromise (an inference which is never permitted), cannot bring the plaintiffs within the exception, in Section 13, Regulation I of 1800, of the Bombay Code, under which a suit is barred by limitation if not brought within twelve years from accrual of the cause of action.

The defendant's residence beyond the limits of the E. I. Co.'s Court is not a good and sufficient cause, within the meaning of the same exceptions, to excuse the plaintiff's delay in suing beyond the

twelve years. *Bhaei Chund* v. *Purtab Chund*, 5 W. R., P. C., 31.

(*c*) *Regulations*, 1802 (*Madras Code*).

Where plaintiff's ancestors mortgaged land and the mortgagee obtained possession on condition that the produce should extinguish interest,—*Held* that the plaintiff's suit was not barred by the Law of Limitation, although the transaction took place twelve years before the passing of Regulation XI of 1802.

Held also that in such a case no cause of action could accrue until something was done to render the friendly possession hostile. *Vanneri Purushottaman Namhudri* v. *Patanattil Kanju Menavan*, 2 Mad. Rep., 382.

Where a bond was seized under legal process of attachment after it had become due, but before the lapse of twelve years from its date, and remained under attachment for several years,—*Held* that there was "good and sufficient cause" for the lapse of time within the meaning of Regulation II of 1802, Section 18, Clause 4, and that a suit on the bond was therefore not barred. *Kádarbácha Sahib* v. *Rangasvámi Nayák*, 1 Mad. Rep., 150.

A suit is not barred by limitation under Clause 4, Section 18, Regulation II, 1802, of the Madras Code, if the plaintiff prefers his claim within the prescribed period to a Court of competent jurisdiction, and is prevented from commencing his suit in proper time by no neglect on his part, but by the irregular proceedings of the Court to which his claim is preferred. *Naragunty Luchmedavamah* v. *Vengama Naidoo*, 1 W. R., P. C., 30.

The appellant, a zemindar, sued to recover a portion of the zemindary granted by his grandfather upwards of forty years ago, upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802, and that, in the absence of the observance of the formalities there prescribed, the grant was void.

Held that more than twelve years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. *Sri Rajah Seta Rámá Khrisna* v. *Sri Jogunti Setayamma Gáru*, 3 Mad Rep., A. J., 67.

(*d*) *Regulations*, 1803.

The words "other good and sufficient cause" in Clause 3, Section 18, Regulation II, 1803, of the Bengal Code, include insanity, whether there has been or is a commission of lunacy or the like or not; and the word "precluded" in the same clause does not mean precluded during the whole term of twelve years or merely at its commencement, but means in effect precluded during any part of it.

In computing the twelve years' period of limitation there should not be reckoned any time elapsing while the person for the time being entitled to seek redress was not free from disability. *Troup and Solaroli* v. *The E. I. Company; The Hon'ble Mr. Dyce Sombre; The E. I. Company*, 4 W. R., P. C., 111.

This case which was originally instituted in the Zillah Court at the time when no regulation for the limitation of suits applicable to the suit existed but Section 18, Regulation II, 1803, but which having been appealed from the Zillah Court, was pending at the time that Regulation II of 1805, which corrected the Regulation of 1803, was passed, was held to be subject to the Regulation of 1805, as regards the forcible and violent possession taken by the defendants, who could not be allowed to plead their wrong in support of the plea of limitation. *Lall Dokul Singh* v. *Lall Rooder Purtab Singh*, 5 W. R., P. C., 95.

(*e*) *Regulations*, 1805 *and* 1812.

A suit by Government to establish its right and title to a *julkur* is barred by limitation under Section 2, Regulation II, 1805, if brought after the expiration of sixty years' adverse possession against Government.

The *onus* is on a plaintiff to remove the bar of limitation pleaded by a defendant, by showing that he (the plaintiff) had possession within the period prescribed by law. *The Collector of Rungpore* v. *Prosunno Coomar Tagore*, 5 W. R., 115.

Under Regulation II, 1805, sixty years is fixed as the absolute limit, beyond which neither fraud nor any other special allegation will give a cause of action.

In a suit by Government against ghatwals the defendants were found to have been in possession "for a very long time," and although they had failed to prove possession in excess of sixty years, the *onus* was held to lie on the Government to prove possession within sixty years. *Bromanund Gossain* v. *The Government*, 5 W. R., 136.

Limitation bars, under Regulation II, 1805, any enquiry into the title of parties who hold by purchase from one who was in peaceable possession for fifteen years before the date of suit. *Anundo Moyee Dossee* v. *J. Mackenzie*, W. R., 5.

The *nullum tempus* clause of Section 3, Regulation II, 1805, does not apply to a case where the occupant was not a mortgagor or depositary, otherwise than as he was subject to pay a portion of the proceeds of the property to another during her lifetime. *George James Gordon* v. *Khajah Aboo Mahomed Khan*, 5 W. R., P. C., 68.

A suit for rent is barred under Clause 3, Section 3, Regulation II, 1805, against a person who has been, by himself, or by those under whom he claims, in peaceable possession without payment of rent for sixty years before the commencement of the suit.

The clause takes away from the Courts all authority to take cognizance of any suit whatever if the cause of action shall have arisen sixty years before the institution of the suit; it precludes all enquiry into any original defect in the title under which the possession commenced, and makes it unavailing to show that the possession commenced under a grant made null and void by Regulation XIX of 1793. *Chundrabullee Dabia* v. *Luckhee Debia Chowdhrain*, 5 W. R., P. C., 1.

Suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Statutes 3 and 4, Wm. IV, cap. 41, authorizing the Crown to appoint the East India Company to take charge of appeals, and bring them to a hearing. The recovery of these costs does not constitute "a

public right" within the meaning of Regulation II of 1805, enabling the Government to sue, notwithstanding the lapse of time. *The Government of Bengal* v. *Shurrufutoonissa*, 3 W. R, P. C., 31.

Where the defendant in a suit for ejectment, on refusal to give a kubuleut, pleaded limitation generally, and it was found that the defendant had been in possession from before the Decennial Settlement, the question of limitation by reason of sixty years' possession was substantially raised, and the plaintiff was declared barred under Clause 3, Section 3 of Regulation II of 1805. *The Government* v. *W. Fergusson*, 9 W. R., 158.

The extension of the time limited for suing in respect of rights to lands, &c., from twelve to sixty years, where the persons in possession have acquired it by violence, fraud, or by any other unjust or dishonest means as provided by Regulation II, 1805, Section 2, is subject to the proviso in Clause 2, that "the plaintiff shall set forth the same distinctly either in his petition of plaint or in his replication." Where he has not done so the Judge cannot make a decree giving the plaintiff possession, on the ground that although there has been an adverse possession for more than twelve years, such possession was obtained by fraud or violence. *Ramkany Doss* v. *Kissen Chunder Roy*, Marsh., 22.

Section 5, Regulation XX of 1812 (concerning the registration of "bonds, promissory notes, and generally of obligations for the payment of money)" is not applicable to hoondees or other similar negotiable mercantile securities. *Boistub Churn Doss* v. *Prem Chund Mitter*, 4 W. R., 98.

(*f*) *Regulation VIII*, 1819.

The special rules of limitation in Clause 5, Section 17, Regulation VIII of 1819, refer only to the disposal of the sale proceeds of a putnee sale, and do not apply to a suit to recover consideration-money paid for a dur-putnee cancelled by the sale of the putnee for arrears of rent. Such a suit is governed by the general rules of limitation under Act XIV of 1859. *Judoonath Bhuttacharjee* v. *Nobo Kristo Mookerjee*, 3 W. R., S. C. C. Ref., 2.

Regular suit against a gomastah's immoveable property under Clause 4, Section 18, Regulation VIII, 1819, after failure to recover in execution in a summary suit under Regulation VII, 1799. *Held* that the cause of action in the regular suit was the same as that in the summary suit, and that the period of limitation must be reckoned from the time when that cause of action accrued, and not from the time when the summary decree in respect of it was given, or from the time at which the plaintiff first discovered that he could not obtain satisfaction of the decree in the summary suit. *Sreenath Ghosal* v. *Kenaram Singh*, 5 W. R., 100.

(*g*) *Regulation VII*, 1822.

A plaintiff who seeks in the Civil Court to establish a right to settlement under Regulation VII, 1822, and to reverse the orders of the revenue authorities in the defendant's favour, must sue within twelve years.

A Court deciding a case on limitation ought also to go into the merits; so that in case a higher Court reverses the decision on limitation a remand may be unnecessary. *Shibo Doorga Chowdhrain and others* v. *Syud Hossein Ali Chowdhry*, 6 W. R., 218.

(*h*) *Regulation V*, 1827 (*Bombay Code*).

When Hindu coparceners have, for a period of more than thirty years, held shares different from these which as such coparceners they would be entitled to by law, and no separation is proved between the parties, the coparcener holding less than his proper share can sue to recover his full quantum, and his claim is not barred either by Regulation V of 1827 or Act XIV of 1859. *Sakho Narayan Khandal Kur* v. *Narayan Bhikaji Khandal Kur*, 6 Bom. Rep., A. C. J., 238.

The plaintiff in 1861 sued to recover his share in a watan. The defendants had been in actual possession of it from 1811 to 1830, when the Government attached the watan and enjoyed its revenues till 1845. In 1846 it was restored to the defendants.

Held that the defendants had uninterrupted possession for more than thirty years, under Clause 1 of Section I of Regulation V of 1827. *Lado Lakshuman* v. *Krishnaji Sadashid, et al.*, 6 Bom. Rep., A. C. J., 41.

If a proprietor of certain land loses all title to it through the operation of the Statute of Limitations, but subsequently intervenes and holds it for a year or two twenty-eight years before action brought, while Regulation V of 1827 was in force, he cannot rely on this possession to defeat the statute, but must show affirmatively that this intervention was rightful and in virtue of proprietorship, and such as to supersede the previous prescriptive right acquired against him. *Ram Chunder Bin Madhowrao and another* v. *Abajee Wullud Yes and others*, 1 Bom. Rep., 64.

A case is within the exception contained in Clause 2, Section 7, Regulation V of 1827 of the Bombay Code (Limitation of Suits), by reason of a claim having been preferred to the authority that was then the supreme power in the State, although a satisfactory and binding decree was not obtained. *Jewajee and others* v. *Primbukjee and others*, 6 W. R., P. C., 38.

The Law of Limitation contained in Section 1, Regulation V of 1827, applies to miras land as well as to all other descriptions of immoveable property. Special Appeals No. 2,502 of 1850 and No. 3,064, Morris, S. D. A. Rep., Vol. II, overruled. *Saloo Kom Ragoogee* v. *Rowjee Bin Ramjee and Mahadjee*, 1 Bom. Rep., 41.

(*j*) *Act XIII*, 1848.

The order of a Deputy Collector under Regulation VII, 1822, declaring the lands in dispute to be paykan jagheer lands, is an award within the meaning of Act XIII of 1848, and any suit to set it aside must be brought within three years of the order. No deduction on account of minority or other legal disability can be made from the period of limitation prescribed by Act XIII of 1848. *Modhoosoodun Singh* v. *Rajah Purtee Bullub Paul*, W. R., 1864, 140.

Act XIII of 1848 "for the greater security of possessory titles in the Presidency of Bengal, derived from awards made by the revenue authorities under

Regulation VII of 1822, Regulation IX of 1825, and Regulation IX of 1833 of the Bengal Code," by Section 3, enacts that no suit shall be entertained for contesting the justice of any award of the revenue authorities under any of these regulations made after the passing of this Act, after the expiration of three years from the date of the final award. A suit for the amendment of a map was referred by the Deputy Collector to an Ameen for the purpose of a local investigation, and the Ameen returned that, neither of the parties appearing before him, he was unable to make the investigation, whereupon the Deputy Collector struck the case out. *Held* that this was not an award within the meaning of the Act. *Golam Koodsee Chowdhry* v. *Rashu Chunder Ghose*, Marsh., 323.

Where the plaintiff's title was recognized by the settlement officer in 1836, who assigned an allowance of 5 per cent. on the Government demand,—*Held* that the Collector had no power in subsequent years during the pendency of this completed settlement to interfere with the arrangement of the settlement officer, except to the extent allowed by Section 20, Regulation VII of 1822.

Section 20, Regulation VII of 1822, does not confer on the Collector the power of remodelling the arrangements completed by the settlement officer under Section 10 of the Regulation; nor can the notification of Government extend to revenue officers an authority that the law does not allow to them.

The limitation declared by Act XIII of 1848, and Clause 6, Section 1, Act XIV of 1859, applies only to suits for the purpose of contesting the justice of an award as between the contending parties, and not to those the object of which is to amend a settlement and establish the right of persons who were not before the Collector.

Held that the cause of action to the plaintiff did not accrue from the date of the orders of Government directing to discontinue the payment of malikana, but from that of the Collectors by which it became known to the plaintiff that he would henceforth be deprived of his proprietary title.

Where the Collector failed to give notice of his intention to dispose of the estates, it was not incumbent on the plaintiff to contest the sale within the period prescribed by Section 5, Act XXIII of 1863. *Rai Hunmut Singh* v. *The Collector of Bijnour*, 2 Agra Rep., A. C., 258.

In order to apply the provisions of Act XIII of 1848 in regard to limitation it must be shown that there was an award, *i.e.*, an adjudication after a contention between the parties before the survey authorities.

Under the general Law of Limitation the cause of action in a suit for possession by an auction-purchaser at a sale for arrears of revenue arises from the date of purchase. *Hurree Mohun Thakoor* v. *David Andrews*, W. R., 1864, 30.

Act XIII of 1848 cannot be applied to bar a suit to assess land as rent paying. *Mahomed Ali Khan Chowdhry* v. *Jadub Chunder Chuckerbutty*, W. R., 1864, 60.

When a person appealed from an award of a Collector under Act XIII of 1848, which appeal was struck off for default of prosecution, and he then sued to set aside the award,—*Held* that limitation commenced to run from the date of the award, and not from the date of the order in the ineffectual appeal proceedings. *Gholam Durbesh Chowdhry* v. *Sham Kishore Roy*, W. R., 1864, 378.

The rejection by a survey officer of a claim because it had not been brought forward sooner, is not an award within the scope of the special limitation of Act XIII of 1848. *Shama Soondery Dabee* v. *Prosonno Coomar Tagore*, 1 W. R., 114.

A suit to set aside an award made by the survey authorities is not barred by Act XIII of 1848, when the plaintiff was no party to that award, but is an auction-purchaser at a sale for arrears of Government revenue subsequent to the award. *Pureeag Singh* v. *Shib Ram Chunder Mundul*, 3 W. R., 165.

No deduction or allowance is made by law for legal disability from the period of limitation prescribed by Act XIII of 1848. Limitation against an adopted son will count from the time of his attaining majority. *Huro Chunder Chowdhry* v. *Kishen Coomar Chowdhry*, 5 W. R., 27.

Act XIII of 1848 applies only to suits for contesting the justice of an award as between the contending parties, and not to suits for the purpose of amending a settlement, and establishing the rights of persons who were not parties contesting between themselves before the Collector. *Komul Kishen Surkul Bissonath Chuckerbutty*, W. R., F. B., 128.

An order of a Superintendent of Survey striking off an appeal is not an award within the meaning of Act XIII of 1848. *Sham Kant Banerjee* v. *Gopal Lall Tagore*, 1 W. R., 328.

The rejection by a survey officer of a claim, because it had not been brought forward sooner, is not an award within the scope of the special limitation of Act XIII of 1848. *Shama Soondery Dabee* v. *Prosonno Coomar Tagore*, 1 W. R., 114.

A. and B. were similarly affected by a survey award. A. appealed, but B. did not. *Held*, in a suit to set aside the award, that B. could not compute the period of limitation from the date of the order on A.'s appeal. *Held* also that B.'s co-sharers, though they did not appear in the proceedings of award, were bound thereby. *Tulsiram Doss* v. *Mohamed Afzul alias Mirza*, 1 B. L. R., A.C., 13; 10 W. R., 48.

A. appealed from the award of a survey officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue without entering into the merits. *Held* that the period of limitation runs from the date of the order of the Board of Revenue. *Krishna Chundra Doss* v. *Mahomed Afzul*, 1 B. L. R., A. C., 11; 10 W. R., 51.

II.—Limitation under Act X of 1859.

Suits under Act X of 1859 are governed by the special rules of limitation therein mentioned. *Ranee Armedh Koonwar* v. *Joy Kurun Lall*, 1 W. R., 349.

The period of limitation within which suits must be brought for rent due at the time of the passing of Act X of 1859, must be reckoned from 29th April, 1859 (the date of the passing of the Act), and not from 1st August, 1859 (the date on which the Act

came into operation). *Luchmeput Singh* v. *Mahomed Mooneer*, W. R., F. B., 126.

Suits for arrears of rent under Act X of 1859 are not affected by Act XIV of 1859. *J. Poulson* v. *Modhoosuddun Paul Chowdhry*, 2 W. R., Act X R., 21; *J. Mayer* v. *Bibee Sowlutoonissa*, 2 W. R., Act X R., 96.

The fixing of the rate of rent in an execution proceeding of the Civil Court will not save the limitation under Act X of 1859. When a suit is pending to determine the rate of rent, back rent can be sued for only within one year of the determination of the rate. *Nawab Nazir Sidi Nazir Ali Khan Bahadoor* v. *Jugut Tara Chowdhrain*, 3 W. R., Act X R., 2.

Limitation in rent cases must be governed by Act X and not by Act XIV of 1859. *Mahomed Kalee Shikdar* v. *Sheikh Ali Hossein Chowdhry*, 3 W. R., Act X R., 5.

A., a zemindar, sold the rights of B., his putneedar, for arrears of rent under Regulation VIII of 1819. This sale was subsequently set aside at the suit of B. for irregularity. A. then sued B. for the arrears, under Act X of 1859, and B. raised the defence that the suit was barred, more than three years having elapsed from the close of the year in which the arrear became due.

Held (reversing the decision of the High Court) that, upon the setting aside of the putnee sale, the putneedar took back the estate subject to the obligation to pay the rent, and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year. *Rani Shurnamoyi* v. *Shoshee Mookhi Barmani and others*, 2 B. L. R., P. C., 10; S. C., 11 W. R., P. C., 5.

Act X of 1859 does not authorize the recovery of only three years' rent. Thus, where a suit was commenced within three years from the end of the Bengal year 1268, the plaintiff was held entitled to recover the whole of that year's rent. *Doorga Doss Chatterjee* v. *Nobin Mohun Ghosal*, 6 W. R., Act X R., 63.

The fact of a person obtaining a decree against other parties in a suit for rent under Act X of 1859, in which a third party unsuccessfully intervened, does not affect the rights of the intervenor or bar the intervenor's present suit for possession merely because it was not instituted within a year of the decree for rent which the intervenor does not ask to be set aside. *Mussamut Mungroo Oopadhya and others* v. *Mussamut Chamelee Koonwar*, 6 W. R., Act X R., 38.

12.—Limitation under Act XIV of 1859.

(*a*) *Generally.*

Under Act XIV of 1859 a suit for mesne profits may be brought within twelve years from the date on which a decree for possession was passed. *John Grey* v. *Anundo Mohun Moitro*, W. R., 1864, 79.

Section 32 of Act VIII of 1859 imposes upon the Court of first instance the duty of taking any legal objection apparent on the face of the plaint, and the fact that a portion of the claim is evidently barred by the Law of Limitation from which no ground of exemption is stated, is an objection which ought to be noticed by the Court when receiving the plaint; or if not taken notice of then it may be at any subsequent stage of the suit.

The Judge in appeal is bound to decree according to the Law of Limitation applicable to the case as stated by the plaintiff himself, although the objection may not be raised in the grounds of appeal; and his omitting to do so is an error or defect in the decision of the case on the merits and a ground of special appeal. *Mukvana Sohiji Kesraji and another* v. *Raja Saungji Jalum Saugji*, 2 Bom. Rep., 169.

No other cause of disqualification than those mentioned in Act XIV of 1859 is admissible to save limitation. *Ram Kishore Acharje Chowdhry* v. *Lukhee Debee Chowdhrain*, W. R. 1864, 290.

The limitation of suits for rent in Act X of 1859 is not subject to the deductions contained in Act XIV of 1859. *Ram Sunkur Sanaputty* v. *Gopal Kishen Deo*, 1 W. R., 67.

Under Act XIV of 1859, a zemindar cannot resume land, whether veritable lakheraj or not, held from before 1790. Even an auction-purchaser is barred by limitation if the ryot can prove that the land was in the possession of those through whom he claims before 1790. *Radha Kristo Mytee* v. *Bhugwan Chunder Bose*, 1 W. R., 248.

Under Act XIV of 1859 a suit is barred by limitation where the time for its institution expires on a holiday. *S. E. Collis and T. B. Grant* v. *Tarinee Churn Singh*, 3 W. R., 210; *Rajkisto Roy* v. *Denobundho Sarmah*, 3 W. R., S. C. C. Ref., 5; *Hobee Ram Doss* v. *Bibee Ram Gogoree*, 6 W. R., 39.

How limitation applies in certain cases instituted after the passing of Act XIV of 1859, and decreed before 1st January, 1862, in which application for execution of the decrees has for the first time been made after the completion of three years from the dates of the decrees. *Anonymous*, 3 W. R., S. C. C. Ref., 8.

The operation of Act XIV of 1859 was merely postponed by Act XI of 1861 to a certain date from which the procedure prescribed by the former Act is to be carried out. *Modhoosoodun Mookerjee* v. *Dinmonee Banerjea*, 4 W. R., Mis., 24.

By Act XIV of 1859 an adopted son out of possession should sue within three years of his majority to set aside illegal acts of his adopting mother performed twelve years before the suit.

No deduction from the period of limitation can be allowed to the adopted son for the period of pendency of suits brought by or against him, to prove or disprove the validity of his adoption. *Kishen Mohun Koond* v. *Muddun Mohun Tewaree*, 5 W. R., 32.

Where the assignee of a decree passed in 1857 sues out execution within three years from the passing of Act XIV of 1859 he is in time, and limitation cannot be applied. *Ram Chunder Chuckerbutty* v. *Kurreem Bux Meah*, 5 W. R., 223.

Act XI of 1861 only declares that certain Sections of Act XIV of 1859 should not take effect or have any operation before 1st January, 1862, but does not defer the operation of the Act in respect of every case which may thereafter come before the Courts. *Gopal Kishen Poddar* v. *Ranee Shurut Soondery Debia*, 6 W. R., Mis., 41.

In a suit brought upon a judgment in the French Court at Chandernagore,—*Held* that the period of limitation must be reckoned from the day on which the French decree was dated, and therefore in all

Courts to which Act XIV of 1859 applies, such suit will be barred at the expiration of six years from that date. *Sreemutty Heeramonee Dossee* v. *Promothonath Ghose*, 2 Ind. Jur., N. S., 233.

The Law of Limitation applicable to a suit by the heirs of a Mahometan wife for her dower is not that relating to suits on contracts, but that relating to suits to recover inheritance. *Shahazada Mahomed Faez* v. *Shahazadee Oomdah Begum and others*, 6 W. R., 111.

The plaintiff's voluntary absence abroad after attaining majority does not bar the operation of Act XIV of 1859. *Varikata Subha Pattar* v. *Gisi Ammal*, 2 Mad. Rep., 113.

Act XIV of 1859 has no application to cases when the special rules of limitation prescribed by Act X of 1859 apply. *Sreemutty Dabee* v. *Mukeesunnissa Bebee*, W. R., 1864, Act X R., 116; *see* also p. 134.

The Act for limitation of suits (Act XIV of 1859) came into operation on the 1st January, 1862.

By an order of Civil Court it was declared that all suits brought on the 4th January, 1862, when the Court was re-opened after the adjournment for the Christmas holidays, should be treated as if brought under the old Law of Limitation.

A suit was brought on the 4th of January, 1862, which was barred by Act XIV of 1859. *Held* that the Act applied, and that the suit was barred. *Kamhinayani Janaji Subba Rajulu Nayani Varu* v. *Uddighiri Venkataraya Chetty and others*, 2 Mad. Rep., 268.

Notwithstanding Act XI of 1861, all suits instituted since January 1, 1862, are to be governed by the provisions of Act XIV of 1859. *Mohidin Sahib* v. *Khadar Sahib*, 2 Mad. Rep., 42.

Act XIV of 1859 is not applicable to a case where the former condition of the lands sued for became entirely altered and the former landmarks destroyed by diluvian. *Shurut Soondery Debee* v. *The Government and others*, 7 W. R., 42.

The Statute of Limitation, Act XIV of 1859, never begins to run until there has been a cause of action. *Khuruckdharee Singh* v. *Rewut Lall Singh*, 12 W. R., 168.

Where a suit for money lent is instituted after the lapse of the period of time prescribed by the Act of Limitation, Act XIV of 1859, a payment on account shown to have been made by the defendant within that period will not take the case out of the operation of the Act. *Goura Bebee Kissen Misser*, 1 Ind. Jur., N. S., 224.

In cases of application for revival of decrees struck off before the passing of Act XIV of 1859, that Act operates from the date of the Governor-General's assent thereto, and not from the date of its having come into operation. *Shahzada Mahomed Buseerooddeen* v. *Nawab Hajee Mahomed Khan Kuzulbash*, 4 W. R., Mis., 13.

Where A. applied to the Court to realize a claim against a company which was being wound up by the Court,—*Held* that he was prosecuting a suit in Court within the meaning of Section 1 of Act XIV of 1859. He commenced his suit when he first sent in his claim to the official liquidator. *Pershad Dass* v. *Denonath Dey*, 2 Hyde 14 followed. *In the matter of Act XIX of* 1857 *and the Ganges Steam Navigation Company. Robertson's case*, 2 Ind. Jur., N. S., 180.

The rules contained in Act XIV of 1859 as to disability are of general application, and are not confined to the period of limitation provided for by that Act. *Mussamut Phoollas Kooer* v. *Lall Juggessur Sahi*, 14 S. W. R., C. R., 340.

To a process of execution to enforce a summary decision of the revenue authorities, under Regulation VII of 1799, Act XIV of 1859, is held applicable; and no proceeding in execution having been taken out to enforce such decision or to keep the same in force within one year next preceding the application for such execution, it was held barred by limitation. *Luchmee Kant Ghose* v. *Baman Dass Mookerjee*, 17 S. W. R., C. R., 472.

The defendant, who was the owner of a moiety of certain property (the plaintiff and another being owners of the other moiety), mortgaged his moiety to the plaintiff; the mortgage-deed, dated 11th June, 1863, contained a covenant to pay off the principal and interest at the expiration of a year, and gave a power of sale in default of payment. The whole property, including the mortgaged portion, was conveyed to one I. D. on 27th November, 1864, by a bill of sale executed by the three owners of the property. On the execution of the bill of sale the sum of Rs. 16,250, the half of the purchase-money which belonged to the defendant, was handed over to the plaintiff in part payment of a sum of Rs. 19,555, which was therein recited as being then due on the mortgage. In a suit for the balance, brought in November, 1869, the defence was that it was barred by the Law of Limitation. *Held* that the admission by the defendant contained in the bill of sale of November, 1864, was a sufficient acknowledgment to take it out of the operation of Act XIV of 1859, Section 4. *Madhusudan Chowdry* v. *Brujanath Chundra*, 6 B. L. R., 299.

Plaintiff brought a suit to establish his right to a fishery, which was finally decided in his favour. Whilst that suit was pending he sued in the Small Cause Court to recover damages from defendants for obstructing him from fishing, and his suit was dismissed as premature. After the final determination of the suit in which his title to the fishery was tried he brought the present suit to recover damages, and the Small Cause Court decided that the suit being for damages to personal property ought to have been brought within a year from the time of the injury having been committed, and that the case was barred by the former decision as being a decision on the merits. *Held* that the suit was not one for damages for injury to personal property, but for mesne profits, and that the six years' limitation was applicable to it *Shaikh Elahee Buksh* v. *Sheo Narain Singh*, 17 S. W. R., C. R., 360.

(b) Three Years.

A suit substantially to vary the boundaries laid down in a survey award must be brought within three years from the date of the award. *Jankeeram Mohunt* v. *Haradhun Baneree*, W. R., 1864, 38.

The period of limitation is three years in cases where there is a written agreement or contract which could have been registered at the time and place of execution thereof, unless registration shall have been made within six months of the date of such agreement or contract. For all contracts or agreements which could by virtue of any law or

regulation be so registered] the period of limitation is six years. *Veliappen Chetty* v. *Notoo Thevan*, 2 Ind. Jur., O. S., 11.

Where a co-sharer sues a lumberdar for profits of his share, and also states various acts of the lumberdar in taking the land and appropriating the profits,—*Held* that such a suit was a suit by a co-sharer for the share of his profits, and the limitation applicable to such suits was three years and not one year. *Sheikh Khojoye and others* v. *Mahomed Taque*, 2 Agra Rep., R. C., 11.

Although the relation of agents and principals subsisted between the plaintiffs and defendants, yet, where suit was brought on an account stated, and in reference to transactions of purchase and sale in which the plaintiffs were the vendors and the defendants the purchasers,—*Held* that the suit was barred if not brought within three years. *Held* also that an acknowledgment by one partner sufficient to save limitation will not bind another partner who has not subscribed such acknowledgment. *Shah Benarsee Dass* v. *Khooshal Chund*, 3 Agra Rep., 170.

A seller or mortgagor must always be held impliedly to warrant the title of the property sold or mortgaged; and if it be found that the title is defective, the vendee or the mortgagee can sue for damages or loss on the breach of implied contract, although there may be no express agreement for title

The suit to recover damages or loss on breach of such contract would lie within three years from the date when breach was committed. *Dwarka Dass* v. *Ruttun Singh*, 2 Agra Rep., A. C., 199.

A suit for pleader's fees upon a vakalutnamah which is in the form of a mere power of attorney, and is not a written contract, is barred by limitation if not brought within three years. In the absence of evidence of any express agreement as to when the fees are to be paid, the implied agreement must be taken to be for payment at the time when the case is decided. *Kashinath Roy Chowdhry* v. *Ishur Chunder Mookerjee*, 5 W. R., 297.

The defendant, the payee of a promissory note, endorsed it to the plaintiff. The endorsement was, "Pay to K. M. (plaintiff) or his order." The promissory note had been registered previous to the endorsement to plaintiff. A suit was brought by the plaintiff three years after the date of the endorsement to recover the amount of the note from the defendant. *Held* that the suit was barred by the Law of Limitation. *Kylasanada Moodelly* v. *Armugun Moodelly*, 4 Mad. Rep., 366.

The period of limitation applicable to suits upon written instruments which might have been registered by virtue of any law in force at the time of their creation, but which have not been registered, is three years. *Venkutachalam, Y.* v. *Mala Kasigadu*, 5 Mad. Rep., 68.

Considering the date and history of the Limitation Act XIV of 1859, the Privy Council were of opinion that the High Court in their decision (16 W. R. F. B. 1) were warranted in holding that the High Courts, though unquestionably Courts established by Royal Charter in the broad and general sense of the term, were not, when exercising their appellate jurisdiction from the Mofussil Courts, such Courts within the meaning of that Act. Their Lordships also agreed in the same Full Bench ruling that the execution of decrees of the High Court made on appeal from the District Courts was subject to the three years' limitation prescribed by Section 26. The consideration of the question as to the date from which the three years should be calculated was not necessary for the determination of this appeal; but the Privy Council inclined to the view that the execution ought to proceed on a decree of which the mandatory part expressly declared the right sought to be enforced; and as the question was not one of practical importance their Lordships would not express dissent from the Full Bench ruling above referred to, in which it was held that when the decree of the lower Court was reversed, modified, or affirmed the decree passed by the Appellate Court was the final decree in the suit, further than by saying that there might be cases in which the Appellate Court, particularly on special appeal, might see good reasons to limit its decision to a simple dismissal of the appeal, without confirming a decree erroneous or questionable, yet not open to examination or special appeal; and their Lordships suggested the expediency in all cases expressly to embody in a decree of affirmance so much of the decree below as it is necessary to affirm. *Kristo Kinker Ghose Roy* v. *Burroda Kant Ghose Roy*, 17 S. W. R., C. R., 292.

The plaintiff had sued the defendant at the end of the year 1272 to recover arrears of rent for 1271, and to eject him for non-payment. The litigation lasted till 1276, when the plaintiff obtained a decree, which, however was not executed, as the defendant paid the amount and costs within fifteen days. In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. It was held that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years, under Section 32, Act X of 1859. *Dindayal Paramanik* v. *Radha Kishori Debi and others*, 8 B. L. R., 586; and 17 S. W. R., C. R., 415.

A suit against a del-credere agent on a balance of accounts in respect of dealings in regarding which there is no express written contract is governed by the three years' limitation prescribed by Clause 9, Section 1, Act XIV of 1859. *Dukui Pershand Bustooru* v. *Mussamut Foolcoomara Dulu*, 16 S. W. R., P. C., 35.

(*c*) *Six Years.*

The right to sue on a foreign judgment, as on a new cause of action, accrues on the day when the foreign decree was made, and is barred in all Courts to which Act XIV of 1859 applies at the expiration of six years from that date. *Heera Monee Dossia* v. *Promotho Nath Ghose and others*, 8 W. R., 32.

A suit for mesne profits brought after two years from the passing of Act XIV of 1859, pursuant to a decree for recovery of possession within the said two years, is governed by the provisions of that Act, and must be limited to the mesne profits due for a period of six years before its institution. *James Gray and others* v. *Anundo Mohun Moiter*, 6 W. R., 108.

In a suit instituted after Act XIV of 1859 came into force, mesne profits can only be recovered for the six years next preceding the institution of the suit.

A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided. *Pratab*

Chandra Binwa v. *Rani Swarnamayi*, 3 B. L., Ap., 81; S. C., 12 W. R., 5.

Defendant, whilst prisoner for debt, signed a retainer in favour of the plaintiff, his attorney, and the debt, the subject-matter of the present action, had accrued previously to the year 1859, when the relation of attorney and client ceased. A plaint for such debt filed within six years from the completion of the work contracted for was held not barred by the Statute of Limitations. *Carruthers* v. *Maunzes*, Cor. Rep., 4.

Held that six years is the limitation in suits for contribution, and the cause of action arises from the sale of the property in execution. *Mussamut Joomele* v. *Wallee Ahmed*, 10 W. R., 31.

Defendants carried off a quantity of unthreshed paddy from the plaintiff's threshing-floor. *Held* that the plaintiff's right of action is not barred for six years. *Amirthammál* v. *Ranganádha Pillai*, 3 Mad. Rep., A. J., 165.

Though malikana is not, like rent, a recurring cause of action, yet a suit will lie for malikana the cause of action as to which is non-payment within six years. *Heeramund Sahoo and others* v. *Mussamut Ozeerun and others*, 6 W. R., 151.

A suit to obtain re-possession of property by setting aside a prior decree for the same property must be brought within six years. *Mussamut Jhisoman Koonwar* v. *Roop Narain Singh and others*, W. R., 165.

If a party has a lien on certain property as security for a loan, it is incumbent upon him to obtain a decree, both for the money and for the realization of it by the sale of the property, within six years from the date on which the money became due under a registered bond. *Seetul Singh and others* v. *Sooruj Buksh Singh*, 6 W. R., 318.

A suit for balance of account in respect of dealings of a limited nature is governed by the limitation of six years. *Gopal Chunder Shaha and others* v. *K. Sinaes and others*, 8 W. R., 4.

In a suit brought by the plaintiff to establish his right to a tora garas allowance, and for arrears of it, it was held that tora garas, in the absence of special proof to the contrary, must be presumed to be moveable property. A suit for its recovery must therefore be brought within six years. *Mahana Fatesangii* v. *Desai Kalyanraya*, 4 Bom. Rep., A., C., J., 189.

To a suit upon a written instrument evidencing the loan of money, where there is no legal obligation to register the instrument, the period of limitation is six years. *Syed Ali Saib* v. *Sri Raja Saniyasiraz Pedda Balaiya-Rasimhulu Bahadur*, 2 Mad. Rep., 401.

The representatives of a gomasta, who had, for the last four years of his life, taken the moneys of his employers in advance for the purpose of the business, were sued for the balance of account of such moneys after giving credit for the amount of the gomasta's annual salary. *Held* that the suit, being brought in less than six years from the date of the gomasta's death, was not barred by the provisions of Act XIV of 1859. *Kalikrishna Pal Chowdhry* v. *Srimati Jogutara*, 2 B. L. R., F. B., 139.

Six years is the period of limitation prescribed by Act XIV of 1859 for suits for mesne profits, and twelve years for suits for possession of land.

The cause of action for such profits is the date upon which they annually become due, and no deduction can be made on account of the pendency of the suit for possession. *The Nawab Nazim of Bengal* v. *Raj Coomaree Debee*, 6 W. R., 113.

In a suit for mesne profits, Act XIV allows no deduction for the pendency of the suit for possession. The only deduction which that Act allows is for the pendency of a suit not adjudged on its merits owing to some objection as to jurisdiction, &c. *Issureenund Dutt Jha* v. *Parbutty Churn Jha*, 3 W. R., 13.

Under Act XIV of 1859 mesne profits can be decreed only for six years before institution of suit. The cause of action for the mesne profits is the date on which they become annually due. *Maharaj Koer Ramaput Singh* v. *J. Furlong*, 3 W. R., 38.

In a suit to recover from the defendant the amount of purchase money paid by the plaintiff upon a sale to him of certain land by the defendant's father, and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father,—*Held* that the period of limitation was six years.

Held also that the cause of action arose on the discovery of the fraud upon the plaintiff, and that there was knowledge of the fraud at all events in October, 1859, the date of the judgment of the Civil Court affirming the title of the prior purchaser, notwithstanding the presentation of an appeal from that decision, and notwithstanding that the plaintiff remained in possession of the land until 1861.

The present suit, having been brought more than six years after the judgment of the Civil Court, was held to be barred. *Ramaswami Mudali* v. *Valayada Mudali*, 4 Mad. Rep., 266.

The period of limitation for recovery of moneys deposited in a government treasury, the equivalent whereof was to be returned, does not exceed six years. *Chowdree Sheoraj Singh* v. *The Collector of Moradabad*, 2 N. W. R., 379.

M. on the 12th October, 1855, drew a bill of exchange, payable three months after date, in favour of B., which was accepted by J. Before the bill became due B. endorsed it to P., who again endorsed it for full value to M. B. & Co., of which firm M. L. was a partner. M. B. & Co. discounted the bill with G., who presented it at maturity to J., who dishonoured it. G. thereupon sued M. L., and recovered a decree, which M. L. satisfied. M. L. thereupon brought the present suit, on the 18th February, 1865, against J. as the acceptor of the bill for the amount he paid under G.'s decree. *Held* (confirming the decision of Norman, J.) that the suit was barred by limitation, more than six years having elapsed since the date of the bill of exchange, the plaintiff's cause of action having accrued when the bill became payable and the acceptor refused to pay. *Mohendro Lall Bose* v. *Jadub Kissen Singh*, 14 S. W. R., A. O., 5.

When a hák is not charged upon or payable out of land, a suit for its recovery must be brought within six years from the last payment made on account of it.

A pugdi allowance for collecting a desai hák, though deducted from the amount of such hák, is

not payable out of land. *Raiji Manor, et al.* v. *De Sai Kullianrai Hukmutrai*, 6 Bom. Rep., A. C. J., 56.

A suit to avoid a Butwara division by the collector may be brought within six years. *Coday Singh* v. *Paluck Singh*, 16 S. W. R., C. R., 271.

(*d*) *Twelve Years.*

Where the suit was for possession of certain land, on the allegation that it was land belonging to plaintiff's village, but submerged at the time of settlement, the plaintiff's claim, if he could show the identity of the land submerged with the land which has since been left dry, would not be barred by limitation, unless it could be shown that some other person had been in adverse possession for twelve years before the plaintiff preferred his claim, and that such adverse possession commenced from a time when plaintiff was in a position to dispute it. *Hur Sahal* v. *Mahomed Daim Khan and others*, 1 Agra Rep., A. C., 64.

Neither Section 77, Act X of 1859, nor Section 5, Act XIV of 1859, but the ordinary Law of Limitation (*viz.*, twelve years), applies to a suit to obtain a declaration of title by setting aside a plea of partition urged by the defendants in a former suit for rent under Act X of 1859. *Kundurp Narain Singh* v. *Bundoo Ram Sein*, 3 W. R., Act X R., 6.

Where a creditor sues to recover money advanced by him on the deposit of title-deeds of property, his claim is governed by the limitation applying to debts; but where he seeks to have his lien realized it is a claim to realize an interest in land, to which the limitation of twelve years applies. *Peary Mohun Bose* v. *Gobind Chundra Addy*, 10 W. R., 56.

A Hindu widow was held to be barred by limitation in a suit to recover the undivided half of her husband's estate, of which she had allowed the defendant to remain in possession for more than twelve years. *Brokobhanoo Dossia* v. *Hurro Soondery Dossia and others*, 10 W. R., 264.

In a suit to recover possession of lands as heir where the plea of limitation is raised, the plaintiff must prove that he, or the person through whom he claims, was in possession within twelve years prior to the institution of the suit; limitation running not merely from the date on which the plaintiff's right to sue accrued, but from that on which the cause of action arose. *Bhiloo Mundul* v. *Motee Lall Ghose*, 9 W. R., 251.

In deciding an issue on the Statute of Limitations in a suit for a share of a joint inheritance, the Court below found that the plaintiff had not given evidence of possession up to the date of the suit, and decided the issue against her. *Held* that such finding was inconclusive, the real issue being whether the joint possession continued up to any time within the period of twelve years next before the commencement of the suit. *Mussamut Indurmonee Dabea, guardian, &c.*, v. *Rupnarain Chand Mozoomdar and others*, Marsh, 172; W. R., F. B., 52.

In suits for recovery of huqs, which are of the nature of claims of money charged upon or payable out of land, the period of limitation is twelve years. *Bharatsongjee Manasangjee* v. *Navanaidhuraya Maneessukharaya*, 1 Bom. Rep., 186.

Plaintiff sued to recover certain lands attached to two villages of which he became proprietor in 1857. It was found that the defendants had been in possession for upwards of fifty years before the suit was brought.

Held that the defendants' possession was hostile, and the suit was therefore barred by the Statute of Limitations. *Narayana Chodanghi* v. *T. Venkata Kondal Rao Pantulu*, 2 Mad. Rep., 391.

Suit by the official assignee of a deceased insolvent to recover a talook conveyed (several years before his insolvency) by the insolvent, who was sole or chief acting executor of his father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife, who was the tenant for life of the residue. *Held* that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than twelve years barred the suit. *John Cochrane* v. *Hurrosoondery Debia*, 4 W. R., P. C., 103.

The plaintiff having been dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, and having made no complaint to the Court which was executing the decree, is entitled to bring his suit for confirmation of his title, and to be restored to the possession of the property from which he was ousted at any time within twelve years from the time of his dispossession. *Pertaub Chandra Chowdhry and others* v. *Brojo Lall Shaha and others*, 7 W. R., 253.

Where a person claims possession of an increment as by ancestral right, his suit must be brought within twelve years from the formation of the increment and the possession of it by another party on adverse title. *Doya Moye Dossee and others* v. *Luchmee Naran Shaha and others*, 7 W. R., 457.

Twelve and not three years' limitation applies to decrees of the High Court, as being a Court established by Royal Charter. *Ishan Chunder Chowdry and others* v. *Ingo Dishuru and others*, 8 W. R., 267.

The period of limitation in the case of a bond stipulating not merely for the personal security of the debtor, but also for a security on the land mentioned therein, is twelve years.

Such a bond gives rise to a charge and interest in the land mentioned therein, and confers a right to sue to enforce the charge by sale of the property. *Nowab Oomrao Begum* v. *Khooseram and another* 1, 11, N. W. R., 181.

A suit was brought upon an unregistered and registrable mortgage-bond. The lower Courts treated the suit as one for the debt due, and held the suit barred, it having been brought more than three years after the debt was payable. *Held*, on special appeal, that as the relief prayed for fairly implied the recovery of the debt by the enforcement of the mortgage security, and the subject-matter stated in the plaint showed ground for that relief, the suit must be considered as brought to recover in respect of an interest in the land hypothecated, and the period of limitation was twelve years. *Jonna Venkatasawmy* v. *Busireddy Kindareddy*, 5 Mad. Rep., 364.

Plaintiff having been dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, was declared entitled (having made no complaint to the Court which was executing the decree) to bring his suit for restoration to his property any time within

twelve years from the date of his dispossession. *Bheem Goyallee* v. *Khoobun Sahoo*, 17 S. W. R., C. R., 429.

In a suit for a declaratory decree as to a Magistrate's order under Section 321, Code of Criminal Procedure, the period of limitation is twelve years and not three years. *Meghraj Singh* v. *Rushdham Singh*, 17 S. W. R., C. R., 281.

Where a landlord sued, after the lapse of more than twelve years from the date of his knowledge that a tenant was setting up a mokurruri title, for a declaration that the alleged mokurruri title was invalid, *held* that the suit was barred by lapse of time. *Sheikh Nazimudin Hossein* v. *Lloyd*, 6 B. L. R., Ap., 130; and 15 S. W. R., C. R., 232.

In a suit by an execution purchaser to recover possession of landed property where defendant pleads limitation and plaintiff proves facts from which the Court is unable to draw conclusions of law for itself, plaintiff ought not to be strictly bound to the accrual of the cause of action alleged in his plaint, so long as that arose within 12 years before commencement of the suit. *Mariam Begum* v. *Rye Churn Dut*, 13 S. W. R., C. R., 269.

A suit for possession of a share in a mouzah on the allegation that plaintiff had been ousted therefrom by defendants, and that her late husband was joint in estate with his brother, under whom defendants claimed as purchasers at a sale in execution of decree, was held bound by limitation, the suit having been brought at the close of 12 years from the date of plaintiff's ouster, and it appearing that defendants had been in undisturbed possession for 11 years 11 months and 1 day, that plaintiff's husband had, in two petitions filed respectively 27 and 29 years before the sale to the defendants, made unequivocal admissions of his having separated from his brother and prayed the collector to make a settlement with him separately from his brother, while there was no trustworthy evidence on the part of the plaintiff to show that the family was joint at any time within 12 years before the sale. *Bhromur Coomaree Debee* v. *Bance Madhub Bannerjee*, 17 S. W. R., C. R., 505.

The rule of law laid down by the Privy Council that a person entitled to an interest in immoveable property loses, not only all remedy, but his title, by being out of possession for more than 12 years, was held to apply to the case of a recusant proprietor claiming malikana. *Mussamut Bibee Chummun* v. *Mussamut Om Koolsoom*, 13 S. W. R., C. R., 465.

Where a plaintiff brought a suit in 1856 to recover landed property which was in the possession of the defendant since 1845, and at the time of the institution of the suit, it was held that before the plaintiff could recover he must prove, first, possession within 12 years before suit; and secondly, title to possession. *Beer Chunder Jobraj* v. *The Deputy Collector of Bhullooah*, 13 S. W. R., P. C., 23.

A suit for possession of immoveable property is not barred by the Law of Limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under Section 224, Act VIII of 1859, or if possession by the plaintiff has been admitted within twelve years by the party through whom the defendant claims. *Binderbashini Dasi* v. *J. R. Renney*, 7 B. L. R., Ap., 20; 15 S. W. R., C. R., 307.

In a suit for ejectment and mesne profits on the allegation that the term of the temporary leases under which defendants had been in possession had expired, where defendants pleaded that they had held the land in mokurruree for generations, and that an ancestor of plaintiffs had confirmed their mokurruree rights by the grant of a pottah,—

Held that if defendants could prove that they had held for more than 12 years previous to the institution of the suit under a mokurruree tenure to the knowledge of the plaintiffs, the suit would be barred by limitation. *Te Kaitnee Gouree Coomaree* v. *The Bengal Coal Co.*, 13 S. W. R., C. R., 129.

A mortgagee who was empowered by his mortgage to take possession of the mortgaged property on default of payment in 1848, sued and obtained a decree for foreclosure against the mortgagors in 1860, and now sues the purchasers from the mortgagors who have been in possession ever since their purchase in 1846. *Held* that the plaintiff's right of action accrued in 1848, and that the decree in the foreclosure suit gave no starting-point, and could in no way affect the right of the purchasers who were not parties to that suit. *Huro Chunder Gooho* v. *Gudadhur Koondoo and others*, 6 W. R., 183.

In 1835 A., a mortgagee, obtained a decree in a foreclosure suit, subject to two prior mortgages. In 1844 B. purchased the rights of the mortgagor in the mortgaged property, and in 1854 redeemed the two prior mortgages. *Held* that A. was not barred by the Statute of Limitations from asserting his title to the land subject to the prior mortgages. *Bhugwan Doss* v. *Behary Khan and others*, Marsh. 191.

(*e*) *Sixty Years.*

The period of limitation for a suit to redeem a mortgage of immoveable property is 60 years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting.

Semble,—It makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. *Tanji* v. *Naganumma*, 3 Mad. Rep., A. J., 137.

Suits for the recovery of immoveable property against a mortgagee or his legal representatives may be instituted within 60 years from the date of the original mortgage. *Ajoodhya Persaud and others* v. *Esharee Dyal and others*, 10 W. R., 219.

Act XIV of 1859, *Section* 1.

Wrongful seizure of goods under process of law is not an "injury to personal property" within the meaning of Section 1. Damages should be based on the fall in the market and deterioration by exposure of the goods restrained from sale. *Inderchund* v. *Nunduram Singh*, Cor. Rep., 3.

Section 1, *Clause* 1.

The defendant, a conditional vendee, foreclosed the mortgage, and subsequently sued the auction-purchaser of the rights of the conditional vendor for possession, and obtained a decree, in execution of which he obtained possession. *Held* that the suit of the plaintiff who claimed pre-emption was

not barred by limitation, as it was instituted within one year from the date on which the vendee, whose purchase was sought to be set aside, obtained actual possession of the property to which his title, originally conditional, had become absolute. *Radhey Pandey* v. *Nund Komar Pandey*, 3 Agra Rep., 164.

Held that a suit to set aside the sale of immoveable property is barred by Act XIV of 1859 if not instituted within one year, although the sale may have been in execution of a decree obtained in a suit brought before Act VIII of 1859 came into operation. *Ludooa Mul* v. *Mussamut Nusseebun*, 1 Agra Rep., A. C., 277.

Clause 1, Section 1 (limiting a pre-emption suit to one year from the time of the purchaser taking possession under the impeached sale), is applicable when the purchaser is opposed in obtaining possession by the vendor, or some other person asserting an adverse title, but not when the vendor does not oppose, and the party opposing the khas possession of the purchaser is a mere farmer claiming to pay the same rent to the purchaser which he had paid to the vendor before the sale. *Bechun* v. *Mahomed Yakool Khan*, 3 W. R., 25.

Possession under Section 264, Act VIII of 1859, being merely symbolical, was held to have no legal effect as regards limitation under Clause 1, Section 1, in a case of pre-emption. *Mahomed Hossein* v. *Mohsun Aly and others*, 7 W. R., 195.

In pleading limitation as a bar to a suit for pre-emption the defendant must show that he was in possession more than a year before the plaint was filed. *Mussamut Hosseinne Khanum* v. *Mussamut Lallun*, W. R., 1864, 117.

A suit by a zemindar against his agent and the agent's surety for money improperly charged by the agent in his accounts is barred if not brought within one year from the rendering of the accounts, which is the time of the accruing of the plaintiff's cause of action. *A. B. Mackintosh* v. *Woomesh Chunder Bose*, 3 W. R., Act X R., 121.

The terms of Section 11 are general, and include cases of pre-emption under Clause 1, Section 1, so that a plaintiff may sue to enforce a right of pre-emption within a year after his attaining majority. *Jungoo Lall* v. *Lala Alum Chand and others*, 7 W. R., 279.

The words "taken possession" mean an actual and not a mere constructive possession, so that a right of pre-emption must be enforced within a year from the purchaser taking manual possession of the property in dispute. *Goshain Gobind Pershad* v. *Bebee Fatima*, 2 W. R., 5.

Section 1, *Clause* 2.

A suit to establish a prescriptive claim to irrigation from a running stream and for damages caused by the stoppage of the water is not governed by the limitation described by Clause 2, Section 1, but by that applicable to suits for rights appertaining to real property, and for damages done to real property. *Buddun Thakoor* v. *Mohunt Sunker Doss*, W. R., 1864, 106.

The limitation prescribed by Clause 2, Section 1, refers only to personal property, properly so called, but not to a suit for compensation for injury to and resulting in the loss of crops which the land might have produced but for the illegal act of the defendant. *Roy Chunder Ghose* v. *Joy Kishen Mookerjee*, 4 W. R., 76.

A suit to recover the value of personal property misappropriated is governed by limitation under Clause 2, Section 1. *Ramnath Roy Chowdhry* v. *Hurro Chunder Roy Chowdhry*, 5 W. R., 50.

A suit for servant's wages is governed by the limitation prescribed by Clause 2, Section 1. Servant's wages are a debt which may be revived within the meaning of Section 4, by an admission in writing, the new period of limitation being computed according to the nature of the original liability from the date of such admission. An admission which does not specify a particular amount to be due does not extend the period of limitation. *Nobin Chunder Mozoomdar* v. *T. J. Kenny*, 5 W. R., S. C. C. Ref., 3.

A suit by a mookhtear for salary is not barred by the limitation of one year prescribed in Clause 2, Section 1. If the plaintiff was engaged upon a distinct contract that he would be paid a fixed monthly salary, the limitation prescribed in Clause 9 would probably apply. *Nitto Gopal Ghose* v. *A. B. Mackintosh*, 6 W. R., 11.

The limitation of one year prescribed by Clause 2, Section 1, for bringing a suit for damages for injury caused to reputation by a malicious prosecution in a Criminal Court, runs from the date on which the plaintiff was discharged from custody, and not from the date on which the criminal charge was preferred. *Obedul Hossein* v. *Goluck Chunder and others*, 8 W. R., 443.

A suit to recover personal property carried away and appropriated to the use of the defendant, or the value of such property, is not a suit for damages for injury to personal property within the meaning of Clause 2, Section 1, but is governed by the limitation prescribed by Clause 16. *Luchmeeput Singh* v. *Mahomed Mooneer*, W. R., F. B., 126.

Clause 2, Sec. 1, applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and the section does not apply to a suit brought by one Government servant against another for the recovery of a sum of public money received by the defendant as a disbursement on account of the wages of the plaintiff, to whom the defendant was legally bound to pay it over. *Siva Rama Pillai* v. *Turnbull*, 4 Mad. Rep., 43.

Clause 2, Section 1, does not apply to a suit brought to recover damages for the total and illegal appropriation of property. *Ram Mondul Debia* v. *Dolechurn Dey Sircar*, W. R., 1864.

In a suit to recover damages for loss caused during the years 1862, 1863, and 1864, by defendant's interference with plaintiff's right,—*Held* that Clause 2, Section 1, did not apply; that, supposing plaintiff still in possession, the period of limitation is that given by Clause 16, Section 1, *viz.*, 6 years. If plaintiff be not in possession at the time of bringing the suit, the period prescribed in Clause 12, Section 1, *viz.*, 12 years, is the limit. *Sree Visnecun Chara* v. *Sree Sree Sree Saradhichurn Sununtaralie*, 3 Mad. Rep., A. C., 111.

The word "injury" in Clause 2, Section 1, means a loss or deterioration caused by a wrongful act; and the phrase "injury to personal property" means some damage directly caused by some wrong-

ful act to some particular piece of property. *Amerthranemal* v. *Pranganadha*, 3 Mad. Rep., A. C., 165.

A teshildar is not a "servant" within the meaning of Clause 2, Section 1. *Oroon Chundra Mundul* v. *Romanath Rukheet*, 10 W. R., 260.

A suit for damages for injury to crops is a suit for damages for injury to personal property within the meaning of Clause 2 of Section 1. *Kashidas Govindbhai* v. *The B. B. & C. J. Railway Company*, 6 Bom. Rep., A. C. J., 114.

The defendant, who was a butwarra Ameen employed by the Collector, drew from the public treasury at Backergunje a sum of money to pay the establishment, but failed to pay the plaintiff, who was a mohurrir under him. In a suit against the Ameen for recovery of his salary after a lapse of three years from the time when the salary became due,—*Held* that the plaintiff was not a servant within the meaning of Clause 2 of Section 1; but that his claim was for money had and received on his account, and therefore he might bring his suit within three years from the date of such receipt. *Abhayee Charan Dutt* v. *Haro Chundra Das Bunik*, 4 B. L. R., Ap., 68; 13 S. W. R., C. R., 150.

Section 1, *Clause* 3.

Quære,—Whether the one year's limitation (of suits to set aside sales in execution of decrees) under Clause 3, Section 1, applies to a suit brought against a person who has obtained possession of property by delivery under Section 264, Act VIII of 1859. *Bebee Suboorun* v. *Sheikh Golam Nujee*, 2 W. R., 55.

A suit to set aside a sale of land in execution of a decree against a third party is not barred by limitation under Clause 3, Section 1, if brought within a year after the sale actually took place. *Sreemutty Dossee* v. *Sheebanee Dabia*, 5 W. R., 123.

Clause 3, Section 1, applies only to suits to set aside sales on account of irregularity and the like, but not to suits to set aside fraudulent deeds under colour of which the sale was made. *Kissen Bullub Mahatab* v. *Roghoonundun Thakoor and others*, 6 W. R., 305.

Where a claimant, without attempting to impeach either the proceedings in the suit or in the decree or in the subsequent sale, seeks to recover property belonging to himself in which the judgment-debtors had no right or interest, and upon which, therefore, the sale in execution could have no legal operation, —*Held* that a suit of this nature is not a suit to set aside the "sale of property sold under an execution" within the meaning of Clause 3, Section 1; and it is not incumbent on such a claimant to sue as therein prescribed within one year from the date of sale. The plaint might ask in terms to avoid the sale, but such an allegation cannot alter the real nature of the suit, if it is otherwise sufficiently disclosed. Though there is a specification of the subject of sale at the time of sale, yet it is not the property specified, but only the right of the judgment-debtor therein, that is offered for sale and is conveyed, there appearing no provisions in the Procedure Code to contemplate the sale or transfer of anything more than the right and interest of the judgment-debtor, and the auction purchaser at a sale in execution acquires by the express terms of the conveyance to him, not the presumed title of the person in possession, or the apparent title in the Collector's books, but the right, title, land interest of the judgment-debtor in the property sold. *Mahomed Buksh and others* v. *Mahomed Hossein and others*, 4 Agra Rep., 171.

The limitation of one year provided by Section 1, Clause 3, is not applicable to a suit brought by a judgment-debtor to set aside an execution sale, on the ground that the decree-holder fraudulently got the property sold in execution of a previous satisfied decree. Section 256, Act VIII of 1859, does not bar such a claim. *Budree* v. *Lokemun*, 4 Agra Rep., 89.

Where a person's claim to attached property was not rejected, but the sale took place subject to it,—*Held* that he could sue to establish his right to the property at any time within twelve years, Clause 3, Section 1, not applying to such a case. *Rutneshur Koondoo* v. *Majedha Bibee*, 7 W. R., 252.

In a suit for the cancelment, on the ground of fraud, of an auction sale made under the provisions of Section 12, Regulation XLV of 1793, and for the reversal of a Judge's order in appeal conferring the sale, the period of limitation was *held* (under Section 9, Act XIV of 1859) to run at the latest from the date of the Judge's order of confirmation, and to extend to one year under Clause 3, Section 1. *Enaet Aly Khan* v. *Kumola Koonwar and others*, 11 W. R., 261.

Clause 3 does not bar a suit to set aside a sale of land in execution of a decree against a third party, if brought within a year after the sale actually took place. *Sreemutty Dossee* v. *Sheebanee Dabea*, 5 W. R., 123.

A. purchased immoveable property at an auction sale. The same property was subsequently purchased by B. at another auction sale,—*Held* that a suit brought by A. against B. to recover the property was virtually a suit to set aside the last sale, and that it should have been brought within one year from the date of that sale; and that Clause 3 (and not Clause 12) of Section 1 was applicable. *Krishnaji Joshi* v. *Mukund Chinawash*, 2 Bom. Rep., 18.

Section 1, *Clause* 4.

Clause 4 of Section 1 of Act XIV of 1859 is not applicable where the revenue, for recovery of a portion of which suit is brought, was a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale.

Plaintiff may be entitled to recover from a co-sharer what he has paid to the Government beyond his just share, but his case is not governed by the 4th Clause. Clause 16, allowing six years, appears rather to be applicable. *Shada Lall* v. *Mussamut Bhawanee*, 2 N. W. R., 52.

A suit to set aside a transfer of land made by the revenue authorities for arrears of Government revenue comes within the words of Clause 4, Section 1. *Chitto Narain Singh Te Kuit* v. *Assistant Commissioner of the Sonthal Pergunnah*, 14 S. W. R., C. R., 203.

Section 1, *Clause* 5.

The limitation prescribed by Clause 5, Section 1,

Act XIV of 1859, is not applicable to an order under Act XIX of 1841. *Bipro Pershad Mytee* v. *Mussamut Kanye Deyee*, 1 W. R., 341.

The rights and interests of one of three brothers of joint Hindu family having been sold in execution of a decree, a suit brought, not to set aside such sale, but in right of inheritance of the judgment-debtor's brother's share in the family property, is not barred by limitation under Clause 5, Section 1, and Section 246, Act VIII of 1859. *Lalla Beharee Lall and others* v. *Lalla Modho Persaud and others*, 6 W. R., 69.

Property being attached under a decree obtained before Act VIII of 1859, a third party claimed to be entitled as against the judgment-creditor under a bill of sale. The Judge enquired into his claim, found that the assignment was fraudulent, and ordered that the property should be sold under the decree,—*Held* that the order of the Judge was a summary decision of a Civil Court within Section 1, Clause 5, and that a suit by the claimant for the recovery of the property instituted after the expiration of a year from the date of the order was barred by that clause. *Sheikh Khyrut Ally* v. *Khurruck Dhuree Singh*, Marsh., 520.

Held that Clause 5, Section 1, applies to suits to set aside summary orders passed in execution, although such orders were passed before Acts VIII and XIV of 1859 were enacted. *Basit Aly* v. *Ashan Ali*, 2 Agra Rep., A. C., 198.

Held that the Judge's order relating to the landed property of a person dying intestate, being apparently an order made without jurisdiction, had no legal operation, and was not a summary order within the meaning of the 5th Clause of Section 1, Act XIV of 1859. *Aujudhya Nath* v. *Doorga Gir*, 1 Agra Rep., A. C., 241.

A suit brought, not to set aside an order of release under Section 246 of Act VIII of 1859, but to recover possession from the successful claimant of the property released, is not governed by the limitation prescribed by Clause 5, Section 1. *Bhyrublall Bhukut* v. *Meer Abdool Hossein and others*, 8 W. R., 93.

The final decision, award, or order contemplated by Clause 5, Section 1, is a final decision of the Court which has competent jurisdiction to determine the case finally, and not the order of a Court superior to such Court dismissing an appeal from the decision of such Court for want of jurisdiction. *Mussamut Obo-unissa* v. *Buldeo Narain Singh*, 7 W. R., 151.

Quære,—Whether, with reference to Clause 5, Section 1, a suit will lie to set aside a summary order after the expiration of one year. *Gobind Nath Sandyal and others* v. *Ramcoomar Ghose*, 6 W. R., 21.

The plaintiff sued to obtain a decree declaring that the ancestral land possessed by the family of the plaintiff was not liable to seizure and sale in satisfaction of an *ex-parte* decree obtained by the defendant in a suit against the yejaman of the plaintiff's family, on the ground that the decree had been obtained collusively and fraudulently for a debt alleged to have been contracted for the benefit of the family. The decree against the yejaman was passed on the 22nd June, 1857, and upon attachment of the family property the plaintiffs made a claim, under Section 246 of the Civil Procedure Code, alleging their independent right to the property and resisting a sale. The claim was disallowed on the 18th October, 1861, and an appeal from that decision was dismissed on the 15th November, 1861. The present suit was instituted on the 2nd February, 1864. *Held* that this was not a suit to which the limitation provided by Section 246 of the Civil Code, or by Clause 5, Section 1 of Act XIV of 1859, was applicable, and that the suit was not barred. *Ramanada Butt* v. *Bithee*, 4 Mad. Rep., 263.

The plaintiff was by an order of the Civil Court in execution of a decree, to which the plaintiff was no party, ejected from the possession of a muttah. He brought a suit more than three years afterwards to eject the legal representative of the person who was so put in possession. *Held* (reversing the decree of the Civil Court) that the order of the Civil Court was not a summary decision within the meaning of Clause 5, Section 1, and that the suit was not barred. That clause is only applicable to orders which the Civil Courts are empowered to pass deciding matters of disputed property raised for hearing and determination by a summary proceeding between the parties disputing. *Appundy Ibram* v. *Maria Varden Seth Sam*, 4 Mad. Rep., 297.

Section 1, *Clause* 6.

On a Collector proceeding to settle a mortgage estate, both mortgagee and mortgagor appeared before him and contended for the right of settlement. His award under Regulation VII of 1822 was in favour of the mortgagee in possession, on the ground that the period of redemption had expired, and he settled the estate with him.

Held that as the mortgagor allowed that award to remain unchallenged for three years, it became binding under Clause 6, Section 1, 1859. *Sreechund Baboo* v. *Mullik Choolun*, 9 W. R., 564.

In computing the period of limitation under Clause 6, Section 1, the day on which the award was passed should be excluded. *Rumonee Soondery Dossia* v. *Punchanun Bose*, 4 W. R., 105.

Clause 6, Section 1, provides that possessory titles by virtue of awards under the Regulations there mentioned shall become final unless questioned within three years; but that will not enable a person to come in within three years after the date of such awards and recover possession of lands in respect of which his suit has been barred by the other provisions of the Law of Limitation. *Beer Chunder Joobraj* v. *Ramgutty Dutt and others*, 8 W. R., 209.

An Appellate Court can *ipso motu* raise the question of limitation for the first time where it appears on the face of the plaint that the suit is barred.

Where A. sued for reversal of a survey award, and for recovery of possession, alleging dispossession subsequent to the date of the award,—*Held* that his suit is not barred by reason of its being brought beyond three years from the date of the award. *Mozaffur Ally* v. *Grish Chunder Dey*, 1 B. L. R., A. C., 25; S. C., 10 W. R., 71.

Held that an order passed by revenue authorities for entry of names in a proprietary register, not being passed after a trial in a suit of the nature referred to in Clause 2, Section 23, Regulation VII of

1822, was not an order in a suit to which the term of limitation mentioned in Clause 6, Section 1, applies. *Madhoo Singh* v. *Jehangeer*, 2 Agra Rep., A. C., 229.

Held that the plaintiffs' claim was not barred by limitation provided in Clause 6, Section 1, as they were no parties to the settlement proceeding of 1841, and no judicial award or order affecting them was passed by the settlement officer.

Held further that, as the defendants, who were at the settlement in 1841 when the estate was farmed out, recorded as proprietors by the revenue authorities, did not hold proprietory and adverse possession till the expiry of the farming lease, the plaintiffs' suit was not barred by limitation as not having been brought within twelve years after 1841. *Ramesher Singh and others* v. *Saiva Zalim Singh and others*, 2 Agra Rep., A. C., 8.

Held that the proceeding of the settlement officer representing a cess as a source of income to the zemindar was not a judicial award, and the limitation provided in Clause 6, Section 1, was not applicable to a suit to set aside that proceeding.

Held, further, that the mention of the cess in the wajib-ool-urz is not conclusive proof of the right to the levy of cess against persons not parties to it. *Ram Chund* v. *Zahoor Ali Khan*, 1 Agra Rep., A. C., 134.

In a thakbust map land was demarcated as belonging to A. B. claimed that it belonged to him jointly with A. On 18th November, 1858, the map was rectified by demarcating the lands to A. and B. jointly. B. afterwards brought a suit against A. in the Moonsiff's Court to recover the value of some mangoes which grew on two plots of the land in question, and it was decided on 12th December, 1864, in favour of B., on the ground that the plots belonged to A. and B. jointly. On 11th December, 1865, A. brought his suit against B. for a declaration of right and confirmation of possession to set aside the survey award, and for amendment of the thakbust map. A. alleged that he was no party to the thakbust proceedings, and that he had been in possession ever since. *Held* (overruling the decision of the Courts below) (1) that A. was not estopped by the decision of 12th December, 1864; (2) that the suit was barred, so far as it asked to have the thakbust map amended, under Clause 6 of Section 1; (3) that a suit by a person in possession to have his title confirmed is not a suit to recover property within Clause 6 of Section 1, and is not barred by reason of its not being brought within three years from the date of the award. *Mohima Chundra Chuckerbutty* v. *Rajkumar Chuckerbutty*, 1 B. L. R., A. C., 1; 10 W. R., 22.

An assessment for revenue or rent by a Collector is not a judicial award within the meaning of Clause 6 of Section 1. The term "award" as used in that clause means an adjudication on rights as between rival claimants, made by a revenue officer under the judicial powers conferred by the regulations mentioned in such clause. *Huree Mohun Ghosaul* v. *The Government*, 2 N. W. R., 226.

An order of a settlement officer upon an enquiry made at the instance of the zemindar, and for the purpose of the preparation of the record, in the course of which enquiry information was given both in support of and against the zemindar's claim to a cess, is not an award of the nature contemplated by Clause 6, Section 1, and the three years' period of limitation is inapplicable to a suit to assert such claim. *Mahomed Ali Khan* v. *Omrao Singh*, 2 N. W. R., 425.

Section 1, Clause 7.

The limitation prescribed by Clause 7, Section 1, applies to orders respecting possession of property made under Clause 2, Section 1, Act XIV of 1838, or Act IV of 1840 (now repealed), and not to those made under Section 318 of the Code of Criminal Procedure, the provisions of the last-mentioned section differing from those of Act IV of 1840 in many important respects. No period of limitation is prescribed in Section 318, Code of Criminal Procedure, within which a suit must be brought to set aside the Magistrate's award made under that section, and a suit for that purpose may be brought within twelve years from the time that the cause of action arose. *Gasper Gregory* v. *Gourdoss Shaha and others*, 8 W. R., 490.

Suit to recover property comprised in an Act IV order, which, by an apparently fraudulent undervaluation, was instituted in a wrong Court before Act XIV of 1859 came into operation. The undervaluation having been brought to notice, the plaint was returned to the plaintiff, who filed it in the proper Court after that Act came into operation. *Held* that the case was governed by the limitation prescribed by Clause 7, Section 1 of that Act. *Rajah Indro Bhooshun Deb Roy* v. *Hurro Nath Roy*, W. R., 1864, 280.

A suit to recover property respecting which no final award has been passed under Act IV of 1840 is not barred by limitation, under Clause 7, Section 1, but may be brought within twelve years from date of ouster. *Dyram Sahoo* v. *Bibee Sogra*, 3 W. R., 174.

A Magistrate's order dismissing a complaint under Act IV of 1840, on finding that complainant had not been forcibly dispossessed, is not a binding award to which Clause 7, Section 1, Act XIV of 1859, would apply. *Hurronath Chowdhry* v. *Hurree Lall Shaha and others*, 11 W. R., 477.

Where a plaintiff was found to have been dispossessed from land by force of a Magistrate's order, under Section 318 of the Code of Criminal Procedure, it was held that his right of suit for possession was not barred under Clause 7, Section 1, by the lapse of more than three years from the date of the Magistrate's order. *Undhoob Narain* v. *Chutterdharee Singh*, 9 W. R., 480.

Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession,—*Held* that it was not an order respecting possession within the meaning of Clause 7, Section 1, Act XIV of 1859, and therefore the limitation provided by that clause was not applicable. *Chuj Mull* v. *Khyratee*, 4 Agra Rep., 65.

Section 1, Clause 8.

Goods supplied to a dealer for the purpose of retail sale by him are not "articles sold by retail" within the meaning of Clause 8, Section 1, Act XIV of 1859. *Mothoora Lall Pall* v. *Shrinebash Dutt and Chunder Mohun Dutt*, 3 W. R., S. C. C. Ref., 24.

A suit for the value of articles sold by retail, and supplied for household purposes, is governed by the limitation prescribed by Clause 8, and not Clause 16, Section 1, Act XIV of 1859. *Bucha Gope* v. *The Collector of Tirhoot*, 7 W. R., 102.

Section 1, *Clause* 9.

Clause 9 of Section 1, and not Section 8, Act XIV of 1859, is applicable:—

To a suit for balance of account and fresh advance made for the cultivation of indigo, where the defendant fails to perform his part of the contract. *J. J. Doyle* v. *Khooseeal Khan*, 3 W. R., S. C. C. Ref., 1.

Also to a suit on account stated. *Nobin Chunder Shahoo* v. *Suroop Chunder Doss and others*, 6 W. R., 328.

To a suit for breach of contract not in writing against a *del credere* agent, who, for a certain commission, was employed to sell the plaintiff's goods, it is not taken out of the operation of that law by either Section 4 or Section 8. *Mussamut Phool Komaree Bibee* v. *Woonkar Persaud Rustoby*, 7 W. R., 67.

To a suit for balance of account consisting of moneys advanced in payment for goods to be subsequently supplied. The cause of action accrued at the time when the goods ought to have been delivered. *Boeddonath Shah and others* v. *Lahenissa Bibee and others*, 7 W. R., 164.

An action for a balance on an indigo account, comprising a balance found at the close of 1859 and advances made in 1860, was held to be governed by the limitation of three years: first, as regards the balance, for defendant's presence and assent at the time of adjustment implied a contract to which Clause 9, Section 1, would apply; and, secondly, in respect to the advances which were on account of goods to be supplied, where the same limitation would run from the time when the goods ought to have been delivered. *H. D. Tripp* v. *Kubeer Mundul*, 9 W. R., 209.

A suit brought to recover fees due to plaintiff as pleader in three suits was held to be barred by limitation as instituted after three years, that being the period of limitation in one case in which the defendants had agreed to pay the fees according to law, such agreement being an obligation for the payment of money within the meaning of Section 5, Regulation XX of 1812, and that being also the limitation applicable under Clause 9, Section 1, in the other cases in which there was no written engagement to pay the fees. *Rash Mohun Goswamy* v. *Issur Chunder Mookerjee*, 9 W. R., 113.

In a suit to enforce the performance of an agreement alleged to have been entered into between the plaintiffs and the principal defendants whereby the latter, in consideration of an undertaking subsequently carried out, was to admit the former, who were his uterine brothers, to a share of the property of his adopting father, which included an interest in land,—*Held* that this was substantially a suit on a contract governed by the limitation fixed by Clause 9, Section 1, that the defendant was in a position to fulfil that contract on the deaths of his adoptive parents respectively, and that plaintiff's suit, not having been brought within three years of the dates of those deaths, was barred by limitation. *Mohadeo Lall and others* v. *Nundun Lall*, 12 W. R., 22.

Where A. screwed jute for B. down to May 16th, 1863, and a part payment on account of this work was made on May 18th, 1863,—*Held* that a suit for the residue in which the plaint was not filed till May 18th, 1866, comes under Section 1, Clause 9, and must be brought, therefore, within the three years.

Note.—Payment does not, under this Act, take a case out of the rule of limitation. *Potitpabun Sen* v. *Chunder Kaunt Mockerjee*, 1 Ind. Jur., N. S., 329.

In a suit brought on the 29th July, 1867, to recover back a deposit of purchase-money paid in September, 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re-sale this decree was reversed on the 29th August, 1865. *Held* that the suit to recover back the deposit was not barred under Clause 9, Section 1, since the cause of action for its recovery did not accrue till 29th August, 1865. *Ramjoy Dey* v. *Srinath Singh*, 2 B. L. R., A. C., 170; S. C., 11 W. R., 24.

A letter directing an advance of money to a third party, and containing a promise on the part of the writers to repay the advance with interest, is such a written engagement or contract to pay the money lent, &c., as is mentioned in the last portion of Clause 9, Section 1, and the period of limitation applicable to suits brought for a breach of such engagement is not provided in Clause 16 of the same section. *Choty Lall* v. *Mohun Lall*, 1 Agra Rep., A. C., 52.

The plaintiff agreed with defendant that, in consideration of the possession and use of certain land and a third of the produce for the season, he would provide seed and labour, and carry on the cultivator's share of the produce. *Held* that the limitation was that prescribed by Clause 9, Section 1. *Audi Konan* v. *Venkata Subbaiyan*, 2 Mad. Rep., 387.

The want of an admission or acknowledgment in writing, as required by Section 4, to qualify the limitation prescribed by Clause 9, Section 1 of that Act, cannot be supplied by oral evidence to the admission of the debt sued for. *Doorga Dutt Singh* v. *Kalika Sookul*, 7 W. R., 46.

Where the plaintiff, a native artist, agreed to supply, and the defendant agreed to purchase, pictures as ordered from time to time, subject to the approval of each picture by the defendants, the prices to be fixed on delivery and acceptance,—*Held* that a distinct contract became complete in respect of the pictures as they were from time to time delivered and approved of, at the price then fixed, and that the case came within Clause 9, Section 1, and not within Clause 8 or Clause 2 of the same Section. *Viraswámi Náyak* v. *Sáyambabáy Sáhitá and others*, 2 Mad. Rep., 6.

A suit for a pleader's fees is founded upon a contract either express or implied. If the contract is not in writing, the limitation under Clause 9, Section 1, is three years from the time when the cause of action accrues. *Dwarkanath Moitro* v. *T. J. Kenny*, 5 W. R., S. C. C. Ref., 1.

A suit for the balance of an adjusted account of an indigo factory is subject to the limitation

provided by Clause 9, Section 1. *John Doyle* v. *Allum Biswas*, 4 W. R., S. C. C. Ref., 1.

Where a doctor is engaged to treat a patient without any arrangement being made at the time as to his fees, there is an implied contract, an action for the breach of which is governed by the three years' limitation under Clause 9, Section 1. *Hurris Chunder Surmah* v. *Brojonauth Chuckerbutty*, 13 S. W. R., C. R. 196.

The plaintiff, a Hindu widow, sold to the defendant certain land which formed part of the estate of her deceased husband, for a sum of Rs. 800. The price was paid to the plaintiff, who, on the same day, made it over to the defendant under an agreement that she should receive Rs. 6 monthly by way of interest, and that the principal sum should be repayable on demand. Interest was paid accordingly by the defendant for three years, up to the end of March, 1869, when the defendant discontinued payment of interest. The plaintiff thereupon demanded repayment of the principal, which the defendant refused. On the 4th July, 1870, the plaintiff instituted the present action against the defendant for the recovery of the principal sum lent, with interest from the date when it was withheld up to the date of suit. The defendant pleaded that the claim was barred by limitation, under Clause 9, Section 1. *Held* that the contract in this case was alternative, and contained two distinct and separate obligations,—first, an obligation to pay Rs. 6 month by month by way of interest; and secondly, an obligation to repay the principal on demand, and the case fell within the rule that where, by the terms of the contract, either express or implied, it is stipulated that a request or demand of performance shall be made, such demand must be made in order to complete the cause of action. The suit which was brought within three years from the date when plaintiff first made demand for repayment was accordingly held not to be barred. *Brohmo Moyee Dassee* v. *Obhay Churn Chowdry*, 16 S. W. R., C. R., 164.

The period of three years' limitation prescribed by Clause 9, Section 1, is applicable to a suit for balance of aurrutdary account and for commission and interest, the cause of action in such a suit accruing from the close of the year in which the last item was admitted or proved, indicating he continuance of mutual dealings. *Meher Chaund Sahoo* v. *Mooroolyram and others*, 14 S. W. R., A. O., 7.

Section 1, *Clause* 10.

Attestation before a cazee is not registration within the meaning of Clause 10, Section 1. Consequently a suit under a lease attested before a cazee is subject to the limitation of three years prescribed by that clause. *Doya Moyee Dabee* v. *Nobonee Dabee*, 1 W. R., 89.

Three years' limitation as prescribed by Clause 10, Section 1, Act XIV of 1859, is applicable to a suit under an instalment bond, the limitation commencing from the date of the last unsatisfied payment. No deduction can be allowed under Section 14, Act XIV, for litigation against a wrong party. *Mussamut Munna Jhunna Koonwar* v. *Laljee Roy*, 1 W. R., 121.

A contract to sow and cultivate indigo provided for liquidated damages payable in a lump sum in the first year in which a breach of contract took place. *Held* that a suit for damages for breach of contract for two years must, under Clause 10, Section 1, be brought within three years from the time when the breach of contract first took place; (2) that a suit for damages to the extent of the injury sustained brought under Section 3, Act X of 1836, against a party for prevailing upon ryots, who had entered into a lawful contract with the plaintiff to break that contract, was governed by the six years' limitation provided by Clause 16, Section 1; and (3) that both liquidated damages and the amount advanced to the cultivators could not be recovered under Section 3, Act X of 1836. *Meer Mahomed Kazem Chowdhry* v. *A. J. Forbes*, 5 W. R., 277.

A suit for damages for breach of contract by the defendant in not giving a valid title to the plaintiff, according to his contract, to the shares which the defendant professed and agreed to sell of the property in question, is governed by the limitation prescribed by Clause 9 or 10, Section 1. *Raj Narain Singh* v. *Koonwar Dowlut Singh and others*, 6 W. R., 49.

A suit to recover the balance due on account of principal and interest upon an unregistered bond with lien on immoveable property, is governed by the limitation prescribed by Clause 10, Section 1. *John Lyster* v. *Komihone and Mah Byaw*, 7 W. R., 354.

Though Section 3, Act X of 1836, enables an indigo planter to join in one and the same suit two distinct causes of action,—*i. e.*, the breach of contract on the part of the ryot, and the tort on the part of the person prevailing upon the ryot to break the contract,—yet the two causes of action are governed by different periods of limitation, the former within three years under Clause 10, Section 1, and the latter within six years under Clause 16. *A. J. Forbes* v. *Pertab Singh Doogur and others*, 7 W. R., 401.

In a suit for recovery of a certain sum of money the present defendant intervened by a petition agreeing to pay the whole amount due on the bond, if the first instalment be not paid by the debtor on the 16th of December, 1863. In this suit brought on the 11th of April, 1867, for recovery of the whole amount,—*Held* that under Clause 10, Section 1, the claim was barred. *Gaur Hari Doss* v. *Madan Mohan Biswas*, 3 B. L. R., A. C., 16; S. C., 11 W. R., 330.

Where there is a bond which not merely secures a sum of money, but also hypothecates lands as a further security for its due payment, and a suit is brought to recover the money (the suit in no way relating to the mortgage or charge on the lands), the limitation prescribed in Clause 10, Section 1, applies. *Gora Chand Dutt* v. *Lokenath Dutt and others*, 8 W. R., 334.

An action for breach of contract on the repudiation of a lease is provided for by Clause 10, Section 1. *Pochooram Sahu* v. *Choto Lall Mukoond Lall Sahu*, 8 W. R., 442.

Held that the limitation applicable to a suit for the recovery of a fixed salary agreed to be paid to a mookhtear for conducting the plaintiff's cases is that provided by Clauses 9 and 10, Section 1. *Jumma Pershad* v. *Bheem Sein*, 1 Agra Rep., M. A., 8.

An endorsement without signature cannot be

deemed a written engagement which could be registered within the meaning of this clause. *Shumbhoochunder Shaha* v. *Baroda Soonduree Debia*, 5 W. R., 45.

A suit for the recovery of the amount due on a policy of marine insurance falls under Clause 10 of Section 1. In such cases the limitation (in the absence of a custom allowing a certain time of grace) begins to run from the date when the defendant has notice of the loss, and refuses or neglects to pay. *Narotamdas Bhagtan das* v. *Dayabhai Ichhachund*, 6 Bom. Rep., A. C. J., 34.

A promissory note is a "contract or obligation" under Section 16, Act XVI of 1864, and as such might have been registered under that Act; consequently the period of limitation prescribed by Section 1, Clause 10, *viz.*, three years, applies to it. *Pyari Chaund Mitter* v. *Frazer*, 6 B. L.R., Ap., 40. *See* also 14 S. W. R., A. C., 51.

On 9th April, 1864, the defendant, L., an attorney, entered into an agreement with the plaintiff and one P. R. D., by which the plaintiff engaged to employ himself as cashier and accountant of L., and the plaintiff and P. R. D. engaged that they would from time to time, on the requisition of L., advance money to him subject to the proviso that there should be at no time a larger sum due by L. on account of such advances than three-fourths of the value of all bills, stocks, and other property, which L. would make over to the plaintiff and P. R. D., provided also that the said advances should not exceed in total at any time Rs. 10,000. L. was to pay interest on such advances at nine per cent., and the plaintiff and P. R. D. were to have a lien for such advances on all bills, stocks, and other property of L.'s which the plaintiff and P. R. D. should have in their custody as security for such advances. L. was to be at liberty to realize such bills and sell such stocks as he should deem necessary, provided that the money was to be paid to the plaintiff and P. R. D. in payment of such advances. Should there be any surplus money remaining after the settlement of the account, such money was to be credited to the account of L. The agreement was made before the Registration Act of 1864 came into force, and it was admitted that it could not have been registered. In a suit against L. to recover money advanced by the plaintiff and P. R. D.,—*Held* that there was such an agreement by L. to repay the advances as to constitute a contract in writing signed by the party to be bound within the terms of Clause 10, Section 1, and therefore the period of limitation was six years as provided by Clause 16, Section 1, of that Act. *S. J. Leslie* v. *Panchanun Mitter*, 6 B. L. R., 618; and 15 S. W. R., A. C., 1.

Section 1, *Clause* 11.

Where a sum assigned to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance,—*Held* that Clause 11, Section 1, was the limitation applicable to suits under the will for recovery of the sum due as a legacy. *Held* further that the denial of the will, by the persons under whom the plaintiffs claim, was not a bar to the present suit. *Nana Narain Rao* v. *Rama Nund and others*, 2 Agra Rep., A. C., 171.

R. by his will gave the whole of his property to his brothers, making a specific provision of Rs. 4,000 for one of his daughters (the mother of the plaintiffs), which was to remain as *amanut* in the family treasury, yielding her interest if and till she gave birth to a male child, when she should also have 200 beegahs of land. Shortly after this the testator died, and the elder of the plaintiffs was born. The mother having since died without drawing the principal or taking the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother. *Held* that this was a suit for legacy, and that Clause 11, Section 1, applied so far as the claim for the money was concerned; and that the cause of action to the plaintiffs occurred at the time of the birth of the elder plaintiff, when his mother became immediately entitled to the principal sum of money and to the land. *Prossono Chunder Roy Chowdry* v. *Gyan Chunder Bose*, 13 S. W. R., C. R., 354.

Section 1, *Clause* 12.

A suit to obtain possession of lands belonging to the plaintiff's zemindary which are falsely declared by the defendant to be lakheraj is barred by twelve years' limitation even under Clause 12, Section 1, nor can the plaintiff under Section 14 exclude from the computation the time of pendency of a suit for assessment not brought by him, nor by any person under whom he claims, even were the provisions of that section otherwise applicable. *Rajah Barodahant Roy* v. *Sookmoy Mookerjee*, 1 W. R., 29.

A plaintiff can sue for the profits of property of which he has been dispossessed by the defendant, without being obliged to sue for possession. The limitation prescribed by Clause 12, Section 1, is applicable to such a suit. *Dyamoyee Dayee* v. *Muddoosoodun Mytee*, 3 W. R., 147.

A suit for recovery of possession of land and for opening a water-course through it, alleged to have been stopped by the defendant, is held to be a suit "for an interest in immoveable property," and therefore subject to the limitation prescribed by Clause 12, Section 1. *Oodoyessurree* v. *Hurokishore Dutt*, 4 W. R., 107.

A suit not to resume or assess, but to recover possession with mesne profits, as part of the plaintiff's mâl tenure, of land which the defendant is alleged to be holding on an invalid lakheraj tenure, must, under Clause 12, Section 1, be brought within twelve years from the time the cause of action arose,—*i.e.*, from the date on which the defendant began to hold the land in dispute rent-free. *James Furlong, manager on behalf of the Rajah of Dhurbhangah* v. *Kusroo Mundo and others*, 7 W. R., 531.

In a suit to recover possession of immoveable property, the defence was adverse possession for more than twelve years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court: first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review; and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court, in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court,—*Held*, *per* Loch, J. (Glover J., dissenting), that

plaintiffs' possession during those two periods was not *bonâ fide*, and that the suit was barred. *Mati Singh* v. *Rajah Lilanand Singh*, 2 B. L. R., A. C., 173.

Where there was nothing to show whether the family had been a joint or a divided family, and where the suit was not against a mortgagee, but, before the plaintiff could get at the mortgagee, he had to remove the obstacle presented by the adverse title (based on a twelve years' usufructuary adverse possession) of the daughter-in-law of the original mortgagor,—*Held* that the limitation applicable to the case was that prescribed by Clause 12, Section 1. *Nund Koomar Lall and others* v. *Shumboo Singh and others*, 8 W. R., 34.

A suit for a sum of money to be recovered by the sale of mortgaged property, in which plaintiff asked for a decree to be enforced both against the person of the borrower and against the property pledged, comes within the provisions of Clause 12 (not Clause 10) of Section 1. *Munoo Lall* v. *W. J. Pigue and others*, 10 W. R., 379.

A. claimed certain immoveable property as lessee, under a Government settlement made in 1859. B. had been in possession for more than twelve years before the institution of the suit. *Held* that the suit was barred under Clause 12 of Section 1. The mere fact that A. claimed as lessee under Government did not entitle him to the benefit of Section 17, Act XIV of 1859. *Asu Mia* v. *Raju Mia*, 1 B. L. R., A. C., 34; S. C., 10 W. R., 76.

Hypothecation creates an interest in immoveable property such as is mentioned in Clause 12 of Section 1, and therefore the period of limitation for suits arising out of documents of hypothecation is 12 years. *Raja Kaundan* v. *Muttammal*, 3 Mad. Rep., A. J., 92.

About twenty-five years before suit brought,—R. being possessed of a house allowed K. to occupy it without paying rent, on condition that K. would keep it in repair, and restore it to R. on demand. Nine years afterwards, and without any demand having been made by R., K. died, and his heirs continued to occupy the house, apparently on the same terms as K. had done. In a suit brought by R. against the heirs of K. to recover possession of the house, it was held that K. could not be deemed to have been a depositary of the house within the meaning of Section 1, Clause 15 of Act XIV of 1859, and the case was therefore governed by Section 1, Clause 12 of that Act. *Held* also that K. occupied the house as tenant-at-will of R., that such tenancy was on the death of K., as of course, converted into an adverse occupation, by the heirs of K., in the absence of proof of the intention of the parties to that effect, and in the absence of anything to show that R. did not assent to the heirs of K. continuing to hold on the same terms as K. had done. *Radhabhai* v. *Shama*, 4 Bom. Rep., A. C. J., 155.

Clauses 12 and 13, Section 1 of the Limitation Act, considered. *Govindan Pillai* v. *Chindambara*, 3 Mad. Rep., A. J., 99.

Held that a suit to enforce the charge under a mortgage deed is a suit of the nature mentioned in Clause 12, Section 1, and can be brought at any time within twelve years. *Koonj Behary Lall* v. *Raj Narain*, 2 Agra Rep., A. C., 244.

Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief sought was that payment of principal and interest may be enforced, both as a simple contract liability and a debt secured by a collateral mortgage of immoveable property,—*Held* that the suit was one for the recovery of an interest in land under Section 1, Clause 12, and was not barred for 12 years. *A. Kristna Row and others* v. *H. Hachaha Sugapa*, 2 Mad. Rep., 307.

A summary order made under Act XIX of 1841, and intended only to affect the question of possession, does not operate as a bar to a regular suit to try the title. Such suit may be brought within 12 years according to Clause 12, Section 1, Act XIV of 1859. *Loknarain Singh* v. *Ranee Myna Koer*, 7 W. R., 199.

Held that, though mere receipt of rent under a void or voidable lease does not operate as a confirmation of it, or show that the lessee held possession of the land at the time, yet if, with full knowledge of the existence of the putnee pottah, rents were claimed on behalf of the plaintiff, and proceedings taken under Regulation VIII of 1819 to enforce payment of the rents as reserved on a putnee tenure by the acting manager (B.) during plaintiff's infancy, and on coming to age plaintiff took no steps to repudiate the proceedings, Clause 12, Section 1, would apply to his suit. *Shumboonath Shaha* v. *Bunwaree Lall Roy*, 11 W. R., 102.

The plaintiff having been dispossessed under a sale in execution against other parties, is entitled to sue, to establish his title, and to recover possession at any time within 12 years from the time at which he was dispossessed, according to Clause 12, Section 1. *Baboo Jadunath Chowdhry* v. *Radhamoney Dossee*, 7 W. R., 256.

When there is an unregistered bond to secure the payment of a sum of money with interest, by which bond also lands are charged (by way of simple mortgage) with the payment of the debt, a suit to have it declared that the lands are charged with the payment of the debt, and for an order for the sale of the lands (as subject to the charge) in satisfaction of a debt, falls within Clause 12, Section 1, and must be brought within 12 years from the cause of action. *Surman Hossein* v. *Shahazadah Golam Mahomed*, 9 W. R., 170.

A Hindu died, leaving two daughters, who succeeded to their father's property. One sold her half share of the property, and died in 1835. The other died in 1859, and her son instituted the present suit in 1867 for recovery of the half share which her sister had sold. The defence set up was that the suit was barred by lapse of time, as the plaintiff's cause of action arose in 1835, or more than 12 years before the institution of the suit. *Held* (following a dictum in the Full Bench Ruling in *Nabin Chandra Chuckerbutty* v. *Iswar Chandra Chuckerbutty*) that the words "cause of action" in Clause 12, Section 1, refer not to the new cause of action which accrues to the reversioner, but to the "cause of action" which accrued to the tenant for life; and that the suit having been brought after a lapse of more than 12 years after the death of the tenant for life was barred. *Ganga Charan Roy Chowdhry* v. *Jagannath Dutt*, 3 B. L. R., A. C., 208; S. C., 12 W. R., 97.

The plaintiff's tenant having been ejected from certain immoveable property of the plaintiff, under

an auction sale in execution against a third party, the plaintiff made no application to the Court under Section 246 or 269 of the Civil Procedure Code to prevent or set aside the sale.

Held that he was not bound to do so, but that he was entitled to file a regular suit to establish his title and recover possession at any time within twelve years from the date of the dispossession, under Clause 12, Section 1. *Lálchaund Ambáidas* v. *Sakharám Valad Chandrá Chái, et al.*, 5 Bom. Rep., A. C., 139.

A suit to recover excess lands wrongfully taken under cover of a decree comes within the provisions of Clause 12, Section 1. *Gour Monee Moorain* v. *Shun Kuree Pharinee*, 13 S. W. R., C. R., 459.

Section 1, *Clause* 13.

Clause 13, Section 1, does not apply to a suit for maintenance, when the right to receive such maintenance is not a charge on the estate of a deceased person, but on the estate of living persons. *Binode Lall Chatterjee* v. *Luckhee Monee Debia*, 4 W. R., 84.

A suit for malikana is governed by the limitation prescribed by Clause 13, Section 1. *Mussamut Oozeerun* v. *Heera Nundo Shahu*, 7 W. R., 336.

Clause 13, Section 1, applies to suits in which a plaintiff seeks to introduce one or more additional co-sharers into the enjoyment of property alleged to be joint, not where a plaintiff seeks to enforce his right to separate possession of that to which he is entitled. *Lukhee Monee Dossee* v. *Brojo Bullub Seal*, 11 W. R., 132.

A Hindu died in 1840 leaving him surviving seven sons, who, after their father's death, entered into joint possession of certain immoveable property which had been left by him, and continued to live in commensality until 1859, when a separation in mess took place. Subsequently, more than twelve years after the father's death, a suit was brought by the youngest son for his share of the joint ancestral property belonging to the father, and to property subsequently acquired out of the proceeds of such joint estate, to which the brothers were entitled in equal shares. The plaintiff failed to show that any payment was made to him or any person through whom he claimed by the person in possession or management of the property within twelve years before the commencement of the suit.

Held that the suit was barred by limitation under Clause 13, Section 1. *Uma Sundari Dasi* v. *Dwarkanath Roy*, 2 B. L. R., A. C., 285; S. C., 11 W. R., 72.

In a suit to establish a right to share in a watan and to recover a portion of the profits thereof for seven years,—*Held* that the case was governed, as to limitation, by Clause 13, and not Clause 16, of Section 1, and that arrears for seven years were, therefore, properly awarded.

There is no law by which interest can be awarded in such a case. A volunteer, who acts as manager, cannot claim remuneration from his co-sharers without showing a previous consent on their part to pay him. *Gundo Anandravetal* v. *Kristnarain Govind*, 4 Bom. Rep., A. C. J., 55.

A mere reference to the ordinary rule that possession of one of the members of the family cannot be looked upon as antagonistic, is not sufficient for the right decision of the case when adverse right to the property is asserted; and the Court, in determining the issue of limitation, should advert to the provisions of Clause 13, Section 1, which governs suits to share in joint family property. *Mussamut Jaraoo and others* v. *Fakeera and others*, 4 Agra Rep., 133.

Held that the plaintiffs' suit was barred by lapse of time, they having received nothing from the property, a share of which they claimed, for a period beyond that prescribed by Clause 13, Section 1. The fact that the plaintiffs had a manifest right by inheritance, and that their names had been entered in the revenue register as proprietors, is not equivalent to proof of payment to and receipt by them of any profit on account of their share. *Khorun Singh and others* v. *Beharee Lall and others*, 4 Agra Rep., 95.

Section 1, Clause 13, applies to Mahometan as well as Hindu families. *Mussamut Khyroonissa* v. *Sabhoonissa Khatoon*, 5 W. R., 238.

Section 1, Clause 13, applies to suits for the recovery of maintenance, whether the right to receive maintenance arises out of the general law, or out of a specific deed granting such maintenance. *Bamasoondery Debea* v. *Shamasoondery Debea*, W. R., 1864, 13.

Where a suit was brought for a division of family property twelve years after the death of the head of the family,—*Held* that the suit was not barred by Clause 13, Section 1. *Subhaiyar and others* v. *Sankara Subhaiyar*, 2 Mad. Rep., 347.

In a suit to enforce the right to share in property on the ground that it was joint family property,—*Held* that upon the construction of Clause 13, Section 1, the claimant, in order that the Statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims. *Govindun Pillai* v. *Chidambra Pillai*, 3 Mad. Rep., A. C., 99.

A reversioner cannot, during the life-time of a Hindu widow, sue to set aside a sale made by her if twelve years have elapsed since the date of the sale, though he may, during her life-time, sue to have the sale declared void and to prevent waste. Such limitation does not prevent the right of suit of the reversioner after the widow's death when he succeeds as heir. *Syed Ameer Ali* v. *Mohendronath Bose*, 2 W. R., 271.

Adverse possession for twelve years against a Hindu widow which would bar her right of suit, is also a bar to a suit by the reversioner brought after the death of the widow. *Ramdyal Gossain and others* v. *Kattyanee Debia and others*, 8 W. R., 256.

As regards property of which a Hindu widow never gets possession, and which is held adversely to her and to her husband's estate, limitation runs during her life-time; and if the ordinary period of limitation has elapsed since the cause of action accrued to her, the reversioner will be barred. *Brinda Dabee Chowdhrain* v. *Peary Lall Chowdhry*, 9 W. R., 460.

A reversioner suing to set aside certain deeds executed more than twelve years before, alienating property which a Hindu widow had been declared entitled to retain for her life-time, was held to be barred by limitation, and to have no right to sue for recovery of possession and declaration of right before the death of the widow. *Rash*

Behary Lall and another v. *Purmessur Nath*, 10 W. R., 30.

All alienation by a Hindu widow, with a life-interest only, is bound during her life, and the suit of a reversioner to set aside such alienation is not barred if brought within twelve years of the period when the succession opens out to him. *Suntokhee Thakoor* v. *Mussamut Balasee Koonwar and another*, 10 W. R., 276.

A suit to recover possession of a share of land by a reversioner deriving from a party who, though she had died only four years previously, had been out of possession twenty-four years, was held to be barred by limitation. *Chunder Nath Sein* v. *Anund Moyee Dossee and others*, 11 W. R., 289.

A Hindu widow, entitled to a life-interest only, sold the estate absolutely, claiming under a pretended deed of gift from her husband. Her son questioned the validity of the deed, and the Court directed a regular suit to set aside the sale, which was not, however, brought. The son pre-deceased the widow, and his children, after the death of the widow, and within twelve years after they attained their majority, but more than twelve years after the conveyance, instituted a suit, as reversioners, for the recovery of the land. *Held* that the claim was not barred by the Statute of Limitations. *Pearymohun Roy and others* v. *Chandercant Roy and others*, Marsh., 33.

Proof of payment is not necessary to bring a case within Clause 13, Section 1; but the limitation therein prescribed will apply to the case of a person entitled to a share in property, and simply enjoying the property with the co-sharers, there being no division of money or any payment at all made between them. *Bhujohuree Paul* v. *Huro Soondooree Debee*, 17 S. W. R., C. R., 530.

The plaintiff sued the defendants for future and past maintenance, and obtained a decree for future maintenance and for arrears of maintenance for seven years. The parties were governed by the Aliyasantana law. It was found by the lower Appellate Court that for twenty years before the suit the plaintiff lived apart from the defendants and the other members of the family, and supported herself without receiving or applying for anything towards her maintenance out of the family property in the possession of the defendants, or obtaining any recognition of her right to maintenance. On special appeal, *held*, *per* Scotland, C. J., that, assuming the Aliyasantana law recognizes the right of the plaintiff to enforce separate maintenance as a charge upon the estate, the plaintiff's claim was barred by Section 1, Clause 13.

Per Collett, J.,—It is doubtful whether Section 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within Section 13, then it was one to recover an interest in immoveable property, and was equally barred by Clause 12 of Section 1. *Abbaku* v. *Ammu Shettati*, 4 Mad. Rep., 137.

In a suit by a co-parcener to enforce a division of family property it is necessary, in order to constitute the bar provided by Clause 13, Section 1, to prove possession and enjoyment of the property as the possessor's own separate property to the absolute exclusion of the person suing to enforce the right to share for twelve years, computed either "from the death of the person from whom the property alleged to be joint is said to have descended," or "from the last payment to the plaintiff or any person through whom he claims by the person in the possession or management of such property or estate on account of such alleged share." The question of fact whether there has been such exclusive possession or enjoyment must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow plaintiff any part of the benefits of the joint property. *Subbaiya* v. *Rajesvara Sastrulu*, 4 Mad. Rep., 354.

The 13th Clause of Section 1 of Act XIV of 1859 does not require that the acknowledgment should be given to the mortgagor. *Unicha Kandyile* v. *Valia Pidigali*, 4 Mad. Rep., 359.

In ruling that a suit to enforce the right to a share in certain property on the ground that it is joint family property is barred under Section 1, Clause 13, it is not enough to find that the plaintiff had occasionally received money from the defendant, and that his sister continued to live in what had originally been the joint family dwelling-house; but there must be a distinct finding as to what payments (if any) have been made to the plaintiff within twelve years next prior to the date of the institution of the suit, by the person in possession or management of the property on account of the plaintiff's alleged share. *Prossono Coomar Mookerjee* v. *Shama Churn Mookerjee*, 17 S. W. R., C. R., 451.

Held that a Hindu is entitled to maintenance from her husband's brother, whether separated or not, notwithstanding the non-receipt by the latter of her husband's assets.

In a suit for maintenance, the cause of action ordinarily arises at the time when the maintenance having become necessary is refused by the party from whom it is claimed.

Section 1, Clause 13, does not apply to all suits for the recovery of maintenance brought by a Hindu widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate.

There is nothing in the Hindu Law to prevent the Court, in its discretion, awarding a widow separate maintenance. Former decisions commented on. *Timmáppa Bhat et al.* v. *Parmeshriamma et al.*, 5 Bom. Rep., A. C., 130.

An acknowledgment in writing, signed by the defendant, or the person through whom he claims, of the right of the plaintiff to share in a watan, is not sufficient to revive the period of limitation contained in Section 1, Clause 13, so as to give a new starting-point from the date of such acknowledgment; under that clause there must be a payment on account of the alleged share by the person in possession of, or having the management of, the watan; and Section 4 is not applicable to such a case. *Amitráv bin Yeshvantráv Deshmukh* v. *Anyábá bin Abáji Deshmukh*, 5 Bom. Rep., A. C., 50.

In a suit under Clause 13, Section 1, to enforce a right to a share in immoveable property on the ground that it was not joint family property, where

plaintiff claimed as the heir of her husband, and defendant (who pleaded a title derived by purchase from one of the co-sharers) had been in adverse possession for nine years,—*Held* that, under Clause 13, plaintiff would have to prove that she had been within twelve years prior to date of suit in the enjoyment of a share of the profits or rents. *Rajoo Singh* v. *Gunnesh Monee Burmonee*, 15 S. W. R., C. R., 400.

Section 1, *Clause* 14.

According to Clause 14, Section 1, a suit by a dur-putneedar, who purchased at a sale under Regulation VIII of 1819, to resume an alleged invalid lakheraj tenure, must be brought not within twelve years from the date of his purchase, but within twelve years from the date when the right to sue accrued to the person under whom he claims. *Sheikh Musseruddeen* v. *Shibpershad Chowdhry*, W. R., 1864, 170.

Rules (as gathered from the late Full Bench decisions) laid down for the future guidance of the lower Courts in disposing of suits for the resumption of lakheraj, instituted before the date on which Act XIV of 1859 came into operation.

In suits instituted after that date, the effect of Clause 14, Section 1 of that Act, should be taken into consideration. *Khelut Chunder Ghose* v. *Poorno Chunder Roy*, 2 W. R., 258.

Clause 14, Section 1, applies to all suits to resume or assess lands held rent-free, whether before or after the Permanent Settlement. *Krishto Mohun Doss Buhshee* v. *Joy Kishen Mookerjee*, 3 W. R., 33.

A suit for the resumption or assessment of lakheraj land is barred by limitation under the proviso to Clause 14, Section 1, if the defendant shows possession as lakheraj before 1st December, 1790, unless the plaintiff can rebut that evidence by proving the land to be mâl by payment of rent or otherwise. *Sristeedhur Samunt and others* v. *Romanath Rokhit*, 6 W. R., 58.

The words "rent free" in Clause 14, Section 1, are not used in contradistinction to, but merely as showing the meaning of, the term "lakheraj." *Janoke Bullub Chuckerbutty* v. *Nobin Chunder Roy Chowdhry*, 2 W. R., Act X R., 33.

Section 1, *Clause* 15.

Claims to malikana are not barred by limitation if brought within thirty years, the Collector being held to be a depositary within the meaning of Clause 15, Section 1. *The Government* v. *Rhoop Narain Singh*, 2 W. R., 163.

A written acknowledgment by the mortgagee of the title of the mortgagor, or of his right of redemption, is sufficient within the meaning of Clause 15, Section 1, though made to a third party and not the person entitled to the land. *Dur Gopal Singh* v. *Kasheeram Panday*, 3 W. R., 3.

Clause 15, Section 1, applies when there is some relation of trust, whether the property is given in mortgage or pawn, or simply deposited for safe custody. *Rutton Monee Debia* v. *Gunga Monee Debia Chowdhrain*, 3 W. R., 94.

The period of limitation for a suit to redeem a mortgage of immoveable property is (by Clause 15, Section 1) sixty years, and this is apparently without reference to the nature of the title the mortgagee in possession is asserting.

Semble,—It makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. *Punji* v. *Nágamma*, 3 Mad. Rep., A. J., 137.

An entry to the wajib-ool-urz was not tantamount to an acknowledgment on the part of the defendant, mortgagee, of the plaintiff's proprietary right so as to allow him to sue within sixty years from that date as provided by Clause 15, Section 1. *Juggoo Singh and Teenut Singh* v. *Syud Nazir Hossein*, 2 Agra Rep., A. C., 227.

When a mortgagor, after a mortgage has been satisfied, sues for the recovery of the property mortgaged, the case comes within Clause 15, Section 1, but when he sues for surplus collections which have been received by the mortgagee, the case falls under Clause 16 of that section. *Baboo Lall Doss* v. *Jumal Ali*, 9 W. R., 187.

An acknowledgment made by an agent which was not expressly authorized by the principal, and was not a necessary part of the agent's duty on the occasion, cannot be dealt with as an acknowledgment made in conformity with Clause 15, Section 1. *Lutchmee Buksh Roy* v. *Pandey Kunjeet Ram*, 12 W. R., 443.

During the pendency of a butwarra, the plaintiff purchased a share in an ijmali mehal; and as the proportion of the Government revenue of each shareholder had not been ascertained, the shareholders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1857 it was ascertained that after all necessary deductions a sum of Rs. 655 was due to the plaintiff, who in 1864 applied to the Collector for payment of the amount, but the application was rejected, as the money had been previously drawn away by certain creditors of his vendor.

In 1867 he sued the Collector for recovery of the amount. The defence set up was that the suit was barred by lapse of time.

Held that the Collector was not a depositary under the meaning of Clause 15, Section 1; that the cause of action did not arise on the demand for and refusal of payment, but on adjustment of the account; and that the case came under Clause 16, Section 1. *Gobind Chandra* v. *The Collector of Dacca*, 3 B. L. R., Ap., 57; S. C., 11 W. R., 491.

The words "in the meantime" in Clause 15, Section 1, import the time between the creation of the relation of mortgagor and mortgagee in possession and the end of the period of limitation. *Stansfield* v. *Hobson* (3 De. G. M. and G. 620), dissented from. *Kammana Kalla Cherri Illath Vassudavan Namludiri and others* v. *Chembrakandy Mussa Kutty and others*, 6 Mad. Rep., 138.

The words "if in the meantime an acknowledgment of the title of the mortgagors," contained in Clause 15, Section 1, refer to the period intervening between the date of a mortgage and the expiry of the sixty years, the normal period of limitation, and not to the period between the date of the mortgage and the institution of a suit in respect thereof. *Mahomed Abdool Ruzzah* v. *Syud Asif Ali Shah and others*, 3 N. W. R., 119.

The 15th Clause of Section 1 does not require that the acknowledgment should be given to the mortgagor. In a suit to redeem, the plaintiff produced a mortgage the genuineness of which the defendants denied, but they produced a mortgage from the plaintiff's ancestors to their ancestors. The principal Sadr Amin made a decree for the restoration of the lands according to the terms of the mortgage produced by the defendants. The Civil Judge reversed the decision. *Held*, in special appeal, that the principal Sadr Amin was justified in making the decree which he gave. *Unicha Kundyib Kunhi Kutti Nair* v. *Valia Pidigali Kunhamed Kutty Maraccur*, 4 Mad. Rep., 359.

Where B., an old judgment-creditor of K.'s father, takes out execution against K., whose rights in an estate are accordingly sold and bought by B. himself, B. buys, not K.'s right of suit, but a right determined by a decree to which Clause 15, Section 1, does not apply. *Ram Sarun Singh* v. *Mahomed Ameer*, 13 S. W. R., C. R., 78.

Section 1, *Clause* 16.

Six years is the period of limitation for suits for mesne profits, under Clause 16, Section 2. *Lalla Gobind Suhaye* v. *Munohur Misser*, 1 W. R., 65; *Ram Surn Singh* v. *Gooroo Dyal Singh*, 1 W. R., 83.

The suit being for payment of a bill for goods supplied by retail by an ordinary trader,—*Held* that it was governed by Clause 8, and not Clause 16, of Section 1. *Shama Churn Lall, banker*, v. *The Collector of Tirhoot*, 1 W. R., 308.

The limitation applicable to a suit for damages arising from the act of a servant in not making payment of a sum of money which had been entrusted to him for a particular purpose, is six years under Clause 16, Section 1. *Sheikh Amjud Ali* v. *Syud Ali Buksh*, 2 W. R., 122.

Also to a suit for damages to recover the value of personal property plundered and other consequential damages. *Sheik Ahmedoolla* v. *Hur Churn Pandah*, 2 W. R., 236.

Also to a suit for reimbursement of rateable shares of a joint decree. *Doorgamonee Dossee* v. *Doorga Mohun Doss*, 2 W. R., 266.

Also to a suit for contribution by a person who became surety for the re-payment of advances received by him and the defendant from Government for manufacturing salt, and was obliged in execution of a decree against him to pay the whole sum advanced. *Nobo Kristo Bhunj* v. *Rajbullubh Bhunj*, 3 W. R., 134.

Also to a suit to recover deductions made on account of revenue by the Collector from a deposit made by a sharer of a joint estate in order to protect his share from sale by reason of the default of his co-sharer. *Boy-Kunt Nath Bhooya* v. *Ram Nath Bhooya*, 4 W. R., S. C. C., Ref., 9.

The mere fact of a plaintiff not suing within three years of attaining his majority will not, in cases where Act XIV of 1859 allows a general limitation of twelve years, bar his suit if brought within twelve years of the time when his cause of action accrued. According to Clause 16, Section 1, no more than six years' mesne profits can be recovered. *Luchmun Singh* v. *Mussamut Bibee Miriam*, 5 W. R., 219.

A suit for an account and for the plaintiff's share of the profits after an admitted dissolution of partnership, is governed by the limitation prescribed by Clause 16, Section 1. *Bhutto Ram* v. *Poohul Chowdhry*, 7 W. R., 36.

Also a suit to recover moveable property seized under a sham decree against another. *Kazee Nuseentoollah* v. *Roop Sona Bibee and others*, 7 W. R., 499.

Also a suit by the holder of a hoondee against the acceptor. *Boistub Churn Doss* v. *Prem Chand Mitter*, 4 W. R., 98.

Also a suit by a widow against the heir who has ousted her to establish her lien, or if she sues to enforce her lien on landed property as subject to the lien on landed property, Clause 12 may apply. *Mussamut Janee Khanum* v. *Mussamut Amatool Fatima Kanum*, 8 W. R., 51.

In a suit against the heirs of a gomasta to recover the aggregate amount of certain sums of money overdrawn from time to time by the gomasta to the date of his death, less the salary due to the gomasta during the whole period of his incumbency,—*Held* (by Kemp, J., dismissing the appeal) that in the absence of any stipulation between the parties that the salary of the deceased was to be set-off at all against the items overdrawn, the claim for recovery of such of the items as were drawn more than six years previous to the institution of the suit was barred by Clause 16, Section 1. *Kaleekishen Paul Chowdhry* v. *Mussamut Jugut Tara and others*, 9 W. R., 334.

Plaintiff in 1842 purchased B.'s share of an ijmalee mehal while a butwarra was going on in the mehal, and the several sharers paid in what they thought due from themselves on account of Government revenue. In 1864 plaintiff asked for the surplus payment as per account dated March, 1857, by which it had been ascertained that there stood a balance in his favour. The Collector refused the application, saying that the money was not in the treasury, having been drawn out by certain of B.'s judgment-creditors. Plaintiff sued to recover.

Held that Clause 16, Section 1, applied to the case, plaintiff's cause of action accruing from the date of the adjustment of the accounts. *Gobind Chunder Sein and others* v. *The Collector of Dacca*, 2 W. R., 491.

Both under Clause 16, Section 1, and under Section 14, Regulation III of 1793, a separate cause of action, in respect of the wrongful receipt by a defendant of rent or profits of land belonging to a plaintiff, arises immediately upon the receipt by the defendant of each several sum. *Obhoy Gobind Chowdhry* v. *Ranee Surnomoyee*, W. R., F. B., 163.

In a suit to recover damages for loss caused during the years 1862, 1863, and 1864, by defendant's interference with plaintiff's right to the flow of water from a canal,—*Held* that Clause 2, Section 1, did not apply; that, supposing plaintiff still in possession, the period of limitation is that given by Clause 16, Section 1, *viz.*, six years. If plaintiff was not in possession at the time of bringing the suit, the period prescribed in Clause 12, Section 1, *viz.*, twelve years, is the limit. *Held* also, with regard to the loss sustained in 1864, that plaintiff's right to recover depended upon

whether or not the special damage claimed had accrued at the time of the bringing of the suit. *Sri Viswambara Rájendra Dévee Gáru* v. *Sri Sri Sri Saradhi Charana Samantaráya*, 3 Mad. Rep., A. J., 111.

The limitation applicable to suits for recovery of a wife's person is the limitation provided by Clause 16, Section 1. *Mussamut Bhughna* v. *Gungooa*, 2 Agra Rep., A. C., 170.

Held that the limitation provided by Clause 16, Section 1, would be applicable to suits brought by one partner against the other members of the partnerships to recover his share of the partnership funds and property, no special limitation having been provided for suits of this nature. *Jwala Pershad and others* v. *Kedar Nath and others*, 4 Agra Rep., 175.

Clause 16, Section 1, applies to suits to set aside decrees obtained by fraud. *Ameen Chand* v. *Oomeid Singh*, 1 Agra Rep., A. C., 114.

A suit by an indigo planter against an instigator brought under Section 3, Act X of 1836, is governed by the six years' limitation provided by Clause 16, Section 1. An instigator can, under the former law, be made liable to the extent of the damage sustained; but a plaintiff in such a case cannot obtain liquidated damages calculated on the penal amount due by the ryots under their contracts, but must prove the amount of damage done. *Meer Mahomed Razem* v. *Forbes*, 8 W. R., 257.

Where the money is paid by a co-sharer to save the estate, without being requested by another sharer to pay on his account, the suit for contribution is not a suit for money lent or paid in pursuance of any contract, and the limitation applicable to such a suit is six years under Clause 16, Section 1, and not that provided by Clause 9. *Mussamut Chohagur* v. *Thakooree Singh*, 1 Agra Rep., A. C., 123.

A suit against defendant for entering into plaintiff's land, cutting his crop, and carrying it away, though the plaint may use the word "damages," is clearly for the value of the crop, and is governed by the limitation prescribed by Clause 16, and not Clause 2, Section 1. *Musst. Dhunputty Kooer* v. *Lloyd*, 17 S. W. R., C. R., 277.

Suit brought in 1868 to establish that plaintiff had vested in him the right to the office of karnam of certain villages, from which he had been ousted by the defendant in 1857, and to recover from defendant the mirási lands annexed to the office. The Court of first instance decreed for plaintiff. The Civil Court reversed this decision on the ground that title to the office was the principal matter of the plaintiff's claim, and the right to possession of the land merely an incident dependent upon that title; that therefore, as the period of limitation applicable to the former claim (six years) had elapsed before the institution of the suit, it was not maintainable for the land. Upon special appeal, the decree of the Civil Court was affirmed, on the grounds that it was conclusively found that the land was inseparably attached to the office as a source of endowment for the services of the holder of it for the time being, and that, as against the plaintiff, the defendant was protected in the possession of the office by Clause 16, Section 1. *Tamminrázu Ràmzogi* v. *Pantina Narsiàh*, 6 Mad. Rep., 301.

A suit to recover the balance of an account adjusted and signed by the defendant may be brought at any time within six years from the date of the adjustment, the contract to pay the amount found due on the adjustment being an implied contract, and therefore falling under Clause 16 of Section 1, and not under Clause 9, Section 1.

Semble,—That the adjustment and signing of an account by the defendant is a sufficient contract in writing to satisfy the requirements of Clause 9 of Section 1. *Umedchand Hukamchand, et al.* v. *Shá Bulákidás Lálchaund, et al.*, 5 Bom. Rep., O. C., 16.

In a suit to recover certain ornaments (or their value) which had been obtained by defendant from plaintiff's ancestor, with a view to borrowing money on them, limitation was held to be governed by Clause 16, Section 1, and the cause of action to arise when defendant set up an adverse claim in respect of the ornaments. *Shumboo Chunder Mullick* v. *Prankisto Mullick*, 14 S. W. R., C. R., 322.

The plaintiff sued the defendants for declaration of his right to a turn of worship of an idol for seven and a half days in each month, alleging that the defendants, who were entitled to another turn, had in 1864 taken adverse possession of the idol and properties belonging to it, and had so deprived him (the plaintiff) of his turn of worship from that time. *Held* that the cause of action did not recur as the turn of worship came round. Such suits fall within the operation of Clause 16, Section 1. *Gour Mohan Chowdry* v. *Madan Mohun Chowdry*, 6 B. L. R., 352; and 15 S. W. R., C. R., 92.

A suit for damages to recover the value of personal property plundered is governed by the limitation prescribed by Clause 16, Section 1, and is in no sense a suit for damages on account of injury to personal property within the meaning of Clause 2, Section 2. *Sheikh Ahmedoollah* v. *Hur Churn Pandah*, 2 W. R., 236.

Section 2.

A suit for possession against an agent or deputy in charge of endowed property is not barred by limitation according to Section 2, Act XIV of 1859. *Shaw Gholam Nujjuff* v. *Toosoodack Hossein*, 1 W. R., 126.

Where no steps had been taken against the assets of a defaulting executor who died in 1836,—*Held* that the claim of the representatives of testator was barred by limitation, the Court declining to express an opinion as to whether in another form of suit claimants might not follow their testator's assets under Section 2. *Re Palmer's Estate*, Cor. Rep., 68.

In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage debt had been paid off, it was re-conveyed to the idol. After this the names of the idol and of its shebait were entered in the Collector's books as owners of the estate. In 1812 the purchaser again mortgaged the property, and in 1816 his widow executed a second mortgage of it, to pay off the mortgage of 1812. In 1820 this second mortgage was purchased. The defendant held the property under titles derived from the mortgage of 1816. The shebait's representatives in 1867 sued to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the

present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust; that accordingly the suit now brought was a suit against a trustee within Section 2, and could not be barred by any length of time. There was no evidence of a formal dedication of the property to the idol. *Held* that the defendant claimed under purchasers who had purchased *bonâ fide* and for valuable consideration within Section 5, and that therefore the period of limitation was twelve years from the date of purchase, and the suit was barred. *Maharani Braja Sundari Debi* v. *Rani Luchmi Kunwari*, 2 B. L. R., A. C., 155.

A benamee transaction does not create the relation of trustee and *cestui que* trust. A benameedar is not a trustee within the meaning of Section 2. *Uma Sundari Dasi and others* v. *Dwarkanath Roy*, 2 B. L. R., A. C., 285; S. C., 11 W. R., 72.

Section 2 is applicable to a suit against a purchaser from a trustee who is not a *bonâ-fide* purchaser, although he is himself a trustee in law. *Mussamut Kyroonissa* v. *Sabhoonissa Khatoon*, 5 W. R., 169.

A mortgagee, after the mortgage has been satisfied, is not a trustee for the mortgagor within the meaning of Section 2. *Baboo Lall Dass and others* v. *Jamul Ali*, 9 W. R., 187.

Section 4.

Section 4, Act XIV of 1859, is confined to an acknowledgment in writing signed by the debtor himself, and not by his agent. *Budoobhoosun Bose* v. *Enaet Moonshee*, 8 W. R., 1.

Section 4 does not require the defendant to plead uniformity of payment from the time of the Permanent Settlement, but provides that if, on the trial of a suit, it appears that the rent has not been changed for twenty years, it shall be presumed that the land has been held at that rate from the time of the Permanent Settlement. *Bhoyrubnath Sandyal* v. *Mutty Mundul*, W. R., 1864, Act X R., 100.

An admission of a debt with the appended averment that it is not yet payable in point of time, may be an acknowledgment of a debt under Section 4. An assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at some time arise. *John Young* v. *Manglapilly Rumaiya*, 3 Mad. Rep., A. C., 308.

Although part payment is not sufficient to give a new period of limitation without a written acknowledgment of the debt, within Section 4, that section does not require that the writing should express in terms a direct admission that the debt, or part thereof, is due. It is left to the Court to decide in each case whether the writing, reasonably construed, contains a sufficient admission that the debt, or part of it, is due. *A. Kristna Row and others* v. *H. Hachapa Sugapa*, 2 Mad. Rep., 307.

In a suit to recover a balance on account of indigo advances made on a kubuleut executed by defendant, where defendant had broken no contract, but the discontinuation of the cultivation had been the act of the plaintiff, limitation was held to run from the date of the kubuleut, which operated as a written acknowledgment signed by defendant (Section 4, Act XIV of 1859).

Held, too, that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant (who could not write), was not an acknowledgment within the meaning of Section 4. The entry of defendant's name in one column, taken in connection with a cross in another column, formed no valid signature. *Bengal Indigo Company* v. *Koylash Chunder Doss*, 10 W. R., 293.

Section 4 is not applicable to the execution of decrees. Thus an incidental mention by a judgment-debtor, in a petition filed by him in another case in which another decree-holder had taken out execution, that he owed money to the decree-holder in the present case, was held not to be an admission within the meaning of that section to keep the decree alive. *Mussamut Luchmun Koonwur* v. *Luchmun Vukut*, 7 W. R., 79.

An acknowledgment in writing sealed, but not signed, by a defendant, is not an acknowledgment within the meaning of Section 4. *Luchmun Pershad* v. *Rumzan Ali*, 8 W. R., 513.

A letter not signed by the debtor is not an acknowledgment in writing within the meaning of Section 4. *Baboo Ramnarain* v. *Huree Dass*, 4 Agra Rep., 81.

The obligation of a Collector on behalf of the Court of Wards properly to manage a lunatic's estate is different from liability to pay the latter's personal debts, and the acknowledgment of an agent for the management of a zemindar's property is not the acknowledgment of the principal within the meaning of Section 4. *Shaik Raezooden* v. *The Collector of Cuttack*, 10 W. R., 175.

Held that an admission in writing of the making of a promissory note, accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim. *Narbadashankor and another* v. *Rughnath Ishvorji*, 2 Bom. Rep., 349.

Under the Punjab Code, and before Act XIV of 1859 took effect in Oude, letters offering to pay a debt by instalments, and praying to be excused from the payment of interest, were an ample acknowledgment of the debt to save limitation.

Under the same Code, payments made by an agent upon account, and continued monthly for several months, ought to be regarded as tantamount at least to, if not correctly described as, a running account, and are therefore part payments, which amount to "a partial satisfaction of demand," whereby the period of limitation is renewed. *Shah Bukkum Lall* v. *Nawab Imtiaz-eod-Dowlah*, 5 W. R., P. C., 18.

A letter from the Commissioner of Revenue, expressing his willingness to recommend Government to pay for certain land, is not an acknowledgment in writing within Section 4. *Hills* v. *The Magistrate of Nuddea*, 11 W. R., 1.

Memoranda of payments made, indorsed on the bond and signed by the defendant, are not acknowledgments in writing within the meaning of Section 4. *Gorachand Dutt* v. *Lokenath Dutt and others*, 8 W. R., 334.

Part payment, though evidenced by writing, is not in itself an admission of debt within Section 4.

To entitle a plaintiff to the benefit of a new period of limitation under that section, he must

prove that the party sued has in writing authenticated by his signature, either in express terms or by reasonable construction, acknowledged and admitted that the debt or a part thereof is due from him.

This signature need not be formally subjoined or added to an acknowledgment written by the debtor, unless it appears from the writing that such signature was intended, or unless the writing would be incomplete in itself, as an admission without a signature. If the body of the admission is in the debtor's own handwriting, and contains his signature, and was given over by him as complete in itself, it would be an acknowledgment in writing within the meaning of Section 4. *Khwaja Muhammad Javula* v. *Venkatarayar and others*, 2 Mad. Rep., 79.

The plaintiff sued three executors for the balance due of their testator's simple contract debt of more than three years' standing. A part payment had been made by the defendants within the three years previous to the commencement of the suit. Two of the defendants had also, but during their testator's life-time, given a personal undertaking in writing to pay the debt out of a fund coming to their hands. The defendants had also signed as executors, and sent a letter to the plaintiff informing him that they had registered his claim against the testator's estate, and that notice would be given to him when the assets, if any, were to be distributed.

Held, first, that the case was not taken out of Act XIV of 1859 by the part payment; and secondly, that neither the personal undertaking nor the letter was such an acknowledgment in writing as to bring the case within Section 4 of the same Act.

Remarks on the English doctrine that part payment gives the creditor a new period of limitation. *Raja Jevra Das* v. *Richardson and others*, 2 Mad. Rep., 84.

When an indigo planter and a ryot contract, the former to make advances of money or seed for the cultivation of indigo plant, and the latter to deliver the indigo plant grown, a mere verbal admission by the ryot of the correctness of an account containing cross items due, without a written acknowledgment from him that the balance is due, does not operate to create or renew any liability with reference to the Law of Limitation. *John Doyle* v. *Allum Biswas*, 4 W. R., S. C. C., Ref., 1.

Section 4 applies to what is merely an acknowledgment of the debt being due, and not to a writing by which time is given for the payment of the debt, and which comes within Clause 10, Section 1. *Bissumbhur Shi* v. *Syud Bukto Bedarul Hossein*, 17 S. W. R., C. R., 406.

The first plaintiff claimed to redeem a mortgage to defendant's ancestor for Rs. 320. Defendants pleaded that the mortgage was for Rs. 2-336-4, and redeemable only at the pleasure of the mortgagee. They also pleaded the Limitation Act. The original Court decreed redemption on payment of the amount stated by defendants. The lower Appellate Court reversed that decree, and dismissed the suit as barred. *Held*, reversing the decree of the lower Appellate Court, that an acknowledgment by the mortgagees of the mortgagor's title, sufficient to take the case out of the statute, was evidenced by their written answer in suit No. 238 of 1830, and by the answer in original suit No. 441 of 1861, as recited in the judgment in that suit, although the right to redeem and the amount of the mortgage were denied, and the acknowledgments were not made before those suits were brought. The Act for the limitation of suits does not require that the acknowledgment of the title of a mortgagor should be made to any particular person or at any particular time before the institution of the suit in which the bar is pleaded. *Narraina Tantri* v. *Ukkoma*, 6 Mad. Rep., 267.

To bring a case within Section 4, the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning. *Lutchumanan Chetty* v. *Mutta Ibaraki Marakkuyer*, 5 Mad. Rep., 90.

To render an agreement, come to orally for the payment of the balance of an antecedent debt on a settlement of accounts, available in support of a suit brought after the expiration of the period of limitation applicable to such debt, it must be clearly shown to have amounted to a new valid contract to pay the balance, which extinguished the original cause of action. *Hirada Karibasappah* v. *Gadigi Muddappa and two others*, 6 Mad Rep., 142.

In a suit by the plaintiff to recover money lent more than three years before suit, the plaintiff alleged an express verbal promise by the debtor to pay the amount sued for made upon a settlement of accounts,—*Held*, by Holloway and Kindersley, JJ.,—That a verbal promise was not sufficient to prevent the application of the Act of Limitation.

Per Kindersley, J.,—If a debtor and creditor enter into a new contract, the debtor promising to pay a barred debt, that would seem to be a new cause of action, and it is doubtful whether it was the intention of the Limitation Act to insist that the new promise should be in writing. *Kittupa* v. *Somanna*, 6 Mad. Rep., 51.

An admission or acknowledgment in writing, under Section 4, is sufficient to give a new period of limitation, although a promise to pay on request is not inferrible from it. The word "due" in the section means no more than that the debt is owing and that there is an existing obligation to pay it.

An acknowledgment made in writing to a third party and not to the creditor is sufficient under the section.

Quære,—Whether an acknowledgment to satisfy the section must be made before suit.

The English and Indian Law of Limitation considered and contrasted. *Nijamudin* v. *Mahammadali*, 4 Mad. Rep., 385.

An acknowledgment not coming directly from the debtor himself, but merely deduced as an inference from the tenor of a series of letters, is not a sufficient acknowledgment to satisfy Section 4. To satisfy that section, there must be some principal writing of a particular date, which can be relied on by itself, when properly construed, as constituting an acknowledgment of the debt. *Rogers* v. *Montriad*, 6 B. L. R., 550.

A letter containing no distinct admission of a debt, but only doubtful expressions,—*Held* not to be a written acknowledgment such as Section 4 requires for the revival of a right of suit. *Gash* v. *McLean and others*, 2 N. W. R., 403.

Under Section 4 an acknowledgment in writing signed by the agent or constituted attorney of the

debtor is not sufficient. *Purshotam Mancharam* v. *Mirza Abdul Latif Khan*, 6 Bom. Rep., O. C. J., 67.

Section 5.

By "*bonâ-fide* purchaser," Section 5, does not necessarily mean a *bonâ-fide* purchaser without notice, but an honest purchaser without actual fraud. In this view, the defendants, who were purchasers from a mortgagee for valuable consideration of an estate with a doubtful title, were held as *bonâ-fide* purchasers, protected by Section 5, and entitled to plead in a suit brought for the redemption of the mortgaged estate, the ordinary limitation of twelve years from the date of their purchase. *Gisborne and Co.* v. *Radhanath Dass*, 5 W. R., 253.

Certain landed property alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to the office of shebait, and was mortgaged subsequently, on the death of the vendor, by his widow to pay off the charge created by her husband. The last mortgage was foreclosed, and the mortgagee obtained a decree for possession. In a suit for the recovery of the property by descendants of the vendee, claiming as shebait of the idol, —*Held* that the last mortgagee was a *bonâ-fide* purchaser for valuable consideration, and was therefore entitled to the protection of Section 5. *Gobind Nath Roy Bahadoor* v. *Ranee Luchmee Koomaree and another*, 11 W. R., 36.

Section 5 is intended to benefit only *bonâ-fide* purchasers from trustees. *Mussamut Kyroonissa* v. *Sabhoonissa Khatoon*, 5 W. R., 238.

Section 5 does not apply to a case of priority of *bonâ-fide* purchase. *Kally Mohun Pal* v. *Bholanath Chuckladar and others*, 7 W. R., 138.

In a suit by the representative of a mortgagor against *bonâ-fide* purchasers for valuable consideration from the mortgagee,—*Held* that the period of limitation was twelve years from the date of the purchase, under Section 5.

Notice of fact from which the infirmity of the vendor's title might be inferred is evidence of *mala-fides*, but is not itself *mala-fides*, and the question of *bonâ-fide* purchase is one of fact. *Sitha Ummal* v. *Rungasami Jyengarand and others*, 5 Mad. Rep., 385.

Section 8.

A verbal admission of a balance on hearing the items of an account read, will not save a suit from being barred by limitation; nor will a subsequent advance avail to preserve any former right of suit. Section 8 does not apply to a suit for balance of accounts between ryots and an indigo factory. *J. Doyle* v. *Edoo Gazee*, 3 W. R., S. C. C. Ref., 13.

Where in the lower Court an issue was raised whether the plaintiff's claim was barred by limitation, and the Judge decided it was not, and decreed the case on the merits; and the decree was appealed against by the plaintiff; and the Appellate Court did not deal with the question of limitation, but remanded the case for a new trial on the merits,—*Held* that, on appeal from the new decree, the Appellate Court could entertain the question of limitation; and that the lower Court might have re-tried that issue on the facts found on the new trial.

Where A. acted as *del credere* agent of B., and as such received commission for effecting sales of cotton for B. and guaranteeing payment by the purchasers,—*Held* that A. was not a "merchant or trader" within Section 8; and the accounts of transactions which they then had together were not on accounts current between merchants and traders who have had mutual dealings. *Phool Coomaree Beebee* v. *Oonkurpershad Boostobe*, 2 Ind. Jur., N. S., 50.

Repaying a debt which one has contracted does not constitute a trafficking or dealing in the capacity of "merchant or trader" in the sense intended by Section 8. *Peary Mohun Bose* v. *Gobind Chundra Addy*, 10 W. R., 56.

In a suit for the balance of an account with interest in a case of mutual dealings between traders, where the High Court had directed the production of the defendant's book of account, and was satisfied, after receiving the report of the District Judge, that there were such books in existence, and that no satisfactory excuse for their non-production was given, and where the defendant had otherwise conducted his case in a very suspicious manner, — *Held* (reversing the decree of the District Court) that the plaintiff was entitled to judgment on a *primâ-facie* case being made out by him, and that the suit as regards limitation came within the provision of Section 8. *Fernandez* v. *Vásudeo Sháubog*, 3 Bom. Rep., A. C., 82.

The test of whether dealings were mutual within Section 8 or not, seems to be, where they are such that the balance was sometimes in favour of one party, sometimes of the other. *Ghaseeram* v. *Monohur Doss and others*, 2 Ind. Jur., N. S., 241.

The effect of Section 8 enacts that nothing in an account of mutual dealings between merchants and traders is to be barred, provided that there is an item indicating the continuance of such dealings proved to have occurred within the period of limitation. *Hiráda Bàsappa* v. *Gudigi Muddapa*, 6 Mad. Rep., 142.

Section 9.

In a suit to recover landed and other property to which plaintiff made title by inheritance, and endeavoured to set aside defendant's plea of limitation by alleging fraud,—*Held* that even if the allegation were true, as it did not exhibit concealment of the cause of action within Section 9, Act XIV of 1859, and the alleged fraud did not constitute an ingredient in plaintiff's cause of action, it could not get rid of the effect of time. *Byjnath Sahaye* v. *Brohmo Deo Narain and others*, 9 W. R., 255.

Section 9 is only applicable when the plaintiff has been kept from a knowledge of his rights by means of fraud. *Sheikh Muksood Ali* v. *Sheikh Gowhur Ali*, W. R., 1864, 364.

Section 10.

Where a deed of sale is found to be a forgery executed in fraud of a person during his minority, the date from which to compute his knowledge of the fraud practised on him, in the absence of proof

that he had before majority the knowledge required by Section 10, is the date on which he attained majority. *Kulyan Chunder Mookerjee* v. *Bipro Churn Purel*, 6 W. R., 321.

In a suit against an agent for moneys received on plaintiff's account, in which defendant set up a plea of limitation, plaintiff sought to extend the period of limitation on the ground that fraudulent accounts were delivered, — *Held* that the Judge should have found specifically when the fraud was first known to the plaintiff; limitation in such a case running (under Section 10) from the date of knowledge of the fraud, not merely from that of suspicion of the fraud or of delivery of accounts. *Dhunput Singh Doogur* v. *Ruhman Mundul*, 9 W. R., 239.

Section 11.

Persons who had attained their majority before the passing of Act XIV of 1859 are not within the provisions of Section 11. *Radhamonee Dossee* v. *Goluck Chunder Chuckerbutty*, 1 W. R., 52.

The object of Section 11 is the computation of period of limitation in cases of legal disability, *Kalie Das Chatterjea* v. *Beharee Lall Mookerjee*, 2 W. R., 305; not to place minors under a special disability as compared with majors, but to make a special concession in their favour. *Bissambhur Sircar* v. *Soorodhuny Dossee*, 3 W. R., 21.

Section 11 lays it down that, when a right of action first accrues to a person who is then under a legal disability (such as a minor, for instance), the action may be brought by such person within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time exceed the period of three years, in which case the suit shall be commenced within three years from the time the disability ceased. *Khetter Mohun Ghose* v. *Ramessur Ghose*, 3 W. R., 184.

There is no law or rule of practice which stays the Law of Limitation in cases of execution pending the period a decree-holder may be under legal disability. Section 11 applies to suits, and not to processes in execution of a decree. *Rotty Rumun Oopadhya* v. *Chunder Binode Oopadhya*, 5 W. R., Mis., 10.

Suit to recover money advanced on a bond granted by the plaintiffs' father, on the allegation that the money advanced was the plaintiffs', who were minors at the time. In the absence of proof of knowledge on the part of the defendant of the benamee character of the father's position, it was *held* that, whether the money of the loan really belonged to the plaintiffs or not, they could only sue as the representatives of their father, and that Section 11 prevented them from deriving any advantage from their minority in computing the period of limitation. *Nusheeram Roy* v. *Shushee Bhooshun Roy*, 5 W. R., 169.

In a suit brought after Act XIV of 1859 came into operation to resume or assess invalid lakheraj created subsequent to 1790, the *nullum tempus* clause of Section 10, Regulation XIX of 1793, is not applicable, but either Clause 14 or Clause 12 of that Act, limiting the period of suit to twelve years, applies. *Dhunput Singh* v. *Boojah Sahoo*, 4 W. R., 53.

An adopted son after he attains majority is under no legal "disability" within the meaning of Section 11, although his title as adopted son may be disputed, and has not been finally established. *Muddun Mohun Tewaree* v. *Nand Kishore Doss Mohunt*, 5 W. R., 295.

Limitation begins to run against a mother on her succeeding to a family estate as the heir of her son and under no disability, and cannot be estopped by any subsequent disability under Section 11. *Gobind Kumar Chowdhry* v. *Huro Chunder Chowdhry*, 7 W. R., 134.

The right of a reversionary heir to succession, on the death of a widow in possession, is a contingent one. It is only on the death of the widow, when his rights as reversioner are converted into a right to immediate possession, that he is required to sue for possession of the estate. The mere fact of the adoption of another party does not prejudice his rights. Those rights are invaded only when the adopted son, on the death of the widow, takes possession of the property as adopted son. Section 11 has no application to such a case. *Jogendronath Banerjee* v. *Rajendronath Halder and others*, 7 W. R., 357.

In a suit by the son to set aside an alienation by the father, limitation runs from the date of alienation or of possession under it, unless the son was under legal disability, owing to minority at the time of alienation, in which case, according to Section 11, the suit must be brought within three years from the time when the disability ceased. *Beer Kishore Suhye Singh and others* v. *Hur Bullub Narain Singh and others*, 7 W. R., 502.

The object of Section 11 is that when a person's disability has ceased, and an opportunity to sue upon the cause of action has accrued, then no subsequent disqualification of such person, or of any person claiming through him, should be allowed to operate to extend the period of limitation. *Sreemutty Obhoya Doorga* v. *Huree Kishore Gope and others*, 10 W. R., 285.

In computing the period of limitation under Section 11, the period of the plaintiff's legal disability by reason of minority cannot be deducted. *Vira Pillai* v. *Muruga Muttayan*, 2 Mad. Rep., 340.

Section 11 does not apply to execution of decrees. *Tarucknath Mookerjee* v. *Poornochunder Chatterjee*, 8 W. R., 137.

Section 11 merely means that no limitation will apply to a case in which the person suing was disqualified at the time when the cause of action arose, provided the suit is brought within three years of the time of the disqualification ceasing. *Guz Behary Singh* v. *Mussamut Bebee Washun*, W. R., 1864, 302.

Section 11 cannot be used for the purpose of altering the limitation prescribed by Act X of 1859 with regard to rents. *Dinonath Panday* v. *Rughoonath Panday*, 5 W. R., Act X R., 41.

By Section 11 a person who is under legal disability when his right of action accrues has not a shorter period allowed him for suing than other parties, but has in addition three years from date of attaining majority. *Sree Persad* v. *Rajgooroo Trenunbucpatte Deo and others*, 10 W. R., 44.

In computing the period of limitation under Section 11, the period of the plaintiff's legal dis-

ability by reason of minority cannot be deducted. *Vira Pillay* v. *Muruga Muttaya*, 2 Mad. Rep., 340.

Under Section 11 the subsequent disability of an heir will not save a suit instituted after a lapse of twelve years from the date of cause of action, when such cause of action arose during the life-time of the ancestor. *Mohabat Ali and Rahmat Ali* v. *Ali Mahomed Kulal*, 3 B. L. R., Ap., 80; S. C., 12 W. R., 1.

The effect of Section 11 is to provide a distinct period of limitation applicable to every case in which but for legal disability the suit would be barred. In other words, to add three years from the time the disability ceases to the period of limitation made applicable by the Act to the particular case. *Ramanaja Chariyar* v. *Venkatavaradhaiyangeer*, 4 Mad. Rep., 54.

In a suit for possession of landed property which belonged originally to plaintiffs' father, but which was sold by his widow to defendants, whose case was that she had received the property by hibbah in lieu of dower, plaintiffs contended that their father had held up to the year when he died, from which time up to the sale the widow had held as guardian for them. *Held* that as the issue of limitation raised in the first Court was a special issue as to the particular provision on the subject of minority found in Section 11, plaintiffs were entitled to be heard on the issue of general limitation under Clause 12, Section 1, and to show that the widow as guardian was in possession at any time within 12 years of the suit. *Bahur Ali* v. *Sookea Bibee*, 13 S. W. R., C. R., 63.

Section 13.

Ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act, extending the periods of limitation prescribed by that Act. But under Section 13 plaintiff is entitled to exclude from the computation of the periods of limitation applicable to his claims, the time during which the defendant is absent out of British territories. The law of limitation being a law which bars the remedy, and does not destroy the right, if by any of its sections indulgence is shown to suitors, the Court will feel bound to give full effect to the language in which that indulgence is conceded. *Mahomed Musah-ood-een* v. *Clara Jane Mushood-deen*, 2 N. W. R., 173.

Section 14.

An unsuccessful claimant, instead of bringing a regular suit to establish his right as provided by Section 246, Act VIII of 1859, chose to file an appeal against the order rejecting his claim. His appeal, though successful before the lower Appellate Court, having been thrown out in special appeal, as illegal under the section above cited, he now sues to set aside the order rejecting his claim. *Held* that he was not entitled under Section 14, Act XIV of 1859, to deduct from the period of limitation the time during which the appeal proceedings were pending. *Ramdass Baboo* v. *R. Watson and Co.*, W. R., 1864, 371.

When a suit to recover possession of land is instituted in a wrong Court and not returned to the plaintiff until after the time prescribed for such suits, the time so occupied is held not entitled to the benefit of Section 14. *Roy Kally Prosonno Sein* v. *Kisto Nund Dundee*, W. R., 1864, Act X R., 13.

Deduction of pendency of a former suit from period of limitation can only be claimed under Section 14, when the Court before whom the former suit was brought had no jurisdiction, and where there has been no adjudication. *Nund Doolal Sircar* v. *Dwarkanath Biswas*, 2 W R., 9.

Section 14, which provides that when a party has *bonâ-fide* been engaged in prosecuting a suit in a wrong Court, the time when the suit was pending in such Court shall not be counted against him, does not apply to a case of execution of decree. A party cannot be said to be acting in good faith when he applies for the execution of a decree to a wrong Court. *Ketternath Dey* v. *Gossain Doss Dey*, 4 W. R., Mis., 18.

Section 14 does not apply to cases in which the right of the petitioner has been judicially determined, but to suits in which no judgment has been given, but which through error have been *bonâ-fide* instituted in a Court not having jurisdiction. Execution of a decree should be taken out from the date of the passing, and not from the date of the commencement of that Act. *Kalee Chunder Chowdhry* v. *Ruttun Gopal Bhadooree*, 2 W. R., Mis., 1.

A former suit brought, not against the same defendants as in the present suit, but only against one of them, does not fall within Section 14; consequently the time of its pendency cannot be deducted in computing limitation. *Nilmadhub Surnokar* v. *Kristo Doss Surnokar*, 5 W. R., 281.

No deduction can be made from the computation of the period of limitation from the time of pendency of a suit wrongly non-suited on a point unconnected with jurisdiction; but a deduction is allowed under Section 14, of the time of pendency of a suit dismissed for want of jurisdiction. *Dhonmonee Chowdhrain and others* v. *Brindabun Chunder Sircar Chowdhry and others*, 7 W. R., 60.

Suit by purchaser of a share of a decree for his portion of the decretal money by the sale of a share of the property of the judgment-debtors, against the auction purchasers of the same property at a sale, in satisfaction of other shares of the same decree. *Held* that the defendants could plead limitation, and that the plaintiff was not entitled to the benefit of Section 14, which refers to suits only, and not to summary applications or proceedings in execution. *Sheo Narain and others* v. *Joogul Kishen Ram*, 7 W. R., 327.

Where limitation is pleaded, a plaintiff is not entitled, under Section 14, to deduction for the time of the pendency of a suit brought by defendants upon the same cause of action, if it was a suit in which the Courts were unable to decide the question from defect of jurisdiction or other such cause. *Oodoymonee Debee* v. *Bishonath Dutt*, 9 W. R., 455.

Section 14 does not apply to execution of decrees so as to take them out of the Statute. It merely provides that where a suit is instituted *bonâ fide* in a Court not of competent jurisdiction, the time when the suit was pending shall not be reckoned in the period of limitation. *Khettronath Dey* v. *Gossain Doss Dey*, 1 Ind. Jur., N. S., 49.

Held that the word "suit" used in Section 14,

has only one, and that the common and ordinary sense of the term.

Held, further, that the plaintiff, in preferring an appeal from a summary order, which appeal was expressly forbidden by law, cannot be considered to have been prosecuting a suit within the meaning of Section 14, and was therefore not entitled to indulgence given by the aforesaid section, even assuming that section to be applicable to suits to contest the order under Section 246, Act VIII of 1859. *Futteh Ram* v. *Monohur Lall*, 4 Agra Rep., A. C., 39.

Section 14 does not apply to suits barred by limitation under Act X of 1859, which are expressly exempted from the operation of Act XIV, Section 3. *Soudamonee Dossee* v. *Poorno Chunder Roy*, W. R., 1864, Act X R., 113.

According to Section 14, a plaintiff is not entitled to deduct the time occupied by him in prosecuting a former suit in which he was nonsuited, much less the time occupied in appealing from that decision and the time intervening between the non-suit and the filing of the appeal (Loch and Shamboonath Pundit, JJ., dissenting). *Chunder Madhub Chuckerbutty* v. *Bissessuree Debia and others*, 6 W. R., 184.

The words "or other cause," in Section 14, apply to cases where the action of the Court is prevented by causes not arising from laches on the part of the plaintiff, in other words, by accidental circumstances beyond his control. *Luchman Pershad* v. *Nimhoo Pershad*, 17 S. W. R., C. R., 266.

The period during which a suit is pending in a Court not having jurisdiction is to be excluded from the period of limitation provided by Act XIV of 1859, and the fact that the second suit, in bar of which the Act is pleaded, was instituted before the Court not having jurisdiction disposed of the first suit, is immaterial. *Morris, Receiver of the Estate of the late Maharajah of Tanjore* v. *Sapamthutha Pillay*, 6 Mad. Rep., 45.

In a suit upon a bond, the plaintiff having sued the defendants, not on the ground of their personal responsibility but as the legal representatives of the obligor, who was supposed to be dead,—*Held* that the suit is not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there is proof of special circumstances which warrant the inference of his death within a shorter period. Section 14 applies to the case in which the plaintiff is unable, after due diligence, to procure due service upon the defendant of the summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and will prevent a suit against the defendant's representatives from being barred. *Karuppan Chetti* v. *Veriyal*, 4 Mad. Rep., 1.

A suit against putneedars, under Act X of 1859, to recover half the rent mentioned in their kubuleut having been dismissed on the objection that plaintiff's co-sharer had not been joined as co-plaintiff, and that the judgment having been upheld in appeal, plaintiff brought a fresh suit under Act making the co-sharer a defendant. Defendants again objected that the question as to plaintiff's share being still open, it could not be decided in the Collector's Court. This suit was also dismissed and the dismissal upheld in appeal. Plaintiff then brought her suit in the Civil Court. *Held* that plaintiff was, under Section 14, entitled to an allowance of the period during which she was *bonâ-fide* prosecuting her claim in the Revenue Court, which from defect of jurisdiction was not able to try it. *Hurrish Chunder Dutt* v. *Sreenath Jugodumba Dassee*, 16 S. W. R., C. R., 61.

Section 15.

When a Deputy Collector, acting as agent for a minor, uses powers which belong to the Government alone for the resumption of invalid lakheraj tenures, and by virtue of those powers resumes lands for the benefit of the minor and unlawfully dispossesses the previous holder,—

Quære,—Whether such a dispossession is within the contemplation of Section 15, or not. That section does not confer on the person who unlawfully acquires possession of land the advantage of a short period of limitation, on the expiration of which the dispossessed person is bound to show an absolute title to recover. It gives to the dispossessed person who has been wrongfully deprived of possession a right to recover possession within six months without regard to any title, however clear, which may be set up against him. If he sues after six months have expired the parties to the suit are left in the same condition as they would have been in under the former law with reference to the production of proof. *Protab Chunder Burooah* v. *Ranee Kantaeswurree Dabee*, 2 W. R., 250.

A. obtained a decree against B. for possession of land. On appeal by B. that decree was reversed by the late Sudder Court, and B. applied to the lower Court for restitution of the land and for mesne profits. She was put in possession of the land and the Principal Sudder Ameen ordered an investigation into the amount of the mesne profits, and eventually directed the same to be paid to her. On appeal, the Sudder Court reversed this last-mentioned order, holding that the Principal Sudder Ameen went beyond his jurisdiction in giving mesne profits when the decree of the Sudder Court had not awarded mesne profits, and observing that B. should have either applied to the Sudder Court for review of its judgment or should bring a separate suit. The present suit was brought by B. to recover the mesne profits.

Held by Peacock, C. J., and Kemp and Macpherson, JJ. (Loch, J., dissenting), that in the proceedings which B. took in the former suit to obtain the mesne profits, she was prosecuting a suit upon the same cause of action within the meaning of Section 15.

Held by Macpherson and Kemp, JJ. (Loch, J., concurring, Peacock, C. J., dissenting), that the order of the Principal Sudder Ameen had not been reversed on the ground of "defect of jurisdiction or other cause" mentioned in Section 14, and that therefore the time during which B. was engaged in endeavouring to obtain the mesne profits in the former execution proceedings could not be deducted, and that the present suit was barred. *Hurro Chunder Roy Chowdhry* v. *Shoorodhonee Debia*, 9 W. R., 402.

Long anterior possession only, without proof of title, cannot avail a plaintiff suing to recover possession after ouster, if he has failed to sue within six months of the alleged ouster, as prescribed by

Section 15. *Ameer Bibee and others* v. *Luckroonissa Begum and others*, 7 W. R., 232.

In a suit against a landlord to recover possession of land of which plaintiff alleged himself to have been illegally dispossessed,—*Held* that if plaintiff sought to recover possession without reference to any right or title, but simply on the ground of having been illegally ejected, his remedy would have been under Section 15. Not having availed himself of this remedy, he was bound to show that he had title to re-enter, and that the landlord had ejected him without any right to do so. *Nund Kishore Lall and others* v. *Sheo Dyal Oopadha*, 11 W. R., 168.

In a suit for recovery of possession of a share in a certain talook, on the allegation that the plaintiff had been dispossessed under an award passed under Section 15, the defence set up was that the plaintiff was not in possession of the property within twelve years of suit,—*Held* that the wrongful possession which the plaintiff held during the few months before the award under Act XIV was no possession which could take his case out of the Statute of Limitations. That the dispossession under the award did not give him a fresh cause of action. *Gholam Nabi* v. *Biswanath Kar*, 3 B. L. R., Ap., 85; 12 W. R., 9.

Section 15 does not affect the general law on the matters to which it relates, but provides a special remedy for a particular kind of grievance, *e.g.*, to replace in possession a person who has been evicted by a wrongful act from landed property of which he had been in undisturbed possession, and to prevent a powerful person from thus shifting the evidence of proof from himself to another less able to support it. *Kalee Chunder Sein* v. *Adoo Sheikh*, 9 W. R., 602.

Where a warrant is issued to the Sheriff to seize certain specific immoveable property not coming within the description in the decree, possession under such warrant would not be an illegal possession under the meaning of Section 15. *Jadubchunder Chechky* v. *Heeraloll Saha*, 1 Ind Jur., N. S., 21; S. C. Bourke's Rep., O. C., 384.

Section 15 does not abridge any rights possessed by a plaintiff, but is intended to give him the right, if dispossessed otherwise than by course of law, to have his possession restored, without reference to the title on which he holds.

Where a plaintiff sued to recover a paramba of which he alleged that he was owner and that the defendant had forcibly dispossessed him,—*Held* that the suit was not barred by Section 15. *Kunhi Komapen Kurapu* v. *Changarachan Kandil Chunbata Amhu*, 2 Mad. Rep., 313.

A person forcibly dispossessed and suing for possession within six months is entitled, under Section 15, to recover, notwithstanding any other title. When a plaintiff's evidence fails to show title in him, but does not show title in another, the plaintiff may recover upon his possession against a defendant wrong-doer. *Doe* v. *Kuppu Pillai*, 1 Mad. Rep., O. C., 85.

In considering the subject of possession as creating title, irrespective of Section 15,—*Held* that possession for a period of sixty years and upwards is sufficient to create a title in the possessor which no one in the world can question or repudiate; that adverse possession for any period sufficient under the Limitation Act is itself a title, even against the rightful owner himself; that prior possession, however short, is itself a title against a mere wrong-doer. *Khajah Enaetoollah Chowdhry* v. *Kishen Soondur Surma and others*, 8 W. R., 386.

The defendant having had an award under Section 15, the plaintiff's allegation of possession and dispossession by the defendant requires him specifically to prove those facts before the defendant can be called upon to prove his case. *Juggurnauth Deb* v. *Mahomed Mokum*, 17 S. W. R., C. R., 161.

Section 15 is not applicable to a suit to enforce a mere right of way. *Haro Dyal Bose* v. *Kristo Gobind Sein*, 17 S. W. R., C. R., 70.

Plaintiff's title to the property in dispute having been invaded by an award under Section 15, the present suit was brought to establish that title, and held to be governed by the limitation of twelve years from the date of the award. *Eshan Chunder Banerjee* v. *Zumuduroonissa Khatoon*, 17 S. W. R., C. R., 468.

A. had been dispossessed of certain land in execution of a decree which B. had obtained in a suit against C. under Section 15, Act XIV of 1859. A. applied under Section 230, Act VIII of 1859, to recover the land. *Held*, the decree obtained by B. was a decree within the meaning of Section 230 of Act VIII of 1859, and therefore A. had rightly applied under that section. No stamp was necessary on A.'s application. *Bramha Mayi Debi* v. *Barkut Sirdar*, 4 B. L. R., F. B. R., 94; and 12 S. W. R., F. B., 25.

A party dissatisfied with a legitimate finding under Section 15, Act XIV of 1859, has a special remedy by a suit in a Civil Court, and cannot claim the High Court's interference under Section 15, 24 and 25 Vic., Chap. 104, except where the Judge has exercised a jurisdiction which he has not, or has refused to exercise a jurisdiction which he has. *Doorga Soonduree Debia* v. *Kushee Kant Chuckerbutty*, 14 S. W. R., C. R., 212.

Although in a suit to set aside an award made under Section 15, plaintiff must establish his own title before the party in possession can be required to make good his case, a Judge should look into the summary case itself, and ascertain if there had been a proper enquiry and trial in that case. *Surbo Mohun Roy* v. *Surut Chunder Roy*, 16 S. W. R., C. R., 34.

A zemindar cannot compel a trespasser on his land to become his ryot and execute a kubuleut in his favour, and the fact that the zemindar has obtained a money decree under Section 15, against a person, does not entitle him to treat such person either as a trespasser or a ryot on his land. *Shaikh Hemalee* v. *Kumala Kant Banerjee*, 16 S. W. R., C. R., 133.

Where a party is restored to possession under Section 15, Act XIV of 1859, the opposite party is not deprived of the right to institute proceedings under Section 25, Act X of 1859, and an appeal against an order under this section lies to the Commissioner. *Shibdass Tribedee* v. *Pearee Soonduree Chowdrain*, 14 S. W. R., C. R., 417.

In cases under Section 15, it is in the discretion of the Court to give costs, either as provided in Section 1 of the rules passed by the High Court

under Act XX of 1865, or (if the proceedings be a miscellaneous case) according to Section 8 of those rules. *Radha Kristo Chaklanuvis* v. *Kalee Prossono Roy*, 15 S. W. R., C. R., 268.

Plaintiff sued upon a document promising to pay the price of grain supplied at defendant's request,—*Held* that, being a contract in writing which could not have been registered by any law in force at the period of making, the time of limitation was that prescribed by Section 15 of Act XIV of 1859. *Guirivi Chetty* v. *P. Aiyappa Naidu*, 2 Mad. Rep., 329.

Section 19.

Where the High Court rejected an application for review of judgment passed by the late Sudder Court, it was held that while the decree of the Sudder Court was governed in the matter of limitation by the rule laid down in Sections 20 and 21, Act XIV of 1859, the only law applicable to the decree of the High Court was Section 19 of that Act. *Huropershad Roy* v. *Manick Luskhur*, 12 W. R., 343.

A Judge may admit and hear a plea of limitation after the other objections have been disposed of. Section 19, Act XIV of 1859, applies only to Courts in this country established by Royal Charter, and not to the Privy Council, the execution of whose decrees is subject to the limitation prescribed by Section 20 of that Act. *A. Wise* v. *Jugobundoo Baboo*, 4 W. R., Mis., 10.

A decree of the High Court as a decree made by a Court established by Royal Charter, falls under Section 19 of Act XIV of 1859, and is subject to twelve years' limitation.

Held, by Jackson, J., that it is a fallacy to suppose that the High Court has two parts; one representing the late Supreme Court, the other the late Sudder. It is one amalgamated Court, possessing and exercising "all jurisdiction and every power and authority whatever in any manner vested in any of the abolished Courts." (Section 9, High Court's Act.)

Held, by Hobhouse, J., that when the present High Court was intended to stand in the place of the Sudder Dewanny Adawlut on the one side, and of the Supreme Court on the other, it would only have been intended that the Laws of Limitation which applied to those Courts respectively before they were amalgamated should apply to the Court which took their place. But though he cannot doubt that it was the intention of the Legislature that decrees of the High Court passed in appeal from Courts not established by Royal Charter should be subject to the limitation provided by Section 20, yet the terms of the law are in conflict with such supposed intention; Section 19 being declared to apply to Courts "established by Royal Charter." The High Court's decrees are therefore subject to a limitation of twelve years. *Kishen Kinkur Ghose and others* v. *Buroda Kant Roy and others*, 8 W. R., 470.

The ruling in 8 W. R., 470 (to wit, that a decree of the High Court falls under the 19th Section of Act XIV of 1859, and is subject to twelve years' limitation), will not apply to a decree of the late Sudder Court, which was not a Court established by a Royal Charter. *Thakoor Doss Gossain* v. *Kashee Nath Mundul*, 12 W. R., 73.

The execution of decrees of the High Court is governed as to limitation by Section 19, and not Section 20 or 22, of Act XIV of 1859. *Maharajah Mahatab Chand Bahadoor* v. *Tarucknath Mookerjee and others*, 6 W. R., Mis., 94.

When once Act XIV of 1859 (the operation of Sections 19 to 23 of which was suspended by Act XI of 1861 until 1st January, 1862) actually came into operation, all cases became subject to its provisions, and a decree-holder did not get a fresh start from the beginning of 1862. *Raj Bullub Bhunj* v. *Taranath Roy*, 6 W. R., Mis., 30.

The periods of limitation specified in Sections 19 to 23 of Act XIV of 1859 run (under Section 2, Act XI of 1861) from the 1st of January, 1862. *Hookoom Chand Tekram* v. *Bhugwantrao*, 1 Bom. Rep., 95.

The day on which the application for execution is made is not to be reckoned in computing the three years alluded to in Section 19, Act XIV of 1859. An order dismissing an appeal for default, under Section 346 of the Civil Procedure Code, is not a new decree from the date of which the period of limitation begins to run anew. The appearance of the person in whose favour a judgment is given as respondent on an appeal, is not an act done for the purpose of keeping the judgment in force within the meaning of Section 19, Act XIV of 1859. *Virasamy Madali* v. *Mamnomonary Ammal*, 4 Mad. Rep., 32.

Where a decree of the lower Court is materially altered on appeal by the High Court, *e.g.*, where the amount of mesne profits allowed by the lower Court is cut down by the High Court, the decree becomes a decree of the High Court, and the period within which a proceeding must have been taken to enforce the same, so that it may not be barred by the Law of Limitation, is twelve years under Section 19 of Act XIV of 1859. The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. *Chowdry Wahid Ali* v. *Mullick Inayet Ali*, 6 B. L. R., 52; and 14 S. W. R., C. R., 288.

M. and others obtained a decree in the Court of the Agent for the Sardars. This decree was in special appeal confirmed by the High Court. *Held* that the period of limitation for the execution of the decree commenced to run from the date of the decree (in special appeal) in the High Court, and not from the date of the decree in the Court below.

A decree of the High Court in its appellate jurisdiction, as a decree made by a Court established by Royal Charter, falls under Section 19, and not under Section 20, of Act XIV of 1859, and is therefore subject to the twelve years' limitation. *Bapuran Khrishna* v. *Madhavrun Ramran*, 5 Bom. Rep., A. C. P., 214.

Section 20.

A *bonâ-fide* application for execution held to be a proceeding within the meaning of Section 20, Act XIV of 1859, even though it had to be amended

by order of Court. *Mahomed Shamee Bhooya* v. *Allahee Buksh Chowdhry*, 10 W. R., 346.

Where a decree-holder expends money in procuring attachment of his debtor's property, and advertising the same for sale, the proceeding must be presumed, nothing to the contrary being shown, to be a *bonâ-fide* proceeding within the meaning of Section 20, Act XIV of 1859. *Juttadhuree Singh* v. *Wuzeer Singh*, 12 W. R., 357.

A decree was passed in 1850, and was in force in 1859, when Act XIV of that year was passed. Between August, 1860, and 25th April, 1864, nothing effective was done in furtherance of execution. Petitions for execution were filed in May, 1861, and August, 1862, and the usual orders passed on them, but they were struck off in default. On 25th April, 1864, another petition was filed, and notice was served on the debtor. *Held* that at that time the petition for execution was barred by limitation. The decree was not kept alive by the petitions of May, 1861, and August, 1862, which were struck off in default. *Rajah Satyasaran Ghosal* v. *Bhyrub Chunder Brahmo*, 2 B. L. R., A. C., 196.

A decree was obtained on 16th April, 1859, and execution was applied for on 28th December, 1861, when the applicant was ordered by the Court to produce a certificate of heirship. On his failing to do so the case was struck off. He next applied for execution on 13th August, 1864.

Held that the proceedings taken in 1861 were not *bonâ-fide* proceedings on the part of the Court, such as would keep the decree alive, and that the application was barred. *Luchmiput Singh Roy* v. *Wahid Ally*, 2 B. L. R., A. C., 194; S. C., 11 W. R., 70.

The three years' limitation prescribed by Section 20 counts from the date of the final decree of the Appellate Court, in a case in which the judgment debtor has appealed against the original decree. *Huree Bungsho Banerjee* v. *Ramessur Banerjee*, 6 W. R., Mis., 38.

The petitioners applied for the substitution of their names as heirs of a deceased decree-holder, but failed to satisfy the Judge that they were the heirs of the original decree-holder. *Held* that such an infructuous application was not a process to enforce or keep in force a decree within the meaning of Section 20. *Lalla Bishen Dyal Singh and others* v. *Ram Sunkur Tewaree*, 6 W. R., Mis., 38. Nor is an unnecessary and unsuccessful suit. *Junardun Doss Mitter and others* v. *Rajah Rooknee Bullub Bahadoor*, 6 W. R., Mis., 48. Nor is the act of taking out the proceeds of a previous sale in execution of a decree. *Kishen Mohun Jush* v. *Chunder Kant Chuckerbutty*, 6 W. R., Mis., 49.

An unsuccessful suit by a decree-holder to establish his right to have certain land which formerly belonged to him, and which he had sold to a third party, but which, under the belief that the third party had only purchased benamee for the judgment-debtor, he alleged to be the land of the judgment-debtor, was held to be, if *bonâ fide*, a proceeding within the meaning of Section 20 to keep the decree in force. *Eshan Chunder Bose and others* v. *Juggobundhoo Ghose*, 8 W. R., 98.

Application for notice, notice itself, service of notice, issue of process, and execution of process, are all separate and distinct acts which the judgment of the Full Bench (6 W. R. 98) contemplates as proceedings which, if *bonâ fide* taken, would bar the operation of the Law of Limitation, but no proceeding would be effectual within the meaning of Section 20 unless it were *bonâ fide*. *Tabbur Singh and others* v. *Motee Singh and others*, 9 W. R., 443.

The three years "preceding the application" allowed in Section 20 must be accounted for by excluding the day on which the application is made. *Brojo Behary Sahoy* v. *Kewal Ram and others*, 10 W. R., 5.

Where a decree was in force at the passing of Act XIV of 1859 it would be barred after three years; but if steps had been taken, and an application made within that period, a second application would fall within the rule laid down in Section 20. *Gregory* v. *Joychunder Banerjee*, 1 Ind. Jur., N. S., 80.

The taking out by a decree-holder of money deposited in Court by his judgment-debtor is an effectual proceeding under Section 20 to keep the decree in force. *Jogesh Prokash Gangooly* v. *Kalee Coomar Roy and others*, 8 W. R., 274. So also is an appeal from an order setting aside an attachment. *Kallypersaud Singh* v. *Jankee Deo Narain*, 7 W. R., 9.

Where an application for execution was made, and notice was issued thereupon to the judgment-debtor, the proceeding, being apparently *bonâ fide*, was held sufficient to keep the decree alive under Section 20. *Shoo Chand Chunder* v. *D. Grant*, 7 W. R., 10.

Where a Court of Small Causes delivered final judgment and decree on the whole matter in dispute, and more than a year, but less than three years, had elapsed from the date of the decree without any proceeding having been taken upon it,—*Held* that Section 20 applied, and that the plaintiff's application for a warrant in execution of the decree was not barred by lapse of time. *Punchanada Chetti* v. *Raman Chetti and others*, 1 Mad. Rep., A. C., 446.

The judgments of the late Supreme Court, sitting under Act IX of 1850, are not affected by Act XIV of 1859, Section 20. *Coultrup and another* v. *Smith*, 1 Mad. Rep., O. C., 204.

In Section 20 the words "any judgment, decree, or order," mean a judgment, decree, or order which the person in whose favour it is given is at liberty to enforce by execution.

An application for a review or a petition of appeal by the person against whom the judgment, decree, or order was given, would not be a "proceeding taken to enforce such judgment," decree, or order, or to keep the same in force, by the person in whose favour the judgment had been given, but *secus* if he had opposed the application or petition. *Baprodoss Gossain and others* v. *Chunder Sikhur Bhuttacharjee and others*, 2 Ind. Jur., N. S., 248; 7 W. R., 521.

The words "some proceeding" in Section 20 include every application for execution *bonâ-fide* made, and all acts done either by the Court or by an officer of the Court, or *bonâ fide* by the applicant, for enforcing a decree or keeping it in force.

The striking of an execution case off the file is not a proceeding for the purpose of enforcing the decree. In such a case limitation will count from the date when the application for execution was first made, or when the last *bonâ-fide* act was done

in furtherance of the application. *Gooroo Dass Auckhoolee and others* v. *Modoo Koondoo and others*, 6 W. R., Mis. R., 98.

By Section 20, no process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some "proceeding" shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for such execution.

Held that an issue of notice by the Court, under Act VIII of 1859, Section 216, is a "proceeding" and the service of notice by the officer of the Court is a "proceeding" within the meaning of this section, and that three years will be to run from the date of the last of the proceedings, whether a *bonâ-fide* application for execution, or the last act done by the party, the Court, or its officer, in furtherance of such *bonâ fide* application. *Ram Sahoy Singh* v. *Shew Sahoy Singh and others*, 1 Ind. Jur., N. S., 421.

A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On the 15th June, 1861, the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August, 1862. Some of the plaintiffs having died in the meantime, an application was made on the 29th July, 1863, and an order was passed thereon on the 26th May, 1864, whereby the present decree-holders were substituted for the deceased plaintiffs. A new Principal Sudder Ameen was appointed on the 10th December, 1864, and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September, 1865. On the 20th of the same month an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May, 1864, was not a proceeding within the meaning of Section 20; and therefore the application for execution was too late. *Held* that execution might have been obtained under Section 207 of Act VIII of 1859 by the survivors of the original decree-holders, for the benefit of all parties interested in it. The order of the lower Appellate Court was reversed. *Teja Singh* v. *Rajnarayan Singh*, 1 B. L. R., A. C., 62; 10 W. R., 95.

Held that the provision of Section 20 applies where there is a present right to execute the decree, and not to cases of an instalment made payable at a future date; and that in the latter case application may be made within three years from the date of each instalment becoming due, without being barred by limitation provided in the said section. *Ultaf Ali Khan* v. *Ram Lall*, 1 Agra Rep., F. B., 83.

Where a decree-holder comes to execute his decree within three years from the date when a previous proceeding has been taken to enforce his decree, he is entitled under Section 20 to have a second process in execution, notwithstanding he may not have come within three years from the passing of Act XIV of 1859. *Huro Nath Bose* v. *Mudun Mohun Chuckerbutty*, 6 W. R., Mis., 39.

The mere striking off an application for execution is not a proceeding within the meaning of Section 20. *Maharajah Dhiraj Mahatab Chund Bahadoor* v. *Dino Moye Debia*, 6 W. R., Mis., 60.

A suit by a decree-holder to set aside orders passed under Section 246, Act VIII of 1859, and to declare his right to sell a certain estate as the property of his judgment-debtor in execution of his decree, is a proceeding within the meaning of Section 20, Act XIV of 1859, to enforce such decree. *Ram Coomar Chowdhry* v. *Brojessuree Chowdhrain*, 6 W. R., Mis., 14.

If after a decree upon an application for review of judgment or petition of appeal the person in whose favour the original decree was given appears in person (whether voluntarily or upon service of notice) to oppose the application, and files a vakalutnama, or does anything for the purpose of preventing the Appellate Court or the Court of Revenue from setting the judgment aside, such an act being an act of the person in whose favour the judgment has been given for the purpose of preventing its being set aside, is an act done for the purpose of keeping the judgment in force. *Bhubaneswari Debi* v. *Mahendranath Chowdhry*, 3 B. L. R., Ap., 33.

An application for execution of a decree followed by the issue of notice, if made *bonâ fide* (*i.e.*, with a real intention and desire on the part of the decree-holder to execute his decree), is a proceeding within the meaning of Section 20 to keep alive the decree. *Luckee Narain Chuckerbutty* v. *Ram Chand Sircar*, 6 W. R., Mis., 63.

Where a decree passed by the late Sudder Court in 1859 was appealed to the Privy Council, and the decree-holder neither appealed to the Sudder Court or to the High Court to take out execution, nor appeared before the Privy Council, by whom the appeal was struck off for default,—*Held* that the execution of the decree was barred by limitation under Section 20, no proceeding having been taken to enforce it within three years; and that, in such a case, the word "judgment" in that section did not mean the final judgment. *Ram Ruttun Banerjee* v. *Maharajah Ameeroolmolk Bunwaree Gobind Bahadoor*, 6 W. R., Mis., 95.

Something more than the mere presentation of a petition on the part of a decree-holder for execution is necessary to keep a decree alive. *Raj Bullub Bunge* v. *Taranath Roy*, 3 W. R., Mis., 2.

A proceeding taken in execution of a decree does not serve to keep a cross-decree alive. *Hemraj Chowdhry* v. *Assoodun*, 5 W. R., Mis., 43.

The law makes no distinction between the different defendants liable under a decree; the decree is kept wholly in force if any effectual proceeding is taken under it within the prescribed time to keep it alive. But where a decree, though nominally in one document, really contains separate decrees against separate individuals, the Law of Limitation may be put into force in execution against the different defendants as if there were separate decrees. *Mary Eliza Stephens and others* v. *Unnoda Dossee*, 6 W. R., 18.

An attempt at settlement of accounts in Court is sufficient to keep a decree alive. *Mussamut Fuzulutoonissa* v. *Chutter Dharee Singh*, 6 W. R., Mis., 43.

An application for execution and an order to deposit tullubana, followed by the deposit of the

tullubana and service of notice, are sufficient to keep the decree alive. *Trilochun Chatterjee* v. *Radhamonee Dossee and others*, 6 W. R., Mis., 74.

Bonâ-fide proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders. *Maharanee Inderjeet Koonwar* v. *Mazum Ali Khan and another*, 6 W. R., Mis., 76.

Proceedings in execution originating in illegality, and which have been the subject of contests by the judgment-debtor, and are still under consideration in appeal, cannot be regarded as *bonâ-fide* proceedings to keep alive the decree. *Tiluck Chunder Gooho and another* v. *Gourmonee Debee and another*, 6 W. R., Mis., 91.

When execution is barred by limitation, subsequent proceedings taken by the decree-holder, without objection on the part of the debtor, cannot get rid of the bar of limitation and revive the decree. *Luchmun Suhoy and others* v. *Bhugwan Dutt*, 6 W. R., Mis., 118.

Where a decree has passed against several defendants, each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously. *Mohesh Chunder Chowdhry* v. *Mohun Lall Sirkar*, 8 W. R., 80.

An unsuccessful suit by a decree-holder for the purpose of having specified property made liable under his decree, is a proceeding to keep the decree in force. *Syud Akbar Gazee* v. *Mussamut Bibee Nufeezun*, 8 W. R., 99.

Where a plaintiff, within three years next preceding the application, had enforced his decree by giving possession of the land decreed to him, and the defendants did not specifically allege that such proceedings were fraudulent or collusive,—*Held* that the Judge had no course but to allow further execution. *Ameerun Bibee and others* v. *Shibpershad Thakoor*, 8 W. R., 199.

Execution of a decree in respect of possession of land keeps the decree in force, and saves the subsequent application to execute it in respect of wasilat. *Jogesh Prokash Gangooly* v. *Kalee Coomar Roy and others*, 8 W. R., 274.

Striking a case off the file is not an effectual proceeding to keep a decree in force under the Law of Limitation. *Mudun Bhukut and others* v. *Dooar Bharatee*, 8 W. R., 320.

The mere formal confirmation by a Court of a sale by a decree-holder cannot be said to be a proceeding on the part of such decree-holder to execute his decree. *Juggut Mohinee Bibee* v. *Ram Chund Ghose*, 9 W. R., 100.

Held that where a decree is not a joint one against all the defendants, but a separate one as against each batch of defendants, the proceedings against one batch have no effect towards keeping alive the separate decrees against other batches. *Khema Debia* v. *Kamola Kant Bukshee and others*, 10 W. R., 10.

In order to enforce, or to keep in force, a decree, it is not necessary that the proceeding alluded to in Section 20 shall have been taken by the particular party seeking to execute: it is sufficient if any one interested has taken any proceeding. *Kower Narain Roy* v. *Sreenath Mitter and others*, 9 W. R., 485.

Proceedings in execution of a decree as to mesne profits are held to be an effectual proceeding within the meaning of Section 20, to enforce the same decree as to costs. *Oopendur Mohun Mustafee* v. *H. D. Tripp*, 5 W. R., Mis., 40.

Resisting an appeal against a decree (which appeal was eventually compromised) is a proceeding within the meaning of Section 20, taken to enforce or keep alive the decree. *Syud Khan* v. *Jumal Bibee*, 5 W. R., Mis., 19.

A decree-holder applying on December 24th, 1864, to execute his decree passed on December 7th, 1861, was bound, under Section 20, to show that he had taken some proceeding within three years next before the application to keep alive the decree. *Bharut Singh* v. *Sadut Ali*, 5 W. R., Mis., 20.

The attachment of a judgment-debtor's property is an effectual proceeding within the meaning of Section 20, to enforce a decree. *Prosunno Coomar Mookerjee* v. *Ramtonoo Chunder*, 5 W. R., Mis., 43.

The filing of an application by a debtor for the review of an order passed for execution of decree, does not bar the operation of Section 20, nor does the order rejecting the petition of review give a fresh starting-point for computing limitation. *Chowdhry Junmenjoy Mullick* v. *Bissambhur Panjah*, 5 W. R., Mis., 45.

In 1845 K. and M. obtained a joint decree for possession and mesne profits against N. In 1846 possession was taken, and the case was struck off in 1847. In 1850 K. alone applied for execution and was refused, he not being the sole decree-holder. K. disappeared in June, 1851, and was never afterwards heard of. In February, 1852, S. S., wife of K., and R., uncle of K., applied to execute the decree, alleging that it had been transferred in gift to them by K.; but their application was rejected because M. had not joined; and, secondly, because no order could be passed in the absence of K. On 28th December, 1861, S. S. again applied for execution of the whole decree, claiming her husband's share as his heir, and M.'s under a deed of gift, and her application was rejected on the ground that, as twelve years from the disappearance of her husband had not expired, and she had not performed the ceremony of kooshaputra, she could not claim as his representative. An appeal from this order was rejected on 6th December, 1862. In 1863 S. S. applied for a certificate, under Act XXVII of 1860, to collect the debts due to her husband, which was granted in July, 1864. The present application was made by S. S. and M. on the 23rd August, 1864, S. S. having performed kooshaputra on 18th June, 1863. The Court found that the various attempts to execute were made *bonâ fide*. *Held*, first, that the decree was in force at the time of the passing of Act XIV of 1859; secondly, that the present application, having been made within three years of the proceedings in 1861, was in time under Section 20 of that Act. *W. G. N. Pogose* v. *Boistub Lall and others*, 2 Ind. Jur., N. S., 1.

Where a judgment-creditor took out execution of his decree for costs against all the judgment-debtors, and recovered a portion from some of them, and released those particular debtors from any further payment under the decree, his suit to recover the amount due from the other debtors having been brought within three years from the date of the proceeding last taken by him, was held not barred by

limitation under Section 20, Act XIV of 1859. *Sheikh Buneead Ali and others* v. *Juggessur Singh and others*, 6 W. R., Mis., 25.

Section 2, Act XI of 1861, does not give a fresh starting-point, but simply restricts the operation of Section 20, Act XIV of 1859, until January 1, 1862, without reference to the date of the passing of Act XIV, or without curtailing the period within which limitation under that Act bars a claim to revive a decree passed before the passing of the Act.

Where the last application to execute a decree passed in 1854 was made in November, 1862,—*Held* that the case must be disposed of under Act XIV. *Bishonath Pawrey* v. *Chowdhry Kripa Narain Singh*, W. R., 1864, Mis., 6.

A proceeding against certain of a number of joint judgment-debtors, in which, in the presence of certain of them, some are released from execution and some declared liable, is a proceeding within the meaning of Section 20. *Mohesh Chunder Biswas* v. *Sreemutty Taramonee Dossee*, 9 W. R., 240.

In order to keep a decree alive it is, under Section 20, not necessary that the application for execution should be made with the intention of enforcing the decree at that time. All that the section requires is that some proceeding shall have been taken to enforce the decree or to keep it in force within three years. *Kondaraja Venkata Subbaiya* v. *Rama Krishnamma*, 4 Mad. Rep., 75.

Application for execution of a decree obtained in 1858 under the old law as to limitation, was made in January and disposed of in February, 1864, and a subsequent application was made in November, 1867. *Held* that the first application was in time, but the second application was barred by Section 20. *Virabhadra Rau* v. *Babpautala*, 4 Mad. Rep., 148.

Section 20 is not applicable to a decree until the liability under it has become enforceable by process of execution. *Gopala Setty* v. *Damodara Setty*, 4 Mad. Rep., 173.

The period of limitation provided by Section 20 runs not from the date of a former application for process of execution to enforce the decree, but from the date of the order upon the application. An application to enforce the execution of a decree was made on the 30th August, 1865. The application was dismissed by an order of the Court dated the 14th October, 1865. The second application was made on the 6th October, 1868. *Held* that the second application was not barred by the Limitation Act. *Ramanaja Aiyangar* v. *Venkata Cherry*, 4 Mad. Rep., 260.

The filing of an application for execution is a proceeding within the meaning of Section 20, sufficient to give the decree-holder a new period of three years. *Virada Chetty* v. *Vaiyapuri Mudali*, 4 Mad. Rep., 151.

Applications for execution were made more than three years from the date of the original decrees in the suit, but within three years from the date of the decrees in the regular and special appeals affirming the original decrees. *Held* that Section 20 did not bar the issuing of process of execution upon the application. The period of limitation applicable to decrees of the High Court on appeal from Courts in the Mofussil considered. *Aruna Chellathudayan* v. *Veludayan*, 5 Mad. Rep., 215.

The petitioners, as widow and adopted son of a decree-holder, applied by petition to the District Moonsiff for execution of the decree on the 17th June, 1864. The District Moonsiff made an order stating that execution would not be granted unless the petitioners obtained a certificate from the District Court under Act XXVII of 1860. In August, 1864, an application was made for a certificate to the Civil Court, and an order was made refusing the application, and the order was affirmed on appeal. A second application was made for execution in July, 1867. *Held* that the right of the petitioners to obtain execution was barred by Section 20, Act XIV of 1859.

Quære,—Whether a suit on the decree could be maintained. *Lakshamma* v. *Venkatarágava Chériár*, 4 Mad. Rep., 89.

Consent of parties cannot extend the period allowed by law for enforcing a decree or keeping it in force, nor is an agreement to suspend execution for a specified time a "proceeding" within the meaning of Section 20. *Bibee Moheroonissa* v. *Ranee Rousha Jehun*, 17 S. W. R., C. R., 396.

A decree of the High Court on appeal from the Mofussil must be executed within three years, under Section 20. Such decree is not a decree of a Court established by Royal Charter within the meaning of Section 19. *Ramcharan Bysak* v. *Lakhikunt Bannik*, 7 B. L. R., 704; and 16 S. W. R., F. B., 1.

An order of a Court dismissing an application for execution of a decree, on the ground that it is barred by the Law of Limitation, is not a "summary decision" within the meaning of Section 22. It is an order within the meaning of Section 20 of that Act. *Maharajah Mahtab Chaund Bahadoor* v. *Bacharam Hazra*, 5 B. L. R., 162; 13 S. W. R., F. B. R., 74.

So long as an actual *bonâ-fide* contest is going on in Court between a decree-holder and the judgment-debtor as to the judgment, there is a pending "proceeding" within Section 20, and the period of limitation must be computed from the Court's decision.

The decision in the case of *Ram Sahaye Singh* v. *Degun Singh* commented on and approved of. *Maharajah Mahtab Chand Bahadur* v. *Bulram Sing Baboo*, 5 B. L. R., 611; 13 S. W. R., F. B., 74.

S. M., on 24th April, 1866, obtained a decree against B. M., for possession of certain land, and also for certain moveable property. B. M. then appealed to the High Court against the decree so far only as it related to the moveable property. S. M. appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March, 1869. On the 26th April, 1869, the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under Section 20. *Held*, the appearance of S. M., the decree-holder, as respondent in the appeal preferred by B. M. to the High Court (which was in respect of the moveable property only) was no proceeding to enforce the decree in respect of the land or to keep it in force. The execution of the decree in respect of the land was barred. *Srinath Majumdur* v. *Brujah Nath Majumdur*, 4 B. L. L., Ap., 99, and 13 S. W. R., C. R., 309.

A decree was obtained on 6th June, 1861, and in February, 1864, a pretended purchaser of it sought

execution. On 15th March, 1864, the original decree-holder herself applied for execution of the same decree against certain of the judgment-debtors without mentioning the appellant, who was one of them. Subsequent proceedings at different times were taken between her and the alleged purchaser in order to ascertain which of them was really entitled to execution of the decree, and on the 6th March, 1867, her representatives got a decree setting aside the alleged purchase, and declaring that they might execute the decree of 6th June, 1861. Accordingly on 31st August, 1868, an application was made by her representatives for that purpose. Between the 15th March, 1864, and 31st August, 1868, no proceedings had been taken in execution.

Held that the application was not barred by limitation. That no execution could be given till it was ascertained who were the actual decree-holders. That the intermediate proceedings for that purpose were *bonâ-fide* proceedings within Section 20 for the purpose of keeping the decree in force. *Khaja Abdul Ganni* v. *N. P. Pogose*, 4 B. L. R., A. C., 1, and 12 S. W. R., C. R., 436.

In the case of a joint decree, a *bonâ-fide* proceeding by any one of the decree-holders is a sufficient proceeding to keep the decree alive within Section 20. *Oudhbehari Lal* v. *Brajamohan Lal*, 4 B. L. R., Ap., 41; and 13 S. W. R., C. R., 128.

The holder of a decree for possession, to enforce which no proceeding had been taken, applied more than three years after the date of the decree for execution, stating that she had obtained possession by private compromise, and asking that an order might issue for the registration of her name on the towjed of the Collectorate. Upon this the Civil Court issued a precept to the Collector for the requisite mutation of names. *Held* that the precept was a process to enforce the decree, and its issue was precluded by Section 20. When a copy of such a decree is sent to a Collector in pursuance of Clause 2, Section 24, Regulation XLVIII of 1793, it is for him to inquire and decide whether the mutation of names ought to take place. But where a precept is issued by the Civil Court requiring the Collector to insert a certain name in his register, he is bound to obey. *Naunhee Koonwar* v. *Kestooree Koonwar*, 13 S. W. R., C. R., 141.

The words *bonâ fide* in Section 20 explained. *Ram Dhungoor* v. *Gooroo Dassee Dassee*, 13 S. W. R., C. R., 40.

The rule approved by the Privy Council, that any act done by a Court or an officer thereof, or *bonâ fide* by the applicant, for enforcing or keeping in force a decree, satisfies the term "some proceeding" in Section 20, was held to apply to the act of a nazir in conducting a sale, and remitting the proceeds to the Collector, and to the act of the decree-holder in applying for and drawing out a portion of these proceeds. *Rajeshuree Debia* v. *Raj Coomaree Dossee and others*, 15 S. W. R., C. R., 182.

When a decree awards payment by instalments, to be made at particular specified dates, the date when each instalment becomes due is to be deemed the date of the decree in respect of that instalment for the purpose of calculating the time within which execution may be issued to enforce payment of it. *Uttamrum Manikrum* v. *Girdhunlal Metilal*, 6 Bom. Rep., A. C. J., 45.

Where the decree of a Civil Court is made payable by instalments, the time barring the execution of such decree, under Section 20 does not commence to run until the first instalment becomes payable. *Pânâmchund Valad Surajmal* v. *Bhivraj Valad Dashrut*, 6 Bom. Rep., A. C. J., 38.

Appeals against orders of the Court charged with the execution of a decree, having the effect of restraining execution or stopping further proceedings, are proceedings coming within the terms of Section 20. *Nittyanund Koondoo* v. *Nugendro Chunder Ghose*, 16 S. W. R., C. R., 299.

A plea of limitation under Section 20 can only be raised by the defendant in the suit, and not by third parties, who neither represent nor derive title from him. *Brijonauth Chowdry* v. *Lall Meeah Munneepooree*, 14 S. W. R., C. R., 391.

Sections 20 *and* 21.

According to Sections 20 and 21, Act XIV of 1859, read together, process of execution may be issued upon decrees in force at the time of the passing of that Act within the time mentioned in Section 21, without any prior proceeding having been taken; but if an application is made to enforce such a decree more than three years after the passing of the Act, no execution shall issue upon it, unless some proceeding shall have been taken to enforce it, or to keep it in force within three years next preceding the application for execution. If such proceeding has been taken it is not too late, although the decree may have been in force at the time of the passing of Act XIV, and the application for execution made more than three years after the passing of the Act. *Mohabeer Persaud* v. *Mussamut Pranputty Kooer*, 7 W. R., 515.

Held that Section 20 (and not Section 21) applies to decrees or orders made after the 4th of May, 1859, and that the words "in force at the time of the passing of this Act" must be construed to mean the time when the Act received the assent of the Governor-General, namely, the 4th of May, 1859, and not the 1st of January, 1862, the time when (by Act XI of 1861) it came into operation. *Ex-parte Kaledass Damodhar; Ex-parte Bapuji Pitambar*, 3 Bom. Rep., A. C., 175.

In the case of a decree which was passed in 1831, and part payment made on the 2nd of February, 1859, so that it was in force at the time of the passing of Act XIV of 1859 (4th of May, 1859), the Sudder Ameen rejected an application for execution made on the 19th April, 1865; but the District Judge reversed his order, being of opinion that decrees referred to in Section 21 of the Act might be saved from the operation of Section 20, even though no process of execution had issued within the time provided for by Section 21. *Held* that the right construction of the Act was to keep these sections distinct by applying Section 20 to decrees or orders made after the passing of the Act, and Section 21 to decrees or orders in force at the time of its passing; so that it was not necessary to resort to Section 20 in construing Section 21 if the word "may" in the latter section were read as equivalent to "must" or "shall," on the principle that affirmative words sometimes imply negative of what was not affirmed, as strongly as if expressed.

Semble,—Where the issuing of the execution

within the time limited by Section 21 was prevented by the delay of the Court which was to execute the decree, such Court would have power to prevent an unjust prejudice to the suitor by the delay unavoidably arising from its own act, by ordering the execution to issue as of the date when it would have been issued if there had been no such delay. *Bai Ude Kuvor* v. *Mulji Naran*, 3 Bom. Rep., A. C., 177.

Section 21.

According to Section 21, the application for execution must be made within three years from the time of the passing of the Act, and not from the time of its coming into operation, Act XI of 1861 notwithstanding. *Rughoonath Persad* v. *Mussamut Velaettee Begum*, W. R., 1864, Mis., 27.

According to Section 21, process of execution cannot be issued in respect of a decree in force at the passing of that Act, except where an effectual application has been made, either within the time previously limited by law, or within three years next after the passing of the Act, whichever should first expire. Abortive, because unauthorized proceedings, cannot give the decree-holder any fresh start for computing limitations. *Baroda Debia* v. *Sreeram Chowdhry*, 5 W. R., Mis., 21.

Section 21 applies to the first application after the passing of that Act to execute a decree in force at the time of the passing of the Act; but on the next and subsequent applications, the rule contained in Section 20 is to be followed. *Gasper Gregory* v. *Juggat Chunder Bannerjee*, 5 W. R., Mis., 17; *Doorga Churn Roy and others* v. *Dino Moyee Debia*, 6 W. R., Mis., 14.

Proceedings taken in execution of decree under either Section 20 or Section 21 are without authority of law, unless taken within the time allowed by law. *Kool Chunder Chuckerbutty* v. *Kumul Chunder Roy and others*, 6 W. R., Mis., 17.

Section 21 was passed to give an extension of time to decree-holders whose decrees would have been barred under the new law, but it in no way affects decree-holders who come within the ordinary time allowed by the new law for the execution of decrees. *Huro Nath Bose* v. *Moddun Mohun Chuckerbutty*, 6 W. R., Mis., 39.

Limitation under Section 21, Act XIV of 1859, counts from May 5th, 1859 (the date of the passing of the Act), and not from the date of its coming into operation. *The Collector of Beerbhoom* v. *Raj Coomaree Dassia*, 2 W. R., Mis., 17.

Where a decree passed before 1859 authorized the judgment-debtor to pay by instalments extending over a period of thirteen years, and no proceedings in execution were taken within the time prescribed by Sections 20 and 21, the execution of the decree was held barred by limitation even as to those instalments which were within time. *Tiluck Chunder Gooho and another* v. *Gourmonee Debee and another*, 6 W. R., Mis., 92.

It is not necessary, under Sections 20 and 21, that process of attachment should have been taken out within three years; but in order to determine whether execution is barred or not, it must be seen whether, at the time of application to execute next after the passing of the Act, any portion of the time theretofore limited by law for issuing process of execution still remains, unless these three years from the passing of the Act have already expired. *Nowaraja Chowdhry and others* v. *Ram Kanye Dass and others*, 7 W. R., 330.

Interpretation of Full Bench decision (7 W. R., 515) with regard to limitation in cases of execution of decrees under Section 21. *Degendur Narain Ghose* v. *Hur Kishore Dutt and others*, 8 W. R., 88.

Section 21 is to be read as an independent section and distinct from Section 20. *Bai Udekuvar* v. *Mulji Naran*, 3 Bom. H. C. Rep., A. C. J., 177.

Where the holder of a decree which was in force when Act XIV of 1859 came into operation applied for execution on the 5th of December, 1864, but allowed the application to drop, and again applied for execution on the 28th of March, 1866, it was held that he was barred by the Law of Limitation. *Makunda Valad Balachárya* v. *Sitarám and Nile*, 5 Bom. Rep., A. C., 103.

Section 22.

A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession is a summary order, and therefore subject to the limitation of one year provided by Section 22, Act XIV of 1859. *Mazedoonissa Beebee* v. *Fuezan Beebee*, 5 W. R., Mis., 6.

An order awarding possession under Section 15, Act XIV of 1859, is a summary award to which the provisions of Section 22 are applicable. A summary decision is not a final one on the matter at issue between the parties. *In the matter of Nobokissen Mookerjee*, 11 W. R., 188.

Where a suit was brought to recover a balance due on account of advances made more than three years before, it was held that the case came within the exception contained in the last section of Act XIV of 1859. *Shah Mahhum Lall and others* v. *Nawab Imtiazood Dowlah and others*, 1 Ind. Jur., N. S., 142.

An order for costs made in execution is not of the nature of a summary award described in Section 22, but comes within the word "order" in Section 20. *Puresh Narain Roy* v. *J. Dalrymple*, 9 W. R., 458.

The words "summary decision," as used in Section 22, mean a decision of the Civil Courts not being a decree made in a regular suit or appeal. Under Section 22 the period for the enforcement of such decision is one year from the time it was passed. *Ramdhun Mundle* v. *Rameshur Bhuttacharjee*, 2 B. L. R., A. C., 235; 11 W. R., 117.

The words "unless some proceeding shall have been taken within one year," &c., Section 22 must be read as excluding the day on which application to enforce a summary decision is made.

The petitioner applied, under Section 246 of the Civil Procedure Code, to remove an attachment placed on his property. On the 8th of July, 1867, the Court passed an order releasing the property from the attachment with costs. On the 8th of July, 1868, the petitioner applied to execute that order as to the costs.

Held that he was in time.

Semble,—An order under Section 246 of the Civil Procedure Code is a summary decision within the meaning of Section 22 of the Limitation Act. *Mancharum Kalliandas* v. *Rutilul Lutshan Kur*, 6 Bom. Rep., A. C. J., 39.

A judgment-creditor having in execution taken possession of lands in excess of his decree, objection was raised and a case instituted in which adjudication was made in favour of the judgment-debtor, the order for restoration of the excess land being confirmed in appeal. *Held* that this order was not a summary one within the meaning of Section 22, and that an application for its execution was governed by the three years' limitation. *Tekayet Roop Mungle Singh* v. *Tekayet Chooramun Singh*, 16 S. W. R., C. R., 182.

Section 30.

Where a plaintiff, relying upon the defendant's representation as to the latter's place of residence, brought his suit in a Court which had not jurisdiction, the time of the pendency of the suit in such Court was held to be properly excluded under Section 30 in computing limitation. *Banee Madhub Lahoree* v. *Bipro Dass Dey*, 15 S. W. R., C. R., 69.

XV.

PRINCIPAL AND AGENT.—PRINCIPAL AND SURETY.

I.—PRINCIPAL AND AGENT.

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II.—PRINCIPAL AND SURETY.

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1.—Relationship of Principal and Agent.

The manager of an estate under a safunamah on behalf of B. cannot, without special authority from B., represent him in any suit or charge him with the sts of the defence of an action brought against m. *Bholanath Sandyal* v. *Goiru Persaud Moitra*, S. W. R., C. R., 310.

Where the evidence goes to show that a particular person said to be the agent of the defendant was really his general agent, and did transact business of various kinds for his principal, it is unnecessary to prove any special power enabling him to enter into a particular contract of bargain and sale.

Per Macpherson, J.—The extent and nature of the powers vested in an agent are not so much matter of law as matter of fact. If it be proved that a person acted ordinarily as an agent for the defendant in buying and selling articles of merchandise, the fact of his not being proved to have previously purchased a particular kind of article would not necessarily operate against the plaintiff's case. The Court, in deciding the question of agency, must look to the general evidence on the record.

A Court of first instance decreed a case *ex-parte* in favour of the plaintiff, and at a re-hearing did not recall the plaintiff's witnesses, whom, therefore, the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of plaintiff's witnesses, and reversed the decree.

Held that the Court of first instance should have recalled the plaintiff's witnesses, and given the defendant an opportunity of cross-examination. Case remanded accordingly. *Ram Buksh Lall* v. *Kishoree Mohun Shaha*, 3 B. L. R., A. C., 273; 12 W. R., 130.

A lessor's agent for the receipt of rent is not necessarily his agent to receive lessee's notice of option to renew the lease; but if he has received such notice, and given it to lessor within time, the notice is sufficient. *E. Barnet* v. *C. B. Skinner*, 2 W. R., 208.

A mere admission of an agency to sell will not necessarily raise a presumption of an authority to buy on credit, or otherwise to pledge the credit of the principal. *Ram Narain Potdar* v. *Ramnath Shaha*, 2 W. R., 231.

A principal can determine the authority given to an agent. The authority given to a manager may be revoked by a shareholder, and another shareholder cannot resist such revocation, unless there has been a stipulation in the deed providing for the appointment of a manager that the authority should continue for some definite time. *Bulakee Lall* v. *Mussamut Indurputtee Kowar*, 3 W. R., 41.

To establish a *primâ-facie* case of constructive purchase by an agent out of the funds of the principal, it must be proved that at the time of the purchase the agent had in his hands funds of the principal sufficient to make the purchase. *Meer Sufdur Ali* v. *Syud Woolfut Ali*, 3 W. R., 232.

Held by the majority (Glover, J., *dissentiente*) that it is not within the reasonable scope of the authority of an assistant in an indigo factory to purchase any amount of indigo seed for his master and to make his master liable, particularly when the seed was not purchased or used for the factory; and that though the assistant, in writing to

the vendor for the seed, styled himself in the body of the letter as the manager of the concern, yet his signing himself for another person, and not for the owner of the factory, disclosed to the vendor that the other person and not the owner of the factory was his principal. *Roghooburdyal Nundun* v. *Alexander Christian*, 3 W. R., 123.

Although a general agent may not have power to borrow money for his principal, yet the authority to borrow in a particular case may be shown by a previous authority, either express or implied, or by subsequent ratification.

Where, by the terms of a contract, money is to bear interest, interest is as much payable by virtue of the contract as the principal; and a Court has no power in such a case to withhold interest. *Baboo Bunwareelall Sahoo* v. *Maharajah Moheshur Singh*, Marsh., 544.

An agent employed in collecting rent cannot question the title of his principal to receive the rent, but must pay him all that he collects. *Dhunnanjoy Kur* v. *Gobind Churn Dass Mohunt*, 3 W. R., Act X R., 3.

The fact of an agent being employed cannot affect the right of the principal to receive money due to him. *W. Tayler* v. *Ranee Asmerdh Koonwar*, 4 W. R., 86.

The principal acquires no fresh cause of action against the agent from the date on which the agent admitted the amount which was due from him, and executed an agreement to pay it. *Maharajah Mahatab Chand Bahadoor* v. *Judoo Mohun Mitter*, 5 W. R., Act X R., 91.

A person's agent for the purchase of an estate is not necessarily his agent to re-convey the same. Thus, where one member of an undivided Hindu family, with the authority of his brothers, purchased a share in certain property, and afterwards (without any authority from them) cancelled the sale, received back the consideration-money, and surrendered the kobalah,—*Held* that the brothers were not estopped from suing the parties in possession of the whole property to set aside what the single brother had done, and to obtain possession of the share in question. *Bhogonanud Mytee and others* v. *Radha Churn Mytee and others*, 7 W. R., 335.

Held that the plaintiff's karindha having no power to execute the deed of conditional sale, the basis of the defendant's title, the plaintiff is entitled to the entire area of land claimed, although the defendant had erected a building upon it.

Held further that a general agent has not ordinarily powers co-extensive with those possessed by a universal agent. *Doorga Churn* v. *Koonjbeharee Pandey and others*, 3 Agra Rep., A. C., 23.

An agent's assent to be bound by the statement of a particular witness is not an assent to arbitration, but is an act entirely within the scope of his general authority as agent to carry on his principal's suits, and to do all acts necessary to that end. *Rajender Chunder Newgee* v. *Mahomed Aynooddeen Moonshee*, W. R., 1864, 143.

Where an agent, entrusted with a document of title to goods, pledges it *malâ-fide*, or without authority, it is necessary, in order to deprive the transaction of the protection given by the 1st Section of the 5 and 6 Victoria, Chapter 39, and to bring it within the proviso of the 3rd Section, that the jury should find categorically that the lender had notice of the agent's *mala-fides* or want of authority.

To prove such notice it is sufficient to show that the circumstances attending the transaction were such as that a reasonable man, and a man of business, applying his understanding to them, would certainly infer that the agent had not authority to make the pledge, or that he was acting *malâ-fide* in respect thereof against his principals. *Gobind Chunder Sen* v. *Administrator-General of Bengal*, 1 Ind. Jur., O. S., 17.

Where a party purchased cotton from a person both banker and broker, upon the just belief authorized by the facts that he (the seller to him) was the principal, and not merely a broker, and paid him in good faith the price of the article purchased, he cannot be held liable to the real principal's claim, such payment protecting him from further liability. *Pettumber Bhugutt* v. *Muthoora Dass*, 1 Agra Rep., A. C., 121.

As it does not fall within the ordinary scope of the duties of a mofussil naib to grant pottahs for fixed rents, it is requisite in such cases that express authority should be proved to make the grants valid. *Goluckmonee Dabea* v. *Assimooddeen*, 1 W. R., 56.

Where a plaintiff sues by his recognized agent and obtains a decree, the decree should stand in the name of the agent, not as for himself alone, but as agent and on behalf of the plaintiff. *Golam Jelanee Chowdhry* v. *Nolit Chunder Singh*, 11 W. R., 503.

Held that an agent of a party residing within the jurisdiction of the Court, being not an authorized agent as contemplated by Clause 1, Section 17, Act VIII of 1859, was not competent to appear as plaintiff on behalf of his principal, and to file and verify the plaint as required by Section 27 of that enactment.

The plea of abatement on account of the death of the principal, pending the suit in appeal before the lower Appellate Court, was disallowed, it being shown from the circumstances of the case that appellant, though an agent, intended himself to be the plaintiff. Had he acted as an agent, the whole authority was determined on the death of the principal, and the appeal must have abated until resumed by substituting the heir of the deceased principal as a party to the suit. *M. B. Thornhill* v. *Taylor*, 1 Agra Rep., A. C., 215.

Defendant having required his agent to procure certain articles, the latter borrowed money for the purpose, giving a bond to which plaintiff, as a pleader employed by defendants, also put his name. The articles were purchased with the money and sent to defendant. The lender subsequently obtained a decree with interest against the agent and his principal, but (in spite of plaintiff's applications to defendants) realized the whole amount from the plaintiff, who now sues defendant to recover the money. *Held* (by Loch, J., whose opinion prevailed) that there was an implied contract between the parties, the breach of which took place when defendant refused to pay the amount on plaintiffs applying to him for it. *Held* (by Jackson, J.) that plaintiff's cause of action arose when he was forced to pay up the money which he had borrowed for

defendant. *Bhogeeruth Adhikaree* v. *Tarinee Chunder Pakrassee*, 14 S. W. R., C. R., 174.

2.—Liability of Principal.

A mercantile firm is responsible for frauds committed by one of its members or agents while acting for and in the business of the firm. *Luckhee Kant Bonik* v. *Ram Chunder Bysack*, 2 W. R., 186.

Held that an agent who is appointed for the general management and conduct of business cannot bind his principal by an unusual contract, not strictly relating to the conduct of the business, unless he has express or implied authority for the same.

The fact that a consignor dealt in good faith with the agent, who exceeded his authority, is not sufficient to bind the principal. The consignor dealing with the agent ought to satisfy himself of the agent's authority.

The defendant, not having ratified his agent's act by receiving the benefit of the contract, cannot be bound by the acts of his agent and liable to make good the losses. *Madaree Lall* v. *J. A. G. Gilmore*, 4 Agra Rep., 196.

Where it is sought to make the agent of a foreign principal liable on a contract there is no presumption of law, but the case must be determined by the particular facts. But in the absence of evidence to the contrary it will be presumed, as a matter of fact, that credit was given to the agent. *McGavin and others* v. *Wilson*, 1 Ind. Jur., N. S., 405.

The determinations in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. Therefore, where the relief sought by the plaint is grounded on a contract, the case must not be determined upon an alleged equity resulting from a different state of facts and inconsistent with that alleged by the plaintiff.

When a principal merely authorizes an agent to bid at an auction, he is not liable for an agreement entered into by the agent with a third party pledging him to pay to such party a certain sum in consideration that he should abstain from bidding. *Eshan Chunder Singh* v. *Shama Churn Bhutto*, 2 Ind. Jur., N. S., 87; 6 W. R., P. C., 57.

If an agent signs a promissory note without disclosing the names of his principals, the latter are not liable. *Sheo Churn Sahoo* v. *G. Curtis*, 3 W. R., 139.

The defendant, a servant of Government, having given orders for bricks, and the plaintiff being aware that the defendant was a servant of Government, and that the bricks were required for building bridges on account of Government,—*Held* that the Government was liable, and not the defendant personally. *Sreenath Roy* v. *D. S. Ross*, 4 W. R., S. C. C. Ref., 13.

In a suit for rent, where plaintiff was well aware that the principal was a third party, and that the defendants were the agents of such third party, defendants having successfully pleaded payment, it was held that plaintiff could not proceed against the principal. *Gouree Sunker* v. *Bholee Pershad and others*, 11 W. R., 247.

Statements fraudulently made by an agent for his own benefit are not binding on the principal. *Jowahir Lall and another* v. *Tekeit Singh*, 6 W. R., 252.

Signature by an agent is insufficient to take a case out of Act XIV of 1859. *Rajah Teiavara Dash* v. *Richardson*, 2 Mad. Rep., 84.

An agent employed to effect a wagering contract is entitled to recover from his principal money paid on his account in respect thereof, his authority not having been revoked. The claim is not affected by Act XXI of 1848. *Toibhowandas Jugjeewandas* v. *Motilall Ramdass*, 1 Bom. Rep., 34.

A native lady, possessing an estate in a district in which she did not reside, opened an account with a banker, through her son, as her agent, to provide for the punctual payment of Government revenue, and to meet current expenses. *Held* that such a course of dealing did not of itself warrant the banker in advancing to the son, as the accredited agent of his mother, large sums of money on bonds. *Bibee Missrain* v. *Gopal Lall Doss*, 10 W. R., 376.

If a principal adopts the acts of an agent in respect of the purchase of a property, he must take the property subject to the conditions with which the agent encumbered it, notwithstanding any secret arrangement between them not known to third parties. *Ishenchunder Singh* v. *Shama Churn*, W. R., 1864, 3.

When a man allowed his wife to have control over certain property and to mortgage it,—*Held* that she acted as his agent, and that he was bound by her act. *Mooradee Bebee* v. *Sheikh Syefoollah*, W. R., 1864, 318.

Held that the appellant having delivered indigo pursuant to the terms of a sutta made by a third party professing to act on his behalf, must be considered to have assented to the engagement, and is not now competent to repudiate it. *Mahomed Nuzzeroollah* v. *Fergusson*, 2 Agra Rep., A. C., 139.

The acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess. *The Collector of Masulipatam* v. *Cavaly Vencata Narainapah*, 2 W. R., P. C., 61.

Where the proprietors of an estate, on being informed by their agent of a proposition to obtain a lease of the property, refused their consent, and the agent notwithstanding gave the applicant an amuldustuck to enter upon the property as lessee, and gave no notice at the time to the proprietors, but subsequently informed them of it,—*Held* that the proprietors were not under obligation to take early steps to disavow the act of their agent. *Mussamut Muhool Buksh* v. *Mussamut Suheedan*, 14 S. W. R., C. R., 378.

Suit to set aside a lease as granted without authority by an agent to the defendant, who was the naib of the estate, and as procured by fraud by the defendant in collusion with the agent, the latter charge of collusion having been withdrawn at the hearing before the Subordinate Judge. The High Court remarked on the impropriety of presenting a plaint charging collusion between the agent and defendant without good grounds for such imputation, and on the withdrawal of such charge at the hearing if there were grounds for it; and agreed with the Subordinate Judge in thinking that the

owner of the estate in issue must be presumed to know what was being done on her behalf by her agent. The presumption is that a man acts rightly and not fraudulently. The mere circumstance that the rents were low does not give rise to the presumption that there had been fraudulent conduct on the part of the naib, or that he did not state the circumstance to the agent before obtaining the lease from him. There is also this difference between this case and other cases in which contracts between principals and agents are sought to be set aside on the ground of good faith, that here another agent is interposed, and it is not the case of the defendant (the naib) making a report to the owner in England. Even supposing the original transaction liable to be set aside, the ratification by a person having authority from the owner to make enquiries and ratify what had been done would render it invalid. *Annund Chunder Bose* v. *L. P. D. Broughton*, 17 S. W. R., C. R., 301.

3.—Liability of Agent.

An agent is personally liable who mixes up his private transactions with those of his principal by borrowing for both. *Juggenath Roy Chowdhry* v. *Munnekha Dossee*, 2 W. R., 156.

A suit by a principal against an agent to recover money received by the latter during his agency and not accounted for, is subject to the limitation of six years. In case of fraud, the period of limitation will run from the time of knowledge of the fraud. *Radhanath Dutt* v. *Gobind Chunder Chatterjee*, 4 W. R., S. C. C. Ref., 19.

An agent who deals with another man's goods as if they belonged to his principal, may be answerable to the true owner, notwithstanding that he acts by the command or direction of his principal. *Wise* v. *R. C. Brun*, 4 W. R., Rec. Ref., 1.

M. sued for an account of all moneys received and paid on his behalf by T., deceased (represented by his widow), and F., as his agents from 1st August, 1859, to 30th April, 1865. It was alleged in the plaint that M. "left India in 1858, and has since resided in Scotland; that at the time he left he was, and still is, possessed of extensive property in the Province of Bengal, chiefly landed property;" that T., and afterwards T. and F., were his agents and managers. In his written statement, M. stated that "in the month of June, 1861, the deceased rendered an account to the plaintiff showing that all moneys due to him by the plaintiff in respect of his salary and commissions up to the 31st January, 1861, being the whole of deceased's claim against him up to that date under their above-mentioned arrangements, had been duly paid by the plaintiff." "In the month of April, 1865, deceased transmitted to the plaintiff the agency accounts of himself and his firm with the plaintiff in continuation of the accounts rendered by him as mentioned in the preceding paragraph, brought down to the end of February, 1865; and again in May, 1865, the deceased transmitted the continuation of the said account brought down to the 30th April preceding, being the date of the termination of the agency. The said accounts rendered have been examined by the plaintiff, who verily believes that the true balance now due to him thereon exceeds Rs. 1,00,000, without including interest." There was no allegation in the plaint, written statement, or opening of counsel, of fraud, or specific error.

Held that M., in his plaint and written statement, had not disclosed any cause of action.

Semble,—Under Section 139 of Act VIII of 1859, the issues are to be framed upon the plaint, written statements, and allegations of the parties or their counsel. *A. B. Mackintosh* v. *Emily Temple and others*, 2 Ind. Jur., N. S., 333.

An agent of one co-sharer is not liable to other co-sharers for money drawn by him under a power from his principal, and not as trustee for the others. *Sheikh Waler Mahomed* v. *Fatima Bibee*, 5 W. R., 172.

The agent of a lessor was held to have acted in excess of his power in granting a lease containing a stipulation that the lessee was to receive from the lessor the expenses which he might incur in any litigation which might take place with third parties respecting the land leased. Where such litigation did ensue, and the lessee was cast in costs, he was held entitled to recover the same, not from the lessor, but from the agent. *T. J. Kenny* v. *Mockta Soonderee Dabee*, 7 W. R., 419.

A gratuitous agent is liable for any loss sustained by his principal through the gross negligence of the agent. What is gross negligence is a question on the facts of each particular case. *G. V. Agnew* v. *The Indian Carrying Company*, 2 Mad. Rep., 449.

Held that the defendant's agent, having unconditionally accepted the bill, must be held liable for the amount. *Salig Ram and others* v. *Juggun Nath*, 1 Agra Rep., A. C., 137.

The ex-king of Oude ordered M., one of his officers, to procure the erection of certain buildings. M. made over to Y. (also one of the king's officers) the contract for a portion of the work which the appellant undertook to execute. The contract for the work was signed by the appellant alone, and it provided (among other things) that Y. was to be allowed Rs. 20,000 out of every Rs. 1,00,000 paid to the appellant. By another agreement it was stipulated that the work should be examined and checked by Y. or his agents. The appellant was discharged before the completion of the work, and he sued Y., M., and the ex-king jointly. *Held* that Y. did not render himself personally liable, and that the contract was of such a description that the appellant was not entitled to a decree against the other respondents in respect of it, as both Y. and the appellant were parties to a fraud on the ex-king. *Bhogoban Chunder Sen* v. *Badsa Ally Sha Bahadoor*, 1 Ind. Jur., O. S., 103.

A suit against an agent is bad in law: it should be brought against the principal. *Hurris Chunder Taloputtur* v. *O'Brien*, 14 S. W. R., C. R., 248.

Agents who have collected money on account of an insolvent estate are severally bound to prove to the assignee or his representative that the expenditure of the several amounts charged in their accounts has been actually and properly made, and the *onus probandi* rests on such agents.

It is incumbent on such agents to offer proof in support of all the items in their accounts which are impugned, and the propriety, or the actual expenditure, of such items should form the subject-matter of issues properly framed. *Nujuf Ali* v. *Patterson*, 2 N. W. R., 104.

An agent or person in a fiduciary position

towards the owner of property purchased by him, is bound to prove that the sale was made for good and sufficient consideration, and must not only prove that the agent had authority to sell, and that the consideration alleged was in fact paid, but also that the consideration paid was a fair price for the property.

If the purchase be made by a stranger, such a purchaser need not show that the consideration paid by him is a consideration equal to the value of the property; it will be sufficient for the purchaser to show that the sale was made by a person who had authority from the owner to sell; and, unless the seller can establish a fraudulent connivance between the agent employed to sell and the purchaser, the sale will be binding on the seller on proof of authority of the agent to sell. *Masumut Rutta Bibee* v. *Dumra Lall*, 2 N. W. R., 153.

An authority granted to an agent to purchase does not imply authority to sell; and the mere fact of the principal not questioning his agent's right to sell is no proof that he consents to the latter's exercising such right. *Goluck Chunder Chowdry* v. *Kant Pershad Hazarah*, 15 S. W. R., C. R., 317.

If it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf, and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution.

And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use fraudulently and dishonestly, and falsifies the amount so as to conceal his fraud, there is evidence of a criminal misappropriation. *Queen* v. *Kurreem Bux*, 3 N. W. R., 30.

4.—Banians.

There is a presumption in Calcutta that where a vendor of goods deals with a banian of a European firm, *quâ* banian, he is only to look to the banian for the price. *Sheikh Faizullah* v. *Ramkama Mitter*, 2 B. L. R., O. C., 7.

G. S. and Co. employed R. to make purchases for them in the bazar, upon orders which were in force for two days, and they imposed restrictions on R.'s authority to pledge their credit, which were not made known to those with whom he dealt. His remuneration was to be certain dustooree on the purchases, and he paid and gave receipts for the jute, as agents for G. S. and Co. He furnished accounts specifying the price of the goods and the expenses incurred by him upon them, and upon being paid he affixed his receipts to them. The purchases were unusually large, and in R.'s books G. S. and Co. were debited with the amount paid for the goods, R. retaining no interest in or profit out of it. J. S., one of the vendors to R., sued G. S. and Co. for the price of some of the goods so purchased by R. Judgment for J. S. affirmed in appeal.

Held that a general authority implies all powers necessary, or usual, or proper, as means to effectuate the purposes for which it was created. A banian is a *del credere* agent with regard to his employer in making purchases, and is a principal with reference to third persons. That a person who has been allowed to represent himself as agent of a merchant under a general authority is not, as such, a banian. That when a native dealer makes purchases for a European house, the presumption is that the vendor gave credit to the native dealer. That goods having been purchased for an employer and entered to his debit, and receipts given for them in his name, raises no presumption that the buyer was a banian. *Grant, Smith, and others* v. *Juggobundoo Shaw*, Bourke's Rep., A. O. C., 17; 2 Hyde's Rep., 30; Cor. Rep., 47.

In the absence of a specific contract, a European firm in Calcutta is not bound by a contract made by third parties with their banian. *Juggobundoo Shaw* v. *Grant Smith*, 2 Hyde Rep., 129.

5.—Gomasta.

N. sued J. S. and Co. for damages occasioned by the inferiority of certain goods which he alleged that he bought of them on a verbal contract made by his gomasta M. through his broker F. The defendants' case was that the contract was a written one, and contained a stipulation exempting them from liability on certain conditions which had not been complied with, and was made by K., one of the plaintiff's gomastas, by the pen of J., one of their brokers, whom R. had authorized to sign the contract. The Court below found that K. was N.'s gomasta, but could not, as such, depute a third party to sign a contract for N., and judgment was given for the plaintiffs. On appeal it was held that a gomasta has such authority, but that K. was not N.'s gomasta, and that N. had not authorized the stipulation referred to, the judgment below being affirmed. *Held* that a gomasta has a general authority to manage his employer's business, not as a mere agent, but with power to do all acts necessary for carrying it on, and to authorize brokers to make contracts. A broker authorized to sign a particular contract is not authorized to sign it, if it contain a stipulation unknown to his employer, and *vice versâ*. *Jardine, Skinner, and Co.* v. *Nathoram*, Bourke's Rep., A. O. C., 43.

A suit for rent under Act X of 1859 may be instituted by a gomasta employed in the collection of rents or management of land, on behalf of his principal, without his being specially empowered by warrant of attorney. *Majaun Khan* v. *Sheikh Akully and another*, Marsh., 384.

A gomasta employed to collect rents is not authorized to distrain, unless he has been expressly authorized by power of attorney. Therefore if a gomasta, without such express authority, distrain for rent due, or pretended to be due, to his principal, his principal is not bound by his acts, unless he ratify them, as, for example, by receiving the proceeds of the distress, knowing they had been obtained by distress. *Ramjoy Mundul and others* v. *Kallymohun Roy Chowdhry*, Marsh., 282.

It does not lie within the ordinary scope of a gomasta's authority to grant pottahs. *Kalee Coomar Doss* v. *Sheikh Anees*, 3 W. R., Act X R., 1.

In a suit under Act X of 1859, where plaintiff sues as a gomasta of zemindar, it is not necessary that a power of attorney or any other formal document conferring a special power on the plaintiff

should be produced, if it is proved from the evidence that he filled that character. *Madho Singh* v. *Guneshee Lall and others*, 2 Agra Rep., A. C., 275.

A suit was brought and decreed against the gomasta of a firm, the owner or his heir not being impleaded and properly represented in the Court for the recovery of a sum due from the firm. On execution being sought out against the firm it was held that the decree, if it was meant to be passed against the owner, was illegal, being against a party not represented in Court; and if it was passed against the gomasta, it could not be executed against the firm. *Phool Chund and others* v. *Siva Pershad*, 2 Agra Rep., Mis. 4.

6.—Factors.

By the Factors' Act (5 and 6 Vict., c. 39, extended to India by Act XX of 1844) pledges of securities made *bonâ-fide* by agents entrusted with them are protected, but such protection is limited to advances made *bonâ-fide*, and without notice that the agent who pledges has no authority to pledge, or is acting *malâ-fide* in the transaction against his principal. *Gobind Chunder Sen* v. *The Administrator-General of Bengal*, 1 W. R., P. C., 43.

Factors having an interest, by reason of their advances in their principal's goods, are justified in shipping those goods for sale, either "on account of those concerned," or "on account of themselves," unless their general authority was controlled by instructions from their principal or by contract.

The evidence failing to show that any particular usage or custom qualifying the law of England as between principal and factor prevails in Calcutta,—*Held* that the powers and duties of the factors in making consignments of their principal's goods must be determined by the general mercantile law.

Factors entrusted with possession of their principal's goods, and having advanced upon them, shipped the goods to London, drawing bills against them in their own names, and selling the bills with the shipping documents in the market. The acceptance of the factors' bills by the consignees, and the delivery of the shipping documents to them, made them the pledgees, but did not alter the character of the transaction, which was one whereby the factors had pledged the goods for the payment of bills on which they (and not the principal) were liable as drawers for an amount exceeding the value of the goods. In such a case no priority exists between the consignees and the undisclosed principal. *Held*, therefore, that a loss having occurred on the shipments, the principal was liable to the factors' estate for the full amount of re-drafts representing that loss, although the factors had become insolvents, and had in fact paid only a small dividend on the re-drafts.

The Sudder Court having reduced the rate of interest allowed by the Zillah Judge, before the commencement of the suit, from 12 per cent. to 10 per cent., the rate at which the account current between the parties bore interest, it was held that the same consideration should have determined the rate of interest to be allowed from the date of suit; and that the amount of this should also be calculated at 10 per cent. per annum. *Mirtunjoy Chuckerbutty* v. *John Cochrane*, 4 W. R., P. C., 1.

7.—Master and Servant.

On the 4th of July, 1860, C. engaged to come to India as engine-driver for the East Indian Railway Company on a progressive salary of Rs. 152-11-7 per month for the first year, commencing July 4th, 1860; Rs. 174-8-8 for the second; Rs. 196-5-9 for the third; Rs. 218-2-10 for the fourth, with a free passage home; and the Company might at any time determine the engagement by a six months' notice. The Company gave this notice in September, 1861. When the six months' notice expired the plaintiff was driving ballast trains, receiving (under his agreement) Rs. 174-8-8 per month. He continued to be so employed, and to receive pay at the same rate, without interruption or objection, until the beginning of 1864, when he was employed to drive passenger trains for the defendants, who thereupon increased his salary. The plaintiff did not assent to the increase, but claimed the balance of salary due to him, as on the footing of his whole service having been service under the original agreement. His demand not being acceded to, he sued the Company to enforce it, and also for his passage-money home. He also sued for his salary for May, 1861, during which month he had been suspended, and his pay had been withheld; but he had not previously claimed the pay so withheld. In 1862 he had applied to be restored to his position under his original agreement, and was refused. The Court below gave C. a decree for the amount claimed, minus the passage-money. Decision reversed on appeal. *Held* that a legal notice of dismissal having been given, continuance in the service on a reduced salary is evidence of acquiescence by the servant in his dismissal. That in such a case the servant serves under a fresh contract, not at the rate of wages previously received by him, but at the rate he is actually receiving. That a servant whose wages have for one month been stopped during suspension for alleged misconduct, and who, continuing in the service, has not claimed them for several years, has acquiesced in the stoppage. *Campbell* v. *E. I. R. Company*, Bourke's Rep., A. O. C., 56.

Where a servant leaves his service after giving due notice he is entitled to receive at once all pay then due to him, without reference to the custom of the office or master he serves. *A. Thomas* v. *The Manager of the Pioneer Press*, 2 Agra Rep., Mis., 1.

Every master and employer has an undoubted right to dismiss his servant or agent at any time. After the dismissal, whether wrongful or not, the servant cannot claim wages. The remedy for wrongful dismissal is by action for the damages sustained by the servant in consequence of the breach of the master's contract to employ him. *Ranee Usmut Koonwar* v. *W. Tayler*, 2 W. R., 307.

A master cannot be compelled to retain in his service a servant whose honesty he thinks he has reason to doubt. *Wm. Tayler* v. *Ranee Asmeedh Koonwar*, 4 W. R., 86.

A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorized it. *Suffer Ali Khan* v. *Golam Hyder Khan*, 6 W. R., Cr., 60.

The appellant, having obtained a decree for khas possession of a share in a zemindary, had refused

to recognize the ryots whom the farmers under her co-sharers had settled in the estate; and her servants cut and carried off the crops of those ryots.

Held, by Glover J., that the appellant was liable for the acts of her servants, which were done in furtherance of her known wishes and for her benefit. *Held*, by Loch, J., that those acts were beyond the ordinary scope of the servants' duty; and that, unless it could be shown that the appellant ordered or ratified the acts, she was not liable. In the present case the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable. *Rani Shamasundari Dabi* v. *Dukhu Mundle*, 2 B. L. R., A. C., 227; S. C., 11 W. R., 101.

Unskilfulness in a servant is no ground for dismissal unless it amounts to absolute incompetence.

A solitary instance of insolence is not sufficient to justify a master in dismissing a skilled servant. Where no time was specified for a day's work in a contract, whereby a company (the defendants) engaged the plaintiff, a skilled mechanic, in the capacity of an engineer, and "to make himself generally useful," any work within his capacity was held to form part of his duty. Superintendence of gas pipes is within it. By refusing when directed to work more than eight hours a day without extra pay, plaintiff disobeyed reasonable orders, and defendants were justified in dismissing him. *Owen Williams* v. *Great Eastern Hotel Company Limited*, Cor. Rep., 76; S. C., 2 Hyde's Rep., 166.

Semble,—If a master usually instructed his servant to buy goods upon credit, he will be bound by his acts, even when he has prohibited him specially from buying upon credit. *Maharanee Naranee Koonwaree* v. *Joogul Kishore Roy and others*, 6 W. R., 309.

A dismissed servant is entitled to wages for any broken period during which he may have served, at the rate he was earning when dismissed. *Rughomanth Dass* v. *Halla*, *J.*, 16 S. W. R., C. R., 60.

A suit for wrongful dismissal by one of its servants will lie against the Government.

In a suit by a subordinate officer in the P. W. D., for wrongful dismissal, against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government,—*Held* that the hiring was indefinite, and that although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant.

An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring. *Hughes, P. F.* v. *The Secretary of State for India in Council*, 7 B. L. R., 688.

K. received into his godown certain goods belonging to the plaintiff and in charge of his servant, concerning which there was a dispute between the plaintiff's agent and B., of which circumstances K. was aware; and he advanced money to B. on the security of such goods, which were subsequently delivered to B., and sold by him with the acknowledgment of K., and, notwithstanding the plaintiff's servant objected to it, delivered them to the purchaser. *Held* that K. was liable to an action for damages at the instance of the plaintiff.

A master is responsible for the acts of his servants done within the scope of his duties, and for the master's benefit. *Anunt Dass* v. *Henry Kelly and another*, 17 N. W. R., 107.

8.—Partnership.

M. M. and Co., merchants in London, carrying on business with W. N. W. and Co., merchants in Calcutta, sought to make the defendant liable as a partner in the latter firm, under a particular memorandum of agreement between the members of the firm of W. N. W. and Co. and the defendant.

Held that such agreement did not constitute the Rajah a partner in or with the said firm. Participation in profits does not constitute a partnership. The question is, not whether the persons ought to be made liable participated in the profits, but whether the trade has been carried on by persons acting on his behalf.

There is no rule of law which imposes partnership liability upon a man who advances to others money for the purpose of carrying on their business, and in return secures to himself a share of the profits which may arise from the employment in the business of the money so advanced by him. *Rajah Pratap Chandra Singh Bahadur* v. *Mollwo, March, & Co.*, 3 B. L. R., A. C., 238; S. C., 12 W. R., 56.

The plaintiff became banian to the defendants, under an agreement by which he had a lien upon all goods "belonging to" them in their godowns, for balances that might be due by them. Some time after the date of the agreement, while there was a balance due, the defendants' firm took in a new partner.

Held that the words "belonging to" included all goods in the possession of the new firm that came to them in the way of business. *Held* also that the new firm, not having given notice to the contrary, must be taken to have engaged the plaintiff as banian, upon the terms expressed in the agreement with the old firm, and to have taken over the balance due at the time when the new firm was constituted as a debt due by the new firm. *Baldeo Das Agarwalla* v. *Alexander Kaich and Co.*, 3 B. L. R., O. C., 80.

The parties had entered into a contract of partnership to work certain supposed mines; plaintiff to receive a bonus and also six monthly payments as "rent" for the land, both parties to share the profits and bear the losses; it being stipulated that in case coal should not be discovered the bonus, and any sum paid as rent, would be refunded.

Held that this was a partnership arrangement, and the payment of the money which went by the name of rent was not as by a tenant to a landlord, but as consideration-money for land forming a portion of the capital. *Sreemunjuree Dossee* v. *Poorusuttum Dass and others*, 9 W. R., 499.

Where a document, creating a partnership for a particular business, is silent as to the date at which

the partnership is to commence and end,—*Held* that the partnership is conterminous with the business for the purpose for which it was created. *Buddreentah* v. *Isree Pershaud*, Cor. Rep., 114.

Circumstances under which the Court will infer a partnership between members of a Hindu family alleged to have separated. *Missreeloll and Ramphull* v. *Ramnarain and Rambux Ram*, Cor. Rep., 63.

When a husband and wife are trading in partnership, it is only reasonable to presume that an authority from the husband on matters connected with the partnership is binding on the wife. *Kotoo and Mah Ngwai* v. *Ko Pay Yah*, 6 W. R., 254.

Partners must, on dissolution of partnership, give full and fair notice to their customers of such dissolution, or otherwise be liable to them for all payments made by them to one partner in the belief that he represented the firm. *Shewram* v. *Rohomutoollah*, W. R., 1864, 94.

The doctrine that a dormant partner, when discovered, is liable for every debt incurred for the partnership by the active partner, is not absolute in the Courts in England, and is not to be followed by the Courts of this country, unless found in particular cases to be consonant with justice, equity, and good conscience.

Where money was lent on a bond to a "malick and mookhtear" of a factory on his personal credit and the security of the entire factory, and it was afterwards discovered that other parties had a share in the factory, it was held that the lender was not entitled to go beyond his contract and recover from those other parties personally. *Nundeeput Mahatah* v. *A. Urquhart*, 9 W. R., 355.

The fact that surviving partners are made parties to the suit does not of itself alone enable the Court to direct such surviving partners to render an account of the partnership estate. Surviving partners cannot be made parties to a suit merely by reason of their partnership. They can in certain special cases, as where the relation between the executors or administrators of the deceased partner and the surviving partners is such as to present a substantial impediment to the prosecution by the executors or administrators of the rights of the parties interested in the estate against the surviving partners. *J. E. J. Ellias* v. *Huboob Mooshee Mooshee*, Bourke's Rep., O. C., 350.

A., B., and C., and others were partners in a firm, and had transactions as such partners with another firm in which also C. was a partner.

In a suit by the former firm against the latter, C. and other partners in the former firm refused to join as plaintiffs.

Held (reversing the decision of the Court below) that C. and the other partners of the former firm were rightly made defendants. *Bissonath Ruckitt and others* v. *Gunnesh Chunder Dey and others*, 2 Ind. Jur., N. S., 203.

A member of an ordinary trading partnership, dissoluble at will, cannot, except under special circumstances, seek an account without praying for a dissolution. *Golla Nágabhú Shanam* v. *Kanakala Gangayyá and others*, 2 Mad. Rep., 28.

Held that a dissolution between the members of a carrier's firm, or exclusion of one of the members thereof by others in virtue of a partnership agreement, would not operate against a third party (a consignor) who had no knowledge of it, and who in his dealing with the firm, in the absence of any notification of change, supposed that the partnership continued unaltered as to its members; and that such dissolution or exclusion would not exempt the retired member of the firm from liability to the consignor's claim, unless it be shown that the latter was aware of the fact of the former having ceased to be a member thereof. *Ganga Ram* v. *Gunga Dhur*, 1 Agra Rep., A. C., 198.

The defendant requested the plaintiff to sell for him a plot of ground on the Esplanade in Bombay at any rate exceeding the price at which the defendant himself had purchased it, and agreed to give him as remuneration half of the net profit realized on the sale. The defendant subsequently revoked this authority, and the plaintiff shortly afterwards found a purchaser, whose offer the defendant did not accept.

Held that the defendant could not recover on the agreement, which had not been performed on his part; that there was no ground for holding that the plaintiff and the defendant were partners in the transaction as between themselves; and that the plaintiff was not entitled to recover for work done as broker, or for commission, the nature of the agreement being that the plaintiff took the risk of the authority being revoked. *Hurst* v. *Watson*, 2 Bom. Rep., 423.

If A. and B. contribute in shares to lend money to C. in B.'s name, and B. recovers some of it, A. is entitled to a share of what is recovered, whether C. knows he had joined in the transaction or not; and B. in suing must be held to be suing for both the lenders, and what he realizes belongs to both. *Radha Churn Dey and others* v. *Muddun Mohun Paul*, 10 W. R., 45.

To bar the right of a partner, an adverse possession of separate proprietorship must be pleaded and established by the co-partners, and not by a lessee from the co-partners, much less where the lessee's lease has expired. *Jardine, Skinner, & Co.* v. *Rance Shama Soondery*, 3 W. R., 144.

Every one of the partners in a mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognized trading name of the firm, for a transaction incident to the business of the firm, although his name does not appear upon the face of the instrument, although he be a sleeping and secret partner. In order to take a case out of these principles of the general law it must be shown that the holder of the bill knew at the time he received it that the transaction was the private affair of a single partner. *Bunarsee Doss* v. *Ghulam Hossein*, 13 S. W. R., P. C., 29.

A person paying to one member of a partnership a debt justly due to all the members, is bound to show that he is acting *bonâ-fide* on the understanding that it is for the benefit of the partnership. *Loolf Ali Meah* v. *Pearee Mohun Roy*, 16 S. W. R., C. R., 223.

In disputes between partners respecting their accounts, the plaintiff should so frame his suit that there may be a general adjustment of the partnership accounts. A particular item or claim should not be made the subject of a distinct suit. *Mussamut Soonder Bibee* v. *Khilloo Mull*, 2 N. W. R., 90.

A member of a subsisting partnership is not in a position to sue his partner, still less one of his

alleged partners, for the profits which had up to a particular time accrued, but he must, if he desires relief, sue in the ordinary way for an account. *Dajaram Luskuree* v. *Sookhanum*, 16 S. W. R., C. R., 141.

In a suit of the nature of one for dissolution of partnership, it is incorrect to make an absolute decree for a specific sum of outstanding balances without anything to guide the Court in fixing that amount. No amount ought to be decreed without satisfactory proof of its having been realized and misappropriated. *Mun Mohinee Dassee* v. *Ichamoye Dassee*, 15 S. W. R., C. R., 352.

Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. *Abbott* v. *Crump*, 5 B. L. R., 109.

Plaintiff and defendant entered into a contract with a view to trade, by which each was to contribute a certain sum either in cash or goods. A trading concern was opened accordingly, but after a very short time the parties fell out. Defendant then obtained through the Magistrate the return of certain goods which, as he alleged, he had placed with the plaintiff independent of the partnership speculation. Plaintiff thereupon sued for a declaration that the goods were the partnership goods, and to obtain a receipt for them as such. *Held* that there was no cause of action, and a suit for a receipt did not lie. *Elijah* v. *Aratoon Brothers*, 14 S. W. R., C. R., 47.

Failure to prove an allegation of a settlement of accounts subsequent to determination of a partnership does not necessarily preclude a plaintiff from claiming a decision respecting the partnership accounts at any time within six years from determination thereof. *Baboo Ramsahay* v. *Shethoo*, 1 N. W. R., Par. 1, p. 28.

II.—PRINCIPAL AND SURETY.

9.—Miscellaneous.

A. and his surety B. executed a bond to C. for the faithful discharge of A.'s duties as a gomasta. In September, 1866, upon accounts being rendered, A. was found indebted to C. in a certain sum of money. A. thereupon executed an ikrar to C., which was accepted by C., agreeing thereby to pay the amount due in February following. On default being made, C. sued A. and B. for the amount due.

Held that the acceptance of the ikrar without the knowledge or consent of B., giving time for payment, was a discharge to the surety. *Puri Sundari Debi* v. *Srimati Drobomaye Debi*, 7 B. L. R., Ap., 10; and 15 S. W. R., C. R., 252.

There may be cases in which the Courts would accept and act upon parol evidence of the existence of a guarantee and its amount, but such parol evidence must be beyond suspicion. *Lekhraj* v. *Palee Ram*, 2 N. W. R., 210.

Before a warrant can issue attaching the property of a surety, he should be called on, under Section 220, Code of Criminal Procedure, to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him. *Khooda Koiburtnee* v. *Doorgadass Bhuttacharjee*, 15 S. W. R., Cr. R., 82.

Where a creditor sued his principal debtor and two sureties upon a mortgage bond, and in his plaint formally relinquished his claim against part of the mortgaged property, it was held that after such relinquishment the sureties were no longer bound, their position being altered for the worse by reason of such relinquishment. *Narâyan Govind Oek* v. *Ganesh Atmárám Fadke et al.*, 7 Bom. Rep., A. C. J., 118.

Held that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety, and that when a decree is obtained against a surety it may be enforced in the same manner as a decree for any other debt. *Lachman Icharimul* v. *Bapee Khundee et al.*; *Nandrám Sardármul* v. *Bhavâni Háibuti et al.*, 6 Bom. Rep., A. C. J., 241.

Where a surety without taking precautions to see to its proper application permits the party for whom he is surety to get possession of money which by an arrangement with that party and the co-sureties had been placed in his (the surety's) hands for the purpose of indemnifying the co-sureties, he loses his remedy against the co-sureties to the extent of the security thus allowed to be withdrawn. Where money is permitted to remain in the hands of sureties in order to its being applied to the purpose to secure which they become sureties, it is the duty of each as between himself and co-sureties to see that the money is not misapplied. *Woon Chit Poe* v. *Wee Chang*, 15 S. W. R., C. R., 185.

In a case in which a surety was sued by Government for the amount of defalcations committed by the person for whom he was security during the period of six years out of a total period of eight years for which he held office, it appeared that the surety bond was renewed only three times, the old bond being retained by Government, and that in the other years the Government did not renew the bonds, but made an enquiry into the sufficiency of the security. It was contended by the surety that by the renewal of the bond, each bond as it was renewed was in fact a novation, so that an action could no longer be maintained upon the old bond, and the surety was only responsible for the deficiencies which might have taken place subsequently to the giving of the last bond.

Held that in the absence of anything to show that the Government knew of the frauds, or that the surety had any idea that he was discharged or had a right to the old bonds, it could not in this case be inferred that it was intended to discharge the old bonds, if after the giving of the new bond a discovery was made, though unknown at the time, that frauds had been committed during the time that the old bond was in existence. *Lalla Bunseedhur* v. *The Government of Bengal*, 16 S. W. R., P. C., 11.

The acquittal of the principal in a Criminal Court is no bar to a civil action against the sureties. *Syud Keramut Ali Mutwalee* v. *Moonshee Abdool Wahab* 17 S. W. R., C. R., 131.

There is no rule of law entitling a surety, without question asked, to a disclosure of all material facts known to the creditor which it may be material for him to know.

Without proof of fraudulent misrepresentation or concealment on the part of the creditor or his agent, a surety is not entitled to be discharged from his

suretyship. *Delhi and London Bank, Limited*, v. *Hunter*, 3 N. W. R., 264.

A. became surety for certain judgment-debtors, whose property had been attached in execution of a decree, but who had agreed with the decree-holder to liquidate the amount of the decree by yearly instalments. An agreement between A. and the judgment-debtors contained the following conditions:—"If any of the instalments be paid by the said A., the obligors shall not be at liberty to liquidate the remaining instalments either from their own funds or by borrowing money; but that A. shall continue to pay the instalments as they fall due, and shall hold possession of the estate." The judgment-debtors afterwards satisfied the decree in full. *Held*, in a suit against them by A., that the above condition was void as contrary to public policy, as it prohibited the discharge of an obligation which, by decree of Court, the judgment-debtors were ordered to pay. *Musst. Lall Munee* v. *Pyagdut Doobey*, 1, 8, N. W. R., 137.

10.—Rights of Surety.

A surety who had discharged the amount of a bill guaranteed by him and another as co-surety, sued his co-surety for contribution. *Held* that the cause of action in the suit being the right to contribution, that right accrued, not when the bill in question was dishonoured, but when the surety took it up and paid it. *M. Constantine* v. *W. Drew*, 1 N. W. R., Par. 2, p. 42.

Where a person becomes a surety in the course of the proceedings on an appeal, to pay all such sums as might be decreed against the plaintiff on appeal, the decree when passed can be executed against the surety under Section 204 of the Civil Procedure Code, and an appeal will lie from an order made in execution of such decree against the surety. Where a person became surety, and gave a security-bond undertaking to pay all sums of money that might be decreed against the plaintiff on the defendant's appeal, and the appeal was dismissed for default, and on the application of the plaintiff the Recorder made an order cancelling the bond, and returned it to the surety without notice to the defendant, and afterwards the defendant's appeal was on application restored, and a decree passed against the plaintiff, —*Held* that the Recorder's order was invalid, and execution could issue against the surety notwithstanding that order. *Akhut Ramana Ramkariniji* v. *Ahmed Yonsaffji*, 7 B. L. R., 81; and 15 S. W. R., C. R., 538.

H. obtained a decree in the High Court against S. for certain moveable and immoveable property. S. appealed to the Privy Council. While that decree was pending H. applied for the execution of her decree, and N. became her surety for Rs. 10,000. The decree however was not executed. The Privy Council reversed the decision of the High Court, and dismissed the suit of H. with costs. S. then sought to execute his decree for costs against N., the surety. *Held* that N. was not liable. *Nafur Chunder Paul Chowdry, in the matter of the petition of*, 6 B. L. R., Ap., 126; 14 S. W. R., C. R., 410.

Where sale in execution of a decree was stayed on the security [given by a third party, *held* that, in default by the defendant, the decree could not be summarily enforced against such surety under Section 204 of Act VIII of 1859. *Gajendranarayan Roy* v. *Hemangani Dasi*, 4 B. L. R., Ap., 27; 13 S. W. R., C. R., 35.

Suit by the mutwalee of the Hoogly Imambarah against the treasurer of that endowment and his sureties, under a security bond executed on an optional stamp of Rs. 8 for a sum of Rs. 17,280-5-6 alleged to have been misappropriated by the treasurer, who had been committed to, but acquitted by, the Sessions Court. *Held* that although there was gross neglect on the part of the mutwalee in the supervision and examination of his cash balance, yet as there was no evidence of fraud or mutual connivance at the delinquency of the treasurer, the former was entitled to recover from the sureties the sum which the stamp used on the security bond would cover, *viz.*, Rs. 1,000, with costs in proportion and interest. *Syud Keramut Ali Mutwalee* v. *Moonshee Abdool Wahab and others*, 17 S. W. R., C. R., 131.

R. borrowed money of the D. B. Corporation, payable by monthly instalments, and G. became security for him. R. failed to pay the D. B. Corporation, having then a considerable balance to his credit in their hands. A year after they sued G. as surety for the sum borrowed. Decree for the plaintiff.

Held that a banker need not set-off against a debt a cash balance of the debtors in his hands, but may proceed against the surety.

Semble,—That indulgence granted to a principal debtor does not absolve a surety who is not injured thereby. *The Delhi Bank Corporation Limited* v. *William Greenway*, Bourke's Rep., O. C., 227.

When on the discovery of a deficit in the deposit accounts of certain zemindars a Collector attaches the property of the sureties for the Collectorate treasurer, the remedy open to the sureties is against the treasurer only. *Sadut Ali Khan* v. *Manikamika Chowdhrain, and other cases*, W. R., 1864, 119.

When a salt darogah deposits security for the due performance of his duties, to be appropriated by Government in case of loss to the State from his failure to perform them, and the Government, without his consent, alters his position and risk, such alteration relieves him from his engagement as surety. *Shibnarain Banerjee* v. *The Government*, W. R., 1864, 138.

A notice must be served on a surety, calling upon him to pay the amount of his security bond, or to show cause why he should not pay the same, before an order can be made to levy the sum from him. *Queen* v. *Jeebun Singh*, 9 W. R., Cr., 4.

Money was lent on the security of a third party who died before the loan was repaid. The lender then took a fresh acknowledgment from the borrower for the sum due. *Held* that the subsequent arrangement, which did not contemplate the continuance of the third party's security, cancelled his liability. *Seetaram Sahoo* v. *J. DaCosta*, 12 W. R., 294.

The sureties of a naib are absolved from liability if the principal takes bonds from the naib in acknowledgment of the debts, giving him differ-

ent periods of time for payment, without the knowledge and consent of the sureties. *W. G. N. Pogose* v. *Anund Chunder Gohoo*, 1 W. R., 81.

Where a person became surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and lessor evicted the lessee before the expiration of the lease,—*Held* that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor. *Raja Burodakant Roy* v. *Ram Tunoo Bose and others*, 7 W. R., P. C., 51.

11.—Liability of Surety.

By a bond given for the faithful discharge of the office of overseer to a ferry fund committee, the surety became bound "to make good any funds entrusted to the overseer which may be misused." *Held* that, under these words, the surety was liable for a loss of funds arising from the mere carelessness or indiscretion of the principal, independently of any dishonesty, as by his lending the money to contractors. *The Secretary of the Ferry Fund Committee* v. *Ward and another*, Marsh., 89.

In execution of decree, the debtors arranged to pay the debt by instalments, and the petitioner entered into a surety-bond by which he agreed, on failure of the debtors to pay the debt, or any one of the instalments, to be liable for the debt, or to have execution at once taken out against him. *Held* that the surety's was a separate liability; that proceedings against one or others of the joint debtors which would keep the decree alive against all of them would not affect him; and that, if he could be proceeded against in execution of the original decree, execution should have been taken against him from the date when his liability commenced, and that the decree should have been kept alive as against him by proceedings irrespective of those taken against the judgment debtors. *Hurkoo Singh* v. *Ram Kishen and others*, 6 W. R., Mis., 44.

A principal and two sureties executed in favour of a bank a joint bond to secure the payment of a sum placed to the cash credit loan account of the principal, together with interest, and the premia on a policy of life assurance, within one year from the date of the bond. At the end of the year a considerable sum remained unpaid, but the principal continued dealing with the bank, and the account was continued for three years after the date of the bond as a running account, during which time divers sums were paid in by the principal, more than sufficient to discharge the amount due at the end of the first year from the date of the bond, and divers sums were in like manner drawn out.

In a suit brought by the bank against the sureties to recover the amount due at the end of the first year, it was held that, inasmuch as the whole account from the date of the bond to the end of the principal's dealing with the bank had been treated as a running account, all payments made by the principal to the bank were to be appropriated to the earliest items in the account, and inasmuch as all the moneys due to the bond at the end of the first year were thereby satisfied, no amount remained due on the bond.

Semble,—That for the purpose of giving persons who appear on the face of an instrument to have executed it as principals the equitable rights of sureties, they may show by evidence, *dehors* the instrument, that they executed only as sureties.

Semble,—That a surety is not entitled to notice of default made by the principal.

Semble,—That there being no express stipulation to the contrary, the fact that the principal was allowed a greater credit than that secured would not have discharged the sureties. *Koondan Lall* v. *E. D. Jahans and H. B. MacLeavy*, 1 Agra Rep., A. C., 17.

A bail bond by which the sureties bind themselves to be responsible for the appearance of the accused during the preliminary investigation cannot be forfeited if the accused abscond after the preliminary enquiry and during the trial at the Sessions Court. *Kureemuddeen and another, petitioners*, 9 W. R., Cr., 36.

If one of several co-guarantors, on the default of the principal, pays the whole debt, or more than his proportion of it, he may recover for such excess above his proper share by contribution from the others.

An action by one guarantor against his co-guarantors will lie where a single guarantor has paid the debt, and it is not necessary, in order to maintain such an action, to show that the liquidating guarantor had previously applied to, or proceeded against, the principal, with a view to recover the debt from him. *Nuro Narain Doss* v. *Brojo Mohun Doss*, W. R., 1864, 70.

The liability of a surety will not extend beyond the precise limits of his undertaking; he is not liable for any sum voluntarily paid by his principal to a third party for any purpose of his own. *Khetter Nath Seal* v. *Shib Nath Chatterjea*, W. R., 1864, 284.

Held that a surety's liability must be measured by the contract, and where the contract is specific, and not in general and indefinite terms, the surety cannot be held liable for costs and interest incurred in suing the principal debtor. *Dabee Churn* v. *Jankee Pershad*, 4 Agra Rep., 141.

Held further that the rules which govern Courts in England in matters of suretyship could not be applied to a case like this, where joint and several liability was not found as a fact, and where the sum alleged to be due was not certain but contested. *Lukheekant Doss* v. *Sibchunder Chuckerbutty*, 12 W. R., 462.

A. entered into a bond to C. as surety for B.'s good conduct, &c., as C.'s servant. C. subsequently on A.'s request retained B. in his service. B. became a defaulter, and with A.'s concurrence gave C. promissory notes to satisfy the defalcations. *Held* that C. could sue A. on the bond, although he had sued and recovered against B. on one of the promissory notes and had received payment on another. *Wiseman and others* v. *Gopaul Dass Sen*, 1 Ind. Jur., N. S., 277.

A decree was obtained against a surety only, the principal debtor being dead, and his property having been attached as of an intestate, and proclamation made. *Held* that the property could not be taken in execution of the decree against the surety. *Kalichurn* v. *Sriram*, 2 B. L. R., A. C., 102; 11 W. R., 69.

XVI.

THE LAW OF SHIPPING.

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1.—Bills of Lading and Shipping Orders.

Plaintiff shipped some bales of cloth from Calcutta to Rangoon under a bill of lading by which the defendants were bound to deliver,—accidents, loss or damages from fire, machinery, boilers, steam, and all the accidents of the sea, rivers, land-carriage, and steam-navigation, &c., excepted. On the voyage one of the boilers burst, and steam and water escaping some of the bales were damaged. *Held* that the damage was within the exceptions of the bill of lading, and therefore that the defendants were not liable to make good the loss.

Quære,—Whether, notwithstanding the exceptions in the bill of lading, the defendants might not have been made liable in a suit on the implied warranty if it had been proved as a fact that the boiler was not reasonably fit for the voyage. *The British India Steam Navigation Co.* v. *Ibrahim Moosum*, 8 W. R., 35.

The refusal of a master of a ship to sign bills of lading otherwise than with an endorsement as to the damage claimed, is a wrong that may be fully compensated for in damages. *Grasemann and Co.* v. *J. Littlepage*, 3 W. R., Rec. Rep., 1.

Plaintiff sued to recover the value of certain hides which were lost in defendant's flat. The bill of lading contained, among other exceptions, the words "difficulties or casualties of navigation." In evidence it was proved that the flat was destroyed by some projection embedded in the river. *Held* that the casualty was comprised among the exceptions in the bill of lading, and further that, having regard to the dangerous navigation of Indian rivers, parties entering into contracts of a similar nature should protect themselves by insurance. *Sheikh Dhansee* v. *I. G. S. N. & Co.*, 1 Ind. Jur., O. S., 125.

In a suit instituted by a shipper to obtain bills of lading from the captain, in accordance with the terms of the order granted by the ship's charterers, —*Held* that the captain is entitled to vary the bills of lading in respect of any excess of measurement over the dimensions specified in the order, and that an alleged custom, precluding such variation, after the goods have been received on board ship, is contrary to law.

It is the duty of the shipper to comply strictly with the terms of the shipping order. *Gentle* v. *Thomson*, 1 Ind. Jur., O. S., 69.

By a charter-party made in London, the ship W. was chartered to carry a cargo from Liverpool to Calcutta, where she was to load from the factors of the charterer a full homeward cargo to be carried by her to Europe. Freight for the whole round, out and home, was made payable on safe delivery of the homeward cargo, but at so much per ton of the outward cargo delivered in Calcutta. The master was to have a lien on the cargo for freight, &c.; cash not exceeding £800 was to be advanced to the ship in Calcutta, on account of freight, but subject to insurance; and £600 was to be advanced by the charterer's acceptance at three months, or in cash under discount, at charterer's option, on the sailing of the vessel from Liverpool, less five per cent. for insurance. The charterer himself loaded the ship, and the master signed a bill of lading which declared the cargo to be shipped by the charterer to be delivered at Calcutta, as the agents of the charterer might direct, unto order or to his assigns, freight to be paid as per charter-party. In the margin of the bill was written, "Received in advance of the within freight, £600 as per charter-party." The £600 had been paid, not in cash, but by the charterer's bill at three months. The charterer became bankrupt and the bill was dishonoured, and the fact of the bankruptcy and dishonour was known in Calcutta when the ship arrived there. On the ship's arrival in Calcutta, J. O. and Co., who were the holders for value of the bill of lading, demanded delivery of the cargo. The master claimed a right of lien, and refused to deliver unless J. O. and Co. would pay the £600 bill which had been dishonoured, and would further advance £800 for the ship's use, and load a homeward

cargo, according to the terms of the charter-party.

Held that J. O. and Co. took the bill of lading with notice of the charter-party, but that, under the circumstances, the master had no lien, and was bound to deliver the cargo to J. O. and Co. *John Ogle and others* v. *Nashholm*, Bourke's Rep., O. C., 171.

Held that a clause in bills of lading vesting jurisdiction in a Court which has no jurisdiction can have no legal effect, and cannot be pleaded in bar of a suit brought in a Court competent to try it. *J. J. Crawley* v. *Luchmee Ram*, 1 Mad. Rep., A. C., 129.

A. was the consignee and holder of a bill of lading signed by B. at Bombay, as master of the steam-vessel *John Bright*, for the safe carriage and delivery of a box addressed to A., which in fact contained diamonds of the value of Rs. 11,670, 3 rubies, and 3 emeralds, in all of the value of Rs. 15,940. On the face of the bill of lading was printed, "This bill of lading is issued subject to the following conditions." One condition was that a "written declaration of the contents and value of the goods is required by the owner, and must be delivered by the shipper to the owner's agents with the bills of lading. A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss, &c., and the goods shall be charged double freight on the real value, which freight shall be paid previous to delivery." The declaration in this case was contained in the following letter from the shipper to the agent of the ship-owner: "Dear Sir,—Be good enough to give me an order for a small box containing diamonds to the value of about Rs. 14,000, to be shipped on board the steamer *John Bright* for Calcutta. Yours, &c." The box was lost by the negligence of B. or his servants. In a suit by A. to recover "the value of the goods, *viz.*, Rs. 14,000,"—*Held* that all the ship-owner was entitled to was that the shipper should make a declaration of what *bonâ-fide* he believed to be the value. The declaration as to contents was not vitiated by the omission to enumerate all the different species of articles contained in the box. Upon the evidence, the declaration as to the value and nature of the contents was *bonâ-fide*; therefore A. was entitled to recover the value of the diamonds lost. *Dhunjeebhoy Byramjee Mehta* v. *J. Betham*, 2 Ind. Jur., N. S., 305.

Where a bill of lading, dated at the port of shipment, contains the words, "freight for the said goods being paid here," it operates as a receipt for the freight. The ship-owner is not bound to deliver the same to the shipper until payment of the sum to be charged for the carriage of the goods; but such sum is not freight, and the ship-owner has no lien for the amount upon the goods, nor the bill of lading which represents them. *Soomar Jaffer* v. *Mirza Abdool Kurreem*, 1 Ind. Jur., N. S., 230.

The defendants carry between Hong-Kong and Bombay. By a condition annexed to their bill of lading they stipulated that they should not be responsible for damage to goods arising from insufficiency of package. The plaintiff shipped certain goods in the defendants' steamer, in packages which, though in fact insufficient, were packages of the kind ordinarily used for the conveyance of such goods from Hong-Kong to Bombay. On their being landed in Bombay it was found that the packages were more or less broken, and the contents were in some instances injured, and had to a small extent escaped from the packages.

In an action brought to recover damages in respect of such injury, it was held that evidence of mercantile usage or of custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade.

Held also that the evidence of those packages being ordinary China packages, and of such packages having always been carried by the defendants without objection, was not sufficient, in the absence of proof of negligence, to fix the defendants with liability for damage done to them, there being no proof that it had been the practice either of the defendants or any other ship-owners protected by a similar clause in their bill of lading to make compensation for injury to goods contained in such packages. *P. and O. Steam Navigation Co.* v. *Manickjee Naservanjee Pádshá*, 4 Bom. Rep., O. C., 169.

A bill of lading contained a provision that any claim for short delivery or for damage done to goods should be made at the port of Calcutta and not elsewhere. *Held* that this clause did not affect the plaintiff's right of suit in the Court at Rangoon, and that if the defendants meant to object that no claim had been made in Calcutta before the commencement of the suit, they should have done so in proper time, *viz.*, in their written statement. An objection on that ground taken for the first time at the hearing of the appeal was disallowed. *The British Indian Steam Navigation Company, Limited*, v. *Ibrahim Moosum*, 8 W. R., 35.

On 6th April, 1865, A., who resided and carried on business at Bombay, through his gomastah at Calcutta, shipped on board the *Sir Jamsetjee Family* 268 bags of sugar, and received from the captain a bill of lading, by which he certified that they were shipped in good order and well conditioned on board the said ship bound for Bombay, to be there delivered in like good order and well conditioned to B., or his assigns, on payment of freight at Rs. 16 per ton. The bill of lading was subject to the usual exceptions. The vessel was at the time chartered to H. A., and C. and C. were agents for the owners. H. A. being unable to carry out the terms of the charter, there was a delay in the departure of the vessel. On 26th May, 1865, A. wrote to C. and C., addressing them as agents of the ship: "I beg to inform you that I have shipped per *Sir Jamsetjee Family* 268 bags of sugar for Bombay; I hold the bills of lading for the same, and the ship is still detained here. I hope you will be kind enough to let me know what you will do about the cargo,—if the said ship will sail for Bombay or tranship to any other vessel, or deliver the cargo here." To which C. and C. on the same day replied: "We shall be able to tell you in the course of a week or so what we propose doing with the ship *Sir Jamsetjee Family*: as soon as anything has been decided due notice shall be given to the shippers of cargo already on board." On 1st June C. and C. again wrote: "H. A. having failed to carry out his charter of the *Sir Jamsetjee Family*

in terms of the shipping order, and sundry goods having been sent on board by him, of which the following are believed to be to your order, and for which bills of lading have been signed and delivered to H. A., we shall be glad to know whether you are willing that the said goods, 268 bags of sugar, be transhipped to a steamer going to Bombay, at the current rate of freight, the bills of lading for the same being sent to the owners of the *Sir Jamsetjee Family* to be delivered to the consignees of the goods upon production of the bills of lading already signed. You will, of course, understand that the goods are liable for the chartered rate, *viz.*, Rs. 20-10 per ton; and the charterer having failed to complete the loading, the difference of freight between what H. A. granted you a shipping order at and the freight charged by the steamer will have to be paid by the shipper previous to the goods being delivered in Bombay." On the 8th June A. replied: "I am agreed that my goods be transhipped to a steamer going to Bombay at the current rate of freight, but I must not pay the difference of freight, whatever it may be. In regard to H. A., I have nothing to do with them, as the bills of lading per *Sir Jamsetjee Family* for 268 bags of sugar being signed by the captain of the same at the rate of freight Rs. 16 per ton, I am liable for the same only. If you are willing to tranship my said goods to a steamer at the same rate of freight, I am willing and must pay it; otherwise you will kindly order to deliver my goods from *Sir Jamsetjee Family* here." C. and C. accepted and acted on the proposal in the last letter. The sugar was transhipped from the *Sir Jamsetjee Family* to the *Gunga*, from the mate of which C. and C. obtained a receipt, stating that the goods had been shipped in good order, &c. The goods were afterwards removed without the knowledge of C. and C. from the *Gunga* to another steamer, the *Mula*, which belonged to the same owners. Subsequently C. and C. gave up the receipt from the mate of the *Gunga*, and obtained in exchange a bill of lading signed by the agents for the captain of the *Mula*. The bill of lading stated the receipt of goods (in which were included those of A.) from C. and C., and made them deliverable to order of C. and C. at Bombay, and receipt of freight for the whole at Rs. 15 per ton was admitted. A. knew that his goods had been put on board the *Mula*, and got his policy of insurance, which was against a total loss only, transferred. There were inserted in red ink in the bill of lading when given to A. the words, "Bags all more or less in bad order and torn; contents damaged and rotten; marks indistinct; not responsible for marks or condition of packages or contents." The *Mula* proceeded on her voyage, but returned to Calcutta with her cargo damaged by the perils of the sea: 260 of A.'s bags of sugar were condemned and sold in Calcutta, under the authority of the agents of the *Mula*, without notice to C. and C., or to A., and neither were aware that the sale was about to take place. The remaining eight bags were sent to Bombay in another ship by the agents of the *Gunga* and *Mula*, and were received by A.

Held (overruling Phear, J.) that C. and C. were agents only of the owners of the *Sir Jamsetjee Family;* but had C. and C. been liable as agents for A., they would not have been liable for the full value of the goods damaged by the perils of the sea.

Quære,—If C. and C. had expressly, as agents of the owners of the *Sir Jamsetjee Family*, contracted to tranship and deliver at Bombay, according to the terms of the bill of lading, would they have been personally liable?

Semble,—A contract made with express reference to a principal, though not by name, would not render the agent personally liable as the agent of an undisclosed principal. *David Cowie and others* v. *Dhurmsee Poonjabhoy*, 2 Ind. Jur., N. S., 75.

The owners of a steamer by their bill of lading stipulated that they would not land specie, but would deliver it on presentation of bills of lading, or carry it on at the consignee's risk, if delivery were not taken during the steamer's stay in port. The steamer arrived in port late on Saturday, and sailed at daybreak on Monday without delivering the specie shipped by the plaintiff, who sued for damages. *Held* that the Lord's Day Act, 29 Charles II., c. 7, did not apply to Moulmein; and that even if it had done so it could not prevent the shipowners from availing themselves of the stipulation they had made, and that no action for damages was maintainable against them. *Grasemann and Co.* v. *Gardner, Brooke, and Co.*, 3 W. R., Recorder's Ref., 3.

Where a bill of lading contained a clause to the following effect: "Any claim for short delivery or damage done to goods, and all other claims whatsoever to be made at the port of Calcutta, and at no other port, and the goods are shipped and this bill of lading granted subject to this express condition," it was held by the Recorder of Rangoon to operate so as to make the preferring of a claim in Calcutta a condition precedent to a suit in this Court.

Held by the High Court that this opinion is correct, and that a suit for short delivery, under the bill of lading, cannot be maintained without a claim being made in Calcutta. *Mahomed Ishmailjee Nada* v. *The British Indian Steam Navigation Company*, 9 W. R., 396.

Porter and Co., agents for the ship *F. A.*, contracted by a shipping order with G. for freight, with option to G. to cancel the contract if the *F. A.* should not arrive at the port of Calcutta by the 15th of January. On that day she anchored at Atcheepore, and remained there till the morning of the 16th. G. refused to fulfil the contract, and P. and Co. sued him thereupon. Suit dismissed.

Held that there is no custom governing the construction of the words "the Port of Calcutta" in shipping orders; that an arrival at Atcheepore is not an arrival at the Port of Calcutta. *Porter and others* v. *Gentle*, Bourke's Rep., O. C., 41.

The defendants by a condition annexed to their bill of lading stipulated that they should not be responsible for "leakage or breakage, or other consequences arising from the insufficiency of the address or package."

The plaintiff shipped for conveyance from Hong-Kong to Bombay certain goods on board a steamer of the defendants, in packages which were proved to be insufficient.

These goods, in accordance with a condition to that effect contained in the bill of lading, were transhipped at Galle.

On their being landed in Bombay it was found that all the packages were broken, and in a much

more damaged condition than is usual in the case of such goods carried from Hong-Kong to Bombay in similar packages. The contents had, to a large extent, escaped from the packages, but were otherwise uninjured.

Held that, under a bill of lading in the above form, the *onus* of proving that the packages were insufficient, and that the injury which they had sustained was the consequence of such insufficiency, lay upon the defendants, but that when the result of the evidence on both sides was to leave it in doubt whether the injury was caused by negligence, or was the consequence of the insufficiency of the packages, the plaintiff was not entitled to recover. *The Peninsular and Oriental Steam Navigation Company* v. *Samaji Vishram*, 5 Bom. Rep., O. C., 113.

The plaintiffs agreed with the defendant K. M. to purchase and ship cotton on account of K. M., and to retain the mate's receipts for the cotton so shipped until the purchase-money should be paid by K. M.

Under this agreement the plaintiffs shipped 609 bales on board the *Teresa*. Before the greater part of the 609 bales had been shipped, and before paying for the same, K. M., without production of the mate's receipts, induced the master of the ship to sign bills of lading for the said 609 bales, and endorsed over the bills of lading for 310 of such bales to J. C. and C., *bonâ-fide* endorsees for value without notice.

In a contest between the plaintiffs, holders of the mate's receipts, and J. C. and Co., endorsees for value of the bills of lading of the said 310 bales, it was held that the plaintiffs were entitled to the possession of the 310 bales to the exclusion of J. C. and Co. *Rájárám Govindrám and Nárandás Mulchand* v. *M. B. Brown, M. Donald, and Karsandás Nádhavdás*, 7 Bom. Rep., O. C. J., 97.

Neither by the custom of the port of Bombay, nor by the provisions of the Customs Act, is the master of a ship bound to wait fifteen days before commencing to land his cargo, but within a reasonable time after the arrival of his ship—forty-eight hours in the case of a sailing vessel, and somewhat less in the case of a steamer—he is at liberty, if the consignee has not then sent boats for them, to land the goods at the Custom House bandar, or other place sanctioned by the Customs authorities, and such landing is not unlawful, or a breach of contract as carrier, on the part of the master.

The landing of goods under the above circumstances, and setting them apart on the Custom House bandar for the consignee, do not constitute a delivery of them to the consignee, but such goods, after being so landed, continue in the possession of the master as carrier.

Course of legislation with reference to the landing of goods on the Custom House bandar reviewed.

Whether (under the special circumstances of this case stated in the text) the goods when so landed remained in the custody of the master in his capacity of common carrier or as a warehouseman, *quære.*

The master of a vessel who receives goods on board under a bill of lading which exempts him from loss occasioned by the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatsoever nature or kind, and lawfully lands the goods at the port of discharge, is, so long as the goods remain in his custody after being so landed, protected from liability from loss of fire under the above exemption in his bill of lading. *The Hong-Kong and Shanghai Banking Corporation* v. *T. Baker*, 6 Bom. Rep. O. C. J., 71, and 7 Bom. Rep., O. C. J., 186.

Where a shipping order authorized the receipt of "300 bales of cotton not exceeding 52 cubic feet measurement at the screw house," the fair meaning of the contract was taken to be, considering that it was a mercantile contract, and looking at the surrounding circumstances, that the measurement by which the parties were to be bound was a measurement at the screw house; and that if the agent of the defendants was present there and passed the bales as of the proper measurement, or waived the right to measure and did not measure, the defendants could not afterwards insist upon a right to measure or go into an enquiry of what was the size of the bales. *Schillizie and Co.* v. *Cox, Steel, and Co.*, 17 S. W. R., C. R., 545.

2.—Ships: their Owners and Officers.

A Government brig employed in supplying pilots to vessels at the Sand Heads was arrested under proceeding *in rem*. *Held* that the brig by 21 and 22 Vic., c. 126, had become the property of the Crown, and, as such, was entitled to the same exemption from arrest as all other Queen's ships, and that the proceeding *in rem* was therefore illegal. *Brown* v. *Kedgree*, 1 Hyde's Rep., 253.

A party having two tugs, A. and B., undertakes to supply tugs to two vessels, P. and Q., in the order of their engagements as soon as the tugs are free. A. is first free, and tows P., which has the prior claim, to Diamond Harbour, where she becomes disabled. B. subsequently tows Q., and finding A. disabled at Diamond Harbour, leaves Q. and tows P. out to sea, returning subsequently for Q. *Held* that B. was not justified in leaving Q., but that she ought to have towed her out to sea without interruption. *Nowrjee Nusserwanjee and others* v. *Johannes and others*, 1 Hyde's Rep., 293.

The High Court has no power in its Vice-Admiralty jurisdiction to arrest a British-owned ship for repairs. *Howrah Docking Co., Limited*, v. *The "Jean Louis,"* Cor. Rep., 113; 2 Hyde's Rep., 255.

In an action for breach of contract in not shipping certain goods, the defendants pleaded the unseaworthiness of the vessel. It was found that the ship was unseaworthy at the time of sailing, and that the defendants had placed part of the goods on board. *Held* that it is a condition precedent that a vessel shall be in a proper state to take the goods on board for the purpose of the particular voyage; or in such a state that she may be made fit for the voyage with the goods on board, without such a delay as to frustrate the object of the merchant in shipping his goods. *Held* that the putting part of the goods on board, without knowledge of the unseaworthiness of the vessel, was not a waiver of the performance of the condition.

Semble,—Unseaworthiness at the time of sailing is not a breach of the condition. *Turner, Morrison, and others* v. *Ralli and Mavrojani*, 2 B. L. R., O. C., 127.

It appeared on evidence that a ship was not by the repairs done to her put in a better condition than she had been in before sustaining the damage which constituted the partial loss.

Held that the rule by which a deduction of one-third new for old is calculated in favour of the insurers who pay for the repairs did not apply. *Hadjee Seedich Ghosaul* v. *Apcar*, Bourke's Rep., 418.

In an action for repairs, where the ship had been lost, the Court granted an order for personal arrest of the defendant, the master and part owner, under Section 80 of Act VIII of 1859. *Charriol* v. *Courtois*, Cor. Rep., 123.

The authority of the captain of a ship to bind her owners for repairs, and anything incidental thereto, can only exist by reason of his being their special agent for the purpose, which he will be presumed to be only in particular cases of necessity. *James Bayley and others* v. *Taraknath Poramanic*, Bourke's Rep., O. C., 263.

Where a servant in the course of his employment, and in doing what he believed to be for the interests of his master, acts carelessly, recklessly, wantonly, or improperly, the master is liable. But where the act of the servant is done by him to forward some purpose of his own, the master would not be responsible.

The master, not the owners, of a merchant ship is primarily responsible for damage done in the course of his employment by one of his subordinate officers or crew to the person who is injured. *Anonymous*, Bourke's Rep., A. O. C., 144.

Where the captain of a ship consents to the discharge of a seaman, who also desired to be discharged, the shipping master has no discretion in the matter, but is bound to sanction the discharge of the seaman under the provisions of the Merchant Shipping Acts of 1854 and 1862, and the Regulations of the Board of Trade. *R.* v. *The Shipping Master of Calcutta*, 1 Ind. Jur., N. S., 371.

A boat which S. let to G. A. & Co., for unloading the ship B., was lost in consequence of the negligence of the mate. S. sued the captain for the damage sustained, and the lower Court dismissed the suit with costs, on the ground that G. A. & Co., the ship's agents who had hired the boat, and not the captain, were liable. Judgment reversed in appeal without costs; respondent to pay costs of the former trial.

Held that the captain was not absolved from liability because the injury was caused by the negligence of the crew, although they acted contrary to his orders.

That it was the duty of the captain to deliver the cargo to the consignees, and the loading of the cargo-boats is a part of that duty.

That the fact of the owners of the ship having agents in Calcutta does not alter the relations between the captain and the public. *Sutherland and others* v. *Shaw*, Bourke's Rep., A. O. C., 92.

The defendant being indebted to the plaintiff in the sum of Rs. 574-4-0, the amount of the plaintiff's bill against the ship *Campta*, of which the defendant was master, they both went to the office of the ship's dubash in Bombay, where the defendant signed the bill as correct, and ordered the dubash to pay the amount. The dubash gave the plaintiff Rs. 500 in cash, saying he would pay the balance next day. The plaintiff said he would prefer a receipt for his bill, and returned the Rs. 500. An acknowledgment was then given to him by which the dubash promised to pay the bill for Rs. 574-5-0 immediately on the money being received from Mr. S. On the day following the plaintiff took out a summons in the Small Cause. Court against the defendant, whom he arrested, on making an affidavit that he was about to leave Bombay; and the Court held that there was no valid substitution of the liability of any person of funds in place of the original liability of the defendant, and gave judgment for the plaintiff for Rs. 574-5-0, and costs, which judgment as to the principal sum was affirmed by the High Court, but costs on the sum of Rs. 500, originally paid to and returned by the plaintiff were disallowed. *Allárakbiá Ali* v. *Greael*, 3 Bom. Rep., O. C., 150.

The Government may prohibit its pilots from allowing any vessels under their pilotage charge to be taken in tow of a steamer, the owners of which will only render their services on exorbitant terms. *Thomas Eales Rogers* v. *Rajendro Dutt*, 2 W. R., P. C., 51.

The local tribunal in India, appointed under Sections 201 and 202 of Act I of 1859, can suspend or cancel the British certificate of a master or mate, and for that purpose its report need not be confirmed by the local Government. *In the matter of British Steamship*, 1 Mad. Rep., O. C., 270.

The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (No. I of 1859). *William Martin Evans and others, prisoners*, 2 Mad. Rep., Cr., 473.

A., the captain of a man-of-war, gave written instructions to B., his lieutenant, concerning a certain ship which was stranded. The official instructions contained the following passage: "You will in all emergencies act as your discretion and judgment direct." At the same time A. sent a demi-official letter to B., in which, after several directions having reference to the disposal of the cargo, he added, "after getting all you can, I should think that the wreck ought to be burnt; but all is left to your discretion and judgment." In pursuance of these orders the wreck was burnt without the consent of the owner. A. subsequently ratified the act of his subordinate.

Held, first, that A., by the expressions used in the demi-official letter, rendered himself liable as principal; and second, that B., as the agent directly concerned in causing the burning of the ship, was liable jointly with A. to the owner for the damage occasioned thereby. *Hadjee Abdoola Bin Sheikh Ally* v. *J. Stephens and E. Peevor*, 2 Ind. Jur., O. S., 17.

The taking of a steam-vessel in a trial trip from Mazagan to the sea and back again is a moving of such vessel within the meaning of Section 12 of Act XXII of 1855. For such a trip, therefore, the employment of a pilot is compulsory.

Where the employment of a pilot is compulsory on board a vessel, and such pilot being on board, an accident happens through negligence in the management of the vessel, it lies upon the owners, in order to exempt themselves from liability, to show that the negligence causing the accident was that of the pilot. If such negligence is partly that

of the master or crew and partly that of the pilot, the owners are not exempted from liability.

If it be proved on the part of the owners that the pilot was in fault, and there is no sufficient proof that the master or crew were also in fault, in any particular which contributed, or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them. *Mahomed Yusuf* v. *Peninsular and Oriental Steam Navigation Company*, 6 Bom. Rep., O. C. J., 98.

The *Persia*, on a return voyage from Jedda to Singapore, was driven into Bombay harbour through stress of weather. The owner, resident at Singapore, though frequently applied to, omitted to furnish funds to repair her, or to pay the wages of the mariners; and the master being unable to raise funds for these purposes on the credit of the ship or owner, on the application of the mariners the ship was, in order to levy their wages, sold by the Magistrate under the provisions of Sections 55 and 56 of Act I of 1859.

The master, who had been engaged at Singapore, then brought a suit on the Admiralty side of the High Court, to recover out of the surplus proceeds of the ship his wages up to the time when he could return to Singapore, and his passage money to that port.

Held that he was entitled to recover such wages and passage money. *In re the Persia*, 6 Bom. Rep., O. C. J., 138.

Rules of Bombay harbour with regard to the showing of lights by vessels in the harbour considered.

Independently of special regulation or legislation, there is no general obligation by maritime law on sailing vessels, either under way or at anchor, to carry a light throughout the night, although, for the sake of avoiding a misfortune, it may under particular circumstances become their duty to carry or show a light.

Although that is so, yet the Court will go some way to treat the dark boat as the wrong-doer; and if a vessel be either under way or at anchor at night in a channel, fair way, or ordinary track or path of other vessels, she is bound by general maritime law either to carry or show a light in order to indicate her position when other vessels are approaching her, and in sufficient time to enable them to avoid her. *Muhammad Yusuf* v. *Peninsular and Oriental Steam Navigation Company*, 6 Bom. Rep., O. C. J., 98.

The shipping master of Bombay has a discretion vested in him of refusing to sanction the discharge of a seaman shipped from a foreign port whose articles have not expired, though the seaman consents to such discharge. *In re George Lewis*, 6 Bom. Rep., O. C. J., 42.

Service of a summons on an agent to whom a ship is consigned is good service on the owner in respect of matters connected with such ship. *Rajárain Gollindrám et al.* v. *M. R. Brown et al.*, O. C. J., 97.

A carrier by sea is obliged to make an actual delivery of goods carried by him to the consignee, but such *primâ-facie* obligation may be affected by the custom of the port where the goods are to be delivered. *Hong Kong and Shanghai Banking Corporation* v. *J. Baker*, 6 Bom. Rep., O. C. J., 71.

Applying the maxim "omnia præsumuntur contra spoliatorem," the High Court held that, where a vessel was seized on suspicion of having a greater quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and with the assistance of the agent of the owner, threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit.

Where, under a permit to pass a certain number of maunds of salt on which duty has been paid, an amount in excess of each number is removed, the whole of such salt must be considered as removed contrary to the provisions of the Salt Acts (Act XXVII of 1837, and Act XXXI of 1850), and the whole of such salt, and not merely the excess, is, under these Acts, liable to confiscation. Interest should not be awarded on unliquidated damages. *Frámji Hormasji* v. *The Commissioner and Deputy Commissioner of Custom*, 7 Bom. Rep., A. C. J., 89.

Where defendant had been plaintiff's servant in charge of plaintiff's shop, on the understanding that he was to be remunerated by a small share of the profits in lieu of fixed wages, a suit to recover the balance after deduction of such remuneration was held to be a suit on a demand cognizable by a Small Cause Court, and not for balance of partnership account. *Ram Kanoye Shaha* v. *Bykantnath Shaha*, 15 S. W. R., C. R., 89.

The Statute 7 Geo. I., Chapter 21, Section 2 (which declared void all contracts by way of bottomry made by any subject of his Majesty on any ship in the service of foreigners bound or designed to trade to the East, and all contracts for loading or supplying such ships with goods, &c., or with any provisions, stores, or necessaries, &c.) is repealed by implication.

The Statute 3 and 4 Vict., Chapter 65, Section 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessaries supplied to foreign ships, that Statute not extending to India.

The Statute 24 Vict., Chapter 10, (Admiralty Act of 1860) does not extend to India.

The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above Statutes. The extent and nature of that jurisdiction considered and explained.

When a suit is brought by material men for necessaries supplied to a foreign ship against the surplus proceeds of such ship lying in the registry of the Court, and there is no opposition on the part of the owners of these proceeds, the Court has a discretionary power to allow the claim of the material men to be paid out of such unclaimed proceeds. *The Proceeds of the Asia Hormasji and Ukarji*, 5 Bom. Rep., O. C., 164.

3.—Transfer of Ships and Bottomry.

A., not a British subject, contracted with B., a British subject, for the purchase of a ship which was registered in the port of Calcutta in the name of C. (also a British subject). A. and B. entered

into the contract as if both had been British subjects. *Held* that, on the evidence, the parties contracted with reference to the Merchant Shipping Act, and that the intention was that a title under that Act should be given. *Held* also that, although it turned out that A.'s nationality prevented the possibility of his being registered as owner, this did not affect the liability taken upon himself by B. to have himself put on the register as owner, or his liability to put A. in a position to have a change of ownership noted in the register under Section 53 of the Merchant Shipping Act.

Held further that B., not having had himself put on the register as owner, and not having put A. in a position to have a charge of ownership noted under Section 53, and B. having declined to take any further steps towards attaining either of these objects, A. was entitled, although he had got possession of the ship, to rescind the contract, and to recover back a portion of the purchase-money which he had paid, and also to recover damages for the breach of contract. The Calcutta Court of Small Causes has power to seize and sell a vessel in execution of a decree of that Court, and the bailiff who sells the vessel is the person who ought to execute the bill of sale to the purchaser.

A British ship having, in execution of a decree of the Calcutta Court of Small Causes, been sold to a person qualified to be the owner of a British ship,—*Held* that it was necessary that the transfer to the purchaser should be by bill of sale as prescribed in Section 55 of the Merchant Shipping Act, and the mere sale and delivery to the purchaser did not pass a title to him. *Esau Ahmed and others* v. *Jassin Binsaff*, 2 Ind. Jur., N. S., 251.

The transfer of a ship should be in the form, or as near the form as may be, laid down by the Merchant Shipping Act; therefore where a ship sold in execution was transferred by the Clerk of the Court, in a form usual in sales in execution, but quite irregular, having reference to the Merchant Shipping Acts, the Court refused a *mandamus* to order the Registrar to register the transfer.

Quære,—Whether a ship can be sold in execution of a decree of the Calcutta Small Cause Court, and, *quære*, whether the Clerk of the Small Cause Court can execute a transfer of a ship, supposing she is saleable, in execution of that Court's decree. *In the matter of the ship "Shah Callander,"* 1 Ind. Jur., N. S., 263.

A ship-owner having mortgaged his ship has still an interest in her seizable in attachment under the Civil Procedure Code. An attachment on a vessel in respect of the mortgagor's right and interest does not affect the validity of a sale under a prior mortgage. *Auhin, Ah Singh, Hadjee Abdool Rohoman, and Hadjee Solomon Molodina* v. *Ahmed Mahomed*, 1 Ind. Jur., N. S., 241.

The defendants, M. Gregory and Co., entered into a contract of guarantee with the plaintiffs, P. and C. Nusserwanjee, Cama, and Co., which was contained in the following letter: "In consideration of your paying us on account of Abraham Cohen, Esq., the owner of the ship *Caroline*, chartered by you to load at Rangoon with timber, as per charter-party executed by him and your good selves, dated this day, the sum of Rs. 21,500, to be paid in advance and in part freights of the said vessel payable as follows: *viz.*, Rs. 18,000 at Calcutta, and Rs. 3,500 at Bombay for the disbursement of the vessel there;—we hereby guarantee and engage to hold you harmless against all losses, damages, and consequences arising from the non-performance of any of the acts, covenants, or agreements to be done, kept, observed, or performed by or on the part of the said Abraham Cohen in terms of the said charter-party; and we further agree to allow you interest at the rate of 10 per cent. per annum, to be charged by you for the said advance in the event of its being refunded by us. We also agree to see the voyage performed by the said vessel in full terms and conditions of the said charter-party this day executed by Abraham Cohen, Esq., in your favour." To this the plaintiffs replied on the same day: "In consideration of your having guaranteed to keep us harmless for the advance made by us to Mr. Abraham Cohen, owner of the ship *Caroline*, against freight of that vessel, to be earned by her on the anticipated voyage from Rangoon to Bombay, with a cargo of timber, as per charter-party executed this day between ourselves and the said Abraham Cohen, as per your letter of guarantee dated this day, we hereby agree and engage ourselves to make you over a mortgage bond on the British barque *Moulmein* of 305 tons, executed in Moulmein by the said Mr. Abraham Cohen, in favour of Mr. Nanabhoy Burjorjee, of Rangoon, for certain debts due to him by the said Abraham Cohen, duly transferred to you free from Mr. Nanabhoy's claim on the said barque *Moulmein*."

The charter-party was of even date, and was made by Cohen on the one part and the plaintiffs on the other part, and it was thereby agreed that the ship *Caroline*, "being tight, strong, and staunch, and in every way fitted for the voyage, and now at Bombay, shall with all convenient despatch proceed to the port of Rangoon in British Burmah, or so near thereto as she may safely get, and there load from the charterer's agents or their order a full and complete cargo of timber," &c., "and being so loaded shall proceed to Bombay," &c., "and deliver the same on being paid freight in the manner below at and after the rate," &c., "the act of God, &c., excepted." The freight to be paid as follows: "Rs. 18,000 in Calcutta on the signing of this charter-party, Rs. 3,500 also in advance at Bombay towards defraying the disbursements of the vessel at that port, and the balance to be paid by transfer on account and to credit of Mr. Nanabhoy Burjorjee, of Rangoon, for money due and owing to him by the said Abraham Cohen," &c. "And the said Abraham Cohen hereby binds himself," &c., "that the said vessel *Caroline* shall be ready to leave Bombay without any delay immediately upon the disbursements being satisfied; and in case she cannot leave the said port of Bombay within such time as shall be considered reasonable, or is otherwise detained either at Bombay aforesaid or at Rangoon, except for or by such causes as the act of God," &c., "then and in such case this charter-party shall be considered null and void, and the said charterers shall be entitled to recover from the said Abraham Cohen, his heirs and representatives, the aforesaid sum of Rs. 21,500, together with interest thereon, calculated from the date hereof at the rate of 10 per cent. per annum. The charterers to have the option of cancelling their charter-party in the event of the vessel arriving at

Rangoon in a disabled state, and the time for repairs to make the ship seaworthy in every respect exceeding twenty-five days. Penalty for non-performance of this agreement, the estimated amount of freight."

The plaintiffs were acting on behalf of Nanabhoy Burjorjee, and the defendants on behalf of Cohen, during the whole of this negotiation, and Cohen was at the time largely indebted to Nanabhoy. The ship *Caroline* turned out to be unseaworthy, and the charter-party was not carried out.

In an action by the plaintiffs against the defendants on the guarantee,—*Held* that the covenant to transfer the mortgage of the *Moulmein* was independent, and not a condition precedent to the plaintiff's right of action.

Held also on the facts that the representation in the charter-party that the *Caroline* was, while lying at Bombay, "tight, strong, and staunch," &c., amounted to a contract that the ship should be so, and the defendants' guarantee covered it.

Held also that the defendants not being parties to the charter-party, and not having bound themselves to any assessment of damages, were not called on to pay the penalty specified in the last clause of the charter-party, but that the damages against them must be the actual damages which the plaintiffs on Nanabhoy's behalf suffered in consequence of Cohen's breach of contract, that is, Rs. 21,500 paid under the contract, and the balance of freight that would have gone to reduce Nanabhoy's debt and interest on both sums from the date of the contract. The plaintiff, however, claimed a less sum than these damages would amount to, and therefore the plaintiff's claim was decreed in full. *Prestomjee Dhunjeebhoy and others* v. *Gregory*, 1 Ind. Jur., N. S., 412.

A letter, purporting to create a charge on a ship, was not registered as a mortgage under the Merchant Shipping Act. The ship not having a British register, it was held that the letter created a valid charge on the ship. A ship in the river cannot be said to be delivered over to the possession of those who execute repairs; consequently no lien arose for repairs done.

Secus,—If the ship had been under repair in a dock belonging to the plaintiffs. *Shib Chunder Doss* v. *John Cochrane*, Bourke's Rep., O. C., 388.

An attachment on behalf of the rights of the mortgagor of a ship will not debar the mortgagee from his power of sale under the Merchant Shipping Act. *Ahmed Mahomed* v. *Auhin*, 1 Ind. Jur., N. S., 95.

In construing powers of attorney, the special purpose for which the power is given is first to be regarded, and the most general words following the declaration of that special purpose will be construed to be merely all such powers as are needed for its effectuation.

Where the owner of a ship by power of attorney constituted the master his agent, and authorized him to raise or borrow upon the ship's papers such sums of money as he should deem necessary for the repair of the ship, "and to act in the premises as fully and effectually to all intents and purposes as I might or could do if personally present." In a suit for the amount of a mortgage bond upon the ship executed by the master,—*Held* that the master had no authority to sell or mortgage the ship. *Sansone Ezekiel Judha and others* v. *Addi Raja Queen Bibi*, 2 Mad. Rep., 177.

A ship was chartered for a voyage from Calcutta to Jedda and back. While at Jedda, the master found it necessary to borrow money for the wages of the crew and other purposes; and with the consent of the owner, tenders were invited by advertisement for a sum for which a bottomry-bond was to be given. Several tenders were made, and one by the charterer of the ship was accepted. A bottomry-bond was executed by the master, with the consent of the owner, in which was included the expense of certain repairs which had been found necessary at an intermediate port on the voyage from Calcutta, and for which the master had made himself liable. By the bond the master bound himself, his heirs, executors, and administrators for the payment of the sum named therein, and part of the consideration was expressed to be the payment of the debt which the master had incurred at the intermediate port. On arriving in the Hoogly, the ship was taken in charge by a pilot, under whose advice the master engaged a steamer to tow her to Calcutta. He was sued in Calcutta for the hire of the steamer, and had to pay the claim. When the ship arrived in Calcutta, the bond-holder obtained a decree on his bond, and had the ship arrested and sold; but on the application of the master, who had put in a claim for wages, the Court ordered that the proceeds should remain in Court, pending the consideration of the master's claim. In a suit by the master to recover the balance of wages due to him as master of the ship, and for the expense of the steamer which towed the ship up the river to Calcutta,—

Held, the towage was a disbursement fairly made, and of which the bond-holder had the benefit; the master therefore had a lien on the ship for such disbursement.

Semble,—The master also had a lien for wages down to the time when he was duly discharged, and not merely down to the time of the arrival in port and arrest of the ship.

The master, however, having bound himself by the terms of the bond, was precluded thereby from setting up his lien against that of the bond-holder, to whom, on the face of the bond, he had constituted himself a debtor. 24 Vict., C. 10 (The Admiralty Act, 1861); and 26 Vict., C. 24.

The Vice-Admiralty Act, 1863, extends to India. The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act, 1861, or otherwise, any jurisdiction over claims for disbursements by the master. But after the passing of the Charter of 1865 the Vice-Admiralty Act, 1863, applied to the High Court, as being "a Vice-Admiralty Court established after the passing of that Act in a British possession." *Held*, therefore, that the High Court had jurisdiction, as a Vice-Admiralty Court, to entertain the claim of the master for wages and disbursements on account of the ship. *Re Portugal*, 6 B. L. R., 323.

The charterer of a ship advanced money to enable her to complete the voyage, and obtained as security a "bottomry bond" signed by both the master and owner. On the completion of the voyage the charterer got the ship arrested and sold, and the money was brought into Court. Before any order had been made for the payment

of the proceeds out of Court the master also had got the ship arrested at his suit for wages due, but no decree had been obtained. Subsequently the charterer, without notice to the master, obtained an order of Court for the payment of the proceeds of sale to satisfy his bottomry bond. Thereupon the master applied to restrain the charterer from taking the money out of Court until the claim for wages had been first satisfied. *Held* that the master had a lien on the proceeds for wages due to him at the time of the sale of the ship, prior to that of the bottomry bond-holder, and that he was entitled to have the proceeds retained in Court until the hearing of his claim. *In the matter of the ship "Portugal,"* 5 B. L. R., 258.

4.—INSURANCE.

The ship *Maharanee* was wrecked and abandoned with her cargo to the underwriters. Nine cases, part of the cargo, which with two others were separately insured, were recovered in good condition from the wreck. Of this all parties had notice. The wreck and cargo were subsequently sold by the ship's agents, who were also agents for the underwriters, for the benefit of all concerned, the cargo being described generally. *Held* that the nine cases did not pass to the purchaser at the sale, as they could not be legally abandoned; and on the facts, that the defendants were not liable as having induced the plaintiff to believe that they intended to sell more than what was ceded to the underwriters by the abandonment. *Mitchell* v. *Gladstone and others*, 1 Ind. Jur., N. S., 406.

The captain of the French ship C., which had been wrecked, abandoned her to the French consul for the benefit of all concerned. The owners assented to this arrangement, but afterwards sued the consul, as their agent, for the sum realized by the sale of the ship. Suit dismissed.

Held that when the owners of a foreign ship abandon her to their consul for the benefit of all concerned, they cannot afterwards sue him as their agent.

That such abandonment by the captain is valid if the owners afterwards assent thereto.

Semble,—That the owners of a foreign ship, when abandoning to their consul, cannot legally enter into a private agreement with him with reference to the funds realized by the sale of the ship. *Emile Robert and others* v. *Auguste Jaquehim*, Bourke's Rep., O. C., 112.

A policy was effected upon a quantity of piece goods, part in bales and part in cases. The bales and cases were separately enumerated, and separately valued in the body of the policy, but the gross total was made up. *Held* that the words "free from particular average," following directly upon the gross total, must be taken to apply to the whole value of both lots, and not separately to the bales and separately to the cases. *Beeroopoo Setty* v. *Hursmell Runohend*, 2 Hyde's Rep., 74.

The rule allowing one-third "new for old" in cases of insurances on ships is not inflexible; therefore where the ship insured was not worth repairing, and was not in fact repaired, it was *held* that one-third "new for old" ought not to be allowed. *Apcar and others* v. *Howah Bye*, 1 Ind. Jur., N. S., 237.

An insurer relying on the certificate of a competent surveyor that the ship is seaworthy is entitled to recover, in the event of the ship's loss, notwithstanding it be shown that she was unseaworthy at the time the policy attached. *Hossani Ibrahim Bin Johur* v. *Mutty Lall*, Cor. Rep., 5; S. C., 2 Hyde's Rep., 107.

A. sued B. and Co. on a policy of insurance on the ship *Alaye*, from noon of the 24th November, 1865, to noon of the 24th February, 1866, "at and from and to all ports and places." The words "and to all ports and places" were written, the rest being printed. B. and Co. in their written statement admitted the policy, but set up the following exception: "All risks or losses arising from detention, &c., also from storms and gales of wind, or other perils of the sea, while touching or trading on the coast of Coromandel from Point Palmyras to Ceylon, and within soundings between the 15th October and the 15th December inclusive, are hereby accepted, which risks or losses are to be borne by the assured, and not by the assurers, notwithstanding anything to the contrary hereinbefore expressed."

Held, firstly, it lay upon A. to prove that the loss did not fall within the exception.

Held, secondly, that the meaning of the policy was that the ship was to be at liberty to proceed to or stay at any port she pleased, but that the insurers were not liable for any loss arising from perils of the sea in which the three following events were combined: first, that she was at the time touching or trading on the coast of Coromandel; secondly, that she was at the time within soundings; thirdly, that the loss happened between the 15th October and 15th December.

Held, thirdly, upon the facts, the loss was within the policy, notwithstanding the exception. *Aga Syud Saduck* v. *Hajee Jackariah Mahomed and others*, 2 Ind. Jur., N. S., 308.

In a suit on a policy of insurance as for a total loss where goods were shipped for the voyage from Surat to Kurrachee, and the vessel, having sprung a leak, was forced to put into Dwarka, at which place the goods (with exception of some iron thrown overboard during the voyage) were landed and placed in a warehouse, from which a portion (some castor oil and jagari) was carried off by robbers; and the residue of the cargo, consisting principally of cotton seeds which were dried and cleaned, was sold; and the proceeds, after deducting freight expenses, remained in the hands of mahajans, to be paid to whomsoever might be entitled to them,—

Held, first, that the loss by robbers, although not expressly mentioned in the policy, was one of the perils insured against; second, that the Judge below being erroneously of opinion that when the goods were once landed damaged there was nothing to do but to sell everything for the benefit of underwriters, and having consequently recorded no finding on the material question whether the whole or any part of the cargo was practically capable of being sent in a marketable state to the port of destination, the suit must be remanded, in order that the Judge may determine whether there was a constructive total loss which entitled the plaintiffs to abandon; and if not, that he may award such a proportion of the value of the iron and of the jagari and oil which were actually lost, and of the amount of the deterioration in the cotton seeds and

other articles, as the sum insured by the defendant bore to the whole sum, taking into account also in that case what proportion the sum insured bore to the actual value of the goods. *Dwarkadas Labebhai* v. *Adam Ali Sultan Ali*, 3 Bom. Rep., A. C. J., 1.

In this suit, which was instituted to recover the amount of insurance on a ship which had been abandoned on an alleged constructive total loss, it appeared that the ship had sustained severe injury from foul weather, but that her value, after being repaired, would exceed the cost of repairing her by about 3,000 dollars. The suit was dismissed.

Held that, in order to establish a constructive total loss, there must have been a threatened destruction, or absolute temporary privation, of the insurer's ownership, or an alienation of his property in the thing insured. *Gahan* v. *Owen*, Bourke's Rep., O. C., 17; 1 Cor. Rep., 149.

M., M., and Co. shipped aboard the *Barmeli* goods, which were insured under general average. The ship having been wrecked, part of her cargo, including some of M., M., and Co.'s, was jettisoned and forwarded to its destination. M., M., and Co. sued on a constructive total loss, but their plaint laid no claim for jettison. Suit dismissed.

Held that after the defendant's case was opened the plaintiff could not amend by claiming upon the jettison, although jettison is a general average loss. That some of the goods having been saved, there was not a constructive total loss. *W. Mackinnon and others* v. *H. Dundas*, Bourke's Rep., O. C., 228.

Where an insurance office is sued on a constructive total loss, there must be a distinct and decided abandonment of all right on the part of the insured. The notice of abandonment should be immediate. The question always is whether the delay in giving notice is reasonable, with reference to the particular circumstances and the owner's means of ascertaining the position of the ship; where the suit is for a total loss, the judgment may be as for an average loss. *Hadjee Seedick Dhoosal* v. *A. G. Apcar*, Bourke's Rep., O. C., 391.

Where a policy has been effected on a gross quantity of sugar, the fact that that sugar has been described in the margin of the policy as being in different lots containing different species of sugar, and being separately priced, does not raise any presumption that a separate insurance upon each separate species of sugar was intended by a policyholder. *Hadjee Joosoop* v. *Vardon*, 1 Hyde's Rep., 198.

In an action on a policy of insurance to recover the value of a portion of the goods insured lost by jettison, the protest of the nacoda and the Custom House vouchers showing that, on the return of the ship to her port of sailing (being driven back by stress of weather), the goods alleged to have been lost were not on board her, are not sufficient as even *primâ-facie* proof of the loss. *Rumbai Girdhubai* v. *Ali Akbar Kajrani*, 1 Bom. Rep., 6.

A cargo, consisting of railway sleepers, was insured by the plaintiffs in the ship *Heimdhal* from Geography Bay to Calcutta, and expressed in the policy to be warranted from all risks, except total loss. In proceeding up the river Hoogly in charge of a pilot, on the 30th April, the vessel grounded on the Rungafulla Sand, heeled over, and lay imbedded in the sand. Endeavours were made unsuccessfully to get her off. On 5th May, Lloyd's surveyor inspected the vessel, and reported that, considering her position, the state of the tide at that season, and the expense of getting her off, it was unadvisable to go to further expense in doing so; and that the cost of repairs would in all probability amount to much more than the value of the ship when repaired. Some of the sleepers had been then jettisoned, and the surveyor recommended that the vessel and cargo should be abandoned; and sold by public auction to the highest bidder. Attempts were made, but unsuccessfully, to get some of the cargo off, and the sleepers were of such a quality that they would not float. The consignees accordingly caused the ship and cargo to be sold by public auction in Calcutta on 12th May. No notice of abandonment was given. The sleepers realized the sum of Rs. 450. The purchaser hired boats and began unloading the ship; he unloaded 78 sleepers in all. On 14th May the ship floated off and came up the river, with the rest of the cargo in safety, proving not to be so much damaged as was supposed. *Held* that there was not such a total loss of the cargo as entitled the plaintiffs to recover as for a total loss without giving notice of abandonment. *East India Railway Company* v. *Australasian Insurance Company*, 6 B. L. R., 218.

A cargo consisting of railway sleepers was consigned to, and insured by, the plaintiff in the ship *Heimdhal* from Geography Bay to Calcutta. The sleepers were valued at £2,230 in the policy, which was against total loss only. In proceeding up the river Hoogly, in charge of a pilot, on 30th April, the vessel grounded on the Rungafulla Sands, heeled over, and lay imbedded in the sand. Endeavours were made to get her off, but without success. On May 5th Lloyd's surveyor inspected the vessel, and made a report in which he recommended that the ship and cargo should be abandoned, and sold for the benefit of all concerned. On 7th May the ship and cargo were accordingly advertised for sale on 12th May, on which day the sale took place, and the cargo was purchased for Rs. 450. No notice of abandonment was given. A small portion of the cargo was removed by the purchaser on the 13th May, and on the 14th May, on which day there was a very high tide, the vessel floated, and on the 18th May, with the remainder of the cargo on board, arrived at and was anchored off Armenian ghaut, Calcutta. In an action on the policy by the plaintiffs, *Held*, on appeal,—

Per Phear and Macpherson, JJ.—The plaintiffs failed to prove any necessity for the sale of the ship, or that it was impracticable to convey the sleepers, or a material portion of them, to their destination. But if the insured were legally justified in abandoning and claiming as for a total loss, notice of abandonment ought to have been given. The condition and behaviour of the ship when she got off the shoal should be looked at as indicating her real state and strength while she was on it.

Per Paul, J.—Considering upon the evidence of the circumstances at the time of the sale that the ship was not worth repairing, and that she was expected to sink at any time, the sale of her was justifiable. The sale of the cargo was also justifiable; it could not have been carried, in a mercantile sense, on shore, much less to its destination. The sale

caused a total loss, and there was no need for notice of abandonment. *East Indian Railway Co.* v. *Australasian Insurance Co.*, 7 B. L. R., 347.

To prove the authority of an agent who underwrites a policy of insurance, it is not necessary, in order to charge his principal, that the instrument appointing such agent should be produced, if it is shown that he has been in the habit of underwriting policies for his principal, and that the latter has been in the habit of paying losses upon policies so subscribed.

Semble,—When at the close of the plaintiff's case the evidence adduced is not sufficient to connect the defendant with the instrument sued upon, the presiding Judge acts rightly in entering a decree for the defendant without hearing his evidence. *Multani Mulchaund Chutumal et al.* v. *Thakar Sundayi Naranji*, 7 Bom. Rep., O. J., 39.

5.—Lien.

M. chartered a ship to load a cargo at Cardiff, and proceed therewith to Madras, the freight to be paid in London on unloading and right delivery of the cargo; one-third by M.'s acceptance at three months from the sailing of the ship (the same to be returned if the cargo were not duly delivered), and the remainder by like bill at three months from the date of delivery in London of the certificate of right delivery of the cargo. The charter-party provided for payment of a commission on the contract, ship lost or not lost, that the £150 should be advanced in cash at the port of discharge on account of the freight against the captain's draft on M.

The cargo was loaded accordingly, a bill of lading was given for the same, and the ship sailed from Cardiff on the 8th October, 1863, M. having consigned the cargo to A. and Co., who carried on business at Madras. On the same day the owners drew a bill on M. at three months for £261 1*s.* 10*d.*, being one-third of the freight.

On the 10th October, 1863, the general agents in London of A. and Co. advanced to M. on A. and Co.'s account and out of their funds £700, received as security for such advance the bill of lading blank, and endorsed and forwarded the same bill to A. and Co.

On the 29th October, 1863, M. accepted the bill for £261 1*s.* 10*d.*; and in the following December he suspended payment, and the bill was protested.

On the 14th January, 1864, the ship arrived at Madras, and thereupon A. and Co., as holders of the bill of lading, applied for the delivery of the cargo, and offered to advance the £150 in cash pursuant to the charter-party, but the captain claimed to retain the cargo for the value of the dishonoured bill and the balance of freight due.

Held that the terms of the contract were at variance with the right of lien so claimed, and that it was not suspended by the bill, nor revived by the freighter's insolvency. *Arbuthnot and others* v. *Daigre*, 2 Mad. Rep., 88.

The master of a ship has by Statute (Act I of 1859, Section 58) a lien upon the ship for the recovery of wages due. *In the matter of Burge Ann*, 2 Hyde's Rep., 273.

The captain of a ship has no lien on the cargo in respect of a portion of the freight stipulated to be advanced, and advanced by bills afterwards dishonoured, nor in respect of a portion of the freight stipulated to be advanced at the port of discharge. A lien cannot arise in any case when the master has not a right to retain the goods till the freight is paid. Such advances are not freight, but advances to be made under discount, and upon the security of the captain's bill on the freighter.

The master has no lien at law or in equity in respect of breaches of covenants in the charter-party, other than those relating to the payment of freight for goods actually carried. *The Peninsular and Oriental Steam Navigation Company* v. *Small*, Bourke's Rep., O. C., 309.

A., the agent for a ship in port at Bombay, lent the master money on a bond, in the nature of a bottomry bond, which he obtained from the master under pressure of necessity. It appeared that A. at the time of the making of the bond had funds of his principal's in hand. *Held* that the master's lien for wages has priority over the bondholder. *In the matter of the "Good Success," Macqueen, master, promovent, Fuzzul Mahomed Essau and Co., intervenors*, 1 Ind. Jur., N. S., 303.

6.—Freight.

An action will lie for the recovery of the difference in the rate of exchange against the assignee of a shipping order under which part of the freight was to be paid on delivery at specified rates of exchange. *Gladstone* v. *Joakim*, Cor. Rep., 148.

Goods were shipped deliverable to the order of the shippers or their assigns. The bill of lading stated that "freight for said goods was to be paid as per charter-party, with average accustomed, reserving lien in full on cargo for full amount as stipulated therein." The charter-party showed "that H. and Co. undertook to supply a full cargo for the ship, and that R. H., agent for the ship, agreed with H. and Co. that the said ship should proceed to London dock, or any other suitable dock, for loading salt at party's option, or so near thereto as she can safely get, to be at all times afloat and in safety, and then load for the charterer's agent a full and complete cargo of salt, not exceeding what the master considers sufficient cargo, which the charterers engage to ship, not exceeding what she can reasonably carry with her stores, provision, and furniture, and being so loaded shall therewith proceed to Calcutta, or so near thereto as she may safely get, and there deliver as per bills of lading, and on being paid freight at the rate of twenty-three shillings per ton." The freight to be paid thus: "£500 by charterer's acceptance at two months on sailing, less 2½ per cent. insurance; or cash on sailing, less 5 per cent. interest and insurance, at charterer's option, and the balance in cash in delivery as master requires, at current rate of exchange; 2 per cent. commission to charterers in lieu of consignment."

Held that "a sum of money payable before the arrival of the ship at her port of discharge, and payable by the shippers of the goods at the port of shipment, is not freight in the strict legal acceptation of the term, with all the incidents of freight in giving the shipowner the right of lien, unless it is stipulated for." Here the owners had a lien upon the goods for freight, notwithstanding that the bill of exchange for £500 had been given. *Thomas* v. *Ogle*, Bourke's Rep., A. O. J., 100.

The plaintiff chartered a ship of which he was master to one C. H. C., of Calcutta, under a charter-party by which it was agreed that the ship (which was then at Melbourne) should proceed to certain ports and there load a cargo for Calcutta, "the cargo to be delivered to the charterer at Calcutta, on being paid freight at and after the rate of the lump sum of £1,150 for the full reach of the ship; the said freight to be paid on the unloading and right delivery of the cargo as customary, less any advances that may have been made." On the arrival of the ship at Calcutta C. H. C. requested the plaintiff to deliver the cargo to the defendants as his agents, which the plaintiff agreed to do on having payment of the freight guaranteed by the defendants. The defendants were *bonâ-fide* holders of the bills of ladlng which had been signed by the plaintiff in respect of the cargo. They sent to the agents of the plaintiff in Calcutta the following letter: "As it will be necessary for us for the protection of our interests to get delivery of the cargo, and as we do not care about further trouble in the matter, we agree to guarantee payment of the balance of freight due on the charter-party, less any claims for short delivery," &c. On unloading there was found to be a deficiency in quantity between the goods mentioned in the bills of lading and those actually shipped and delivered. *Held* that notwithstanding this the plaintiff was entitled to the whole of the freight specified in the charter-party, and was justified in keeping the cargo until the freight was paid. *J. S. Dods and others* v. *C. F. Stewart*, 8 B. L. R., 340; and 17 S. W. R., C. R., 340.

7.—Charter-Party.

The plaintiffs chartered a ship of the defendant, and by the charter-party it was stipulated that the said ship, being tight, staunch, and strong, should receive from the plaintiffs a full cargo of rice or grain, and being so loaded should therewith proceed to St. Denis, the freight to be paid there on right delivery of cargo. The penalty for non-performance of the charter-party was to be the estimated amount of freight. The plaintiffs began to load on May 3rd, and continued doing so until June 10th, having then shipped very nearly the full cargo; they then stopped loading in consequence of a notice from the defendants that the ship was leaking. In consequence of the leakage the cargo had to be shifted, and a portion of it, found to be damaged, had to be replaced after the leak was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay occurred in consequence of the leak, and the loading was not completed until the end of July. On May 28th, when the plaintiffs had loaded a portion of the cargo, and had obtained bills of lading, they drew a bill of exchange at sixty days for the value of the cargo covered by the bills of lading on their agent at St. Denis, which they sold to the Comptoir d'Escompte de Paris, hypothecating the cargo for the amount of their draft. Other similar drafts were subsequently drawn and sold. When the plaintiffs received notice of the leakage, they in anticipation of the delay which would occur in consequence, arranged with the Comptoir d'Escompte that the bills should not be forwarded forthwith, but should be held by the Comptoir d'Escompte, and renewed by the plaintiffs on the completion of the loading, the plaintiffs paying interest on the bills in the meantime at 9 per cent. per annum. On renewing the bills the plaintiffs, in consequence of the difference in the rate of exchange, were out of pocket Rs. 400. In an action against the owner for breach of the charter-party in not supplying a ship tight, staunch, and strong, as stipulated, the plaintiffs sought to recover, as damages arising out of such breach of the charter-party, the interest paid by them on the drafts in pursuance of their arrangement with the Comptoir d'Escompte, the sum they had to pay on renewing the bills, a further sum for interest on bills they could not negotiate in consequence of not being able to obtain bills of lading from the defendant, and the value of the stamps on the bills which had been cancelled in pursuance of the plaintiff's arrangement with the Comptoir d'Escompte. *Held* that such damages were too remote. *Robert and Charriol* v. *Issal*, 6 B. L. R., Ap., 20.

A charter-party made between the defendants (the owners of the *Seaforth*) and H. and C. (the freighters), provided that the owners should employ at the ports of discharge the consignee nominated by the freighters to transact the ship business there inwards and outwards on the customary terms, not exceeding 2½ per cent. on amount of freight payable inwards and 5 per cent. outwards.

H. and Co. nominated the plaintiffs to transact the ship's business in Bombay (a port of discharge) with the knowledge and consent of the master of the *Seaforth*, and the plaintiffs accepted and acted under such nomination.

The defendants refused to pay the plaintiffs' commission on the outward freight of the *Seaforth*, on the ground that, under the circumstances under which such freight was procured, the plaintiffs were not under the charter-party entitled to receive commission on it.

Held that the plaintiffs were sufficiently within the consideration of the charter-party to maintain a suit for the breach of such clauses of it as were inserted for their benefit.

Meaning of the mercantile expression of ship "going seeking" discussed. *Blackwall and Co.* v. *Jones and Co.*, 7 Bom. Rep., O. C. J., 144.

8.—Salvage.

Where a ship is in condition of actual peril, and the services of a tug are sought for, and directed to the purpose of releasing her from that condition, such services are salvage services. But where there is nothing in those services as regards risk or exertion or other conduct of the salvors to make them differ from ordinary towage services, their reward should be estimated as for towage with salvage liberality. *The "Alabama," Harrison, master*, 2 Ind. Jur., N. S., 139.

In estimating the value of salvage service, the Court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service, and also the degree of danger from which the property is rescued and the value of the property so rescued.

Steamboats are entitled to a higher rate of reward

than other vessels by reason of the promptness with which they are enabled to render services in such cases. *The "Lady Joceleyn,"* 2 Mad. Rep., 355.

A dinghee laden with gilders valued at Rs. 20,000 was being propelled across the river when a squall coming on and the dinghee being in some danger, the gilders were taken on board a flat for safety, and kept there till the squall subsided. *Held* that the owners of the flat had no claim for salvage, and that 150 rupees was a fair remuneration for services rendered. *Urna Churn Chetty* v. *W. Gordon*, 1 Hyde's Rep., 212.

9.—Collision.

The owners of the ship A. having obtained a decree against the T. for damages occasioned by collision, the T. appealed on the grounds, 1st, that she was not liable, as she had a harbour-master on board, who was in charge of the ship at the time of the collision; 2nd, that the mere fact of her cable having some hours previously jammed, and thereby rendered it necessary for her to take up a comparatively unsafe position, her being in which was the immediate cause of the accident, did not render her liable; and, 3rd, the A. could not recover damages, as she was bound to be ready at her moorings in case of any emergency, and might have avoided the collision if she had been so. Appeal dismissed without costs.

Held that an accident to the gear of a ship does not of itself alone render her liable for damages for a collision of which it is a remote occasion.

That a ship at anchor in the port should keep a look-out, and be ready to take all reasonable means for her own safety in an emergency. *The "Thaletta," "Anne,"* Bourke's Rep., A. O. C., 87.

The ship *Thames* was lying a mere hulk, waiting for repair, when a bore drifted her stern foremost up the river, and she came into collision with another ship. No negligence was proved against the master, and the accident was held to be inevitable, and no costs were decreed on either side. *Hadjee Abdoola Rohoman Moosan* v. *The Owners of the ship "Thames,"* Bourke's Rep., O. A. J.. 21.

The ship T. having got adrift in a dark night, in consequence of a collision, the harbour-master tried to anchor her, but failing to, as her cable jammed, finally brought her up inside the ship A., which was moored off the Howrah side of the Hooghly, this being the only berth the T. could then secure. The next flood swung both ships, and the T. fouled the A., damaging her, and causing her to part her cables, in consequence of which she suffered further damage from subsequent collisions. The owners of the A. sued the T. for the whole damage done. The defence was that the promovents, by adopting certain precautions, might have prevented the accident; that the T. being in charge of the port authorities was not liable, and that no care or skill on her part could have prevented the accident.

The T. did not allege a liability of any of the vessels subsequently collided with. Judgment was given for the plaintiffs for the whole amount of damages sued for.

Held that liability for damages occasioned by collision rests, *primâ-facie*, on the colliding vessel. That a ship in port is bound to be prepared for such exigencies only as might be expected to arise from the circumstances she knew to surround her, that is, a ship is protected by the port rules from liability for damage only when it is due to the acts or omissions of the officials in charge of her. *Held* also that the ship is liable for all the consequences occasioned by an accident that results from any defect in her equipment, or want of care or skill of her crew, &c. *The "Thaletta," William Harvey, master*, Bourke's Rep., Ad., 1.

The ship H. in charge of a pilot (acting as harbour-master) when proceeding across the bow of the ship I. S., which was at anchor, to take up a clear mooring, came into collision with and slightly damaged her, and this suit was for the damage so occasioned. Both sides relied on Act XXII of 1855 and the Port Rules of 1856, the plaintiff contending that the officer in charge was not such officer as the said Act and Rules referred to; and the defendant that he was. The suit was dismissed with costs.

Held that a ship is *primâ-facie* liable for damages occasioned by a collision resulting from an error in judgment of the officer in charge of her. *Held* also that a vessel is exempted from liability for the fault of a pilot in charge of her,—first, where a master is authorized to employ a pilot, and is exempted from responsibility if he elects to do so; and, secondly, where the employment of a pilot is compulsory, and the owners of the vessel so employing him are relieved from responsibility for his misconduct. That the legislation regarding the employment of pilots and other officers in the port of Calcutta is contained in Act XXII of 1855 and the Port Rules of 1856. That where no special requisition is made by the port authorities, under Rules 2 and 7, a ship may move at her discretion in the port. That it is unlawful, under Section 12 of Act XXII of 1855, to moor a vessel in the port without having a port officer on board to take command of the ship. *The "Hanover," James Browne, master*, Bourke's Rep., Ad., 15.

One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-suit for damages caused by the same collision, although himself residing out of the jurisdiction of the Court.

An order rejecting, for want of jurisdiction, a plaint brought under such circumstances, was set aside on appeal, and the costs of the appeal ordered to be costs in the suit. *Bombay Coast and River Steam Navigation Company* v. *Rénd Hebunt*, 4 Bom. Rep., O. C., 149.

XVII.

THE LAW OF PERSONAL STATUS.

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1.—STATUS.

The law allows a person the right to cease to be a Hindoo or Mahometan in the fullest sense of the word, and to become a Christian, and to claim for himself and his descendants all the rights and obligations of a British subject. *Hogg* v. *Greenway and others*, 2 Hyde's Rep., 3.

A. stated that he was born in 1848; that his great-grandfather was, according to the tradition of the family, a European (but of what country in Europe he did not know) residing at Madras, and his great-grandmother, a native Hindu or Mahometan; that he did not know whether his great-grandfather and great-grandmother were married, or who his grandmother was, or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and knew of no relatives in Europe. *Held* that he was a legitimate descendant of a European British subject, and therefore his age of majority was twenty-one years. Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him. *Rollo* v. *Smith and others*, 1 B. L. R., O. C., 11.

A deaf and dumb person is not on that account alone to be deemed incompetent to sue or to be sued. *Buggee Ram* v. *Buldeo Singh*, 2 N. W. R., 414.

2.—GUARDIAN AND WARD.

A minor is bound by all acts of his guardian done in good faith, particularly if he, when he comes of age, gives an acknowledgment to the guardian admitting himself liable for all debts of his ancestor, and for all debts incurred by his guardian, except certain specified ones. *Hurro Chunder Chowdhry* v. *Bungsee Mohun Dass*, 1 W. R., Mis., 16.

Suits for or against minors can only proceed when they are duly represented by a guardian or next friend. *Sama Soondery Debia* v. *Grish Chunder Banerjee*, 3 W. R., Act X R., 138.

The appellants made a claim upon the respondents in respect of certain bonds given during their minority by their executor and guardian. On attaining majority, the respondents, being desirous of avoiding payment, were advised that they could only do so by instituting a suit to which the executor must be a party, and in which a settlement of his accounts would be required. Rather than do this, they came to terms with the appellant in order to obtain time for the payment of the debt by instalments, and a kistbundee was accordingly executed. *Held* that the respondents could not now, after the death of their guardian, dispute their liability for a debt which they had thus deliberately undertaken to pay. *Gholab Khoonwarree Bebee* v. *Eshur Chunday Chowdhry*, 2 W. R., P. C., 47.

Suit for the recovery of a minor's share of the consideration paid for a mouroree lease granted by the minor's co-proprietors on their own behalf and as his guardians, in order to raise money required for the expenses of the joint estate, which lease was cancelled (on the suit of the minor when he came of age) so far as his share was concerned.

Held that the plaintiff was not entitled to recover without proof of fraud, and that the evidence tendered by the plaintiff (namely, the record of the case instituted by the minor for the cancelment of the lease) was not admissible to prove the allegation of fraud. *Doorga Churn Bhuttacharjee* v. *Shoshee Bhoosun Mitter*, 5 W. R., S. C. C., Ref., 23.

Where the father of a minor lent on account a

sum of money to the defendant, and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and a balance was struck during the minority of the infant, it was held that the cause of action arose at the time such balance was struck; and that, as the cause of action accrued to the minor during his disability, his representatives could sue to recover the balance at any time during the time of disability, and that a claim by the minor on attaining his majority, or, if he should die, by his representative, would not be barred if preferred within three years from the cessation of the disability. Further, the extension of the period of limitation conceded to a minor on account of legal disability is not affected by the fact that during his minority he is represented by a guardian. *Mahipatrave Chundrarav* v. *Nensuk Anandrav Shet Marvadi*, 4 Rom. Rep., A. C. J., 199.

Held that a decree obtained against a minor and his property represented by an unauthorized guardian may be set aside by a lawful guardian without imputation of fraud or collusion, and that such decree would have no effect, and will not be binding on the minor and against his property. *Mussamut Khooshalo* v. *Subookh*, 1 Agra Rep., A. C., 175.

Where the plaintiff was a minor, and his interest could not *primâ-facie* be alienated,—*Held* that the *onus* of proving that due enquiries were made as to the necessities for the loan, and that it was incurred by the manager for the benefit of the estate, lay on the defendant.

It is not necessary to show that such necessities actually existed, but that reasonable enquiry was made as to the existence of such necessities, and the object for which the loan was intended. *Poolunder Singh* v. *Ram Pershad*, 2 Agra Rep., A. C., 147.

A minor's estate is not liable under bonds contracted by his guardian otherwise than for the minor's benefit, and without legal necessity. *Dhamoo Lall and others* v. *Government*, 11 W. R., 240.

Held that there was no error in law in an order of a lower Appellate Court directing that a minor should be excluded from the category of defendants in a suit, inasmuch as the minor, not having been represented by a guardian, would not be bound by any decree of the Court, as the law does not recognize any act of a minor when not having a guardian before the Court. *Radhakishore Surmah* v. *Ram Chunder Doss and others*, 11 W. R., 300.

Although purchasers are not bound to look to the application of the purchase-money, or to enquire whether there were goods sufficient to redeem the mortgage, and so to obviate the necessity of a sale of a minor's property, yet the purchaser not proving necessity or not satisfying himself of the existence of necessity, and the unwillingness of the minor's mother to dispose of the property in his minority, are sufficient legal grounds for reversal of the sale. *Gomain Sircar* v. *Praunath Goopto*, 1 W. R., 14.

The *bonâ-fide* act of a guardian for the benefit of a minor's estate, in giving a farm of the estate, is not one which a Court ought to set aside except for strong reasons. *Huro Mohun Mookerjee* v. *Kaleenath Mookerjee*, 2 W. R., 270.

A guardian cannot grant his ward's lands in perpetuity except on clear proof of benefit to the minor. *Oddoyto Chunder Koondoo* v. *Prosunno Koomar Bhuttacharjee*, 2 W. R., 325.

The guardian, at the time of the suit, and not the former guardian of a minor, is held liable, to the extent of the funds in his hands belonging to the minor, for a debt incurred for the benefit of the minor. *Sheikh Azeemooddeen Ahmed* v. *Moonshee Auther Ali*, 3 W. R., 137.

A. sued B. to recover possession of an hereditary jote, of which he alleged he had been dispossessed by B. during his minority. B. raised the defence of relinquishment by A.'s grandmother and guardian. The Lower Court decided on the merits against A., but on special appeal the High Court *held* that it was not shown that the relinquishment was for the benefit of the minor, and therefore the decree of the Court below must be reversed.

On review, Loch, J., *held* that the judgment of the High Court on special appeal must be reversed as being *ultra vires*, for that the question of injury to the minor was not urged in the Court below; no issue was raised on that point, and even if the relinquishment of the jote by the guardian did turn out to the disadvantage of the minor, that was not sufficient ground for setting aside the act of the guardian as invalid, provided that, at the time it was done, it appeared to be for the interest of the minor and was done in good faith.

Glover, J., *held* that the conclusion of the High Court on special appeal was justified, but was willing to remand the case to the Judge below to find the fact whether or not the relinquishment by the guardian was made in good faith for the interest of the minor. *Muthuranath Dutt* v. *Kadernath Mookerjee*, 2 B. L. R., A. C., 127.

The validity of a compromise effected by the father as the natural guardian of an expectant heir during his minority, by which immediate possession of half the property was obtained on the surrender of all claim to the reversion of the other half, was declared to depend on whether the transaction was at the time one reasonably beneficial to the minor. *Lall Boodhmul* v. *Lala Gouree Sunkur*, 4 W. R., 71.

Where a person representing herself as a guardian neither took out a certificate under Act XL of 1858, nor obtained the permission of the Court under Section 3 of that Act to appear in the suit without a certificate,—*Held* that the minor was not bound by any act of the alleged guardian, nor was he bound to sue within three years from the order passed by the Court under Section 246, Act VIII of 1859, rejecting her petition of objection to a sale of attached property. *Sreenath Coondoo* v. *Hurree Narain Mudduck*, 7 W. R., 399.

Where a party after attaining full age allowed his mother to give him out to the world as a minor, and as his guardian to mortgage his ancestral property, and permitted the mortgagee to retain possession for five years,—*Held* that he could not afterwards turn round and repudiate arrangements which were made for his benefit, and for which an innocent party had given valuable consideration. *Purmessur Ojah* v. *Mussamut Goolbee and others*, 11 W. R., 446.

If a guardian or next friend of an infant retain an attorney to act for the infant, no contract is created between the attorney and the infant upon which

the attorney can sue the infant for costs. *Radhanauth Bose* v. *Suttoprosono Ghose*, 2 Ind. Jur., N. S., 269.

The acts of guardians on behalf of minors must show the strictest good faith, and must be based on considerations of actual necessity and advantage, not on calculations of possible benefit. In this case the Court refused to sanction a compromise effected between the guardian and the widow, by which the minor received immediate possession of half the property as consideration for the surrender of the reversion of the other moiety, no interest or advantage to him being shown in the arrangement. *Bodh Mull* v. *Gouree Sunkur*, 6 W. R., 16.

Sale by a guardian of a minor upheld, there being proof of pressing valid necessity, and no proof either of undue advantage taken of the guardian by the purchaser, or of the existence of fiduciary relations between the guardian and the creditors, or of the inadequacy of the price at the time when the property was sold. *Komola Pershad Narain Singh* v. *Nokh Lal Shahoo and others*, 6 W. R., 33.

Held that the institution of a suit by a guardian on behalf of minors, without due authority having been obtained, is illegal. *Mussamut Dhunraj Kooeree* v. *Rajah Roodur Pertab Singh*, 3 Agra Rep., 300.

In the absence of a competent and unobjectionable male relative, ready and willing to act as guardian *ad litem* of an infant, the mother of the infant may be appointed such guardian, if there be no objection to her on any ground but that of her sex. *In the matter of Danapa bin Soobrao*, 1 Bom. Rep., 134.

Though the lender of money borrowed by the guardian of a minor for the payment of a family debt is bound to enquire into the necessity for the loan, and to satisfy himself as well as he can that the guardian is acting for the benefit of the estate, yet if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably created necessity is not a condition precedent to the validity of his charge, and he is not, under such circumstances, bound to see to the application of his money. *Maha Beer Pershad Singh* v. *Dumreeram Opadhya*, W. R., 1864, 166.

Held that the act of the guardian was binding on the minor unless it be proved that it was an unreasonable one, and that the payment by the debtor before any certificate was obtained was not an invalid payment. *Motee Ram Sahoo* v. *Nawab Khuleeloollah and others*, 3 Agra Rep., 338.

Guardians appointed by Civil Courts ought to file the accounts of their estates annually as required by law. A guardian is not necessarily accountable for sums paid by him in discharge of debts barred by limitation. *Chowdhry Chuttersal Singh* v. *The Government*, 3 W. R., 57.

The guardian at the time of the suit, and not the former guardian of a minor, held liable to the extent of the funds in his hands belonging to the minor for a debt incurred for the benefit of the minor. *Sheikh Azeemooddeen Ahmed* v. *Athur Ali*, 3 W. R., 137.

A mother as guardian has no power to make a compromise on behalf of a minor daughter, unless the compromise is beneficial to the daughter's interests. *Ranee Roushun Jahan* v. *Syed Enaet Hossein*, W. R., 1864, 83.

A father, as guardian of his minor son, can sue to recover damages for personal injuries received by the son. *Modhoo Soodun and another* v. *Kaemoollah Biswas*, 9 W. R., 327.

When a sale by the guardian of a minor is reversed, with a direction that the purchaser be reimbursed the amount of his purchase-money, he having been a *bonâ-fide* purchaser for valuable consideration, the minor is liable for the purchase-money. *Agooree Hurrihur Churn* v. *Gonga Persad Oopadhya*, W. R., 1864, 208.

The sale of a minor's property is reversible when it can be shown that the purchaser did not satisfy himself of the necessity of the sale, and bought in spite of the unwillingness of the minor's mother to have the property disposed of during her son's minority. *Gomain Sircar* v. *Prannath Goopto*, 1 W. R., 14.

A sale by an elder brother during a younger brother's minority having been set aside, and the vendee ejected, the vendee alone, and not the vendor, whose connection with the property ceased with the sale, is liable for mesne profits received and expended by the vendee whilst in possession. *Shurutchunder Dey Sircar* v. *Jadubnarain Nundee*, 1 W. R., 90.

A suit is not premature when brought by the guardian of minors to set aside a sale made by an adult member of a joint Hindu family without the consent of his wards. *Sheo Pershad Jha* v. *Gunga Ram Jha*, 5 W. R., 221.

In a suit to set aside a sale effected by plaintiff's mother during his minority, it appearing that plaintiff, eleven months after attaining his majority, signed for his mother a written statement in another suit, to the effect that the property had been sold by her to the defendant, and that he in that suit conducted his mother's defence, which was that the purchaser from her was entitled to what he claimed, it was *held* that he must be considered to have acquiesced in and ratified the sale. *Kebulkristo Dass* v. *Ramcoomar Shah*, 9 W. R., 571.

The plaintiff was entitled, in right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian who submitted to a decree; and under that decree the property was sold, and the defendant became the purchaser,—*Held* that the defendant being a *bonâ-fide* purchaser, the sale was not liable to be set aside. *Khettermoney Dassee* v. *Kishenmohun Mitter and others*, Marsh., 313.

In a suit in which it is not necessary for a minor defendant to take an active part, no guardian is ever justified in taking any step prejudicial to his ward. If he can do nothing positively for the minor's benefit, he ought to leave the matter to the Court. *Court of Wards on behalf of Raj Coomar Sheoraj Nundun Singh* v. *Raj Coomar Deo Nundun Singh*, 16 S. W. R., C. R., 143.

Where an act done by a guardian is one arising naturally out of the management of the minor's estate, and especially where it is concurred in by other co-sharers of the same property, the liability for such act attaches not to the guardian, but to the

estate. *Gireewar Singh* v. *Maddun Lall Dass*, 16 S. W. R., C. R., 252.

In the case in which Regulation X of 1793 has no application, the Court may, under Section 3, Act XL of 1858, allow a friend or relative of the minor to institute a suit on his behalf, and where the guardian omits to take steps for the protection of the infant the Court may allow another person to sue for the benefit of the latter. An infant is as much bound by a judgment in his own action as if of full age, and if an application for review is made on his behalf it must be subject to the conditions of the 376th and 377th Sections of the Code of Civil Procedure. *Madhoo Soodun Singh* v. *Rajah Pritha Bullub Paul*, 16 S. W. R., C. R., 231.

A suit by the plaintiff's guardians for the plaintiff's mother's share in certain dower resulted in a decree for Rs. 62,913 calculated on the allegation in the plaint that such share was a third of the entire amount of dower. That suit having been sold by the plaintiff's guardians for the alleged sum of Rs. 51,000, the plaintiff brought the present suit to set aside that sale as collusive.

Held that it was incumbent on the defendants in this suit to prove that they paid the Rs. 51,000 to the plaintiff when he came of age, or at least that the money reached the plaintiff's hands when he came of age.

A compromise set up by the defendants in the present suit having been rejected, a decree was given to the plaintiff for the sum of Rs. 62,913, awarded in the original suit. That decree was upheld in appeal; but as it was alleged that on the facts stated in the plaint in the original suit the plaintiff's mother's share of the dower was an eighth, and not a third, the Privy Council held that plaintiff ought not to benefit by that mistake, if it was a mistake, and they accordingly left it to the lower Court to enquire into that point, and to let execution go for the eighth or the third share, according as the fact might turn out. *Moulvie Abdool Ali* v. *Mozuffur Hossein Chowdry*, 16 S. W. R., P. C., 22.

A widow defending a suit as guardian of her minor son cannot be made liable in her own person as well as representing the heirs of her husband. *Brojo Mohun Mojumdar* v. *Roodronauth Surmah*, 15 S. W. R., C. R., 192.

The Court of Wards is not "a person" within the meaning of Section 7, Act XL of 1858, and is not entitled to administer to an estate by virtue of a will or deed executed by a private person. *Rowshun Jehun* v. *The Collector of Purneah*, 14 S. W. R., C. R., 295.

In a suit against a minor's father as the minor's guardian during the minor's minority, where the good faith of the parties is not impugned, the minor is liable.

In the absence of any valid reason to the contrary, execution may be taken out by means of a warrant for the arrest of the minor's person. *Sheraputtoollah Chowdry* v. *Abedoonissa Bibee*, 17 S. W. R., C. R., 374.

From the fact that, in a former suit, plaintiff's mother was arrayed amongst the parties as guardian of plaintiff, then a minor, as well as from the line of defence which she adopted, and in the absence of any evidence to the contrary, it was presumed that she had the permission of the Court to appear and represent the minor's interest in that suit; and the question raised in the present suit having already been raised and decided in the former suit, the plea of *res-adjudicata* was held to apply. *Bonomally Kesh* v. *Hemghessur Roy*, 17 S. W. R., C. R., 492.

A Collector appointed guardian, under Section 12 Act XL of 1858, has power to make arrangements for a minor's education, and is not so far amenable to the jurisdiction of the Civil Courts. *Ræmendra Bhuttacharjee* v. *Collector of Rajshayhye*, 14 S. W. R., C. R., 113.

The plaintiff on coming of age sued to set aside a sale of his ancestral property which had been made by his guardian during minority. No legal necessity was proved, but it appeared that he had the benefit of the sale proceeds. A decree was passed in his favour, but subject to the condition that he should first refund the proceeds of sale. *Paran Chundra Pal* v. *Karunamayi Dasi*, 7 B. L. R. 90; and 15 S. W. R., C. R., 268.

Where application is made under Act IX of 1861, and an estate is taken charge of by the Collector under Section 12, Act XL of 1858, the interference of the Civil Court is precluded alike by the former Act (Section 7) and by the latter. *Rajah Mohessur Roy* v. *The Collector of Rajshaye*, 16 S. W. R., C. R., 263.

A manager has no authority to deal with the claims or debts and liabilities attaching to the estate of a minor without having taken out a certificate under Act XL of 1858. An order for a certificate may be revoked under Section 21, Act XL of 1859, if the Judge sees sufficient cause for its revocation in the conduct of the party in whose favour it was granted. *Tusneef Hossein* v. *Bibee Sookhoo*, 14 S. W. R., C. R., 453.

Where a Judge cancels his own order under Act XL of 1858 appointing the Collector to take charge of a minor's estate, a friend of the minor on behalf of the minor as the party interested is at liberty to appeal under the provisions of Section 28. *Sheo Pershun Chobey* v. *The Collector of Sarun*, 13 S. W. R., C. R., 256.

The marriage of a minor is not a sufficient cause within the meaning of Section 21, Act XL of 1858, for withdrawing a certificate as manager granted under that Act; there must be some neglect in the performance of duty, or some cause of a similar kind rendering it improper to continue the manager in the appointment.

Where two persons were fighting to get hold of the property, and the probability was that the minor would suffer if the property lay in the hands of either, the Court could not say that either person was a fit person to be appointed manager and therefore, under Section 12, ordered the property to be made over to the charge of the Collector, with direction to appoint a manager of the property and a guardian of the person of the minor. *Musst. Ingoodumba Koer* v. *Musst. Mircha Koer*, 17 S. W. R., C. B., 269.

Held that the lower Court could not, in the summary department, pass an order declaring invalid a sale of a house made by a manager as being beyond the scope of Section 18, Act XL of 1858, and granting an injunction to prevent the demolition of such house, but should have left the title of the parties to be established in a regular suit. *Mukrumunnissa* v. *Abdool Indbar*, 17 S. W. R., C. R., 171.

It is not necessary that a party who represents the interests of a minor should take out a certificate under Act XL of 1858 before he can be heard on behalf of the minor, or be able to institute or defend a suit on his behalf, but the Court is competent under Section 3 of that Act to permit any relative of the minor to institute or defend a suit on his behalf although a certificate of administration has not been granted to such relative. *Bonomally Kish* v. *Hungesshur Roy*, 17 S. W. R., C. R., 492.

It is undoubtedly the duty of guardians scrupulously to regard the interests of minors in dealing with their estate, and the Court will, when necessary, enforce the performance of this duty. But the interests of infants would seriously suffer if a notion were to prevail that guardians were bound for their own security to contest all claims against an infant's estate, whether well or ill-founded, and such a notion might prevail if the compromise of a claim of debt confirmed by a decree of a Court were to be set aside after sixteen years without distinct proof of fraud. *Lakraj Roy* v. *Mahtabchaund*, 17 S. W. R., C. R., 117.

Held that the lower Appellate Court had properly exercised its discretion under Act XL of 1858, when it found that the minor plaintiff was not properly represented, in refusing to allow decree to be passed against him so as to be binding upon him when he came of age. *Baboo Dhoondh Bahadoor Singh* v. *Baboo Priag Singh*, 17 S. W. R., C. R., 314.

It is not necessary to institute a regular civil suit in order to obtain the revocation of a certificate of guardianship. *Mahomed Nukskund Khan* v. *Musumut Afzul Begum*, 3 N. W. R., 149.

Guardians of a minor cannot be held personally liable for torts committed by such minor. *Luchman Dass* v. *Narayan and others*, 3 N. W. R., 191.

Guardians *ad litem* should always be appointed by the Court in which the litigation is pending. 5 Mad. Rep., Rul. VIII.

3.—Minority.

A purchase from a minor is not *ipso facto* invalid. *L. Renni* v. *Gunga Narain Chowdhry*, 3 W. R., 10.

A minor when he comes of age is not precluded from suing in his own name for anything that his guardian, either through ignorance or negligence, has omitted to prosecute. *Koylash Chunder Sircar* v. *Gooroo Churn Sircar*, 3 W. R., 43.

Section 2, Regulation XXVI of 1793, extends the term of minority of proprietors of estates paying revenue to Government from the end of the 15th to the end of the 18th year, in respect of all acts done by such proprietors, both as to matters connected with real estate and matters of personal contract.

Minors have a qualified power of contracting, and an implied or express contract for necessaries is binding absolutely on a minor.

As a minor cannot himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, so neither can he authorize another party to do for him that which he cannot do himself. *Bykuntnath Roy Chowdhry* v. *N. P. Pogose*, 5 W. R., 2.

The acts of a minor are only voidable, and not absolutely void. The purchaser of the right, title, and interest of a judgment-debtor sued to obtain immediate possession of the property purchased at a sale held in execution of a decree, after setting aside an usufructuary mortgage executed by the judgment-debtor while a minor.

Held that the sale in execution merely transferred to the purchaser the reversionary right of the judgment-debtor in the property, after the satisfaction of the usufructuary mortgage, and not the right to set aside an act done during minority.

Held that until a transaction by a minor was avoided by some distinct act on attaining majority, it must be considered valid. *Hari Ram* v. *Jitan Ram*, 3 B. L. R., A. C., 426; S. C., 12 W. R., 378.

The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects. *Lakhikant Dutt* v. *Jugabundhu Chuckerbutty*, 3 B. L. R., Ap., 79; S. C., 11 W. R., 561.

Regulation XXVI of 1793 (fixing 18 years as the legal age for the exercise of the powers of a proprietor of an estate paying revenue to Government) applies to a co-sharer, as well as to the proprietor of an entire estate. *Ranee Roushan Jahan* v. *Syed Enaet Hossein*, W. R., 1864, 83.

When a certificate of guardianship has been granted under Act XL of 1858, it is by the terms of that Act, and not by reference to Mahometan or Hindu law, that the period at which the ward is to be considered of full age must be determined. *Mahomed Arsud Chowdhry* v. *Oosun Bebee*, 2 W. R., 217.

Every person, not being a European British subject, who has not attained the age of 18 years, is a minor for the purposes of Act XL of 1858; and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court, and he is a minor, whether proceedings have been taken for the protection of his property or the appointment of a guardian, or not. *Mudhoosoodun Manji* v. *Debegobinda Newji*, 1 B. L. R., F. B., 49; 10 W. R., F. B., 36.

According to Section 2, Regulation XVI of 1793, the minority of a proprietor of an estate paying revenue direct to Government extends to the end of the eighteenth year. *Beer Kishore Suhye Singh and others* v. *Hur Bullub Narain Singh and others*, 7 W. R., 502.

Act IX of 1861 applies to Pegu and also to minors, the lawful children of European natural-born British subjects. Recorders appointed under Act XXI of 1863 possess all the jurisdiction relative to minors referred to in Section 1, Act IX of 1861, or intended to be given by that Act. *In re W. H. Hutton and another*, 3 W. R., Recorder's Ref., 5.

Where a bond (usufructuary mortgage) was signed in presence of a Deputy Commissioner by the agent of a minor, in open Court, and duly registered by him, the transaction was held to be the same as if the minor himself had executed the deed. *Hurree Ram* v. *Jeetun Ram*, 12 W. R., 378.

A minor interested in contesting the execution and validity of an alleged will by her father having been improperly joined with the alleged executors of the said will as co-plaintiff, the decrees of the Courts below were reversed and the suit remanded,

in order that the minor might be made a defendant, and a guardian *ad litem* appointed to protect her interests. *Krishnabái* v. *Sonábái*, 2 Bom. Rep., 327.

A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the co-parceners from whom it is sought to recover it. *Kamakshi Ammal* v. *Chidambara Reddi*, 3 Mad. Rep., A. J., 94.

Where property belonging to three brothers, one of whom was a minor, was sold for an ancestral debt on which execution proceedings had been taken, the rights and interests of the two elder brothers alone being advertised for sale, and the deed of sale making no mention of the minor's rights and interests,—*Held* that the minor's rights and interests were not conveyed to the purchaser. *Neetye Roy* v. *Oodit Roy and others*, 10 W. R., 241.

The father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age. 2 & 3 Vict., c., 39, which gives a discretionary power to a Judge in England, has not been extended to this country; therefore the law applicable to cases which occurred in England previous to the passing of that statute is applicable here. *Re Holmes*, 1 Hyde's Rep., 99.

The High Court, in its equitable jurisdiction, has authority to interfere with the legal right of a father to the custody of his child, if he be an improper person. *Re A. F. Curran, an infant*, 1 Hyde's Rep., 143.

The holder of an estate paying revenue direct to Government, whether the settlement of that estate be temporary or permanent, is a proprietor within the meaning of Section 3, Regulation XXVI of 1793; and the minority of such a proprietor extends to the end of the 18th year. *Anromonee Dibea* v. *Tumeejoodeen Chowdhry and others*, 7 W. R., 181.

A sale under Regulation XXVI of 1793 does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims. *Juggomohun Bukshee* v. *Roy Mothooranath Chowdhry and others*, 7 W. R., P. C., 18.

In a suit by a minor through her guardian for the recovery of property sold more than 3 years before the plaint was filed, plaintiff was held to be entitled to rely on the provisions of Section 11 of Act XIV of 1859, and to be therefore not barred by limitation. *Ramghose* v. *Greedhur Ghose*, 14 S. W. R., C. R., 429.

Under Act XIV of 1859 the disability of a minor is to be considered absolute, and any benefit which the minor is to have accrues to him, not during his disability, but when his disability ceases. *Mussamut Phoolbus Kooer* v. *Lall Juggessur Sahi*, 14 S. W. R., C. R., 340; *Bikramujut Lall* v. *Mussamut Phoolbus Kooer*, 14 S. W. R., C. R., 340.

A Judge, in the exercise of his jurisdiction under Act XL of 1858, is justified in having respect to the religion professed by the father of a minor, and in passing such orders with regard to the custody of the person of such minor as he may hold to be in accordance with what would have been the minor's father's wishes had he been alive to express them.

Where a mother under colour of a change of religion forms a connection or leads a life which by persons professing her husband's faith would be deemed immoral, she thereby ceases to be a proper person to be entrusted with the education of the children of her deceased husband.

If the Court finds a case made out for its interference, it will not be deterred from the exercise of its powers because the persons setting it in motion may be actuated by motives other than the interests of the minor. *Skinner* v. *Orde*, 2 N. W. R., 275.

Appellant having presented a petition to a Zillah Judge under Act IX of 1861, claiming the possession and custody of his two minor children alleged to be detained by their mother, the parties being European British subjects,—*Held* that such Judge had no power to entertain the application. *Shunum*, 2 N. W. R., 79.

Where a person (a native of this country)has not attained the age of eighteen years, he is not competent to institute and maintain a suit without the intervention of a guardian appointed under Section 3 of Act XL of 1858. *Noor Ahmed* v. *Lutta Pershad*, 2 N. W. R., 189.

A suit against a minor whose estate exceeds Rs. 250 in value cannot be proceeded with unless he be represented by a person holding a certificate of administration under Act XX of 1864. The plaintiff may apply to the District Judge to appoint an administration if none such has been appointed. *Dhondiba Lakshuman* v. *Kusa*, 6 Bom. Rep., A. C. J., 219.

The Bombay Minors Act (XX of 1864) does not apply to minors who are not resident within the Presidency of Bombay.

A foreign guardian will not be recognized in the Courts in this country in a suit brought by such guardian to recover, on account of a minor, profits arising from immoveable property.

Where a suit was brought by the agent of a minor's guardian appointed by H. H., the Gaikwád of Buroda, it was ordered that the proceedings should be amended by describing such agent as the next friend of the minor, in which capacity he was then permitted to sue. *Maganbhái Purshetamadás* v. *Vithold bin Náráyan Shet*, 7 Bom. Rep., A. C., 7.

A Court ought not to make a decree by consent against an infant without ascertaining that it is for the benefit of the infant that such a decree should be pronounced. *Ram Churn Ruba Bukshu* v. *Mungh Sircar*, 16 S. W. R., C. R., 232.

A conveyance by a minor may be voided by him when he comes of age; but unless after coming of age he promptly does some act to repudiate the contract it must be taken to be ratified. *Doorga Churn Sahu* v. *Ram Naraín Doss*, 13 S. W. R., C. R., 172.

A contract made by a minor, though voidable is not necessarily void, and if made for a consideration which is of the nature of a necessity is not even voidable. If a minor remains quiet for a considerable period after attaining his majority without doing anything to repudiate the contract, a Court of Equity is bound to presume that the consideration was of such a character as to bind him, or that he has, after coming of age, ratified the contract, unless his silence can be explained, or the

contract impeached on its merits. *Boiddonath Dey* v. *Ram Kishore Dey*, 13 S. W. R., C. R., 166.

In a suit for possession of landed property, which originally belonged to plaintiff's father,—*Held* that any act done by the widow, and any decree given against her, as sole proprietor of the lands, and not as guardian, would not bind the plaintiff. *Bahur Ali* v. *Sookea Bibee*, 13 S. W. R., C. R., 65.

Appeal from an order of the High Court, confirming an order of the Zillah Judge, removing an infant ward and her property from the custody and guardianship of her mother and the mother's second husband. The minor was the issue of a Christian marriage, the child of a Christian father, who was massacred at Delhi in 1857, and was under the protection of her mother, who was of Mahometan ancestry. In 1867 the mother and second husband, after cohabiting together for some time, both became Mahometans, and contracted a Mahometan marriage, the second husband being already the husband in Christian marriage of a living Christian wife. The Privy Council, without relying on the rule in force in the Courts of Chancery requiring that, in the matter of religious education, great and (in absence of controlling circumstances) paramount weight should be given to the expressed or implied wishes of the deceased father, affirmed the order of the High Court, being of opinion that, from the very necessity of the case, a child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social status, and that therefore it was ordinarily, and in the absence of controlling circumstances, the duty of a guardian to train his infant ward in such religion.

The Privy Council agreed with the High Court in doubting the validity of the Mahometan marriage, and suggested, in the selection of a school in such cases, the desirableness of having some independent person as guardian, to whom the ward could apply, in whom the Court and the ward could confide, and whose duty it would be to communicate to the Court any matter which might arise. *Skinner* v. *Orde*, 17 S. W. R., C. R., 77.

In a suit against a minor's father, as the minor's guardian, during the minor's minority, when the good faith of the parties is not impugned, the minor is liable. *Sherafutoollah Chowdry* v. *Abedoonissa Bibee*, 17 S. W. R., C. R. 374.

Held that the Judge had not improperly exercised the discretion vested in him, by Act IX of 1861, S. 3, in not removing a minor of 5½ years old from the custody of his natural mother. *Senamonee Dossee* v. *Joy Doorga Dassee*, 17 S. W. R., C. R., 551.

Held that a Hindu of the age of seventeen years was competent to apply for the execution of a decree obtained by a deceased person of whom he was the representative. Reg. V. of 1827, Sec. VII, Cl. 3, does not prevent a Hindu less than eighteen years of age from suing, but restricts him to a particular period, after which he is no longer a minor. *Gangádhar Raghunáth* v. *Cheinnáje Keshav Dámle*, 5 Bom. Rep., A. C., 95.

A suit by a guardian on behalf of a minor is the suit of the minor, and is governed by the law of limitation applicable to the minor. *Sreemutty Suffuroonissa Bibee* v. *Moonshee Noorul Hossein*, 17 S. W. R., C. R., 419.

Minors, right of — Jurisdiction of Civil Court. *Hari Prusad Iha* v. *Maddan Mohun Thakur*, 8 B. L. R., Ap., 72; 17 S. W. R., C. R., 217.

An infant cannot sue except by next friend, and where an objection is made on the ground of the disability of the plaintiff the suit ought to be dismissed. *G. Chinniah* v. *Banhun Saib*, 5 Mad. Rep., 435.

An application was made to a Moonsiff for the custody of a minor daughter, which on appeal to the Civil Judge was dismissed. On appeal to the High Court—*held*, all the proceedings must be quashed. The application should have been made in the principal Civil Court of original jurisdiction in the district. *Mussamut Harasundari Baistab* v. *Mussamut Jayadurga Baistabi*, 4 B. L. R., Ap., 36.

4.—Managers.

A manager has no authority to borrow money on a bond which does not recite for what purpose it is required, and the greater portion of which is said to have been previously borrowed by the principal *Maharajah Jugunnath Sahee Dee* v. *Heera Ran Chuckerbutty*, 6 W. R., 43.

A lender to the manager of a minor's estate is bound to satisfy himself that the loan is for the benefit of the estate. *Lallah Bunseedhur* v. *Koowar Bindeseree Dutt Singh*, 1 Ind. Jur., N. S., 165.

A manager of the estate of a minor appointed by will is liable to removal only upon proof of actual malversation, or that by reason of mental incapacity, conviction of felony, or by some other incapacitating cause, he has become incapable of managing the property; but not merely on the ground that another person would manage the property better.

He is, it seems, subject to removal upon summary application under Act XL of 1858, Section 21; but if the ground upon which his removal is applied for involves an investigation of accounts, such investigation must be made in a regular suit under Section 19, previous to such summary application under Section 21. *Mudhoosoodun Singh* v. *The Collector of Midnapore*, Marsh., 244.

Where a case is started showing that elder sons are neglecting their duty as managers of an estate to the material injury of a minor son, the Judge is bound to institute enquiry.

Where particular persons have been appointed by will to be managers, and any of them become incapable and refuse to act, it does not follow that others should be appointed in their stead.

Where managers by becoming vedantists are incapable themselves of performing ceremonies contemplated in the will, they may make over to any person concerned the requisite expenses for such ceremonies. *Anund Coomar Gangooly* v. *Rakhal Chunder Roy and others*, 8 W. R., 278.

The conveyance of property while the owner is a minor is not necessarily inoperative; if the sale is effected by the guardian, and acquiesced in by the minor when he comes of age, it may be valid notwithstanding. *Kummuroodeen Shaikh* v. *Shaikh Bhadhoo and others*, 11 W. R., 134.

An appeal from an order under Act XL of 1858, appointing a person to be guardian of a minor and manager of his property, bears no value and cannot be carried to her Majesty in Council. *Mussamut*

earee Daye v. *Hurbuns Koer*, 14 S. W. R., C. R., 299.

Where a manager is appointed under Act XL of 1858, the Civil Court has no authority to restrict or limit by description or otherwise the nature or extent of the minor's property. *Sheo Prosunno Chokey* v. *Gopal Surn*, 15 S. W. R., C. R., 529.

Where the trusts of manager and guardian are vested in different persons, an action instituted on behalf of the minor with the sanction of the Court of Wards is properly brought by the manager. *Madhoo Soodun Singh* v. *Rajah Prittha Bullub Paul*, 16 S. W. R., C. R., 231.

5.—Powers of the Court with regard to Minors.

The Court of Wards is not prevented by Act XL of 1858 from taking a minor and his estate under its protection by reason of a certificate of administration granted by the Civil Court under that Act. *Mudoosoodun Singh* v. *The Collector of Midnapore and R. Watson and Co.*, 3 W. R., 83.

In appointing a manager of a minor's estate a Judge has to consider not only the nearness of kindred, but also the suitableness of the person to be appointed. *Khoodee Monee Dossee Ghossanee* v. *Koylash Chunder Ghose*, 4 W. R., Mis. A., 22.

A mother brought a suit on behalf of her minor son to recover from her step-son, the managing member of the family, the minor's share in the family property. *Held* that the only ground upon which such a suit could be maintained is that of malversation. The Court may relieve the minor from his brother's authority, and appoint another guardian, but a case requiring relief must be made out. *Alimelamal* v. *Arunachellam Pillai*, 3 Mad. Rep., A. J., 169.

Where an application is made for a certificate under Act XL of 1858, a party asserting certain rights adversely to the minor cannot be admitted as a party to the record, but must seek his remedy in a regular suit. Where the will propounded by an applicant is a genuine document the certificate prayed for must be granted, notwithstanding the existence of any "natural guardian," no discretion being left to the Court in such a case. *Puroma Soonduree Dossee* v. *Tara Soonduree Dossee*, 9 W. R., 343.

An unsuccessful application by the grandmother of a minor for a certificate under Act XL of 1858, is no bar to her suing under a *neeumpattro* alleged to have authorized her to represent the minor. *Ranee Shoobhudra* v. *Ranee Prem Moyee*, 5 W. R., Mis., 36.

Where an application was made by a Hindu female for a certificate of administration under Act XL of 1858 in respect of an estate which she alleged to belong to an adopted son,—*Held* that the Judge ought merely to have enquired whether the boy was a minor, and whether the petitioner, being a near relative, was a fit person to be entrusted with the charge of the minor's property. *Brohmo Moyee Chowdhrain* v. *Chittur Monee Chowdhrain*, 8 W. R., 45.

The Court (having already held that the Civil Courts cannot interfere with an order of the Board of Revenue directing the removal of a minor to the Wards Institution in Calcutta) declined to pass an order to stay the minor's removal pending an appeal to the Privy Council, holding that it had no power to make such order. *The Collector of Beerbhoom* v. *Mundakinee Debee*, 1 W. R., Mis., 7.

Where a testator makes due provision for the guardianship of his minor son, Act XL of 1858 does not contemplate the interference of the Court in its summary jurisdiction. *Anund Coomar Gangooly* v. *Rakhal Chunder Roy and others*, 8 W. R., 278.

Act XL of 1858 declares that a person shall not be competent to institute a suit in Court in respect of property of which he claims the charge until he shall have obtained a certificate; but not that every act of a guardian who has not such a certificate shall be null for the want of one. *Mussamut Shooghury Koer* v. *Boshisht Narain Singh and others*, 8 W. R., 331.

Where the grandmother of minors applied for certificates under Acts XL of 1858 and XXVII of 1860, the father consenting and approving, it was held that there was nothing in the law to prevent the certificates being granted if the applicant was competent and willing to take them. *Mussamut Oomrao Doolbaen* v. *Syud Aga Meer*, 12 W. R., 119.

A certificate of guardianship to her minor son may be allowed to a widow after the certificate of administration has been granted to another party. *Sreemutty Sham Manna* v. *Ramdyal Goohoo*, 1 W. R., Mis., A., 3.

Where a minor claimed an estate as adopted son,—*Held* that a certificate appointing a guardian under Act XL of 1858 would not, until his adoption was proved, entitle the minor or his guardian to interfere with the possession of the estate by the deceased's widow, who denied the adoption, and claimed the estate as heiress. *Panch Cowree Mundul and others* v. *Bhogobutty Dossee*, 6 W. R., Mis., 47.

Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather. *Srimati Lakhi Priya Dasi* v. *Nabin Chandra Nag*, 3 B. L. R., A. C., 37; S. C., 11 W. R., 370.

A female whose estate is under the management of the Court of Wards cannot, without the consent of the Court of Wards, give up her rights in favour of the next heir. *The Government* v. *Monohur Dos*, W. R., 1864, 39.

That the persons who sue on behalf of minors are their natural guardians is not a sufficient reason for neglecting the directions of law which require that the minors shall be represented by persons who have obtained certificates, or by persons, who when the property is of small value, are specially permitted by the Court to sue or defend the suit on behalf of minors. The fact that the defendant's pleader did not press the objection does not relieve the Judge from the duty imposed on him of seeing that the minors were properly represented. *Zorawar Singh* v. *Jawahir Singh*, 3 Agra Rep., 167.

A stranger cannot bring an action on behalf of a minor without a certificate under Act XL of 1858. *Goberdhun* v. *Girwar and others*, 3 Agra Rep., 92.

It is not the policy of Act XL of 1858 to prevent parties from performing their natural duties by the younger members of their family who may be deprived of their parents, and it should not be considered as an axiom that an uncle or other near

relative will necessarily defraud a minor, and ought therefore to be refused a certificate under that Act. *Mahomed Saleh* v. *The Government*, W. R., 1864, Mis., 26.

6.—Rulings under Act XL of 1858.

A father cannot sue on behalf of his minor son without having obtained the certificate prescribed by Act XL of 1858, and any decision passed in the case would be irregular, as being passed in the absence of the party *primâ facie* principally interested. *Shiam Soonder* v. *Narain Doss and others*, 2 Agra Rep., 343.

A Judge is not precluded, by reason of a will and the existence of executors under the will who have taken out certificate under Act XL of 1858, from enquiring into a complaint against the executors. *Nund Coomar Gungopadhya* v. *Rakhal Chunder Roy and others*, 6 W. R., Mis., 123.

Without a certificate under Act XL of 1858 a Court may refuse to hear even a natural guardian of right. When the Court in the exercise of the discretion vested in it does hear him, the absence of the certificate will not vitiate the proceedings. *Lalla Bhoodmul* v. *Lalla Gowree Sunkur*, 4 W. R. 71.

The private acts of a natural guardian without a certificate under Act XL of 1858 are not vitiated by law. *Lalla Bhoodmul* v. *Lalla Gowree Sunkur*, 4 W. R., 71.

A father cannot sue on behalf of his minor sons without a certificate under Act XL of 1858, unless allowed to do so by the Court under the provisions of the said Act. *Madho Rao Apa* v. *Thakoor Pershad and others*, 3 Agra Rep., 127.

Held that the plaintiff, not being legally or formally appointed manager or guardian of minor's estate or person, was incompetent to maintain the suit on his (the minor's) behalf, especially when the minor's natural father has been appointed as such under Act XL of 1858, and has not been discharged from his office. *Setul Pershad* v. *Birj Mohun Dass*, 1 Agra Rep., A. C., 25.

A surbarakar cannot sue on behalf of a minor without permission of the Court, or a certificate under Act XL of 1858. *Thakoor Bodh Singh* v. *Lochun Singh*, 4 Agra Rep., 220.

In the grant of a certificate to a guardian under Act XL of 1858, unless under peculiar circumstances, fitness is to be preferred to mere nearness of relationship. *Aman Khan* v. *Mussamut Hoseena Khatoon*, 9 W. R., 548.

The lapse of six years was held to be no sufficient ground for a Judge's refusal to enquire into the merits of an application for a certificate under Act XL of 1858, that law providing no limitations as to the time within which such applications are to be made. *Puroma Soondery Dassee* v. *Tara Soondery Dossee*, 9 W. R., 343.

A Civil Court may defer passing orders on an application for a certificate under Act XL of 1858, pending an enquiry by the Collector as to the alleged fraud of the manager, and the state of the accounts and the assets of the property. *Mohesh Chunder Sein* v. *The Collector of Dinagepore*, 16 S. W. R., C. R., 312.

The order of a Judge, rejecting an application for the removal of a guardian under Act XL of 1858, is appealable. *Mahindronauth Mookerjee, In the matter of the petition of*, 7 B. L. R., Ap., 6; and 15 S. W. R., C. R., 493.

The fact that a guardian, appointed under Act XL of 1858, had executed a bond without an order of the Court was *held* not to be sufficient ground for removing him from office. *Brijendro Narain Roy* v. *Bussunt Coomar Ghose*, 13 S. W. R., C. R., 300.

Act XL of 1858 authorizes a Court to select a guardian irrespective of the law of the parties (*e.g.*, Mahometan law) but does not prevent the selection of a guardian indicated by such law if he be a fit person. Where charges of immorality were brought against the holder of a certificate under Act XL of 1858, it was *held* to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate-holder. *Mohunuddy Begum* v. *Mussamut Oomdutoonissa*, 13 S. W. R., C. R., 454.

A certificate under Act XL of 1858 having been granted to a party as guardian of an adopted minor, it was objected that the minor's adoption had not been legal. *Held* that as there was no doubt of the fact of adoption, whether the adoption should on enquiry prove legal or not, the certificate was rightly given, and as the objector did not claim to be appointed guardian, he had no *locus standi* to object to the appointment of another person. *Kist Kishore Roy* v. *Issur Chunder Roy*, 15 S. W. R., C. R., 166.

The Civil Court to which the charge of minors and their property is entrusted by Act XL of 1858 is the Court of the Judge of the district. *Mussamut Mohamuddee Begum* v. *Mussamut Oomdutoonissa*, 15 S. W. R., C. R., 271.

Under the Mitackshara law a brother's widow is not entitled to the management of her husband's share of a joint family property. Order giving her a certificate under Act XL of 1858 set aside, but certificate of guardianship allowed to stand. *Sheonundun Pershad Singh* v. *Mussamut Ghunsham Kooeree*, 17 S. W. R., C. R., 237.

Section 3.

A person who does not hold a certificate under Act XL of 1858 is not debarred by Section 3 from representing a minor as plaintiff or defendant in a suit; but the Court has the fullest discretion, when the property is of small value, or for any other sufficient cause, to dispense with the production of a certificate. *Sreemunt Koondoo* v. *Sharoda Soonduree Dossee*, 8 W. R., 197.

Under Section 3, Act XL of 1858, a Court may, in its discretion, if the property be small, or for any other sufficient reason, allow any relative of a minor to sue on his behalf, although a certificate of administration has not been obtained by that relative. *Hurendur Lall Sahoo* v. *Maharajah Rajendur Purtap Sahee*, 1 W. R., 260.

A grandmother is not competent to represent her minor grandson without having obtained the certificate prescribed by Section 3, Act XL of 1858. *Mussamut Rutnee and others* v. *Misser Roghobere Dyal*, 2 Agra Rep., A. C., 278.

A mother may be allowed, under Section 3, Act XL of 1858, to sue as guardian of her minor son without having taken out a certificate. *Mussamut Munra Jhunna Koonwar* v. *Laljee Roy*, 1 W. R., 121.

A Court of Small Causes constituted under Act XI of 1865 is competent, under Section 3, Act XL of 1858, to allow any relative of a minor to institute or defend a suit in his behalf without a certificate of administration, where it has jurisdiction in relation to the subject-matter of the suit. *Khanto Bewah* v. *Nund Ram Nath*, 15 S. W. R., C. R., 369.

In a suit for a kubuleut against and for himself and as guardian of a minor, the defendant denied that he was the guardian, but the Deputy Collector holding that he had a share in the land, and was also guardian, gave a decree against both. The aunt of the minor then applied for a re-hearing, and on being refused appealed. In appeal the Judge held that L. could only have been made liable as guardian if he held a certificate under Act XL of 1858, and that the minor's estate was exonerated from the decree. *Held* that, under Section 3, Act XL of 1858, the Judge had authority to permit the aunt to represent the minor without a certificate under that law, but he should have sent back the case for trial on the merits as between plaintiff and such representative. *Sheoburrut Singh* v. *Lalljee Chowdry*, 13 S. W. R., C. R., 202.

When a Court of first instance allows a mother to institute a suit on behalf of her minor son, the Judge on appeal has no reason to dismiss the suit on the technical grounds that no certificate had been granted to her under Section 3, Act XL of 1858.

It is not necessary for the mother to describe herself as guardian in the plaint, when the suit is evidently brought by her as mother of her minor son. *Gooro Monee Debia* v. *Ram Kuniol Sandee*, 17 S. W. R., C. R., 144.

A certificate under Section 3 of Act XL of 1858 is purely an authority for the administration of property, and ought not to be issued where there is neither present right nor prospective possession. *Nobin Chunder Shaha* v. *Rajnarain Shaha*, 9 W. R., 582.

Section 3, Act XL of 1858, gives discretion to the Court to admit a party to sue without a certificate. *Anund Chunder Ghose* v. *Komul Narain Ghose*, 2 W. R., 219.

Sections 4, 5, *and* 6.

The summary enquiry provided by Section 6 of Act XL of 1858 refers to the grant of the certificate to the parties claiming it, but no part of the Act allows third parties to demand an enquiry into matters which have nothing to do with the genuineness of the grant. *Meltoon Bibee* v *Gibbon*, 12 W. R., 101.

Under Sections 4, 6, and 7, Act XL of 1858, the Court has power to appoint a guardian other than the father of a minor, for the purposes of instituting suits and protecting the property of the minor. *Mussamut Etwari* v. *Ram Narayan Ram*, 4 B. L. R., Ap., 71 ; 13 S. W. R., C. R., 230.

One manager cannot shift off the responsibility from himself and resign the appointment, and another one take up the appointment without the provisions of Section 6, Act XL, 1858 (requiring issue of a notice of such application or the fixing of a day for the hearing of the application) being duly carried out. *Mussi. Ingodumba Koer* v. *Mussi. Mircha Koer*, 17 S. W. R., C. R., 269.

Held by Loch, J., that the word "residence" used in Section 5, Act XL of 1858, is not the place where the minor may be dwelling at or about the time when the application for a certificate under the Act is made, but the paternal family house or the family residence of the minor in which every member of the family has an interest, and in which they usually reside ; Ainslie, J., being of opinion that though ordinarily that might be taken to be the meaning of the word, yet circumstances might arise in which it might be taken to mean otherwise. *Sheikh Mahomed Hossein* v. *Akbur Hossein*, 17 S. W. R., C. R., 275.

Section 7.

Act XL of 1858 comprises the cases of all minors not under the Court of Wards and not being European British subjects, and acts irrespective of the Mahometan law, which can be no guide to the Civil Court in determining whether an applicant should or should not have letters of administration.

Section 7 looks as much to the fitness of the relative as to his propinquity ; and when two relatives claim the right to administer, the Court is at liberty to disregard the latter qualification and look to the former. *Akima Bibee* v. *Azeem Sarung*, 9 W. R. 334.

Under Section 7, Act XL of 1858, a manager appointed to the estate of a minor cannot in any way get rid of or resign that trust without the permission of the Court, and without duly accounting to his successor for all moneys received and disbursed by him. *Kala Pershad Singh* v. *Poorne Debia*, 15 S. W. R., C. R., 398.

Under Section 7, Act XL of 1858, a person claiming a right to have the charge of the property of a minor by virtue of a will is entitled, if the will be a genuine instrument, to a certificate of administration, notwithstanding the existence of a natural guardian of the minor in the person of his mother. *Bhoobun Mohinee Deba* v. *Poornoo Chunder Bannerjee*, 17 S. W. R., C. R., 99.

The Civil Court has power by summary proceedings, for any sufficient cause, to recall a certificate of administration granted under Section 7 of Act XL of 1858 to a person claiming a right to have charge of the property of a minor, by virtue of a will or deed, or to a near relative of the minor, and to direct the Collector to take charge of the estate, or may grant a certificate to the public curator, &c., and exercise the other powers conferred upon the Court by Section 21, notwithstanding the manager could not be compelled to render his accounts without a regular suit. *Khaja Surwur Hossein Khan and others* v. *Mussamut Nimnee Beebee*, 2 Ind. Jur., N. S., 200.

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Section 14.

Under Section 14, Act XL of 1858, an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co-proprietors attain majority; but the Judge may, on the representation of the Collector, direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification, or until such time as it is otherwise ordered. *Sufferoonissa Beebee* v. *Gholam Hossein Chowdhry*, W. R., 1864, Mis., 2.

Section 21

A Zillah Judge, having ordered the grant of a certificate under Act XL of 1858 to a widow with reference to the property of her deceased husband, afterwards at the instance of the Collector, and on hearing all the parties claiming or objecting, set aside his order and directed the Collector to take charge of the estate. *Held* that the order, though the Judge professed to make it under Section 12, Act XL of 1858, was really made under Section 21. *Chunder Coomar Roy* v. *Collector of Jessore*, 13 S. W. R., C. R., 243.

An applicant for a certificate under Act XL of 1858 having alleged that the appointed guardians had neglected their charge in various ways, the Judge called upon the guardians to produce their accounts, and on their failing to do so took away their certificate, and gave it to the applicant.

Held that the Judge would have been justified by Section 21 in cancelling the guardians' certificate, if sufficient cause were shown; but he had no authority to do what he did, the accounts which a Judge can call for under that section being those which a discharged guardian is to furnish to his successor in office, and the only way in which a guardian retaining office can be made to furnish such accounts is by a regular suit brought by a relative or friend of the minor.

Held that before appointing a guardian the Judge should satisfy himself, under Section 9, of the applicant's fitness for the office. *Ram Dyal Gooye* v. *Amirt Lall Kamaroo*, 9 W. R., 555.

A certificate granted under Section 7, Act XL of 1858, may, under Section 21, be recalled summarily without the accounts having been previously taken in a regular suit under Section 19, where the application of the recall is based on charges of waste and mismanagement. *Nannee Bibee* v. *Khojah Surwar Hossein and others*, 7 W. R., 522.

A Judge has no power under Section 16 or 21, Act XL of 1858, to order a discharged guardian of a minor to file his accounts. Section 21 refers to the procedure as between discharged guardians and their successors, and not to a case where the contest is between the owner of the estate and a discharged guardian. *Doolun Singh* v. *Torul Narain Singh*, 4 W. R., Mis., 3.

A person apprehending danger to the health or life of a minor should ask the Court's interference under Section 21, Act XL of 1858. *Maharajah Fuckhee Narain Aung Bheem* v. *Sooruj Monee Pat Mohadaye*, 2 W. R., Mis., 6.

Section 26.

Discussion as to the proper construction of Section 26. *Monsoor Ali* v. *Ramdyal*, 3 W. R., 50.

Section 28.

Only persons who claim a right to have charge of property in trust for a minor under a will or deed have a right to make applications under Act XL of 1858, and they alone have a right of appeal under Section 28. A mere creditor has no *locus standi* in the proceedings before the Judge, and not right to have his objections gone into. *Meltoon Bibee* v. *Gibbon*, 12 W. R., 101.

7.—MARRIAGE.

The marriage of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 and 6 Wm. IV., c. 45. *Das Merces* v. *Cones*, 2 Hyde's Rep., 65.

A married woman is capable of contracting in respect of her separate estate.

The doctrines of the Roman and English law upon the subject examined. *Nárayanan Chetty* v. *Jensen and others*, 2 Mad. Rep., 383.

Marriage is a valuable and not merely a good consideration. *Chintalapati Chinna Simhadriraj* v. *The Zemindar of Vizianagram and others*, 2 Mad. Rep., 128.

A nikah marriage falls within the purview of Sections 494 and 495 of the Penal Code. *Queen* v. *Judoo Mussulmanee and Beedhy Bewah*, 6 W. R., Cr., 60.

Jewels given to a married woman during coverture by a relative or a stranger,—*Held* to be property belonging to the separate use of the wife. *Held*, further, that the subsequent investment of the same in the purchase of real estate conveyed to the wife does not cause a change in the nature of such property. *Cohen* v. *Auction and Co.*, 1 Hyde's Rep., 130.

A deed conveying the interest of a native married woman in land will not be set aside on the ground of want of legal advice or misapprehension, where the husband is aware of the alienation, and it is not shown that there is a gross inadequacy of price. *Monohur Doss* v. *Khoolsun Begum and others*, Cor. Rep., 121.

It is not necessary that knowledge of a separation between husband and wife should be brought home to the plaintiff in an action for goods sold and delivered to the wife after separation where plaintiff has long dealt with the wife as the husband's agent. *Sham Chund Doss* v. *W. H. Cox*, Cor. Rep., 82.

A Parsee residing in Bombay after the passing of Act XV of 1865, but before it came into operation, contracted a second marriage during the lifetime of his wife, from whom he had not been divorced, and whom he moreover wilfully deserted for two years.

On appeal from an order by the Judge of the Parsee Chief Matrimonial Court rejecting a plaint for divorce by the first wife, on the ground that the subject-matter of the plaint did not constitute a cause of action under Section 30 of Act XV of 1865, and Act VIII of 1859, Section 32,—*Held* that the facts alleged in the plaint did not amount to "bigamy coupled with adultery," nor to "adultery coupled with wilful desertion," within the meaning of Section 30 of Act XV of 1865, as a second marriage contracted by a Parsee husband during the lifetime of his first wife was not unlawful before

the Act came into operation, nor did the provisions of the Act in any way affect the validity or the consequence of such a marriage. *Arabae* v. *Jamasjee Jamshedjee and another*, 3 Bom. Rep., A. C., 113.

8.—RESTITUTION OF CONJUGAL RIGHTS.

The Supreme Court of Bombay, on its Ecclesiastical side, declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsee wife against her husband. *Ardaseer Cursetjee* v. *Perozeboye*, 4 W. R., P. C., 91.

A decree in a suit for restitution of conjugal rights should not decree possession of the person of the wife, but should declare the husband entitled to his conjugal rights, and order the wife to return to his protection. *Koobur Khansama* v. *Jan Khansama*, 8 W. R., 467.

A suit by husband against wife for restitution of conjugal rights will lie in the Civil Courts. *Held* (by Jackson, J., and Macpherson, J.) that the decree in such a suit ought to be declaratory only, and to be enforced in case of disobedience by attachment. *Held* (by Seton-Karr, J.) that the wife may be ordered to be delivered over to her husband. *Jhotun Beebee* v. *Ameer Chand*, 1 Ind. Jur., N. S., 317.

In suits for restitution of conjugal rights the decree should be in the form that the wife do return to her husband, with which decretal order if she fails to comply she may be dealt with under the provisions of the Code of Civil Procedure relating to attachment and imprisonment for non-performance of the act decreed, for a wife cannot be delivered in execution as a chattel. *Mussamut Toofeah and others* v. *Jussouda*, 2 Agra Rep., 337.

Held that a decree for restitution of conjugal rights should be passed in the form that the husband is entitled to conjugal rights, that his wife do return to live with him, and that her parents do not interfere in any manner to prevent her so doing. *Ram Topal* v. *Madhoo and others*, 2 Agra Rep., A. C., 111.

Held that a suit by a husband to recover possession of the person of his wife will lie. *Hur Sookha* v. *Pooran*, 2 Agra Rep., A. C., 115.

In a suit for restitution of conjugal rights the proper form of decree is a direction to the wife to return to cohabitation, which direction on disobedience by her may be enforced as provided in Section 200, Act VIII of 1859. *Mussamut Imamund* v. *Mahomed Mujidoollah*, 4 Agra Rep., 88.

A suit will not lie by a husband to recover possession of the person of his wife; but a suit will lie by the husband, in the nature of a suit for the restitution of conjugal rights, for a decree declaratory of those rights, to be enforced, in case of disobedience, by the imprisonment of the wife or the attachment of her property, or both (Seton-Karr, J., *dubitante*). *Chotun Beebee* v. *Ameer Chand*, 6 W. R., 105.

Quære,—Whether under the present procedure the Court can enforce its order upon a wife to return to her husband, by giving her over bodily into her husband's hands. Such disobedience would seem to fall within Section 200 of the Code, and to be enforceable only by imprisonment, or attachment of property, or both. *Judoonath Bose* v. *Shumsoonnisa Begum*, 8 W. R., P. C., 3.

A Civil Court cannot pass a decree for the recovery of the person of a wife, the proper order being for the restitution of conjugal rights. *Melaram Nudial* v. *Thanooram Bamun*, 9 W. R., 552.

9.—DIVORCE.

The Indian Divorce Act was intended to apply to such marriages as are recognized as marriages by Christians, and not to polygamous contracts, such as are the unions known as marriages to the Mahometan law.

Such polygamous contracts are not subject to the jurisdiction of the Courts created by the Indian Divorce Act of 1869.

Semble,—That where persons of that faith are married according to the Mahometan law, and either party becomes a convert to Christianity, a claim for restitution of conjugal rights cannot be supported. *Zuburdhust Khan* v. *His Wife*, 2 N. W. R., 370.

Motion to make decree *Nisi* absolute. *Willis* v. *Willis*, 4 B. L. R., O. C., 52.

A certain amount of money had been paid by one Hindu to another in consideration of a promise by the latter that he would give his sister in marriage to the former. The girl's mother was alive. In a suit for recovery of the amount on the ground that the latter had failed to fulfil his promise, *held* that the suit would lie. *Jogeswar Chuckrabutti* v. *Panch Kauri Chuckrabutti*, 5 B. L. R., 395; 14 S. W. R., C. R., 154.

When a wife obtains a decree for judicial separation on the ground of her husband's cruelty and adultery, and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children. *Macleod* v. *Macleod*, 6 B. L. R., 318.

A District Judge ought in all cases to enquire into, and set out in his judgment, the facts relied on as giving jurisdiction to the Court to pronounce a decree of dissolution of marriage. *Durand, N., in the matter of*, 14 S. W. R., C. R., 416.

A suit is not maintainable by a wife for an allowance from her husband on an agreement, for which the sole consideration is a stipulation that the wife is not to communicate with or molest her husband, such stipulation falling within the general rule that a deed of separation entered into by husband and wife without the intervention of trustees is void. *Hughes* v. *Hughes*, 16 S. W. R., C. R., 250.

The High Court has jurisdiction to admit a petition for divorce, where the parties are resident, and the adultery is committed, in the District of the 24-Pergunnahs.

Principle on which the Court will assess damages discussed. *Kelly* v. *Kelly and Saunders*, 3 B. L. R., O. C., 67.

In an application for alimony, it is sufficient to set out the fact of the marriage in the petition; an affidavit to that effect is unnecessary. In making the application, it is sufficient to show the Court that there has been a ceremony which might be a valid marriage; and therefore where the petitioner was shown to be the respondent's deceased wife's sister alimony was granted. *Crump* v. *Crump*, 1 B. L. R., O. C., 101.

Pending a suit for divorce by the husband, an application by the respondent that an estimate of

her probable costs of suit should be made by the taxing office, and the amount thereof as estimated should be paid out of Court to her, was refused; but the Court granted an application that the respondent's costs incurred should be taxed, and the amount thereof be paid out of Court to her proctor. *Kelly* v. *Kelly and Saunders*, 3 B. L. R., Ap., 5.

The petitioner sued for a divorce on the ground of his wife's adultery. The adultery was admitted, but the respondent proved that her husband had been guilty of various acts of cruelty towards her, which disentitled him to have an unconditional divorce, and claimed on this ground a right to a judicial separation with alimony, under Section 15 of the Indian Divorce Act. She was at the time of the suit living with the co-respondent.

Held that the respondent was not entitled to a decree for judicial separation with alimony. The Court has discretion, under Section 14 of the Act, to refuse a decree for divorce if the petitioner has been guilty of cruelty, although the cruelty may have been condoned.

Sections 13, 14, and 15 of the Indian Divorce Act commented on. *Gordon* v. *Gordon and Saran*, 3 B. L. R., O. C., 136.

The respondent is entitled to have brought into Court letters written by her to the petitioner, while the facts to which they speak were fresh in her memory. If the petitioner has none he should make an affidavit to that effect. *Gordon* v. *Gordon*, 3 B. L. R., O. C., 100.

Where a wife is living apart from her husband under such circumstances that she does not pledge her husband's credit, the Court will not grant alimony. *Gordon* v. *Gordon and Dr. Saran*, 3 B. L. R., Ap., 13.

Alimony may be ordered to commence from the date of the service of the citations, and to run until the final decree. *Kelly* v. *Kelly and Saunders*, 3 B. L. R., Ap., 4.

In a suit for dissolution of marriage, where at the time of the presentation of the petition the respondent does not reside within the jurisdiction of the Court, the jurisdiction of the Judge and the right of the petitioner to petition him will depend on where the parties "last resided together." *Wingrove* v. *Wingrove*, 14 S. W. R., C. R., 416.

A wife brought a suit for a dissolution of marriage on the ground of her husband's adultery and desertion. The desertion took place twenty-four years before the suit was brought, and ever since the husband had made his wife an allowance. Latterly his circumstances had considerably improved. The Court gave a decree for dissolution, but in determining the suitable amount of permanent alimony it took into consideration the circumstances of the husband at the time of the desertion, and refused to give the wife the full advantage of the present improved circumstances of the husband. *Smyth* v. *Smyth*, 6 B. L. R., Ap., 153.

A husband brought a suit for divorce against his wife on the ground of her adultery; the co-respondent appeared in that suit. The respondent appealed on the ground (*inter alia*) that, on the evidence, the Court ought to have held that the adultery was not proved. *Held* that in that appeal the co-respondent was not entitled to be heard in opposition to the appeal.

The Court has power under Section 37 of Act IV of 1869 to order permanent alimony to the wife when a husband obtains a divorce on the ground of her adultery. When the marriage is dissolved on account of the adultery of the wife she is not entitled to have access to the children of the marriage. *Kelly* v. *Kelly and Saunders*, 5 B. L. R., 71.

Principle on which the Court will grant permanent alimony. *Ord* v. *Ord*, 5 B. L. R., Ap., 34.

Divorce, suit for—Adultery—Wife's costs. *Broadhead* v. *Broadhead*, 5 B. L. R., Ap., 9.

Where a man and woman, after cohabiting for some time, became Mahometans and contracted a Mahometan marriage, the man being already the husband in Christian marriage of a living Christian wife, the Privy Council, agreeing with the High Court, N. W. P., doubted the validity of the Mahometan marriage. *Skinner* v. *Orde*, 17 S. W. R., C. R., 77.

The defendant, a married woman living with her husband, both domiciled in British India and resident in Calcutta, where they had been married on 21st May, 1866, and having property to which she was absolutely entitled under the provisions of the Indian Succession Act, signed a promissory note in favour of the plaintiff for a debt due by her to the plaintiff, at the same time giving a verbal promise to pay the amount out of her own property. In a suit on the promissory note, in which the husband and wife were made parties, the wife pleaded her coverture,—*Held* that she was liable to pay the amount of the promissory note out of her own property, and the Court would, if necessary, make a personal decree against her.

The defendant was at the time of making the promissory note of the age of 19 years. The evidence showed that her father was born at sea, and lived the greater part of his life at Calcutta. It was not shown of what country his parents were, or whether the ship in which he was born was a British ship. The defendant pleaded minority at the time of making the note. *Held* the defendant was not a European British subject, and not exempted from the operation of Act XL of 1858. She therefore attained her majority at 18 years. *Archer* v. *G. J. Watkins*, 8 B. L. R., 372.

9.—Insanity and Lunacy.

Case in which the prisoner, notwithstanding that he had been convicted by the Sessions Judge, was acquitted by the High Court on the ground of insanity, under Section 393 of the Code of Criminal Procedure, and directed to be kept in safe custody, pending the orders of the local Government to be applied for by the Judge. *Queen* v. *Pursoram Doss*, 7 W. R., Cr., 42.

The prisoner was convicted of murder, and sentenced to death; but before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge, with instructions for further inquiry. *Queen* v. *Arzao Bebee*, 2 W. R., Cr., 33; *Queen* v. *Sheikh Mustafa*, 1 W. R., Cr., 1.

A prisoner who is insane and unaccountable for his actions, and therefore incapable of making his defence, instead of being tried, should be dealt with according to Sections 389 and 390, Code of Criminal Procedure. *Queen* v. *Kalai Sheikh*, 3 W. R., Cr., 57; *Queen* v. *Shah Mahomed*, 3 W. R., Cr.,

70; *Queen* v. *Noorkhan Chowdhry*, 1 W. R., Cr., 11; *Queen* v. *Sheikh Mustafa*, 1 W. R., Cr., 15.

Where a Magistrate has kept in custody an insane prisoner, and reported the case to Government, his successor, instead of striking off the case, is bound to resume the investigation under Section 391, Code of Criminal Procedure. *Queen* v. *Rughooa*, 6 W. R., Cr., 3.

Where an accused person was found after examination to be of unsound mind,—*Held* that the Magistrate should not have proceeded to acquit the prisoner, and directed him to be kept in custody, but should have stayed further proceedings. *Queen* v. *Dataram*, 6 W. R., Cr., 54.

The enquiry as to alleged lunacy under Act XXXV of 1858 must be made by the Judge, and not by a subordinate Court, to which the Judge can only issue commission under Section 8 of the enactment, in cases where the alleged lunatic resides at a distance more than fifty miles from the place where the Court is held. Ordinarily to such enquiries the members of the family are proper and sufficient parties, but other persons interested may, under special circumstances, be permitted to take part. *Thakoor Ram Purgass Singh and others* v. *Syud Ameer Ali*, 3 Agra Rep., Mis., 3.

When, on the trial of a prisoner, the Court entertains doubts as to his sanity full enquiry upon the point is necessary. *Reg.* v. *Heera Poonja*, 1 Bourke's Rep., 33.

A Judge, instead of striking off a case because an alleged insane person does not appear after service of notice, ought in such event to prosecute the enquiry contemplated by Act XXXV of 1858. *Mussamut Moorut Koonwar* v. *Dhurm Narain Singh*, 2 W. R., Mis., 7.

A Collector appointed under Section 11, Act XXXV of 1858, to take charge of the estate of a lunatic, cannot sue himself on behalf of the lunatic, but must appoint a manager for the purpose. *Goureenath and another* v. *The Collector of Monghyr and another*, 7 W. R., 5.

Section 5, Act XXXV of 1858, never intended that an alleged lunatic should be summoned into a public Court as a witness, and subjected to examination as a witness by the vakeel of the person on whose petition the enquiry was instituted. *R. T. Allen for petitioner*, 7 W. R., 246.

Applications made under Section 293 of the Lunacy Act XXXV of 1858 must be verified. *Busrut Ally Chowdhry* v. *Eshan Chunder Roy, mookhtear, on behalf of Arfanissa Chowdhrain*, 7 W. R., 267.

A lunatic had been for a number of years in involuntary confinement in Bhowanipore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergunnahs, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property,—*Held* that as the lunatic was residing within the jurisdiction of the Court of the 24-Pergunnahs, the Judge could, under Act XXXV of 1858, Section 2, enquire into the fact of his insanity, and order a manager to be appointed to the estate. *J. C. Durant* v. *Chundranath Bhuttacharjee*, 2 B. L. R., A. C., 246.

Where a prisoner was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, it was held that it was irregular to acquit him; proceedings should have been stayed, and the prisoner detained, pending the orders of Government. *In the case of Romon Audheekaree*, 10 W. R., Cr., 37.

The application for an enquiry under the Lunacy Act, Act XXXV of 1851, should be verified, and proper notice should be given to the alleged lunatic or his friends in case of necessity. In examining him the greatest care and delicacy should be observed, and everything likely to cause unnecessary pain or excitement to him avoided. If also he be a person of rank, exempted from personal appearance in Court in ordinary civil proceedings, his personal appearance in Court in an enquiry into the state of his mind should be dispensed with. *Maharajah Jugunnath Sahee Deo* v. *Burra Lall Opendronath Sahee Deo*, 5 W. R., Mis., 54.

A Magistrate rightly commits for trial at the Sessions a prisoner charged with murder, whom he finds to be sane at the time of the preliminary investigation, although he was insane when he committed the act.

When a prisoner is found to be insane at the time of his trial, the proper procedure applicable to his case is that prescribed by Sections 391 and 392 of the Code of Criminal Procedure. *Queen* v. *Ram Ruttun Doss*, 9 W. R., Cr., 23.

A Court cannot, under Act XXXV of 1858, make over charge of the property and person of an alleged lunatic to a guardian until it has adjudged him to be of unsound mind and incapable of managing his affairs. *Bholanauth Mookerjee* v. *Grish Mohinee Debia*, 15 S. W. R., C. R., 259.

On an enquiry as to the fact of lunacy under Act XXXV of 1858, any finding as to the actual time when the lunacy began is beyond the jurisdiction of the judicial officer making the enquiry.

Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood as to common report for years in the village as to the lunacy having been admitted by the Lower Court, the Judicial Committee refused to reject it.

The rule as to the admission of evidence laid down by Dr. Lushington in *Unide Rujaha Bommaranze Bahadur* v. *Pemmasamy Venkutadry Naidoo* followed. *Bodduarayan Singh*, by *revivor, and Ajodhya Prusad Singh* v. *Umrao Singh*, 6 B. L. R., 509; and 15 S. W. R., P. C., 6.

On an application for the appointment of a guardian to the estate of a lunatic under Act XXXV of 1858, the Judge should only appoint a person to take charge of the estate of the lunatic, without specifying of what that estate consists. *Nitambini Chowdrain* v. *Shashi Mukhi Chowdrain*, 4 B. L. R., Ap., 24; and 12 S. W. R., C. R., 518.

Where the mother of an alleged lunatic presented a petition to the Collector, and the Collector, after certain enquiries, forwarded it to the Judge for orders thereon,—*Held* that no application was regularly before the Judge under Act XXXV of 1858, for if the application was one by the mother it was bad for want of verification, and if by the Collector it was also bad because he was not the duly constituted agent of the lady, and did not himself formally move the Judge under Section 3 of that Act, or, if he acted under either Section 16 or 27, Act IV of 1870, he had no authority to set the Civil Court in motion without the order of the Court of Wards. *Chuckursurun Narain Singh* v. *The Collector of Sarun*, 17 S. W. R., C. R., 180.

XVIII.

HINDU LAW.

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1.—MISCELLANEOUS.

A Hindu widow cannot sue as representative of her husband when sons are alive, nor will a petition filed by the sons in a suit brought by her as such representative (in which petition the sons state that she has always been in possession of the property and is entitled to sue) cure the defect in her title.

Held also that, in the absence of proof that the widow was the next reversioner after the sons, even a disclaimer by the sons prior to the institution of the suit, if it did not amount to an absolute assignment to the widow, would not entitle her to sue. *Ram Kannye Gossamee* v. *Meernomoyee Dossee*, 2 W. R., 49.

The doctrine of the Hindu law that a widow succeeding as heir to her husband cannot recover property of which he was not possessed, does not apply when the husband has a vested interest under a will or deed, the actual enjoyment being postponed. *Hurosoondery Dabea Chowdraney* v. *Rajessaree Dabea*, 2 W. R., 321.

By Hindu law, the assignee of a debt can sue the debtor in his own name. *Kadar Vocha Sahib* v. *Rangas Nayak*, 1 Mad. Rep., A. C., 150.

A widow under the Court of Wards cannot, in the summary department, appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. *Kustoora Koomaree* v. *Binoderam Sein*, 4 W. R., Mis., 5.

Where a widow who is under age is properly

represented in a suit, the matter stands precisely as if she were of age and acted on her own behalf, and as representative of the entire estate, involving the interests of her deceased husband and her minor sons. She has the same control with respect to compromise as she has with respect to the assertion of rights and appeal against an adverse decision. *Tariney Churn Gangooly* v. *Watson and Co.*, 12 W. R., 414.

A Hindu woman may at all times sue either alone or jointly with her husband. *Bhoyrub Chunder Doss and another* v. *Madhub Chunder Poramanick*, Hyde's Rep., 281.

Purdanushin women, or women who according to the usage of the country ought not to be compelled to appear in public, are not exempt from arrest in execution of a decree. *The Maharani of Burdwan* v. *Srimati Baradasundari Debi*, 1 B. L. R., F. B., 31; 10 W. R., F. B., 21.

Held (by Macpherson, J.) that accumulations are not income, and cannot be dealt with by a Hindu widow as such; they should be treated in the same way as the *corpus* of the estate. *Grose* v. *Amirtamoye Dasi*, 4 B. L. R., O. C., 3; S. C., 12 W. R., A. O. J., 13.

A Hindu becoming a Byragee, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, may be doing an act which is morally wrong, but in which he will not be restrained by the Court.

A. became a Byragee, and went on a pilgrimage. He alleged that before his departure he made over his property to B., on the condition that it should revert to him on his return. B. sold it to C. Upon his return after several years A. claimed the property from C., who refused to give up possession. D. purchased A.'s rights, and then sued the widow of C. to obtain possession. She denied that the property was made over to B. upon trust for A. on his return, and contended that the suit was barred under Clause 12 of Section 1 of Act XIV of 1859. The lower Appellate Court held that it was not barred, on the ground that B.'s possession was not adverse. On special appeal the case was remanded, that it might be found whether B. had been in possession in trust for A. or adversely to him for more than 12 years. *Jagannath Paul* v. *Bidyannad*, 1 B. L. R., A. C., 114; 10 W. R., 172.

The trade of prostitution is recognized and legalized by Hindu law. *Chalakonda Alasani* v. *Chalakonda Katna Chalam*, 2 Mad. Rep., 56.

Each holder of a crotriyam conferred for lives can only alienate his own life-interest. *Sundarati Mudali* v. *Valinaki Ammal*, 1 Mad. Rep., A. C., 465.

Semble,—An adopted son may succeed to a crotriyam.

Semble,—A widow may succeed to a crotriyam during life. *Sundalati Mudali* v. *Valinaki Ammal*, 1 Mad. Rep., O. C., 471.

Civil Courts cannot compel Hindus, against their will, to ask other Hindus to their houses or their entertainments. *Joy Chunder Sirdar and others* v. *Ramchurn and others*, 6 W. R., 323.

Where a contract is proved to have been entered into, but no memorandum thereof in writing has been signed by the parties, a Hindu defendant is not entitled to plead the Statute of Frauds. *John Borradaile and another* v. *Chinnsook Buxyram*, 1 Ind. Jur., O. S., 70; 1 Hyde's Rep., 51.

A Government promissory note is not a "corody," and therefore not immoveable. *Doorga Dayee* v. *Poorun Dayee*, 5 W. R., 141.

Under the Hindu law Government promissory notes ought to be treated as personal property. *Mussamut Doorga Dayee* v. *Mussamut Poorun Dayee*, 1 Ind. Jur., N. S., 128.

Plaintiff brought a suit to procure delivery to her of a share of land purchased with money, subject to the provisions of a deed of partition executed by her husband and the undivided members of his family. Plaintiff's husband has been since 1854 absent in a foreign country. *Held* that the plaintiff sufficiently represented her absent and divided husband to enable her to sue for his share. *Pápammál* v. *Rámaswámi Chetti*, 2 Mad. Rep., Ap., 365.

Held that the mother who is in possession of her daughter's shares in her husband's estate in lieu of dower is not at liberty to sell them, and the sale can be invalidated, although the daughters may not be entitled to immediate entry upon their shares. *Mussamut Ghufoorun Bebee* v. *Khwajeh Mustukedeh and others*, 3 Agra Rep., 300.

The Pattam, or office of dignity in a family governed by the Aliya Santána law, is indivisible, and, whether the family be divided or not, the Pattam, no special arrangement having been made about it, descends to the eldest male of the surviving members of the family.

The passage set out in a note to the case of *Munda Chetti* v. *Timmaju* (1 M. H. C., Rep., 380) is not a correct interpretation of the original canarese text of Bhutala Pandiya's work. *Timmappa Heggade* v. *Mahalinga Heggade*, 4 Mad. Rep., 28.

In a suit between Hindus in the Bombay Mofussil damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff. *Kashirám Valad Krishna* v. *Bhadu Bápuji*, 7 Bom. Rep., A. C., 17.

There is no difference between the position of a Rajah holding an impartible raj, and that of an ordinary zemindar, in respect of his power to relinquish the property in favour of his next legal heir. Such a relinquishment is not forbidden by the Hindu law. *Luchmee Narain Singh* v. *Gibbon*, 14 S. W. R., C. R., 197.

Under the Benares law a man's immoveable property, though self-acquired, is not within his power of disposal so absolutely by gift in his lifetime as to enable him to give it all to one son or grandson in exclusion of the rest. *Maha Sookh* v. *Budree*, 1 N. W. R., 103.

ADMINISTRATION—(*See* ADMINISTRATION).

The sale by a widow (who has obtained a certificate under Act XXVII of 1860 to collect the debts due to her husband's estate) of a money decree belonging to her husband's estate, cannot be set aside except on the ground of fraud, either as not being the heir and selling what she had no power to transfer, or as making a paper transfer to avoid the effect of execution. *Bhagwan Doss* v. *Luchmee Narain*, 2 W. R., Mis., 19.

Where a sale of landed property was made by a Hindu widow as administratrix to the estate of her

deceased husband,—*Held* that she had power to dispose of the land for any purpose for which as administratrix she might properly do so.

Held also that an improper disposal of the property was not to be presumed against a purchaser from her, but that the sale must be taken to be proper and valid, unless it appeared that to the purchaser's knowledge she was for an unlawful purpose converting the estate. *Held* also that she having the right to sell as administratrix, it could not be presumed that she sold as a widow. *Loganada Mudali* v. *Rasvami and others*, 1 Mad. Rep., 384.

The security required from the administrator of effects of a deceased Hindu extends, as in the case of an English administrator, only so far as to cover the personalty of the deceased. *In the goods of Gour Chunder Thakoor, deceased*, 1 Ind. Jur., N. S., 229.

A widow is entitled (in preference to a cousin who also claimed as surviving partner) to a certificate to collect the debts, joint as well as separate, of her late husband. *Roy Baboo Shib Golam Sahoo Bahadoor* v. *Mussamut Gunga Koonwaree*, 1 W. R., Mis., 32.

A Hindu widow, as holder of a certificate under Act XXVII of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property, though she is entitled to do so as heir of the deceased, if he died without issue, and was the sole owner of the property. *Sevinthia Pillay* v. *Mootoosawmy and others*, 8 W. R., 2.

3.—Adoption.

(*a*) *Generally.*

A Hindu died after having made a hibbanama or deed of gift, giving the bulk of his property to the eldest son of one of his brothers, designating him as his pallok-putra. The donee thereof died without issue, but leaving a widow him surviving. On the death of his widow his cousins sued his step-brother for possession of their share of his property, on the allegation that he had been adopted by their uncle, and consequently the relationship between him and his step-brother had been severed, and that they were equally entitled with the step-brother to succeed. The defendant denied the fact of the adoption. The High Court held that the intention to adopt and the fact of adoption were proved by the terms of the deed of gift.

Held, by the Privy Council, reversing the judgment of the High Court, that the words of the hibbanama [" but as I had no son or daughter, I took you as my pallok-putra, in the month of Aghran 1211, B. S. (1803), with the anumati (permission) of your parents, for the purpose of securing future oblations of water and funeral cake, and having brought you up like a son, performed the ceremonies of your Sangskar, &c., and have constituted you my representative"] were not those which properly import the adoption of a son by gift—Dattaka Putra.

Held that the presumption which arose from the religious duty of a childless Hindu to adopt was, in this case, opposed to as strong a presumption that a Hindu would not break the law by giving in adoption an eldest or only son.

In estimating the value of a suit, the costs must not be included in the amount in dispute. *Nilmadhab Dass* v. *Biswambhar Dass*, 3 B. L. R., P. C., 27; S. C., 12 W. R., P. C., 29.

A registered deed of permission to adopt, which contained no words of devise, was held not to be of a testamentary character, there appearing no intention on the part of the maker that the document should contain any disposition of his estate, except so far as such disposition might result from the adoption of a son under it. An adopted son, as such, takes by inheritance, and not by devise. A son cannot be adopted to the great-grandfather of the last taker after the lapse of several successive years, when all the spiritual purposes of a son, according to the largest construction of them, would have been satisfied.

When the estate of a son is unlimited, and that son marries and leaves a widow his heir, she acquires a vested interest in her husband's property as widow, and a new heir cannot be substituted by adoption to defeat that estate, and take as an adopted son what a natural born son would not have taken. By the mere gift of power of adoption to a widow, the estate of the heir of a deceased son vested in possession cannot be defeated and divested. *Bhoobun Moye Debia* v. *Ramkishore Acharjee*, 3 W. R., P. C., 15.

According to Hindu law a power to adopt may be given verbally. The widow of a childless member of a divided Hindu family is entitled to a life-interest in her husband's estate after the death of an adopted son before attaining majority. *Soonder Koomaree Debea* v. *Gudadhur Pershad Tewaree*, 4 W. R., P. C., 116.

A suit to set aside the adoption of a second son must be made within 12 years from cause of action. *Radhakissen Mahapater* v. *Sreekissen Mahapater*, 1 W. R., 62.

A Hindu will contained the following clause: "I give out of my two-anna share of the whole of my personal estates Rs. 7,000 to my mother (*one of the defendants*) and Rs. 5,000 to my wife (*the plaintiff*). Besides the two-anna share of the wealth in ready money and landed property which remains, you, my brother, will keep under your own charge; you are at present malik of the whole of the property; you will perform all acts; you will cause one of your sons to be received in adoption." The brother died leaving a will, by which he committed to his wife and mother the charge of his own property and that of his brother, and also the duty of giving his son in adoption to his brother. The defendants, *viz.*, his wife and mother, proved the will, and took possession of the property. The plaintiff omitted to adopt. Her husband died in 1851, and the suit was brought in 1867.

Held that the estate descended to the widow, plaintiff, subject to the two legacies, notwithstanding her refusal to adopt; and that she did not forfeit it even if she refused to adopt. *Prasannamayi Dasi* v. *Kadambini Dasi*, 3 B. L. R., O. C., 85.

An attempt at a false adoption of a son does not render a widow liable to the penalty of absolute forfeiture of the property for the benefit of reversioners. *Komul Monee Dossee* v. *Alhammonee Dossee*, 1 W. R., 256.

Although the exercise of an act of adoption by the

widow of a Hindu who died without male issue, and made in accordance with his request, divested the property from the widow and vested it in the adopted son, the widow sued for an undivided share in the joint property, and a decree was made directing her to be put in possession. *Held* that the widow must be assumed to have prosecuted the suit only as guardian for her adopted son; that the decree must be considered to be for his benefit, and that she was put in possession as trustee for him and accountable to him as guardian and trustee for the profits of the property, being entitled herself to a maintenance out of it. *Dhurmo Doss Pandey and others* v. *Mussamut Shama Soondery Debia*, 6 W. R., P. C., 43.

Plaintiff sued as the widow of an adopted son for the property of the adoptive father, and also on the ground that the adopted son was the devisee of the adoptive father. The Civil Judge decided that the adoption of the plaintiff's husband was invalid according to Hindu law, and that the devise, having been made to the plaintiff's husband as adopted son, was invalid.

Held (reversing the decision of the Civil Judge) that as the language of the testator sufficiently indicated the person who was to be the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law could not be sustained. *Javani Bhai* v. *Jivar Bhai*, 2 Mad. Rep., 462.

A sale in execution of a decree against an adoptive mother is good as against the adopted son, when made, not personally, but as guardian of the adopted son, and not for a personal debt, but for payments made by co-sharers of Government revenue on account of the adopted son to preserve their joint property. The estate of the adopted son is not liable for a debt without proof that the debt is other than personal. *Roopmonjooree Chowdhrance* v. *Ramlall Sircar*, 1 W. R., 144.

The theory of an adoption is a complete change of paternity; the son is to be considered as one actually begotten by the adoptive father, and he is so in all respects save an incapacity to contract marriages in the family from which he was taken. *Narasamal* v. *Balaramacharlu*, 1 Mad. Rep., 420.

A Hindu whose adoption is invalid is entitled to maintenance in his adopter's family (overruled, 363). A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral estate.

As against an adopted son suing for his share of the ancestral estate, the Law of Limitation does not begin to run until the allotment of such share has been demanded and refused. The share of an adopted son is one-fourth of the share of a son born to the adoptive father after the adoption. *Ayyávu Muppanár* v. *Niladatchi Ammál and others*, 1 Mad. Rep., 45.

Where an adoption had been acquiesced in for a period of thirty-three years, it was presumed that the necessary consent of some person competent to give away the adopted son had been obtained. *Anandráv Siváji et al.* v. *Ganesh Eshvant Bikil*, 7 Bom. Rep., Ap., XXXIII.

A childless Hindu is bound to adopt a son if at all anxious for his own salvation, and what is required to be done for that end is not optional with him, but an imperative obligation. *Rajendro Narain Lahoree* v. *Saroda Soondaree Debia*, 15 S. W. R., C. R., 548.

The decision of an Appeal Bench of the High Court upon a point of law, or the construction of a document in the case before them, is not necessarily binding on a single Judge of that Court, where the same question again arises in another suit before him.

A Hindu testator died, leaving a widow, and leaving also a will which contained the following clause: "My wife is supposed to be pregnant with child; if a daughter be born she will in that case adopt the twain mentioned below (the plaintiff and one S. G.), and whatever property there shall exist, consisting of moveable and immoveable, my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority. S. G. died; no child was born by the widow. The plaintiff having attained his majority brought a suit for declaration of his title, alleging that he had been duly adopted under the will; but that, whether he had been adopted or not, he was entitled under the will to a share in the moveable and immoveable property of the testator. No valid adoption took place,—*Held* that there was no gift by implication to the plaintiff. The testator only intended him and S. G. to take under the will in the event of their being adopted. *Prossonomoye Dassee* v. *Dossmoney Dossee* not followed. *Abhai Charan Ghose* v. *S. M. Dasmani Dassi*, 6 C. L. R., 623.

The Sudder Ameen having held an adoption proved, the Principal Sudder Ameen, on appeal, reversed that decision on the facts. The case came before the High Court on special appeal, and the decision then given was appealed to England, and special leave was given by her Majesty to appeal against the decision of the Principal Sudder Ameen. The decision of the High Court on the law was admitted to be good, but the Judicial Committee reversed the finding of the Principal Sudder Ameen on the facts.

Deeds though unregistered (registration not being compulsory), when proved by all the attesting witnesses, and against which there is no evidence on the other side, ought not to be set aside on mere suspicion of perjury and forgery. *Kali Chundra Chowdry* v. *Shib Chundra Bhaduri*, 6 B. L. R., 501; and 15 S. W. R., P. C., 12.

According to Hindu law sons acquire rights only in the property which belonged to their father at the time of their birth, and have no legal claim to property of which a *bonâ-fide* disposition, effectual as against their father, had been made long before they were born.

The right of an after-born son to share as a coparcener divided property depends upon his mother being pregnant with him at the time of a partition.

The father of the plaintiffs adopted the third defendant. After the adoption the wife of the father gave birth to a son. Thereupon the father effected a division of the property with the adopted son, and gave the latter a larger share than he was entitled to receive by law. The father married a second wife, and the plaintiffs were the issue of the marriage.

Held that the plaintiffs were not entitled to a

partition of any portion of the property which fell to the share of the adopted son. *Yekeyamian* v. *Agniswari*, 4 Mad. Rep., 307.

In order to establish a valid adoption in a Brahmin family, proof of the performance of the datta homam is not essential.

The giving and receiving a boy who is capable of being adopted is sufficient to constitute a valid adoption according to Hindu law. *Singamma* v. *Vinjamuri*, 4 Mad. Rep., 165.

A suit to set aside the adoption of a second son must be made within 12 years from cause of action. The maxim "*ignorantia legis nil excusat*" applies to questions of the Hindu law of inheritance and adoption, as well as to other laws. *Radhakissen Mahapater* v. *Sreekissen Mahapater*, 1 W. R., 62.

A bond executed by a widow in possession of a zemindary was held binding on the adopted son of the late zemindar, the inference from the evidence being that the bond was given for debts which the defendant (the adopted son), as owner of the zemindary, might be liable to pay, and that by his own acts he had admitted that he actually was liable to the payment. *Chetty Colum Coomara Vencatachella Raddyar* v. *Rajah Rungasanwey Jyengar Bahadoor*, 4 W. R., P. C., 71.

(*b*) *Double Adoption.*

P., a Hindu inhabitant of Calcutta, of the Sudra caste, having two wives,—M., the elder wife, and N., the younger,—but no issue by either of them, adopted two sons, the plaintiff and S. This double adoption took place on one and the same occasion, but the plaintiff went through the necessary ceremonies in point of time before S. P. gave the plaintiff in adoption to his wife M., and S. to his wife N. P. afterwards died, leaving M. N., the plaintiff, and S., and leaving property and a will, in which he said,—

"Having adopted two sons, I have given my elder son to my elder wife to bring him up, and they both are respectively nurturing the two sons as sons born of their own womb. For the purpose of protecting and preserving the property after my decease, I appoint my elder uterine brother A. executor, and my said two wives M. and N. executrixes. If either of these my two sons depart this life without issue (which God forbid !), I direct either of my wives whose foster son shall have died to take another son in adoption pursuant to this my direction, and having done so, should a similar misfortune happen, she shall have the option of adopting other sons in succession, and that son shall inherit the share of my deceased son. Further, besides one-half share of the moveable and immoveable properties of which I am possessed jointly with my elder uterine brother, whatever, &c., belonging to me in my separate, &c., account, my said executor and executrixes shall become possessed of the whole after my decease, and shall recover my dues and pay the undermentioned legacies, &c., &c. Afterwards, when my adopted sons shall have attained their ages of majority, my executor and executrixes shall account for and give them their shares on their becoming of age. If they continue to be unanimous, well and good; if not, they may divide and receive their respective shares of the property and live separate as to food, &c., &c."

The executor and two executrixes proved the will. Afterwards S. died, an infant and unmarried, and thereupon N., his mother in adoption, assuming to act under the will, adopted the defendant O. in his place, the other son, the present plaintiff, still living.

The plaintiff and O. afterwards, while still infants, filed a bill by their next friend against P.'s executor and executrixes for the administration of the estate. N. afterwards died before the present suit, which was brought by the plaintiff against M., the surviving wife, and O., praying that the plaintiff might be declared the only son and heir of P., and that an account might be decreed against the defendants. *Held* by the Court below that the adoption by P. of two sons at the same time was void; that consequently there was no validly adopted son living at the time N. exercised the power given her by the will, and that the adoption by her of O. was valid.

Secondly, by the Court below and the Court of Appeal, that there was a clear designation of the plaintiff and S., and of O., the subsequently adopted son, to enable them to take under the will.

Thirdly, by both Courts, that the administration suit was no bar to the present suit.

And *held* by Trevor, J., dissenting from the rest of the Court on the appeal, that the instrument executed by P. was partly a will and partly a permission to adopt; that as to the first part of the instrument, there was sufficient designation of the persons as held by the rest of the Court; and as to the second part, that it was a condition precedent to any one taking under that permission that he should be a validly adopted son according to the Hindu law. *Monemothanath Day* v. *Onothanath Day and Nemoyemoney Dassee*, 2 Ind. Jur., N. S., 24; Bourke's Rep., O. C., 189.

According to Hindu law, a second adoption (the first adopted son still existing and remaining in possession of his character of a son) is invalid. The acquiescence of the first adopted son, after he came of age, in the division of property made by the adopting father between his two adopted sons, was not equivalent to a previous consent (binding on the first adopted son) to the disposition of the ancestral property by the father, but was binding on the first adopted son with regard to other property of which the father had the power of disposing by an act *inter vivos* without the consent of the first adopted son. *Atchama* v. *Ramanhadha Baboo* 7 W. R., P. C., 57.

(*c*) *Evidence of Adoption.*

When a Hindu lady adopted a son in the lifetime of her husband, the fact that she carried on a law-suit during his lifetime, calling herself his wife and the mother of the adopted son, and that neither the husband nor any one else denied the adoption, would be strong corroborative evidence that the adoption was made not only with the husband's consent, but that the ceremonies usual on the occasion of an adoption were done in his actual presence. *Tincowrie Chatterjee* v. *Denonath Banerjee*, W. R., 1864, 155.

Circumstances under which Court will require

strict proof of power to adopt, and under which it will assume the power to have been given. The acquiescence of parties interested in opposing an adoption is not *primâ-facie* evidence of its validity. The precise contingency contemplated by the donor of the power must happen to make an adoption valid. *Mohindrolall Mookerjee* v. *Rookiney Dabee*, Cor. Rep., 42.

In cases of adoption careful scrutiny is necessary. The party seeking to establish an adoption is bound to produce the best evidence procurable. The rule for testing the validity of a deed of adoption is contemporaneity of execution and publication of the deed of permission. In the absence of original deed, all the circumstances bearing upon the alleged deed, and all the probabilities for and against its genuineness, must be considered. *Roopmonjoree Chowdrain* v. *Ramlal Sircar*, 1 W. R., 144.

In a former *bonâ-fide* litigation to which the defendant was no party, the *status* of the plaintiff as an adopted son was in issue and disposed of in his favour. *Held* that that was good evidence of the adoption in this case, in the absence of better evidence for the defendant. *Seetaram* v. *Juggobundo Bose*, 2 W. R., 16.

An adoption made by a Parsee immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto, and therefore call for very clear proof to establish its existence.

Although in cases of adoption by dhurm-putr (a partial adoption) it is not indispensably necessary that a declaration should be made on the third day after the decease, yet it is usual to make such a declaration and to take a writing from the dhurm-putr.

In the absence of any such writing, and upon the whole evidence, the adoption in this case was pronounced to be as a paluk-putr, and not merely as a dhurm-putr. *Homabhaee* v. *Punjeabhaee Dosabheen*, 5 W. R., P. C., 102.

According to Hindu law, neither registration of the act of adoption, nor any written evidence of that law having been completed, is essential to its validity.

In no case should the rights of wives and daughters be transferred to strangers or to more remote relations, unless the fact of adoption by which this transfer is effected be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth. Although the Hindu law does not require that adoptions should be acknowledged in writing, it is usual, when persons in the situation of a zemindar adopt sons, to acknowledge such adoption in writing, to give notice to the ruling power, and to invite the neighbouring zemindars and others to be present at such an adoption. *Sutroogun Sutputty* v. *Sabitra Dye*, 5 W. R., P. C., 109.

(*d*) *Rights of Adopted Son.*

Held (following the rule of the Privy Council in the case of Shumbhoo Chunder Chowdhry, dated 6th February, 1835) that, according to the authorities on Hindu law and the weight due to them, an adopted son succeeds, not only lineally, but collaterally, to the inheritance of his relations. *Tara Mohun Bhuttacharjee* v. *Kripa Moyee Debia*, 9 W. R., 423.

Under the Hindu law an adopted son has all the rights of a son born. When, however, an adopted son rests his title on a confirmatory sunnud, he is bound to prove the sunnud. *Maharajah Juggernath Sahaie* v. *Mussamut Mukkun Koonwar*, 3 W. R., 24.

An adopted son has all the rights and privileges of a son born, and is also entitled to succeed to the stridhun of his mother in the absence of daughters, in like manner as a son born, whether there be a will in his favour or not.

A woman cannot execute a will regarding any property she inherits from her husband or father. But she can dispose of the stridhun by gift, will, or sale, except immoveable property given to her by her husband.

A son adopted by one wife may succeed to a co-wife's stridhun. *Teencowree Chatterjea* v. *Dinonath Banerjea*, 3 W. R., 49.

Where a Hindu has adopted a son, he acquires the right of a son in the hereditary immoveable property of the adoptive father; and he cannot be deprived of these rights by the adoptive father afterwards assuming to adopt a second son, and settling the hereditary property upon such second adopted son, coupled with declarations that the first son was disinherited. According to Hindu law, an adoption of a second son during the lifetime of a previously adopted son is inoperative.

A childless Hindu adopted A. as his son; afterwards he adopted B. as his son and made a will, dividing his property, ancestral as well as acquired, between A. and B. A. filed a petition denying the right of his adoptive father to adopt B., and protesting against the will; but afterwards he signed a consent to the will. *Held* that as the father afterwards endeavoured to deprive A. of all his rights, as well those under the will as by the adoption, the consent did not bind A., since it was given on the basis of a family arrangement, from which the adoptive father afterwards departed.

Semble,—That if the consent were given by A. in ignorance of his right it would not be binding upon him. *Sudanund Mohaputtur* v. *Bonomalee and others*, Marsh., 317.

According to Hindu law, an adopted son succeeds not only lineally, but also collaterally, to the inheritance of his adoptive father's relations. *Sumbhoochunder Chowdhry* v. *Naraini Debia*, 5 W. R., P. C., 100.

Where money derived from ancestral estates is invested, before the adoption of a son, in the purchase of immoveable property, which continues to exist at the time of the adoption, the adopted son has equally a vested right in that property as he has in any other similar immoveable property which the father had it in his power before the adoption to alienate, but which he did not alienate. *Sudanund Mohapattur* v. *Soorjoomonee Dayee and others*, 11 W. R., 436.

An adopted son represents his adoptive father, and is entitled to the share which his father would have obtained. When he comes to share with heirs other than the legitimately begotten sons of his adoptive father in the property of kinsman, he takes the same share that they would have. *Tara Mohun Bhuttacharjee* v. *Kripa Moyee Debia*, 9 W. R., 423.

Adoption is tantamount to the birth of a son to the adopter, and the property inherited from the

adopter must be regarded as ancestral; during the lifetime of his father a son cannot claim to have a specific share declared and defined, but is only entitled to a decree declaring the property to be ancestral. *Heera Singh* v. *Burzar Singh*, 1 Agra Rep., A. C., 256.

Property vests in an adopted son immediately on his adoption, though he be a minor. A Hindu widow having power to adopt cannot be compelled to act up to that permission. *Sreemutty Deeno Moyee Dossee* v. *Doorga Pershad Mitter*, 3 W. R., Mis., 6.

An adopted son is not actually precluded from questioning acts done by his mother during his minority or before his adoption; but a sale by a widow, with the consent of all legal heirs at the time existing, and ratified by decrees of Court, is binding on reversionary as well as on an adopted son adopted long after the sale. *Rajkisto Roy* v. *Kishore Mohun Mojoomdar*, 3 W. R., 14.

A member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption. The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them. *Rayan Krishnamachariyar* v. *Kuppannayyanger*, 1 Mad. Rep., 180.

The adopted son of one whose alleged adoption has been held invalid can make no claim through his adoptive father to be maintained by the alleged adopter. The natural rights of a person adopted remain unaffected when the adoption is invalid.

Quære,—Whether a right to maintenance can descend as an estate. *Bâwani Sankara Pundit* v. *Ambabây Amaral*, 1 Mad. Rep., 363.

A son adopted by the widow of a deceased Hindu (in respect of whose estate no probate, letters of administration, or certificate of heirship has been granted), is the legal representative of the deceased, and as such is entitled to maintain a suit, under Act XIII of 1855, for the benefit of the persons, if any, entitled to compensation for the injury occasioned to them by the death of the deceased against those whose negligence caused that death.

Such an adopted son is not, however, entitled to have any portion of the damages awarded in the suit allotted to him as a child of the deceased. *Quære*,—Whether a son, if adopted by deceased in his lifetime, would be entitled to damages under that Act.

Measure of damages in actions brought under Act XIII of 1855. *Vinâyak Raghunâth* v. *The Great Indian Peninsula Railway Company*, 7 Bom. Rep., O. C. J., 113; *Sorabji Rutanji* v. *G. I. P. Railway Co.*, 7 Bom. Rep., 119; *Rutanabai* v. *G. I. P. Railway Co.*, 7 Bom. Rep., O. C., 120.

(*e*) *Who may or may not be Adopted.*

The Hindu law does not allow of the adoption of a paluk-putro. *Kalee Chunder Chowdhry* v. *Shib Chunder*, 4 W. R., 281.

The adoption of a grand-nephew is not repugnant to Hindu law. An adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs. *Morun Moyee Debeah* v. *Beejoy Kishen Gossamee*, W. R., F. B., 121.

The adoption of an only son is, when made, valid according to Hindu law. *Chinna Gaurdan and another* v. *Kumara Gaundar*, 1 Mad. Rep., 54.

According to Hindu law an orphan cannot be adopted. *Subbalurammal* v. *Ammakutti Ammal*, 2 Mad. Rep., 129.

An adopted son cannot adopt his own natural brother. In the Audhra country, as in Bengal, a Brahmin cannot adopt his sister's son. In Bengal a Brahmin's widow cannot adopt her uncle's son. *Narâsamal* v. *Balaramacharlu*, 1 Mad. Rep., 24.

It is now well-settled law that the adoption of a sister's son by a Hindu of the Vaishya caste is valid. *Ganpatrâv Vireshnag et al.* v. *Vithobâ Khandâppâ et al.*, 4 Bom. Rep., A. C., 130.

The adoption of an only son is invalid according to Hindu law. *Rajah Upendro Lal Roy* v. *Srimati Rani Prasannamayi*, 1 B. L. R., A. C., 221; S. C., 10 W. R., 347.

The Hindu law does not prevent a leper from giving his son in adoption. *Anund Mohun Mozoomdar* v. *Gobind Chunder Mozoomdar*, W. R., 1864, 173.

The adoption by a Sudra of an only son as a kurta putro is not illegal under Hindu law. *Mussamut Tikdey* v. *Lalla Hurreelall*, W. R., 1864, 133.

A male cannot be adopted into a family governed by the law of Aleya Santâna. *Munda Chetti* v. *Temuju Hensu*, 1 Mad. Rep., 381.

(*f*) *Who may or may not Adopt.*

In the Marâtha country a Hindu widow may, without the permission of her husband, and without the consent of his kindred, adopt a son to him if the act is done by her in the proper *bonâ-fide* performance of a religious duty, and neither capriciously nor from a corrupt motive.

An elder Hindu widow has the power to adopt a son to her deceased husband without the consent of a younger widow. *Rakhmâbâi* v. *Râdhâbâi*, 5 Bom. Rep., A. C., 181.

A Hindu widow has no power to adopt a son to her deceased husband if she has been expressly prohibited from doing so by her husband in his lifetime.

Whether according to the Marâtha school she can adopt without the authority of her husband given prior to his decease, *quære*. Where a Hindu childless husband, when at the point of death, positively refuses to adopt a son, and died without retracting that refusal, it was held that a subsequent adoption by his widow was null and void, as authority from her husband to adopt could not in such a case be implied (*per* Westropp, J.)

Dictum of the High Court of Madras, "that the opinion of Devanda Bhatta must have been that the assent of the husband stood upon the same footing, and was of the same scope, in the case of giving and receiving" (a son in adoption by the wife) questioned.

Where an adoption by a young Hindu widow is set up against her and to defeat her rights, the Court will expect clear evidence that at the time she adopted she was fully informed of those rights, and of the effect of the act of adoption upon them; and if it find that fraud or cajolery was practised upon the widow to induce her to adopt, or that there has been suppression or concealment of facts from her,

it will refuse to uphold the adoption. *Bayabai* v. *Bala urf Venkutesh Rama Kant*, 7 Bom. Rep., Ap., 1.

An adoption is not invalidated by the mere fact of the adoptive father being a minor, if he has attained the years of discretion. Such an adoption is not attended by any civil disability. *Rajendro Narain Lahoree* v. *Saroda Soondaree Debia*, 15 S. W. R., C. R., 548.

A Hindu widow, who has become unchaste, is living in concubinage and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. *Sayainlall Dutt* v. *Sudamini Dasi*, 5 B. L. R., 362.

A widower can make a valid adoption according to Hindu law. *Semble*,—The Hindu law does not prohibit an adoption by a man who has not been married. *N. Chandvasekharuda* v. *N. Bramhana*, 4 Mad. Rep., 270.

A widow succeeding as heir to her own son does not lose the right to exercise the power of adoption. By making an adoption she divests her own estate only. *Bykant Mony Roy* v. *Kristo Soondery Roy*, 7 W. R., 392.

A widow in the Mithila province is capable of adopting in the kritima form without her husband's consent. *Boobe Singh and others* v. *Mussamut Busunt Koeree and others*, 8 W. R., 155.

A claim to adopt disallowed in the case of a Hindu woman, who, so long as any male member of her husband's family was alive, took no steps to carry out her husband's permission to adopt, but who, as soon as the last male member died, and the property devolved on his widow, tried to obtain possession by means of the alleged dormant permission to adopt. *Gobind Soonduree Debia* v. *Juggodumba Debia*, 3 W. R., 66.

A widow can adopt a son without the consent of her husband according to Hindu law.

Where a widow adopted a son with the assent of the majority of the surviving kindred of her husband, the adoption was held to be valid.

In such a case, if the requirement of consent of the sapindas be anything more than a moral precept, the assent of any one of the sapindas will suffice. *Anundayi*, alias *Kunjara Natcaiar, and others* v. *Ram Parvatvurdani Natchiar and others*, 2 Mad. Rep., 206.

A widow cannot make a valid adoption without either the authority of her husband or the assent of his sapindas. *Arundadi Ammál* v. *Kuppammàl*, 3 Mad. Rep., A. C., 282; *Collector of Madura* v. *Sreemata Vijaya*, 2 Mad. Rep., 206.

According to the Hindu law current in the Dravida country, a widow not having her husband's permission may, if duly authorized by his kindred, adopt a son to him.

The question, Who are the kinsmen whose assent will supply the want of positive authority of the deceased husband? must depend upon the circumstances of the family in each case. There must be such evidence of the assent of the kinsmen as suffices to show that the act is done by the widow in the *bonâ-fide* performance of a religious duty, and not capriciously or from a corrupt motive. The widow cannot adopt where there is a prohibition by the husband, direct or implied. *Collector of Madura* v. *Muta Ramalinga Sathuputhy*, 1 B. L. R., P. C., 1; S. C., 10 W. R., P. C., 17.

An adoption may be made either by a man in his lifetime, or by one of his wives after his death under a power conferred upon her for that purpose by her husband. *Haradhun Mookerjee* v. *Mothoo ranath Mookerjee and others*, 7 W. R., P. C., 71.

Under the Hindu law, current in Mithila, a Hindu widow has power to adopt a son in the kritrima form, with or without her husband's consent, but such son would not, by virtue of such adoption, lose his position in his own family, nor would he succeed to the property left by the husband of his adoptive mother, but would be considered her son, and entitled to succeed to her only. *The Collector of Tirhoot, on behalf of the Court of Wards* v. *Hurropersaud Mohunt*, 7 W. R., 500.

A Hindu died leaving a son (who afterwards died a minor and unmarried), a widow, and three daughters. On the death of the minor the widow succeeded to the property, and, under a will of her late husband, adopted in 1851 a son of her husband's brother. The widow died in 1866. One of the daughters, as guardian of her infant son born in 1853, brought a suit to set aside the will, and with it the adoption, and for recovery of possession of the property left by her minor brother. The defence set up was that the will was genuine; that the plaintiff should have sued within twelve years from the adoption; and that she had in 1851 admitted the adoption in having accepted a dur-putnee from the guardian of the adopted son.

Held that the cause of action accrued on the death of the adoptive mother, and not from the date of the adoption.

Held that the acknowledgment of the adoption by the plaintiff before the birth of her son would not bar his right.

Held that the *onus* was upon the adopted son to prove the validity of the adoption, and not upon the plaintiff suing as heir to prove its invalidity, even though he alleged fraud, and adduced no evidence in support of it.

Held that the doctrine of Hindu law that a "permission is to be presumed in the absence of prohibition," Dattaka Chandrika, Section 1, verse 32, relates to a giver, and not to a receiver in adoption. *Tarini Churn Chowdhry* v. *Saroda Sundari Dasi*, 3 B. L. R., A. C., 145; S. C., 11 W. R., 468.

(*g*) *Validity of Adoption.*

Uninterrupted and undisputed possession for a long period of time constitutes sufficient *primâ-facie* evidence of title; but if this possession is admitted to be under an adoption it will avail nothing if the adoption fails. In the district of Bareilly the authority of the husband is essential to the validity of an adoption. *Rajah Haumin Chull Singh* v. *Koomer Gunsheam Singh*, 5 W. R., P. C., 69.

No cause of action to set aside illegal acts of an adopting mother arises to the adopted son, either from the date of his obtaining possession or from the date of the final decisions in any case brought for him or against his mother, or by or against him to prove or disprove the validity of his adoption. *Kishen Mohun Koond* v. *Muddun Mohun Tewaree*, 5 W. R., 32.

According to the Hindu law prevailing in Western India an orphan cannot be adopted. *Balvantrâv Bhâksar* v. *Bayâbai*, 6 Bom. Rep., O. C. J., 83.

A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service watan. *Rámchundra Vásudeb* v. *Nánâji Zimâji*, 7 Bom. Rep., A. C., 26.

An adoption amongst Sudras is not necessarily invalid because the person adopted is an only son and is married, and has been given in adoption by his mother after her husband's death and without his authority.

There is nothing in the books of authority amongst Hindus to show that a Vaishya who has undergone the ceremony of Vilhut-Vida is incapable of adopting a son. If a custom to that effect exists it should be proved by satisfactory evidence. *Mhálsái bái* v. *Vithobâ Khandáppá Gulve*, 7 Bom. Rep., Ap., XXVI.

The doctrine that the consent of all her husband's relatives is requisite to make an adoption by a Hindu widow valid is erroneous. *Gopal Shrídhar Dikshit Patvardhan* v. *Naro Vinayak Dikshit Patvardhan and another*, 7 Bom. Rep., Ap., XXIV.

According to the highest authorities in repute in the Marátha country the express sanction of the husband is indispensable to render valid an adoption made by the wife in his lifetime.

Comparative weight, as legal authorities on this side of India on the question of adoption, of the Mitákshará, Mayákha, Dattaká Mimamsá, Dattaká Chandriká, Smriti Chandriká, Viramitrodayá, Dharmasindha, and the Nirnayasindha pointed out.

Dictum in the case of The Collector of Madura v. M. Ramalinga Sathapati "that the opinion of Devanda Bhatta must have been that the assent of the husband stood upon precisely the same footing, and was of the same scope, in the cases of giving and receiving" (by the wife in adoption) questioned. *Náráyan Bábáji and Sundrubai* v. *Nánâ Manchar et al.*, 7 Bom. Rep., A. C. J., 153.

The consent of the party adopted is essential to the validity of an adoption in the Kritrima form. *Luchmun Lall* v. *Mohun Lall Bhoya Gayal*, 16 S. W. R., C. R., 179.

A Hindu Sudra adopted the plaintiff, his brother's son, 1247 (1840), who upon the death of his adoptive father performed his sradh, and obtained possession of all his property as such adopted son. The adoption had not been questioned except in 1256 (1849), when the defendant sued the plaintiff, who was then still a minor, through his guardian, and obtained possession from the plaintiff of certain of the property of the deceased, on the ground that the adoption was invalid. The plaintiff now, within twelve years of such dispossession, sued to recover possession, stating that the decree in the former suit had been obtained by the defendant in collusion with the guardian. The defence was that the adoption was invalid, the proper ceremonies not having been performed. The Court refused to entertain such defence.

Per Bayley, J.—Ceremonies which are necessary to be observed for a valid adoption among Hindus of the superior classes are not necessary in the case of an adoption by a sudra. In the case of adoption by a sudra of a brother's son, mere giving and taking may be sufficient to make the adoption valid. *Nittanund Ghose* v. *Krishna Doyal Ghose*, 7 B. L. R., 1, and 15 S. W. R., C. R., 300.

Where it was not intended by the widow that her adopted son should succeed her in the management and enjoyment of the property with her consent, she may resist the claim of the adopted son to eject her, on the ground of the invalidity of the adoption under the Hindu law, notwithstanding her previous treatment and recognition of the plaintiff as her adopted son and her acknowledgment having been received and acted upon by the authorities without question. In cases of adoption in the dattaka form, it must be proved that the widow had the authority of her husband to adopt, and that she made the adoption when the boy adopted was under six years of age, and with the prescribed ceremonies. Although, according to the Dattaka Mimansa, the ceremony of homa, or burnt-offering, is an essential part of adoption, it is not necessary that it should take place in the dwelling of the adopted. *Thakoor Oomrao Singh* v. *Thakooranee Mahtab Koonwar*, 2 Agra Rep., 103.

The weight of authority is against the validity of the adoption of one upon whom the Upanayana has been already performed. In strictness, there is no authority upon the other side. *Venkatesaiya* v. *Venkatacharlu and others*, 3 Mad. Rep., A. C., 28.

A simultaneous adoption of two sons is invalid. In order to constitute a valid adoption there must be an actual bodily transfer and giving in adoption of the son by the natural to the adoptive parent.

Assuming that the testator, in using the words, "According to our Shastras, the said two adopted sons will perform our obsequies, and shall become successors of our ancestral and self-acquired property," intended to make a substantive gift to named individuals,—*Held* that the gift is inoperative if the individuals do not fulfil the character of adopted sons. *Siddesorry Dossee* v. *Doorgachurn Sett and others*, 2 Ind. Jur., N. S., 22; S. C., Bourke's Rep., O. C., 360.

Objection that the respondent's adoption was not valid because made when the adopter was under pollution in consequence of the death of a relative. Upon a conflict of evidence as to the time of the relative's death, the Privy Council decided in favour of the respondent. The period of pollution according to Hindu law is sixteen days. *Ramalinga Pillai* v. *Sudasiva Pillai*, 1 W. R., P. C., 25.

Held that the adoption by a Hindu widow of an only son, if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced age.

An adoption by a widow has a retrospective effect, and, relating back to the death of the deceased husband, entitles the adopted son to succeed to his estate. A document purporting to be a deed of adoption does not require to be stamped. *Ráje Vyankatrav Anandráv* v. *Jayavantravbin Malharrav Ramadive*, 4 Bom. Rep., A. C., 191.

Consanguinity does not invalidate an adoption where the parties involved do not belong to any of the three regenerate castes. An adoption *de facto* must be supposed to be a valid adoption until it is

set aside, and a party so adopted is entitled to object to other parties receiving a certificate under Act XXVII of 1860. *Nunhoo Sing* v. *Purm Dhan Sing*, 13 W. R., 336.

4—Alienation by Widow.

A conveyance by a Hindu widow, without necessity, of ancestral property, can only operate as a conveyance of her life-interest. The purchase of a kismut sold for Government revenue does not destroy the pre-existing rights of the holders of the tenure. Reversioners are as much entitled to have a sale of their share in such a kismut set aside as a sale of any other property by the widow without necessity. *Tarinee Churn Banerjee* v. *Nund Coomar Banerjee*, 1 W. R., 47.

A purchaser is not bound to prove the necessity of a sale. *Ramkulpo Mundul* v. *Shohocharree Dossee*, 4 W. R., 64.

Where a Hindu widow sells as guardian of her minor son and for his maintenance, the purchaser need only satisfy himself of the necessity of the sale, and is not bound to see to the application of the money. *Radha Kishore Mookerjee and another* v. *Mirtoonjoy Gow and others*, 7 W. R., 33.

A sale by a manager with necessity may be valid, although the vendor does not describe himself as manager. *Jodunath Chuckerbutty and another* v. *James Tewdee and others*, 11 W. R., 20.

A sale by a Hindu widow of her husband's estate, under legal necessity, cannot be set aside upon payment of the amount which it was necessary for the widow to raise, or in the proportion which that sum bears to the amount for which the estate was sold. *Sugeeram Begum* v. *Juddobuns Suhaye and others*, 9 W. R., 284.

Where certain landed property in the possession of a Hindu widow was sold, on the alleged ground of necessity, and the execution of the deed of purchase was attested by the then next heir, it was held that the assent implied in such attestation was not conclusive in law as to the necessity for the sale, though the fact of persons most interested in contesting such a sale being called in to execute the deed is the strongest possible proof of good faith on the part of the purchaser. *Madhub Chunder Hajrah* v. *Gobind Chunder Banerjee*, 9 W. R., 350.

In a suit by reversioners to set aside a deed of sale by a Hindu widow of part of her husband's estate, on the ground that the money which it was necessary to raise could have been raised by other means, it was held that if the widow sold a larger portion of the estate than was necessary to raise the amount which the law authorized her to raise, the sale would not be absolutely void as against the reversioners, who could only set it aside by paying the amount which the widow was entitled to raise with interest.

Held also that if a widow elects to sell when it would be more beneficial to mortgage, the sale cannot be set aside as against the purchaser, if the widow and the purchaser are both acting honestly. *Phool Chund Lall* v. *Rughoobuns Suhaye*, 9 W. R., 107.

A recital in a deed of sale by a Hindu widow of her deceased husband's property, setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity; nor does the attestation of a relative import his concurrence. Such a transaction may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and justified by Hindu law. *Rajlakhi Debi* v. *Gokul Chandra Chowdhry*, 3 B. L. R., P. C., 57; S. C., 12 W. R., P. C., 74.

Purchase from a Hindu widow is invalid, but the purchaser may remain in possession during the widow's lifetime, on proof of his purchase being preferable to an alleged gift made by the widow to the defendant. *Chundernath Surma* v. *Romanath Surma*, 1 W. R., 69.

A purchaser from a childless Hindu widow is bound to satisfy himself as to her right to sell. If he does not act with due care in the matter he cannot be said to have acted legally in good faith, although he may have fully believed, or taken for granted, that all was right. *Ramdhone Bhuttacharjee* v. *Ishanee Dabee*, 2 W. R., 123.

The existence of a debt, the liquidation of which is provided by lease of ancestral property, is no justification for alienation of such property by a Hindu widow during her life-tenancy. *Teluck Roy and others* v. *Phoolman Roy and others*, 7 W. R., 450.

Held that a widow who is in possession of her husband's estate in lieu of her dower is not competent to alienate the whole estate permanently, but can only sell what belonged to her by right of inheritance. *Mussamut Kummar-ool-nissa* v. *Mahomed Hussun*, 1 Agra Rep., A. C., 287.

A Hindu widow cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioners. *Kartick Chunder Chuckerbutty* v. *Gour Mohun Roy*, 1 W. R., 48.

The burden of proving property (the subject of a gift by a Hindu widow) to be stridhun rests with those claiming under her. A deed of alienation by a childless Hindu widow of her late husband's property is not good against any one, unless made either with the consent of the immediate heirs, or under one of those exigencies which give a widow a power of sale. *Sreemutty Chunder Monee Dossee* v. *Joykissen Sircar*, 1 W. R., 107.

A conveyance by a Hindu widow, without proof of necessity to justify an alienation of ancestral property, can only operate as a conveyance of her life-interest. *Taranee Churn Banerjee* v. *Nund Coomar Banerjee*, 1 W. R., 47.

A widow is not competent to alienate property which she has purchased with funds derived from her husband's estate after his death, and purchases with such funds would not belong to the widows otherwise than as the land from which the money arose belonged to them. *Nihal Khan and others* v. *Hur Churn Lall*, 1 Agra Rep., A. C., 219.

A conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste destroying the widow's right and vesting the property in the reversioners, but is binding only during the widow's lifetime.

The reversioner can, during the wife's lifetime,

sue to obtain a declaration that the conveyance is not binding beyond the lifetime of the widow, and also to prevent waste. *Muchooram Sein* v. *Gour Huree Ghooee*, W. R., F. B., 165.

A Hindu widow, entitled to a life-estate only, granted a putnee of the lands. *Held*, first, that this did not work a forfeiture entitling the reversioners to enter. Secondly (Steer, J., dissenting), that the reversioners were not entitled to have the putnee set aside. Thirdly, that the putneedar, being a party to the suit, was entitled to appear against that part of the decree which declared that the act of the widow has caused a forfeiture of her state, as well as against the part of it which set aside his putnee. *Loll Lomder Doss* v. *Hurrykissen Doss*, Marsh., 113.

A pilgrimage to Benares is not a legal necessity to justify a sale by a Hindu widow. *Huromohun Audhikaree* v. *Sreemutty Auluck Monee Dossee*, 1 W. R., 252.

A Hindu widow's right to alienate moveable property inherited from her husband, without the consent of his heirs, is absolute.

With respect to immoveable property inherited from her husband, a Hindu widow is little more than a tenant for life and trustee for the heirs of her husband, and she is restricted from alienating it by her sole independent act, unless for necessary subsistence, or for purposes beneficial to the deceased. *Beechur Bhugwan* v. *Baee Lukmee*, 1 Bom. Rep., 56.

A deed of alienation by a childless Hindu widow is only valid when made either with the consent of the immediate heirs or under one of those exigencies which give a widow a power of sale. *Sreemutty Chunder Monee Dossee* v. *Joykissen Sircar*, 1 W. R., 107.

A sale by a Hindu widow of land inherited by her from her husband is valid only when made of necessity, and for certain purposes; but on this point, where the plaintiff in a suit to set aside such a sale, has relied in the Court below solely on the ground that the land had been devised inconsistently with the exercise of the widow's power of sale, the Appellate Court will be satisfied with evidence less complete and positive than would otherwise have been required. *Rangasvami Ayyangar* v. *Venjeelattaumal and others*, 1 Mad. Rep., 28.

A mere declaration of necessity is not enough to justify a purchase from a Hindu widow. *Gungagobind Bose* v. *Sreemotee Dunnee*, 1 W. R., 60.

When the legal necessity for a sale by a Hindu widow is questioned, its existence must be shown by the party standing on the conveyance. *Bisso Nath Roy* v. *Lall Bahadoor Singh*, 1 W. R., 247.

In the case of an alienation by a Hindu widow, the mere fact that a sale istahar is proved to have been issued about the time of the transfer, is not evidence of necessity. *Nund Koomar Mundul and others* v. *Gayetra Dossee and others*, 6 W. R., 323.

The purchaser from a Hindu widow who is still living is entitled to possession of the property sold, whether there was necessity for the sale or not. *Bogooa Jha* v. *Lall Doss*, 6 W. R., 36.

Where a party does not sue as an heir of a Hindu widow or her husband to set aside a sale by her on the ground of its illegality under the Hindu law, but sues as a decree-holder to have the same set aside as fraudulent, he cannot raise the question of necessity. *Kishen Bullub Mahatab* v. *Rughonundur Thakoor and others*, 6 W. R., 305.

A widow has no power to dispose by will of immoveable property inherited by her from her husband. The word "inherited" used in the Mitackshara in regard to a woman's stridhun does not include immoveable property so as to make it her *peculium*, but refers only to personal property over which alone she has absolute dominion. *Guburdhun Nath* v. *Onoop Roy*, 3 W. R., 105.

A childless widow Ranee has no power to alienate her deceased husband's property as against his collateral heir by a wasseeutnamah, a deed of gift. *Keerut Singh* v. *Koolahul Singh*, 5 W. R., P. C., 131.

Family jewels, if part of the ancestral property, are not transferable by a widow except for special purposes; and acts of waste on the part of the widow in regard to her husband's property, if proved, would be a ground for withdrawing a certificate granted to her under Act XL of 1858. *Bhagwanee Koonwar* v. *Parbutty Koonwar*, 2 W. R., Mis., 13.

There is no rule of Hindu law which compels a widow alienating any portion of her late husband's property to have recourse to a mortgage, instead of to a sale, to raise funds for her maintenance. The question whether she has exceeded her powers or not depends upon the necessities of the case. *Nabakumar Haldar* v. *Bhabasundari Dasee*, 3 B. L. R., A. C., 375.

K., a Hindu widow, while in possession granted a putnee lease of property which was afterwards sold and purchased by B.

Held that if there was no legal necessity to justify the alienation, the putneedar acquired no more than the life-interest of the widow, but if there was, then B.'s purchase was subject to the pottah granted by the widow as a valid alienation of prior date. *Bissonath Chunder* v. *Radha Kristo Mundle*, 1 W. R., 554.

The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired. *Namasiyvayo Chetti* v. *Sivagami and others*, 1 Mad. Rep., 374.

A sale by a widow of property derived from her husband, who is divided in interest from his own family, is valid for her life. Such a sale will not be set aside at the instance of a divided brother of the husband. *Bhagavatamma* v. *Pamapana Yaud and others*, 2 Mad. Rep., 393.

Held that a Hindu widow having a life-interest only in immoveable property inherited from her husband, has an independent power of sale over the same to the extent of such life-interest and no further. *Mayaeram Bhairam* v. *Motiram Govindram*, 2 Bom. Rep., 331.

A Hindu widow has power, with the consent of the reversionary heirs, to make a valid alienation, for religious purposes, of property, moveable or immoveable, left by her husband.

Where a Hindu widow dedicated property by deed to the worship of an idol, and the property was given to trustees in trust, after the death of the widow, to permit the male heirs of her late husband to receive the rents,—*Held* that such heirs were entitled to actual possession and to the rents of the estate, provided they devoted it according to the

provisions of the deed to the worship of the idol. *Brajanath Baisakh* v. *Matilal Baisakh*, 3 B. L. R., O. C., 92.

Held (by Glover, J.) that where the family property was small there was no reasonable necessity for contracting a large loan to provide for the minor's investiture according to the Hindu religion. *Doorhyar Roy* v. *Dulsingar Singh*, 12 W. R., 367.

Held that a widow cannot under Hindu law dispose of immoveable property given to her by her husband which has become a portion of her stridhun. *Gunput Singh* v. *Gunga Pershad*, 2 Agra Rep., A. C., 230.

A childless Hindu widow who is the nearest heir of her deceased husband has, under the Mitackshara law, an absolute right over all the moveable property left by him, and can alienate it to any one she pleases. *Douga Dayee* v. *Poorun Dayee*, 5 W. R., 141.

In a sale by a Hindu widow under necessity, where the vendee pays a fair price and acts *bonâ fide*, the mere fact of only two-thirds of the purchase-money being paid to creditors does not invalidate his conveyance, as he is not bound to see to the application of the purchase-money. *Ram Gopal Ghose* v. *Bullodeb Bose*, W. R., 1864, 385.

A conditional sale is an alienation, the validity of which a reversioner to a Hindu widow is by Hindu law entitled to question. *Odit Narain Singh* v. *Dhurm Mahtoon*, W. R., 1864, 263.

A Hindu widow takes, with her husband's estate, the power of alienation, and conveyances made by her give a good title, liable only to the superior claim of such of her husband's heirs as may be alive at the time of her death.

The sale of a Hindu widow's rights and interests in her husband's estate, in execution of a money-decree against her, does not touch the estate. *Ram Sheouk Roy and others* v. *Sheo Gobind Sahoo*, 8 W. R., 519.

Semble,—A sale by a Hindu widow for a just debt, made in conformity with the Hindu law, and with the consent of the reversioner, may be valid, although the debt creating the necessity for the sale was a debt, not of the ancestor's time, but of the widow's own contracting. *Soobunkurry Dosse* v. *Chand Money Dosse*, 7 W. R., 335.

A sale by a Hindu widow is not invalid if made without collusion. But the sale is limited to the widow's life-interest, and the reversioner is only entitled to a declaration that the sale will not affect or prejudice his interests beyond the widow's life. *Ramgutty Kurmoker* v. *Boistub Churn Mozoomdar*, 7 W. R., 167.

A Hindu widow has full right to alienate any portion of the estate in her possession, if the benefit of her husband's soul requires such a sacrifice, even though the act by which that benefit is to be secured is to be performed by a male member of the family. *Chowdhry Junmenjoy Mullick* v. *Rusomoye Dossee*, 10 W. R., 309.

Where a Hindu widow held under a decree only a life-interest in certain land or in the money which subsequently represented that land, any one holding in her place the same decree can have no higher position than she had, and cannot have the money without security. Under such a state of facts the consent of the immediate reversioner, during the widow's lifetime, cannot dispense with the necessity of taking such security. *G. Rodgers* v. *Bama Soondery Debia*, 6 W. R., Mis., 22.

A party claiming immoveable property by virtue of an alienation by a Hindu widow during her son's minority is bound, whether he be a plaintiff or a defendant, to prove that he made reasonable enquiry, and that he in good faith believed that such circumstances existed as would justify the widow in alienating her son's estate. *Keeshinath Sitaram Oze* v. *Dadki et al.*, 6 Bom. Rep., A. C. J., 271.

The payment of a time-barred debt of her deceased husband is not a valid cause for the absolute alienation by a Hindu widow of her deceased husband's immoveable estate.

Alienation by a Hindu widow of property inherited from her deceased husband is valid for the period of her own life, though the conveyance may purport to convey a greater interest. *Meilgirâppâ bin Salbâppâ Teli* v. *Shivâppa bin Erâppa*, 6 Bom. Rep., A. C. J., 270.

The srâdh of the widow's husband, the marriage of his daughter, the maintenance of his grandsons, and the payment of the husband's debts are admitted by Hindu law as legitimate grounds of necessity for alienations. *Lalla Gunput Lall* v. *Mussamut Toorun Koonwar*; *Chunder Lall* v. *Lalla Gunput Lall*, 16 S. W. R., C. R., 52.

A Hindu died in 1808, leaving five sons, and possessed of considerable property. In 1813 the four younger sons obtained a decree for partition against their elder brother, but themselves continued to live together as a joint Hindu family, and so did their widows after their death. After the death of the widow of one of the brothers, J. D., the widow of another brother brought her suit for partition; but subsequently, by the consent of all parties, the matters in dispute were referred to arbitration, and an award was made as follows: Selling their (the widows') respective ryoti land, bati, or house, they will pay the costs of their respective vakeels; in that way the land, bati, or house that shall remain, with the proceeds belonging to their respective shares, the raiment and food of C. D. (the widow of another brother) and J. D. will be supplied during their lives; they will be unable to make a gift, sale, &c.; should the proceeds of the land, bati, or house not be sufficient for their food and raiment, and for the purity of their respective husbands in a suitable manner, the jetta dharma, then showing good reason, regulation, conformably to the dharma shastra what is expedient as necessary, according to usage, informing the other shareholders, they shall be able to sell the ryoti land, bati, or house of their respective shares. This award, which directed a partition, according to the terms of a chinitnamah or written description of the land, which was executed by all the parties, was made a rule of Court on 26th July, 1858. J. D. took possession of her husband's share of the estate, some portion of which she alienated. In a suit brought by the reversionary heirs against J. D. and the purchasers of what she had sold, it was alleged that the alienations were without necessity and contrary to the award, and it was prayed that they might be declared void as against the reversionary heirs, and that J. D. might be restrained from further alienations. *Held* that the suit could be maintained in the lifetime of J. D.

As there was no waste proved, the prayer for an injunction to restrain further alienation was refused.

Semble,—In purchasing from a Hindu widow the purchaser is not bound to look to the appropriation of the money, nor is he affected by the fact that the alienation was made for a larger sum than the necessity of the case required. *Kamikhaprasad Roy* v. *Srimati Jagadamba Dasi*, 5 B. L. R., 508.

A step-son made over property to his step-mother for her support. Out of the produce she bought properties for her nephew in the name of other parties. *Held*, under the circumstances, that the purchased property, on her death, went to the nephew, and not to the step-son as heir of her husband.

Although the defendant, by his written statement, denied the fact of the purchases being with the widow's money, and it was proved that they were made with her money,—*Held* that this did not remove from the plaintiff the burden of proving that the purchases were made benami for her. *Raja Chundranath Roy* v. *Rumjai Muzumdar*, 6 B. L. R., 303, and 15 S. W. R., P. C., 7.

A Hindu, R. C., died possessed of considerable property, and leaving five sons. One of them died, leaving a widow, B. She brought a suit to recover her husband's share in R. C.'s estate, together with the profits thereon. The suit was conducted by G. R. A large amount became due to him for costs. To secure this B. executed a bond and warrant of attorney to confess judgment. The suit failed. In order to obtain the means of bringing another suit, B., by deed dated 4th April, 1859, assigned her interest in the estate in the right of her husband, and all benefit to be derived from the suit to be instituted, to G., one half absolutely, the other in trust, to retain thereout what he might advance to her for maintenance and for the costs of suit, with interest at 12 per cent., and to pay her the residue. In November, 1859, G., by deed sub-assigned to H. S., in consideration that H. S. should undertake the maintenance of B. and the management of the suit, retaining only five-sixteenths out of the eight-sixteenths assigned to him (G.) absolutely. On 19th August, 1861, B. obtained a decree in the Supreme Court declaring her entitled to the accumulations on her husband's one-fifth share in the estate of his father, R. C., and to all profits made on such accumulations since her husband's death. In September, 1861, G. R. caused judgment to be entered on the bond and execution to be issued, and the sheriff seized and was about to sell B.'s interest in the estate of her husband. Thereupon B., being entirely without means, P. S., brother of H. S., paid off G. R., and in consideration thereof took an assignment by deed, dated 18th December, 1861, in the name of one J. S. from B., of five-eighths of the half-share reserved to her by the deed of 4th April, 1859, but subject to the assignment by that deed to G. On 20th December, 1869, Rs. 84,685 were paid into Court as B.'s husband's share of the accumulations on R. C.'s property at the date of his death, and Rs. 1,55,255 as the profits made thereon since her husband's death. P. S. now sued for a declaration that the deed of 18th December, 1861, was binding upon B. and the reversionary heirs, and for an order that the precise amount due to him be ascertained and paid to him out of the moneys paid into Court. At the trial he abandoned his claim against the Rs. 84,685, on the ground that he could not prove legal necessity on the part of B. when she executed the assignment. *Held* the deed could be supported only so far as it charged the profits made since R. C.'s death with the repayment of the Rs. 12,500 advanced, with interest at 12 per cent. P. S. was entitled to have that amount paid out of the Rs. 1,55,255 in Court.

A Hindu widow is entitled to the accumulations of income from her husband's estate. *Pannalal Seal* v. *Srimati Bamasundari Dasi*, 6 B. L. R., 732.

A Hindu widow cannot alienate moveable or immoveable properties acquired by her out of the funds derived from the income of her husband's estate. Such properties descend to the heirs of the husband and not of the widow. Where, however, a widow held under a deed which conveyed the property to her to enjoy for her lifetime, and to incur all needful expenses, *held* she was entitled to invest sums out of the income for the benefit of her daughter and granddaughter in the purchase of immoveable property for their maintenance. *Chowdry Bholanauth Thakoor* v. *Mussamut Bhugabati Deyi; Musst. Bhagabati Deyi* v. *Chowdry Bholanauth Thakoor*, 7 B. L. R., 93; and 15 S. W. R., C. R., 63.

A., a Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband. The mortgagee obtained a decree, and in execution thereof caused the property to be sold. In a suit by A.'s daughter's son, the next reversionary heir, for a declaration that the sale was invalid as against him, the lower Appellate Court held that there was no cause of action.

Held, in special appeal, that the existence of a cause of action depended upon whether the widow incurred the debt under legal necessity, and the case was remanded for trial of that question. *Bistobehari Sahay* v. *Lala Brijnath Prusen*, 7 B. L. R., 213; and 16 S. W. R., C. R., 49.

A compromise by which a Hindu widow gives up all her rights in her husband's estate, receiving only a life-interest in a part of it, cannot but be regarded as an alienation, and is not binding against the reversioners. *Mussamut Indro Kooer* v. *Shaikh Abdool Burkut*, 14 S. W. R., C. R., 146.

Hindu law does not regard "pious purposes" as the only "necessary purposes" which justify alienation of inherited property by Hindu ladies. Self-maintenance, discharge of just debts, protection or preservation of the estate, may be regarded as such "necessary purposes" also. *Soorjoo Pershad* v. *Rajah Krishan Pershad Bahadoor Sahie*, 1 N. W. R., Par. 1, p. 49.

5.—Alienation of Ancestral Property.

The power of a son under Hindu law to prevent alienation of ancestral property by his father extends to acts of waste, and not to alienation for the payment of joint family debts and for the maintenance of the family. *Bisambhur Naik* v. *Sudasheeb Mohapattur*, 1 W. R., 96.

Under the Mitakshara law a son is entitled to recover from a purchaser from his father ancestral property improperly sold by the father, and in the absence of proof of circumstances which would give the purchaser an equitable right to compel a refund from the son, the latter would be entitled

to recover without refunding any part of the purchase-money.

But if it is proved that the son got the benefit of his share of the purchase-money the son must refund his share of the purchase-money before he can recover his share of the property sold; and where the purchase-money has been applied to pay off a valid encumbrance on the estate, the right of the son to recover will be subject to that of the purchaser to stand in the place of the encumbrancer.

The *onus* in such cases to prove the application of the purchase-money lies on the purchaser. *Modhoo Dyal Singh* v. *Golbur Singh and others*, 9 W. R., 511.

Where ancestral property is sold by the father, the son is entitled to sue for cancelment of such sale, and the decree should not be that the property is ancestral and will pass to the father's heirs on his death, but a decree cancelling the sale so far as it obstructs him in asserting his right and in effect declaring the sale to be invalid, without interfering with actual possession, that may have been obtained by purchaser. *Baboo Ram and others* v. *Gajadhur Singh and others*, 1 Agra Rep., F. B., 86.

In a suit brought by a Hindu son for himself and on behalf of three infant brothers to set aside a sale of certain ancestral lands which had been made by his father without his concurrence,—*Held* that the *onus* of proving that the payment of the debts, on account of which the property was sold, was not a common family necessity, was properly laid by the District Judge upon the plaintiff. *Babji Sekoji* v. *Ramshet Pandushet*, 2 Bom. Rep., 23.

In a suit by the sons and grandson of one N. to set aside a sale by N. of a part of the ancestral estate to S., whose right and interests in the estate were purchased at auction by the defendant N. L., it was held that the consent of the elder brother would not make the transfer valid, inasmuch as by the Mitackshara law the consent of all the shareholders would be necessary, even to the alienation of his own share. *Nuthoo Lall Chowdhry* v. *Chedee Laha*, 12 W. R., 446.

Under the Mitakshara law an alienation by a son without the father's consent is invalid. *Sheo Ruttun Koonwar* v. *Gour Behary Bhukut and others*, 7 W. R., 449.

According to Hindu law the shradh of a mother is not a legal necessity, as that of the father is, to justify a sale by a daughter to the prejudice of the daughter's son. *Raj Chundra Deb Biswas* v. *Sheeshoo Ram Deb and others*, 7 W. R., 146.

The mere fact that sales of ancestral property took place in execution of decrees against the ancestor, does not of itself show that the sales were for necessary or justifiable purposes. *Brojo Kishore Gugendra Mohaputtra and others* v. *Huree Kishen Doss and others*, 10 W. R., 57.

The existence of a decree, which may at any time be executed against ancestral property, is a clear necessity for contracting a loan, and ample justification to any one coming forward to lend money on the mortgage of the property. *Purmeshur Ojha* v. *Mussamut Goolbee and others*, 11 W. R., 446.

Held that a nephew is not competent by Hindu law to object to any alienation of ancestral property directly or indirectly made by his uncle. *Gunga Deen Rawut* v. *Modhoo Sudun and others*, 3 Agra Rep., A C., 4.

According to the Mithila law, a sale made by an adult member of a joint Hindu family, without the consent of all the heirs, is void if it is made without legal necessity, and not for the benefit of the minors. *Sheo Pershad Jha* v. *Gunga Ram Jha*, 5 W. R., 221.

According to the Mitakshara law, a conveyance or transfer of joint property by one member of a family is illegal without the consent of the other members.

By the same law widows have no part in their husband's joint estate, and the mere fact of the husband having treated a property as his own so far as to mortgage it during his lifetime, is no sufficient reason for the conclusion that the property was his separate property, and as such descended to his widows.

By the same law an estate cannot be burdened with the debts of one of its joint owners after that person's decease. *Lewis Cosserat* v. *Sudaburt Pershad Sahoo*, 3 W. R., 210.

A son may sue to obtain a declaration that sales by his father, without his consent, are as against him void and inoperative to pass or to affect any rights possessed by him in the property, and also that property still in his father's hands is ancestral, and cannot be alienated, except under circumstances recognized by the Mitakshara law as justifying alienation and with the consent of those whose consent is by that law requisite. *Kanth Narain Singh* v. *Prem Lall Paurey*, 3 W. R., 102.

A member of an undivided Hindu family has a right to mortgage his own share of the family estate, and, if he be acting as representative and manager of the undivided family, to mortgage the interests of the other members of the family therein on any common family necessity, or for the common benefit and use of the undivided family. *Goondoo Mahadeo* v. *Rambhut Bin Baboo Bhut*, 1 Bom. Rep., 39.

A Hindu father has no power to settle ancestral property by conveyance in his lifetime, or by a will to take effect after his death, without the consent of all his sons living at the time. Where such a settlement is not assented to by the sons living at the time, and another son is afterwards born, no subsequent assent would be binding on the latter. *Hurro Doot Naran Singh* v. *Beer Naran Singh and others*, 11 W. R., 480.

A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction according to the Madras school between a father and other co-parceners. *Palanivelappa Kaundan* v. *Mannaru Naikan and others*, 2 Mad. Rep., 416.

In the absence of authority in the eldest brother from his brothers to sell their rights, the sale by the eldest brother is not the act of all the brothers. *Cazee Ohaud Buksh* v. *Bindoo Bashinee Dossee*, 7 W. R., 298.

An alienation made by a Hindu with the consent of his son cannot, under the Mitakshara, be questioned by the grandson. *Buraik Chutteo Singh and another* v. *Greedharee Singh and others*, 9 W. R., 337.

A mortgagee acquiring by operation of law the possession of an estate mortgaged by a Hindu father, without the son's consent, is bound to enquire

whether the debt on account of which the mortgage is given is a legally necessary one or not; otherwise it will not avail him that the Court has on his application declared the mortgage foreclosed, or the conditional sale rendered absolute. *Purmanund* v. *Mussamut Orumbah Koer*, W. R., 1864, 143.

Held that, on this side of India, a member of an undivided Hindu family cannot, without the consent of his co-parceners, make a gift of his share in the undivided property, or dispose of it by will. *Gangabai and another* v. *Hamanna bin Bhimanna*, 3 Bom. Rep., A. C. J., 66.

A deed of gift of ancestral property not being valid under Hindu law, without the consent of all the heirs, a wife is not bound by her husband's consent to a deed of gift to their children. The wife and husband being in possession, not beneficially for themselves, but for their children, the wife's acquiescence is not to be presumed by being in possession. A mere declaration of necessity is not sufficient to justify a purchase from a Hindu widow. *Gungagobind Bose* v. *Sreemutty Dhunnee and Ramee*, 1 W. R., 60.

The sale by a father of ancestral immoveable property, without the concurrence of his sons, is not necessarily void, though it may be avoided, unless the purchaser can show that it was made, during a season of distress, for the sake of the family or for pious purposes. In the absence of evidence to the contrary, it must be assumed that the price received by the father became a part of the assets of the joint family; and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity and offer to repay the purchase-money, unless he can show that no part of such purchase-money or the produce of it has ever come to his hands. *Muddun Gopal Thakoor and others* v. *Ram Buksh Pandey and others*, 6 W. R., 71.

There is a distinction between ancestral and self-acquired property under the Mitakshara law, with regard to the right of a father to dispose of it. The fact of his being an outcast would not prevent him from exercising his rights over the property to the same extent as he might otherwise have done. *Ojoodhya Persaud Singh* v. *Ramsaurun and others*, 6 W. R., 77.

Under the Mitakshara law, according to which the father and son are joint owners of the ancestral estate, the son's power to prevent alienations by the father extends to acts of waste, and not to alienations for the payment of joint family debts, and for the maintenance of the family. *Bisambhur Naik* v. *Sudasheeb Mahapater*, 1 W. R., 96.

A. and B. sued D. and E. for the estate of a relative, C., the deceased husband of D., on the ground that the family to which A., B., and C. belonged was undivided. D. (who was a Hindu widow without surviving issue) and E. pleaded division, and that D. had sold and assigned the estate to E. This alienation was not shown to have been made for purposes recognized by Hindu law. *Held* that the District Moonsiff, in disallowing the plaintiff's claim to immediate possession, should not have provided for the re-assignment of the estate from E. to D. for D.'s life, but that he was right in declaring that after D.'s death the property should revert to the plaintiffs as heirs of C. *Peria Gaundan* v. *Tiramala Gaundan*, 1 Mad. Rep., A. C., 206.

Held that a Hindu mother, acting as manager of the estate of a minor, has no more authority to alienate or charge that estate than the managing member of an undivided Hindu family. The High Court, considering that certain material issues should be determined, remanded the case to the District Court in order that they might be decided, and a new decree passed. *Dalpat Singh* v. *Navabhi and others*, 2 Bom. Rep., 323.

Under the Mithila law, the father of a Hindu family cannot give a mokurruree lease of land at a nominal rent as a reward for faithful service, when his children, being infants, do not consent to such grant. *Pratabnarayan Das* v. *The Court of Wards*, 3 B. L. R., A. C., 21, S. C., 11 W. R., 343.

A deed of sale (where full consideration is paid) executed by a member of a Hindu family, acting *de facto* as the guardian of his minor brothers, is not invalid by reason of the father being alive at the time.

Where a guardian sells part of an estate, and applies the purchase-money to the expenses incurred in a suit undertaken and found in fact to be for the benefit of the whole property, the sale is valid. *Gunga Pershad and others* v. *Phool Singh and others*, 10 W. R., 106.

The manager of an undivided Hindu family can sell his own share of the family property only. *Damodhor Vithul Khare* v. *Damodhor Huri Somana*, 1 Bom. Rep., 183.

The rule of *factum valet* current in Bengal will not give a good title to a person to whom another conveys more than he has a legal right to convey. *Mongola Dabia* v. *Dinonath Bose*, 12 W. R., 35.

The incapacity of joint owners confers powers of alienation in certain cases of necessity upon the managing owner. *Koer Sheo Pershaud Naran* v. *The Collector of Monghyr and others*, 7 W. R., 5.

According to the Hindu law current in Madras, the member of an undivided family may alien the share of the family property to which, if a partition took place, he would be individually entitled.

There may be a valid sale of such a share upon an execution in an action of damages for a tort. *Virásvami Gramini* v. *Ayyasvami Gramini*, 1 Mad. Rep., 471.

The right of an unborn son to sue does not give a perpetual right of action. When neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed, and the acts of the guardian considered to be the acts of the minor.

Quære,—Whether the same rule strictly applies to the relation of the head of a family, and his descendants holding vested rights in his estate, in regard to alienations by the head of the family to which the descendants did not expressly consent. *Seetul Pershad Singh* v. *Gour Dyal Singh*, 1 W. R., 283.

6.—Alienations, Validity of.

Possession is not essentially necessary by Hindu law to give validity to a transfer by sale of immoveable property. *Bhookun Bhaeebowa* v. *Bhaeejee Prag*, 1 Bom. Rep., 19.

A sale of property may be valid according to Hindu law, although not accompanied by actual

delivery of possession. *Nagobaee* v. *Moteegee Gooroo*, 1 Bom. Rep., 5.

A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate. There is no distinction according to the Madras school between a father and other co-parceners. *Palanivellappa Kaundan* v. *Mannaru Naikan*, 2 Mad. Rep., 416.

According to the Mitakshara law, a son acquires by birth a right in ancestral property, and has a right during his father's lifetime to compel a partition of such property. The father cannot, without the consent of the son, alienate such property, except for sufficient cause; and the son may not only prohibit the father from so doing, but may sue to set aside the alienation if made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue upon the subsequent birth of a younger brother, either to the elder brother alone, or to him and his brother jointly.

Held by the majority of the Court (*dissentiente* E. Jackson, J.) that when (notwithstanding a separation in food and residence) no formal partition of the family estate has taken place, the family must be considered joint and undivided; and that, in such a case, a widow cannot succeed to, or retain possession of, her husband's share as against his surviving brothers, but is only entitled to maintenance. *Badamoo Koer* v. *Waseer Singh*, 5 W. R., 78.

According to the Mitakshara law, a son has an equal right with his father in ancestral property. He can compel the father to divide the property during his lifetime, and any alienation by the father made after the birth of the son, without the consent of the son, unless for a purpose justified by the Hindu law as a legal necessity, will not bind the son. If the father, during the minority of the son, alienated any property in fraud of his creditors, such fraud would not bind the son, who was neither a party nor was privy to such fraud. *Beer Kishore Suhye Singh and others* v. *Hur Bullub Narain Singh and others*, 7 W. R., 502.

Assuming that an alienation by a father, who at the time of such alienation was a member of a Hindu family living in commensality, may be questioned by a son, it will have to be seen whether the alienation was made for purposes which justified it. *Noor Ahmed* v. *Lulla Pershad*, 2 N. W. R., 189.

A brother acting as manager of the family property and for the benefit of the minors, although he has not obtained a certificate of guardianship under Act XL of 1858, may make a temporary alienation of the family property for necessary purposes and for the benefit of the minors. *Lalla Seetul Pershad* v. *Chand Khan*, 2 N. W. R., 428.

Mere production of decree will not establish the propriety and necessity of a sale of ancestral property. There should be evidence of the nature of the debts on which such decrees originated. *Reotee Singh* v. *Ramjeet*, 2 N. W. R., 50.

The sale of joint property governed by the Mitakshara law, in execution of a decree made on a debt which was not a necessity, is not valid and cannot be upheld, even though the proceeds are used to satisfy another decree on a bond by which money was borrowed on necessity. The parties suing for annulment of such invalid execution sale are bound to pay the auction-purchasers so much of the debt as would have been a burden on the estate. *Bhyro Pershad* v. *Basist Narain Panday*, 16 S. W. R., C. R., 31.

Where property in which two members of a Hindu family are jointly interested is sold in order to raise money for the payment of a debt jointly contracted by both, the son of one of them cannot sue to recover his own, or his own and his father's share, in the absence of the other. In such a suit, if it is alleged that the father is connected with the institution of the suit with a view to defraud creditors, an important issue is raised which should be tried and decided. *Sheo Churn Narain Singh* v. *Chukrurn Pershad Narsing Singh*, 15 S. W. R., C. R., 436.

On the death of R. S. his eldest son, R. K., undertook the management of the family property, plaintiff (a grandson of the deceased through his third son) being then an infant. Not long after R. K. purchased some land, which he subsequently sold to R. D. and H. S. D., who are now represented by the defendants, H. S. and L. N. D. In the present suit plaintiff alleges that the property had been purchased by R. R. with money belonging to the joint funds of the family. The first Court found for plaintiff, and adjudged him one-fourth share of the property in suit. From that decree H. S. and L. N. D. did not appeal, but R. R. did appeal. The Judge, assuming the lower Court's finding to be correct, held that as plaintiff, who was of age at the time, did not object to the sale, he could not recover possession of property sold by R. K. as the recognized agent and manager.

Held that R. K. could not found any right upon the presumption of plaintiff's consent, however such presumption might have availed the other defendants, purchasers from R. K., who had not appealed. *Gopal Chunder Lahoory* v. *Roy Kishore Lahoory*, 15 S. W. R., C. R., 467.

Quære,—Where it has been found that, as to a certain portion of the consideration money of a deed of sale of joint ancestral property, there was a legal necessity, is it a correct principle to uphold the deed as to that portion of the land which bears the same proportion to the whole quantity conveyed as the money borrowed for the discharge of the legal necessity bore to the whole amount of the consideration money? *Rajaram Tewari* v. *Lachman Prusad*, 4 B. L. R., A. C., 118, and 12 S. W. R., C. R., 478.

A., a Hindu, subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent of his co-sharers, and not for the benefit of the estate, but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held* that, in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of A., deceased, were entitled to recover possession, without making any refund of the purchase money. *Nathee Lal Chowdry* v. *Chadi Sahi*, 4 B. L. R., A. C., 15, and 12 S. W. R., C. R., 446.

A member of an undivided Hindu family living under the Mitakshara law, in his father's lifetime brought a suit for a declaration of his future right to a one-sixth share in a portion of the immoveable property of the family, and to set aside an aliena-

tion of it by his father, as having been made without legal necessity,—*Held* that no such suit was maintainable. *Raol Gorain* v. *Teza Gorain*, 4 B. L. R., Ap., 90.

According to the Mitakshara law, a son has a right during the lifetime of his father to set aside alienation of ancestral property made without his consent. His cause of action arises from the date when possession is taken by the purchaser. *Aghori Rumasarag Sing* v. *J. Cochrane*, 5 B. L. R., Ap., 14.

The daughter of a Hindu, while in possession of the paternal estate, borrowed a large sum of money under a mortgage of a portion of the estate. Part only of the money borrowed was devoted by her to the relief of legal necessity. After her death, the next heir sued the mortgagee to recover the property mortgaged, and to set aside the mortgage deed. The Courts below gave a decree for possession to the plaintiff upon repayment of the amount actually spent in the relief of legal necessity. Such decree upheld on appeal. *Lalit Panday* v. *Sridhar Deo Narayan*, 5 B. L. R., 176; 13 S. W. R., C. R., 457.

The plaintiff, a Hindu, sued to set aside a certain alienation, on the ground that the alienor was an illegitimate son of the plaintiff's grandfather, and therefore had no interest in the property. Not being able to substantiate this ground in the first Court, the plaintiff, on appeal, raised a new ground, *viz.*, that the alienation was bad, because, under the Mitakshara law, the owner of a share in a joint ancestral estate is not competent to alienate his share without the consent of the other heirs,—*Held* that such variance could not be allowed, and that the plaintiff must prove his case as laid in the plaint.

There is nothing in Rajaram Tewari *v.* Luchman Prasad, and in Sadabert Prasad Saha *v.* Foolbash Koer, to justify the contention that where there is an alienation made by one shareholder, and another sharer sues to set aside that alienation, it follows as a consequence that a party who sues to set aside the alienation must obtain a decree. *Sri Prasad* v. *Ruj Guru Triambuknath Deo*, 6 B. L. R., 555, and 14 S. W. R., C. R., 386.

Under the Mitakshara law, a single member of a family is empowered to sell immoveable property for the purpose of paying off family debts only where the sons and grandsons are minors or otherwise incapable of giving their consent.

Where the sale of landed estate by a single member for the payment of family debts is set aside because made without the son's consent, the son can only get possession on repayment of the purchase-money which was applied to the liquidation of the debts. *Muthoora Koonwaree* v. *Bootun Sing*, 13 S. W. R., C. R., 31.

Where ancestral property is to be sold or mortgaged, all that the purchaser has to do is to see that there is sufficient pressure upon the estate to render the transfer necessary. The fact of there being a decree, an attachment, and a proclamation for sale, is sufficient pressure. *Sheoraj Kooer* v. *Nuckchedu Lall*, 14 S. W. R., C. R., 72.

Where the validity of a sale of ancestral property is objected to on the ground that it was effected without the consent of all the members of the joint Hindu family, the objection can only be made by the member who did not consent.

A member of a Hindu family may mortgage his undivided share of the joint property without the consent of his co-sharers, in order to raise money for the benefit of the family, *e.g.*, to pay debts or liquidate demands under legal necessity. *Juggernauth Khootia* v. *Dooboo Misser*, 14 S. W. R., C. R., 80.

According to Sadabert Prasad Saha *v.* Foolbash Koer, a sale of undivided ancestral property by a father without any legal necessity and without the consent of all the co-sharers is, under the Mitakshara law, invalid. It is not valid even as regards the father's share. A son going to set aside such an alienation is, according to that case, entitled to a declaration that the alienation is void altogether. The son suing in the father's lifetime on behalf of the family may be entitled to a decree for possession. Upon what terms that decree should be made will, according to the decision in Modhoo Dyal Singh *v.* Golbur Singh, depend on the equity which the purchaser may have to a refund of the purchase money, or to be placed in the position of an encumbrancer as against the joint family in the particular case. *Hunuman Duti Roy and another* v. *Baboo Kishen Kishoa Narayan Singh*, 8 B. L. R., 358; 15 S. W. R., F. B., 6.

To justify an alienation of ancestral property, a legal necessity for the sale must be strictly proved to have existed, and such necessity cannot be inferred from the habits and general character of a vendor. *Mittrajit Singh and others* v. *Raghubunsi Singh and others*, 8 B. L. R., Ap., 5.

A., a Hindu, sued B., the widow of C., claiming to be entitled with others as heirs of C. under the Mitakshara law to certain property. The suit was compromised on the terms as to the portion of the property, that it was to be retained by B. for life, and after her death to be divided according to specified shares between A. and the other claimants. After B.'s death A. obtained possession of his share under the deed of compromise. A. alienated the property, and during his lifetime his sons sued to set aside the alienation on the ground that it was ancestral property. *Held*, A. took the property absolutely, and not as ancestral property. *Mahabur Kower* v. *Jubha Singh*, 8 B. L. R., 38; and 16 S. W. R., C. R., 221.

It is the firmly settled rule of Hindu law, resting upon the authority of the Mitakshara and repeated judicial decisions, that a managing co-parcener has not the capacity to alienate or charge the share of his minor co-parcener in immoveable ancestral property except for the purpose of providing for some family need or the performance of an indispensable religious duty, or except the alienation or charge be for the benefit of the joint estate; and in every case to which the rule is applicable, the *onus* of showing either by direct or presumptive proof a *primâ-facie* case in support of the existence of the condition necessary to give the legal capacity to make the disputed disposition, lies upon the party claiming to have acquired under it a title to the minor's share of the property. Upon the question of what is the amount of proof which the law renders necessary to discharge that burden of proof —*Held* that where the dispute as to the validity of a sale or mortgage of family property is with the person to whom it was made, and the pecuniary consideration for it has not been advanced for the

purpose of discharging an antecedent charge on the property or an old debt incurred by an ancestor; the case of the vendee or mortgagee, as regards the existence of a family need or sufficient beneficial purpose requiring the advance of the consideration money, must be established by positive proof. But that between a *bonâ-fide* sale or mortgage for an advance made to pay off a pre-existing mortgage claim or an unsecured debt of an ancestor, and one not made for that purpose, there was this distinction to be observed, that the burden of establishing by direct proof that such prior claim or debt was incurred for a proper family purpose is not cast upon the vendee or mortgagee. He is only required to show this presumptively. But to do so it is incumbent on him to give proof not only of the consideration money for the sale or mortgage having been *bonâ fide* advanced in discharge of an antecedent debt, but also of an enquiry productive of results which warranted his reasonably believing that such debt was a family obligation and the sale or mortgage a prudent arrangement for its discharge. *Taravana Tevan* v. *Muttayi Ammal and Tirnmalai Gaundan*, 6 Mad. Rep., 371.

Where the Court has expressly found the existence of debts, and that the sale of ancestral property was a *bonâ-fide* one, the circumstance that there was no actual pressure at the time in the shape of suits by the creditors for the recovery of their debts, is not of itself sufficient to invalidate the alienation.

A sale of ancestral property merely for the purpose of procuring funds for the re-purchase of other property formerly belonging to the family, cannot of itself be considered as a sale for any of the necessary purposes sanctioned by law.

Although as a general rule it may lie upon those who claim under an alienation of ancestral property for necessary purposes to show that the transaction was within the limited power of the party alienating, yet particular circumstances may shift the burden of proof.

No fixed rule can be laid down as to the degree of proof requisite in such cases. *Kaihur Singh and another* v. *Roop Singh and others*, 3 N. W. R., 4.

The right of a co-parcener to alienate his vested interest in the property held in co-parcenary is limited to the extent of the co-parcener's share in the particular property which is the subject of the alienation.

In a suit to recover a moiety of a village which was a portion of the joint family property, and which had been sold by the managing member without the assent of the plaintiff's father, and not for family purposes, the entire village being less in quantity and value than the share of the managing member,—*Held* that the plaintiff was entitled to the relief prayed. *Venkata Chella Pillay* v. *Chinnayia Mudaliar*, 5 Mad. Rep., 166.

7.—Caste.

An Englishman lived with a Brahmin woman living apart from her husband, by whom he had two sons. *Held* that the sons are Hindus, and their rights are determined by the rights of the class of Hindus to which they belong.

Held also that they are to be regarded as Sudras, or as a class still lower, and that, in the absence of preferable heirs, they inherit the property of their mother and of one another. *Mayna Bai* v. *Uttaram and others*, 2 Mad. Rep., 196.

The Hindu law makes no distinction between the legitimate children of mothers of the same caste. *Rajah Nugendur Narain* v. *Rughoonath Narain Dey*, W. R., 1864, 20.

It is not incorrect to accept the rates paid by cultivators of low caste, with rights of occupancy for lands of the same description and with similar advantages as a basis for calculating the rates to be paid in future by a cultivator of high caste, but it is necessary to consider and allow for the difference of castes. *Kunuk Singh and others* v. *Gholam Jeelanee*, 2 Agra Rep., 329.

According to the family custom the sons of a Rajah of Keonghur, by wives of a lower caste than the Rajah, rank after the sons by wives of the same caste as the Rajah. *Ranee Bistooprea Patmohadea* v. *Basoodeb Dal Bewastee Patnaik*, 2 W. R., 232.

The general Hindu law being against a marriage between persons of distinct castes (*e.g.*, Domes and Harees), local custom can alone sanction it. *Melaram Nundeal* v. *Thanooram Bamun*, 9 W. R., 552.

A suit will lie for restoration to caste, and for damages and compensation for cost of restoration to caste. When the defendant denies that he made any accusation, and it is proved that he did make one, and that it alone led to the excommunication of the plaintiff, the defendant should be allowed an opportunity of proving that the accusation was not false, before a decree for damages is passed against him. *Gopal Gourain* v. *Gurain*, 7 W. R., 299.

Exclusion from caste of a Hindu for an alleged intrigue does not involve deprivation of his civil rights to hold, deal with, and inherit his property (Act XXI of 1850). *Namboodri* v. *Mele Pullakatt Vessa Devan Nambaodri*, 1 Ind. Jur., N. S., 236.

Since the passing of Act XXI of 1850 exclusion from caste, whether by renunciation of religion or from any other cause, is no longer a ground for exclusion from inheritance. *Bhujpen Lall* v. *Gya Pershad*, 2 N. W. R., 446.

An estate which a mother has inherited from her son is not divested by reason of her subsequent unchastity.

It is a general rule of Hindu law that when the descent of an estate has taken place before the cause of exclusion from caste has arisen, the estate is not divested by the owner becoming an outcast.

This rule would not under Hindu law apply to a wife who has become unchaste.

But there is no authority to show that it does not apply to a mother. *Musumut Deoku* v. *Sookhdeo*, 2 N. W. R., 361.

While the Courts have generally accepted the decisions of properly-constituted punchayets on questions of caste, they have accepted them subject to the qualification that the decision of the punchayet does not estop the Courts from enquiring into the civil rights of any member of the caste, and securing to him the enjoyment of such rights, if he be found not to be precluded from the enjoyment of them by the Shastras or the particular usages of his caste.

It would be extremely inconvenient to hold that by a deprivation of caste, which may be temporary, a member of a caste loses his marital rights, so as

to confer on his wife the power of contracting a second marriage.

It is a general principle of Hindu law that the degradation of the husband from caste does not dissolve the marriage tie. *Bishesur* v. *Mutagholam*, 2 N. W. R., 300.

The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as mehtars of the caste, on the marriage of the daughter of the defendant.

The defendant denied that the plaintiffs were his mehtars. *Held* that the question between the parties was a caste question with which the Courts were precluded from interfering by Reg. 11 of 1827, Sec. 21. *Murár Dáya et al.* v. *Nágria Ganeshiá*, 6 Bom. Rep., A. C. J., 17.

A Hindu by becoming a byragee does not divest himself of all title in his family estate, which on his death devolves on his heirs, and not on a kept mistress, although she may have performed his funeral rites on account of his being an outcast. *Khooderam Chatterjee* v. *Rookhinee Boistobee*, 15 S. W. R., C. R., 197.

An instrument was executed by the defendant, a Hindu, to his wife, stipulating that the defendant and his wife should continue to enjoy certain immoveable property jointly, with a right of survivorship, and containing a promise by the defendant to surrender the property to his wife if he married again.

Held that the instrument did not operate by way of gift, there being no change in the possession of the property, nor as a declaration of trust, and that it did not create a binding obligation which the law would enforce.

Quære,—Whether the Hindu law admits of the applicability of the principle on which Courts of Equity in England hold voluntary declarations of trusts to be binding against the declarant. *Venkattachettu Maniyakarer* v. *Thathamal*, 4 Mad. Rep., 460.

8.—Contracts.

The word "sontan" occurring in a deed of agreement between co-sharers, members of a Hindu family, was construed to mean issue generally and not male issue merely. *Kristo Kishòre Bhuttacharjee and others* v. *Seetamony Bhuttacharjee and others*, 7 W. R., 320.

An agreement entered into by two brothers, who never were constituted by Hindu law members of an undivided family, provided for the mode in which self-acquired property, to a moiety of which they were each entitled, should be managed during their lives, for the right of survivorship, and for its descent upon the death of the survivor. One clause of the agreement, literally translated, was in these words: "To the married wives of both of us, if there is not male offspring, in the event of there being sons not born in wedlock, must divide into equal shares for their own benefit." Upon the construction of this clause, *held* that the estate was to be equally divided amongst the wives and the sons born in concubinage. *Sri Gajapotee Horeekristun* v. *Sri Gajapotee Neelmony Patta*, 2 Mad. Rep., 369.

According to Hindu law, not only is the beneficial interest in the subject-matter of the contract, but the contract itself is assignable. The assignee therefore may sue in his or her own name. This doctrine is applicable to suits brought in the Madras Small Cause Courts. *Venbakum Somayagee Janakee Ammal* v. *Mooneswamy Chetty*, 4 Mad. Rep., 176.

A suit may be maintained against a surety, according to Hindu law, although the principal debtor has not been sued. *Totakot Shanguni Menon* v. *Keeru Saigal Kuku Varid*, 4 Mad. Rep., 190.

Quære,—Whether Hindu law admits of the principle in which Courts of Equity in England hold a voluntary declaration of trust to be binding against the declarant. *Venkuchella Marjniakaru* v. *Thathummal*, 4 Mad. Rep., 460.

According to mercantile usage amongst Hindus, where a hundi, drawn "payable to owner" (*shah jogi*) is paid at maturity by the drawee to the shah or holder of the hundi, and such hundi afterwards turns out to be forged, the shah, though a *bonâ-fide* holder for value, is bound to repay to the drawee the amount of such hundi with interest from the date of payment, provided that the drawee has been guilty of no laches in discovering the forgery and communicating the fact of such forgery to the shah.

The shah, however, relieves himself from such liability by producing the actual forger. *Davaltram Shiram et al.* v. *Balakidas Khemchand*, 6 Bom. Rep., O. C. J., 24.

By the Hindu as well as by the English law, a creditor in whose hands a pledge has accidentally perished is notwithstanding entitled to recover his debt in the absence of an agreement to the contrary. *Vithobá Valad Ukba et al.* v. *Chotá Lál Tukáráin*, 7 Bom. Rep., A. C. J., 116.

Though, by Hindu law, on a sale of land it is not absolutely necessary that the purchaser should be put in possession, it is requisite that the vendor should at the time of sale be in possession of the property sold. *Girdhur Parjárám* v. *Dáji Dulubhárám and Moti Dulabhárám*, 7 Bom. Rep., A. C., 4.

In all matters of contract and dealing between Hindus, the law applicable in Civil Courts of the country governs Courts of Small Causes. *Wooday Chund Halder* v. *Gooroo Churn Mojoomdar*, 13 S. W. R., C. R., 148.

Act XIV of 1840 does not apply to contracts between Hindus. *Alva Chetti and others* v. *Vaidilinga Chetti*, 1 Mad. Rep., A. C., 9.

It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate, irrespectively of the actual delivery of possession. Where the vendor sells an estate of which he is not in possession, in consideration of advances to enable him to sue for its recovery, it is not open to the purchaser, after failing to complete his part of the contract, to claim specific performance and delivery of the recovered estate on tendering the balance of the purchase-money.

It is the established practice of the Courts in India, in cases of contract, to require satisfactory proof that consideration has been actually received, according to the terms of the contract, and a contract under seal does not of itself, in India, import that there was a sufficient consideration for the agreement. A plaintiff, however, suing to set aside a security admittedly executed by himself, must make out a good *primâ-facie* case before the de-

fendants can be called on to prove consideration. A zemindar has, as such, a *primâ-facie* right to the gross collections from all the mouzahs within his zemindary. It is for parties setting up an intermediate tenure to prove their grant.

Defendant claimed to hold a mokurruree tenure under deeds executed by plaintiff, zemindar. The plaintiff denied the authenticity of the deeds, and sued to set them aside. The lower Courts dismissed his suit as barred by limitation, on the ground that plaintiff had, in a petition before the Collector, admitted that defendant was mokurruree-dar of the tenure, and that this being so limitation ran against him from the date of the deeds. *Held* that the case should have been tried on the merits, as the petition was not a conclusive admission of the genuineness of the deeds, and it was not right to infer from it that plaintiff knew of their existence at the time of their professed date.

A thakbust award of boundary made in the Lower Provinces may be an award under Regulation IX of 1815, within the meaning of Act XIII of 1848. It would in any case be material evidence of possession.

The pendency of an appeal to England does not put the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties. *Raja Sahib Prahlad Sen* v. *Maharaj Rahendar Kishore Singh*, 2 B. L. R., P. C., 111.

In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindu law, and in contracts between Hindus for the purchase and sale of land in Bombay the intention of the parties must be ascertained from the terms of the agreement, without regard to any implication. *Devsi Ghela* v. *Jivarj Makundas*, 2 Bom. Rep., 430.

By Hindu law a purchaser may recover in an action for breach of contract to deliver goods, not only double the earnest-money, but also damages for the non-delivery. *Alver Chetti* v. *Vaidilanga Chetti*, 1 Mad. Rep., O. C., 9.

9.—Convert.

Upon the conversion of a Hindu to Christianity, the Hindu law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced the old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion. The profession of Christianity releases the convert from the trammels of Hindu law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property.

The convert, though not bound as to such matters, either by the Hindu law or by any positive law, may, by his course of conduct after his conversion, have shown by what law he intended to be governed as to these matters. *Charlotte Abraham* v. *Francis Abraham*, 1 W. R., P. C., 1.

Before the passing of Act XXI of 1850 the property possessed or acquired by a Hindu convert to Mahometanism prior to his conversion passed to his nearest heir professing the Hindu religion. *Ranee Mewa Koonwer and another* v. *Lalla Oudh Beharee Lall*, 2 Agra Rep., 311.

The English law relating to a married woman's property, and the right of the husband therein, is not necessarily applicable to Hindu converts to Christianity. The rule of decision in such cases is the rule prescribed by equity and good conscience, which is in each case to refer the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged. *Isaac Pandu* v. *Surbomongola Dossee*, 1 W. R., 22.

A Hindu husband who has been repudiated by his wife on his conversion to Christianity cannot sue for the restitution of conjugal society. *Muchoo* v. *Arzoon Sahoo*, 5 W. R., 235.

A Hindu father is not deprived of his right to the custody of his children by reason of his conversion to Christianity. *Muchoo* v. *Arzoon Sahoo*, 5 W. R., 235.

A will that provides for an heir becoming disinherited on changing his religion, does not apply to the case of a Hindu becoming a Vedantist, nor does that form of Hinduism incapacitate him from being a manager. *Anund Coomar Gangooly* v. *Rakhal Chunder Roy and others*, 8 W. R., 278.

A Hindu Christian convert, relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living, whom he married while a professing Christian. 3 Mad. Rep., A. C., 7.

10.—Custom.

The existence of a local custom as to the right of pre-emption among the Hindus of Gujarat recognized. Such a custom, where it exists, is regulated by the rules and restrictions of the Mahometan law. *Gordhandas Girdharthai* v. *Prankor*, 6 Bom. Rep., A. C. J., 263.

Evidence of the acts of a single family, repugnant or antagonistic to the general law, will not establish a valid custom or usage enforceable in a Court of Justice. *Tara Chand* v. *Reeb Ram*, 4 Bom. Rep., A. C., 113.

To establish a family custom at variance with the ordinary law of inheritance, it is necessary to show that the usage is ancient and has been invariable, and it should be established by clear and positive proof. A family custom as to intermarriages, being matter of family history, may be proved by declarations made by members of the family. *Rajah Nugendur Narain* v. *Rughoonath Narain Dey*, W. R., 1864, 20.

Where, in a question as to the right of inheritance to a raj, it was admitted that there was a custom that the reigning raja should name a jubraj and a burra thakur, of whom the first succeeds to the throne, and the latter to the office of jubraj; but it was contended, on the one hand, that if the reigning raja had appointed a jubraj his choice should have been guided partly by an alleged promise or intention on the part of the former raja, and partly by the appellant's preferential title as legal heir by seniority amongst the near kindred; and on the other, that the choice of the reigning raja was absolutely free, and could not be controlled by the wishes of the former raja,—

Held that where there was evidence of a power of selection the actual observance of seniority, even in a considerable series of successions, could not of itself defeat a custom which established the right of free choice.

Where family custom required the union of two things to constitute the legal heir, *viz.*, seniority in age and nearness of kin, and the claimant has but one of these qualifications in himself, *viz.*, seniority, he does not entitle himself to succeed. Where a custom is proved to exist, it supersedes the general law, which however still regulates all beyond the custom. *Nilkristo Deb Barmono* v. *Bir Chandra Thakur*, 3 B. L. R., P. C., 13; 12 W. R., P. C. 21.

According to the *Pachees Sawal*, a brother of the Raja of Attgurh, one of the tributary mehals of Cuttack, has a preferential title over the Raja's son by a phoolbebahi wife to succeed to the raj.

The effect of a devise of his estates by a raja would be to alter the course of succession, and therefore contrary to Section 3, Regulation XI of 1816. *Nittanund Murdiraj* v. *Sreekurun Juggernath Bewartah Patnaick*, 3 W. R., 116.

Custom, when it is ancient, invariable, and established by clear and positive proof, overrides the usual law of inheritance. *Mussamut Kustoora Koomaree* v. *Monohur Deo; The Government* v. *Monohur Deo*, W. R., 1864, 39.

By the custom of a Hindu family, no distinction was made between the issue of a Sagyi marriage and a Lyahi marriage. *Held* that the issue of the son of a Sagyi wife first married was entitled to inherit the property of the grandfather, in priority to the issue of a son of a subsequent Lyahi wife. *Radaik Ghaserain* v. *Budaik Pershad Singh*, Marsh., 614.

On the accession of the British Government to the Dewanny, Rajah Futtah Sahie, in 1707, having refused to acknowledge allegiance to, and having openly rebelled against, the Government, was expelled from his estate of Hosaipore. The Government retained the estate in its own possession until 1790, when, setting aside the sons of Futtah Sahie, it conferred the estate upon Chutterdharee, at that time the eldest surviving member of the younger branch of the family. Two of the grandsons of Chutterdharee having sued to establish their right to a moiety of his property,—*Held* that the Hosaipore property was a raj, and that by the rule of the family it was to descend entire to a single heir; that the Government, by setting aside a particular branch of the family, did not, in intent or in fact, confiscate the property, and thereby extinguish the rights of every member of the family; that the family custom and the custom of the raj were not destroyed by the infringement of the custom by virtue of which Chutterdharee acquired the estate; and that he having acquired the estate subject to a particular custom, and having himself done nothing destructive of that custom, his heirs were bound by the same custom, to the exclusion of the ordinary law of Hindu inheritance. *Ram Gopaul Singh* v. *Teluckdharee Sahie and others*, W. R., F. B., 97.

The plaintiff claimed to succeed to the Shoosung estate as sole proprietor, alleging a family custom according to which the property was a raj and indivisible, and descended to the eldest son or nearest male heir of the party in possession. *Held* that there was no proof of such custom; that if there had been it was waived by the sons of Raj Singh (the plaintiff's grandfather) on his death in 1822; that the documents submitted to the Court did not prohibit alienation; that at a period previous to the British rule alienation of two-sixteenths of the property took place, and was acquiesced in by the successors; that the property was during the Mahometan government a military jagheer, resumable at pleasure, and not a raj; and that the succession to it went not by right or family custom, but by the will of the sovereign power. *Promoda Debia* v. *Rajah Prankishen Singh*, 2 W. R., 80.

Held that a custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (*nàtra*) with another man in his lifetime and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable as regards the woman under Section 494 of the Penal Code; and that the man with whom the woman so married having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under Section 497. *Reg.* v. *Karson Gojá; Reg.* v. *Bai Rupa*, 2 Bom. Rep., 124.

According to Hindu law, in order that a custom may have the force of law it must be shown to have existed from time immemorial. *Luchmun Lall* v. *Mohun Lall Bhayu Gayal*, 16 S. W. R., C. R., 179.

Upon the authority of decided cases as well as the evidence of custom in the family, it was *held* that the raj or zemindaree of Ramghur being an ancestral impartible estate, and the family an undivided family governed by the Mitakshara, the plaintiff as eldest male heir was entitled to succeed to the dignity and estates of the family in preference to the mother of the late infant rajah and widow of his father, the last actual rajah. *Maharanee Heeranauth Kooer* v. *Baboo Burm Narain Singh*, 17 S. W. R., C. R., 316.

According to the principles of Hindu law, when regarded apart from any special custom prevailing in a particular district or family, where there are sons by different wives, priority of birth, and not marriage certainly as regards the sons by any wives after the first, must determine the succession of an impartible inheritance. Accordingly the son of a third wife born before the son of the second wife was held entitled to inherit.

Semble,—No just analogy can be established between the status of the first wife and that of any subsequent wife, the title of the first wife to special rank and privileges resting upon grounds peculiar to her and which can have no application to others.

It is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable, and that they should be established to be so by clear and unambiguous evidence. *Ramalakhmi Ammal* v. *Sivannutha Perumal Sethurayer*, 17 S. W. R., C. R., 553.

II.—Dwelling House.

A Hindu died, leaving a widow and an adopted son, who continued, after his death, to reside in the

same dwelling-house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate. The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent. Subsequently the son sold the house, as his property by inheritance, to a stranger, who gave the widow and tenants a week's notice to quit.

Held that the son, even if he had attained his majority, could not evict the widow, or authorize a purchaser to do so, without providing some other suitable dwelling for her; nor in any case could the tenants be turned out without a month's notice.

It seems that the passage in Katyayana, 2 Colebrooke's Digest, p. 133, is a restriction, and not a moral precept only, and that the heir of the deceased has not such a right in the dwelling of the family that he can at once, of his own pleasure, turn out the females of the family, or sell it and give the purchaser a right to turn them out. *Mongala Debi* v. *Dinonath Bose*, 4 B. L. R., O. C., 72; S. C., 12 W. R., O. C., 35.

In a suit for possession by the auction-purchaser of a judgment-debtor's share in a family residence, possession was ordered to be given to him so as not to annoy or insult the inmates of the house; and as the plaintiff could not use the family staircase without exposing the ladies of the family to annoyance, and was obliged to build a separate staircase, he was held entitled to compensation to the value of his share in the family staircase. *Oodhoy Chunder Mullick and others* v. *Pitamber Pyne*, 6 W. R., Mis., 75.

A person who, at a sale in the execution of a decree, has purchased the share of a member of a joint undivided Hindu family, and subsequently sued for and obtained a decree against other members of the family for possession of such share in property, consisting of the joint family dwelling-house and land, in execution of the decree, is entitled to be put into actual possession of a portion of the dwelling-house (*dissentiente*, Kemp., J.). *Koonwar Bijoy Keshub Roy Bahadoor* v. *Shama Soonderee Dossee*, 2 W. R., Mis., 30.

Suit by purchaser of a decree for the debtor's share in a family dwelling-house, with gardens and tanks. *Held* that, as the suit was for chambers and ground, however worthless the land might appear without the residence, or however inconvenient might be the intrusion of a stranger into the family dwelling-house, the plaintiff was entitled to an adjudication of his claim to the land. *Buddun Chunder Maduck* v. *Chunder Coomar Shaha*, 5 W. R., 218.

Partition of a dwelling-house may be claimed as of right by a Hindu. *Hullodhur Mookerjee* v. *Ramnath Mookerjee*, Marsh., 35.

Where there is joint occupation of some portions of a joint family dwelling-house, and the separate occupation of other portions of the same property appears to be merely permissive, such separate occupation does not necessarily imply that the properties occupied are separate properties. *Gour Lall Singh* v. *Mohesh Narain Ghose*, 14 S. W. R., C. R., 484.

12.—EVIDENCE.

By Hindu law an exchange of lands followed by possession need not be evidenced by writing. *Mantinna Raijappa Raj* v. *Chekkari Venkartaraj*, 1 Mad. Rep., A. C., 100.

The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose; but where there is apparently good evidence going back for more than half a century that the land was given for the support of an idol, proof that from that time the proceeds had been so expended would be strong corroboration. *Muddun Lall* v. *Sreemutty Komul Bibee*, 8 W. R., 43.

Clear proof is necessary to support a gift, made orally by a person at the point of death, of all the donor's property to idols.

A member of a joint Hindu family, alleging separate acquisitions by himself and his father (the managers of the family property), is bound fully to prove his allegation; but the law does not impose upon him so high a degree of proof as to require him to trace the funds with which each purchase of his father and himself has been made from the time of their having been acquired in a given year to the time when they were paid to the seller of the property. *Bippro Pershad Mytee* v. *Mussamut Kena Doyee*, 3 W. R., 165.

When joint acquisition is alleged, the facts of the purchase having been made in the name of only one member of the family, of the registration of his name alone in the Collector's books, of his having carried on a law-suit singly with regard to the boundary of their lands, and of the refusal of the Judge to give the other members of the family a share of the costs decreed on that suit, are wholly insufficient proof of separate acquisition. *Deela Singh* v. *Toofanee Singh*, 1 W. R., 307.

Thakbust papers are *primâ-facie* evidence against the proprietors of estates comprehended in them. *Kalee Tara Debia* v. *Nittanund Shaha*, 12 W. R., 90.

No transaction of Hindu law absolutely requires a writing.

A Hindu may make a nuncupative will of property, whether immoveable or moveable. *Srinivasammal* v. *Bhioyamal*, 2 Mad. Rep., 31.

Where a party who claimed to be heir-at-law to the estate of a deceased Hindu was opposed on the ground that he was disqualified from inheriting by leprosy, but volunteered to state that he had performed the penance required by the Shastras for the expiation of the disease, he was held to have admitted thereby that the leprosy was of that grievous nature which demanded expiation before he could succeed to the inheritance, and to be under the *onus* of proving the fact that expiation had been performed. *Bhoobuneshurre Dabea and others* v. *Gouree Doss Turkopunshanun and others*, 11 W. R., 535.

That a Hindu widow, entitled to her husband's share of the joint property, continues to live in the family and mess with them, is sufficient, in the absence of evidence to the contrary, to show that she is receiving payments on account of her share. *Gobind Chunder Bagchee* v. *Kripamoyee Dabee*, 11 W. R., 338.

In no case does Hindu law absolutely require writing. *Mantena Raijappa Raj* v. *Chekkara Venkataraj*, 1 Mad. Rep., A. C., 100, and *Criniva*

Sammal and others v. *Vijayammal and others*, 2 Mad. Rep., 37.

A verbal grant of land followed by possession is valid under the Hindu law. 1 Ind. Jur., O. S., 135.

13.—Gift.

Plaintiff sued to enforce a gift to him of immoveable property by a woman living under his guardianship as against her husband.

Held that such taking of the woman's property by her kinsman is wholly repugnant to Hindu law.

Quære,—Can a woman, without the consent of her husband, during coverture, absolutely alienate her own landed property? *Duntuloore Rayapparaz* v. *Malapude Rayadu*, 2 Mad. Rep., 360.

By Hindu law a man may make a gift of any of his property binding as against himself. Even when a deed of gift is voidable, on the ground of fraud, accident, or mistake, it is a question for the discretion of the Court whether cancellation or delivery up ought to be ordered.

Where a Hindu made a gift to a person whom he said he has taken as his manasaputra,—*Held* that he could not set it aside, on the ground that he erred in supposing that the donee could perform his funeral rites. *Achachari* v. *Rama Chandrayya*, 1 Mad. Rep., A. C., 393.

Semble,—The Hindu law recognizes the validity of a gift on condition. *Armugam Mudali* v. *Amini Ammal*, 1 Mad. Rep., A. C., 400.

A voluntary gift by a husband to his wife is not void against the husband's creditors if at the time of the gift the husband was solvent, and the wife was put in possession under the gift, especially if the plaintiff became a creditor of the husband long after the gift. *Sheikh Enaet Ali* v. *Mussamut Rampreah Koonwar*, 1 W. R., 21.

In establishing the validity of a deed of gift taken from a woman stricken with a mortal disease, and in expectation of death, proof at least of equal strictness, as is required to prove a testamentary disposition, must be given, and the proof to support such a transaction ought to be sufficient to establish that she knew what she was about, and intended to make such disposition of her property. *Mussamut Thakoor Dayhee* v. *Rai Balack Ram and others*, 10 W. R., P. C., 3.

Appeal dismissed, the appellant being unable to prove from Hindu law that a person becoming a leper was incapable of making a gift of property to which he had previously succeeded. *Shamachurn Audicaree Byragee* v. *Roop Dass Byragee and others*, 6 W. R., 68.

The absence of seisin is no objection to the validity of a gift by a Hindu.

Where a cadet member of the Doomraon family gave, for the support of his illegitimate sons, certain properties which he purchased out of the savings and profits of his appanage, even admitting that he was in possession of such properties during his lifetime, his possession would be that of a trustee for his illegitimate sons. *Maharajah Moheshur Buksh Singh Bahadoor* v. *Mussamut Gunoon Koonwar*, 6 W. R., 245.

Held that a gift of land is not complete, by Hindu law, without possession or receipt of rent by the donee. *Harjivan Anandram* v. *Naran Haribhai*, 4 Bom. Rep., A. C., 31.

By an ikrar executed by A., a Hindu widow, in favour of B., a son of another wife of her deceased husband, after reciting that her husband had given her a talook as stridhun, but that he had not empowered her to adopt a son, it was thus directed: "You are the son of my co-wife; you are still living; the funeral cake will be preserved to us by you; and on my death the talook is your rightful property. After my death, out of the whole profits for my two daughters, separating by demarcation ryots with jummas to the extent of Rs. 200, whatever shall remain you shall gain. *Held* that the vesting of the gift was contingent upon B. surviving A.; and that upon the death of B. during the lifetime of A., the gift lapsed. *Kishto Soondery Deebea* v. *Ranee Kishtonotee*, Marsh., 367.

To make a gift of land complete under the Hindu law, there must be either possession or receipt of rent by the donee. The receipt of rent may be by an agent, and, if the transaction is *bonâ-fide*, it is immaterial that such agent has before the gift received the rent for the donor. *Bank of Hindustan, China, and Japan* v. *Premchaund Raichaund; Amedbhái Hubíbhál* v. *Premchaund Roychand*, 5 Bom. Rep., O. C., 83.

A., a Hindu living under the Mitakshara law, executed a petition to the Collector, stating that he was in possession of all his ancestral property; that his only son was dead; that he had no wife; that his son had left a widow, B., and two daughters, and no other children or heirs; the petitioner went on to state, "I declare her (B.) my heir; and as, with the exception of the said B., I have no other heir or malik, nor can there be any, of which circumstances I have already preferred information in my petition of 16th April, 1830, and life is uncertain, I consequently request that the name of B., the widow of my late son, be registered in the Collectory mutation book as proprietor and maulguzar in the place of my name with regard to the property," &c. "Further, as of B., there are two daughters who, after marriage, by the blessings of Providence, may be blessed with children; they and their children, therefore, are and will be heirs and maliks. But as long as I live I shall keep the management of my own affairs in my own hands, and look after all the transactions of *dihat*, &c., myself, as heretofore." B. sold and conveyed parcels of the property. In a suit by her daughter's son against the purchasers for a declaration of his reversionary right to the property sold,—*Held* that, under the terms of the petition, there was an absolute gift to B. That as the gift was not fettered by any restrictions, the alienation by B. was good and valid. *Chattar Lal Sing* v. *Shewukram*, 5 B. L. R., 123; 13 S. W. R., C. R., 285.

A., a Hindu, executed a dan patro (deed of gift) of a talook in favour of his youngest wife, B., wherein he stated: "You are my youngest wife, and your two sons are minors, therefore for your charitable expenses (dan o khairath) and for the maintenance of your minor sons, I make a gift of the above talook to you. You from this day becoming possessor thereof, after deduction of the government revenue, with the balance of the profits will perform acts of charity (dan o khairath) and maintain the sons. For this purpose I execute this dan patro."

A died, leaving C., a son by his first wife, two minor sons by B., and B., his widow. The minor sons of B. died unmarried and without issue. B. made a gift of the property to D., her daughter's son. In a suit by C. against B. and D. for a declaration of his reversionary right to the property after the death of B.,—*Held* that the gift to B. under the dan patro was absolute. An appellant in regular appeal may not at the hearing raise a contention of law expressly abandoned by him in the Court below, and not contained in the memorandum of appeal. *Srimati Pabitra Dasi* v. *Damudar Jana*, 7 B. L. R., 697.

The Hindu law makes no distinction in favour of gifts in contemplation of death, as respects the legal requisites to constitute a perfect disposition by gift. Those requisites are, a giving, either orally or by writing, with the intention to pass the property in the thing given, accompanied by its actual delivery and acceptance in the donor's lifetime.

When all these requisites have been fulfilled there is nothing in Hindu law to prevent effect being given to a gift in contemplation of death. *N. Visalatchmi Ammal* v. *N. Subbu Pillaii and others*, 6 Mad. Rep., 270.

Plaintiff sued to recover certain land in virtue of an alleged gift from her deceased husband. The parties were subject to the Marumakkattáyam law. The facts were that the land being in the hands of tenants, a deed of gift with the counterpart lease was delivered by the donor to the plaintiff. It did not appear that there were any title-deeds belonging to the property. *Held*, reversing the decision of the principal Sadr Amin, that the rule of law applicable is that a gift is perfectly valid if such delivery is made as the nature of the object permits, and that this has been done in the present case. *Wannathan Kandile Chiruthal* v. *Keyakadath Pydel Kyrup*, 6 Mad. Rep., 194.

A voluntary transfer of property by way of gift, if made *bonâ fide*, and not with the intention of defrauding creditors, is valid as against creditors.

The Hindu and English law on the subject discussed. *Guánubhái* v. *Srínivása Pillali*, 4 Mad. Rep., 84.

14.—Interest.

By Hindu law the amount recoverable at any one time for interest or arrears of interest on money lent cannot exceed the principal; but if the principal remained outstanding, and the interest be paid in smaller sums from time to time, there is no limit to the amount which may be thus received in respect of interest. The previous decision of the Sudder Court to the contrary overruled.

A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be made use of in evidence to support a claim to interest on that balance, unless it be stamped; but it may be used as a samaduskut or simple admission of a balance due, although not stamped. *Dhondoo Jogoonath* v. *Narayen Ramchunder*, 1 Bom. Rep., 47.

By the Hindu law, interest exceeding in amount the principal sum cannot be recovered at one time.

Act XXVIII of 1855 has not, by repealing Section 12 of Regulation V of 1827, or otherwise, altered this rule of the Hindu law. *Khushalchand Lalchand* v. *Ichharam Fakir; Ram Krishnabhet* v. *Vithababin Malharia*, 3 Bom. Rep., A. C., 23.

In a suit under the Bills of Exchange Act to recover Rs. 1,200 on a promissory note, the Court gave a decree for Rs. 700 only, that being shown to have been the full consideration received for the note.

There is nothing illegal in the true holder of a promissory note endorsing it to another person, with the express object of allowing him to sue upon it.

Held, by Peacock, C. J., that the suit being between two Hindus must be decided by Hindu law.

By Hindu law a promissory note does not import consideration, and therefore where it was proved that the defendant actually received only Rs. 700, that sum was all the plaintiff was allowed to recover.

Act XXVIII of 1855 did not repeal the Hindu laws as to the rate of interest. Such rate is governed by the strict rules of Hindu law, as originally laid down by Menu and other lawgivers. *Ramloll Mookerjee* v. *Haran Chundra Dhur*, 3 B. L. R., O. C., 130.

Regulation XXXIV of 1802 having been repealed, a claim in a suit between Hindus for an amount of interest exceeding the principal sum due is maintainable. *V. Annaji Ram* v. *Raghubai*, alias *Sithubai*, 6 Mad. Rep., 400.

Act XXVIII of 1855 does not affect or supersede the rules of the Hindu law as to interest.

A promissory note, payable two months after date, given for money lent and interest in advance at the rate of 12½ per cent. per mensem, contained an agreement to continue to pay that rate of interest after the due date if the money was not then repaid.

Held that the high rate of interest so agreed to be paid did not constitute a penalty against which the Courts would relieve. *Hákma Mánji et al.* v. *Memun Ayab Háje et al.*, 7 Bom. Rep., O. J., 19.

The rule of Hindu law which declares that interest exceeding in amount the principal sum cannot be recovered at any one time is not applicable to mortgage transactions. *Náráyan bin Bábáji et al.* v. *Gungárám bin Krishnáji*, 5 Bom. Rep., A. C., 157.

The rule of Hindu law that interest beyond the amount of the principal sum cannot be recovered at any one time applies as well to mortgage transactions as to other loans.

But where the mortgagee enters into possession of the mortgaged property, and in taking the accounts between the mortgagor and mortgagee credit is given to the latter for the rents and profits received by him as against the principal and interest due, the above rule cannot equitably be applied. *Nathubhai Panachand* v. *Mulchand Hirachand*, 5 Bom. Rep., A. C., P. 196.

15.—Joint Family.

A debt incurred by the head of a Hindu family residing together under ordinary circumstances, presumed to be a family debt; but when one of the members is a minor, the creditor seeking to enforce his claim against the family property must show that the debt was contracted *bonâ fide* and for the

benefit of the family. *Tandavarya Madali* v. *Valli Ammal*, 1 Mad. Rep., A. C., 398.

The fact of the members of two branches of a Hindu family being separate in food and worship is quite compatible with their never having been separate in estate.

A document providing separate house accommodation for the members of each of the two branches points rather to a division of enjoyment than to a division of ownership or estate.

The absence of attestation by caste-men to documents by which a Hindu affects to deal with his property as though he were separate in estate, is a circumstance which throws suspicion on the truth of an alleged separation, as the presence of such would be satisfactory evidence of a state of things generally believed to be true at the time.

Bequest of property in dharm to the caste. *Chhabila Manchand* v. *Jadavbae and others*, 3 Bom. Rep., O. C. J., 87.

If a member of an undivided Hindu family invests the proceeds of the joint ancestral estate in the purchase of other estates, he does so for the benefit of the joint family. Without the consent of all the members, or a legal necessity, or a declaration and acts amounting to a division, he cannot alienate so as to bind even his own share. *Mussamut Bona Koeree* v. *Boolee Singh and others*, 8 W. R., 182.

Where, with small aid from paternal property, separate and distinct properties are acquired principally through the exertions of particular members of a joint Hindu family, such members are entitled to a double share upon separation. *Sree Narain Berah* v. *Gooro Persaud Berah*, 6 W. R., 219.

Illegitimate sons of a Christian father, by different Hindu women, although by agreement they may constitute themselves parceners in the enjoyment of their property after the manner of a joint Hindu family, are not a joint Hindu family according to Hindu law. On the death of each his lineal heirs representing their parent would, by the effect of the agreement, enter into that partnership.

Quære,—Whether the Hindu law gives a right of inheritance to collaterals also.

In a partition suit instituted by one of the illegitimate children, a deed of compromise was executed by the parties which provided for the mode of enjoyment and against the sale, mortgage, lease, or security of any separate share. *Held* (1) that these provisions of the deed did not extend to prevent alienation by devise, nor affect the right of inheritance; and (2) that the arrangement between the parties included the right of survivorship, the claim of the state only arising on failure of heirs of the last survivor. *Myuna Boyee* v. *Oottoram*, 2 W. R., P. C., 4.

A family joint in mess is not necessarily joint in estate, nor is a partition by metes and bounds necessary before a division can take place. An agreement amongst the members that the ownership is to be in certain defined shares takes away the character of joint enjoyment.

On the death without issue of one of several uterine brothers undivided in estate, the surviving brothers succeed equally to his share. *Shib Narain Bose* v. *Ram Nidhee Bose and others*, 9 W. R., 87.

Purchases made when a family is joint by individual members thereof are presumably made out of the common funds, and for the common benefit. And it is incumbent on any member of the family alleging that a purchase made whilst such family was joint was made out of his separate funds to establish his allegation by proof. *Hait Singh* v. *Dabee Singh*, 2 N. W. R., 308.

The debtor of an undivided Hindu family is not justified in paying his debt to the eldest member of the family unless such eldest member be also the manager of the undivided family. If there is no manager the debtor should obtain a release from all the members of the undivided family. *Sangáppa bin Chanbasáppa* v. *Sáhebánnábin Kengedáppa*, 7 Bom. Rep., A. C. J., 141.

Where part of the family property is proved to be joint, and the members live in commensality, there is a very warrantable presumption, according to Hindu law, that the family is joint. *Golam Mustafa Khan* v. *Sheo Soonduree Burmonee*, 15 S. W. R., C. R., 304.

The word "ijmalee" expresses joint tenancy, even where commensality is not implied. *Pearee Monee Bibee* v. *Madhub Singh*, 15 S. W. R., C. R., 93.

A managing member of a joint Hindu family is bound to render an account of his management to his co-sharers, and he is liable to a suit if he refuses to do so. And such suit will lie even if the parties suing were minors during the period for which the account is asked. *Abhaychandra Roy Chowdry* v. *Pyarimohun Goho*, 5 B. L. R., 347; 13 S. W. R., F. B., 75.

Every member of a joint family is not bound by an agreement made by the head of that family. The rent of a joint undivided tenure cannot be enhanced on the strength of an ekrar executed by one of the co-parceners. *Hemayetoollah Chowdry* v. *Nil Kanth Mullick*, 17 S. W. R., C. R., 139.

Where one brother of a joint undivided family transferred his interest in the joint property to the other brothers after a decree had been passed against him, although before attachment,—*Held* that when a question arose in such a case the *onus* was on the brothers to whom the transfer was made to prove the *bonâ-fide* character of the transaction. *Brojo Lall Sandyal* v. *Bhobo Soonduree Debia Chowdrain*, 17 S. W. R., C. R., 499.

Where one of the members of a joint undivided family purchases for the benefit of, and with funds belonging to, the family, he is entitled to such a share of the property covered by that purchase as is equal to his original share in the *corpus* of the estate, on the principle that the increment must follow the same rule as the *corpus*. *Kalee Sunkur Bhadooree* v. *Eshan Chunder Bhadooree*, 17 S. W. R., C. R., 529.

The fact of one brother (plaintiff's husband) remitting certain sums of money to another brother (defendant) and no receipts being taken for them, and no accountability being stated, leads to the conclusion of the brothers being joint in property and in mess.

Per Markby, J.—So also the fact of the two brothers being sued jointly upon a bond given by both, and of defendant discharging the debt alone, raises the presumption that the defendant discharged the debt out of the joint funds. *Hurish Chunder Mookerjee* v. *Mokhoda Debia*, 17 S. W. R., C. R., 565.

16.—Joint Estate.

(a) *Miscellaneous.*

Under the Mitakshara law a son is equally entitled with his father, as well as to the profits of ancestral property itself, from the moment of his birth or adoption.

When there is in terms a gift of the interest and dividends or produce of the estate, and that gift is indefinite in point of time, such a bequest will generally carry the *corpus* absolutely. But when the gift is in its terms simply a gift of so much a year, its effect is to give an annuity for life only. *Egnews* v. *Matthews*, 1 Mad. Rep., 17.

Property purchased by a father in possession of ancestral property, as manager for himself and his sons, from the profits of such ancestral property, is itself ancestral property. *Shudanund Mahapattur* v. *Bonomalee Doss Mahapattur and others*, 6 W. R., 256.

Ancestral property is not confined to such property as the father derives from his father or any ancestor, but means at least immoveable property derived from the father, however acquired by him. *Rajmohun Gossain* v. *Gourmohun Gossain*, 4 W. R., P. C., 47.

Shares in ancestral property may be sued for whether they are held jointly or separately. *Koonwar Narain Nundee* v. *Gocoolchurn Dey*, 3 W. R., 108.

Under the Mithila law, as expounded by the Vivada Chintamony, and supplemented where deficient by the Mitakshara, a son has ownership in ancestral property, even during his father's lifetime; and such ownership accrues on the son's death, from which period the father and son are joint owners. *Kantoo Lall* v. *Greedharee Lall*, 9 W. R., 469.

On this side of India a member of an undivided Hindu family can, without the consent of his co-parceners, sell his share in the undivided property. *Tukárám Ambaidas* v. *Ramchundra Salad Bhimanna Dhugi*, 6 Bom. Rep., A. C. J., 247.

In the case of an undivided Hindu family, the burden of showing that property in the hands of one of the members of the family is self acquired and impartible lies upon the person who alleges it to be so.

Gains of science acquired at the family expense, and whilst the acquirer is receiving a family maintenance, are liable to partition, and upon the death of the acquirer form part of the family property, and do not pass to his widow. *Bai Mancha* v. *Narotamdas Kashidas et al.*, 6 Bom. Rep., A. C. J., 54.

Where a member of a joint Hindu family built (at his own expense, with borrowed money) a house upon ground belonging to the family, it was held that each of the co-parceners was entitled to a share in the house and the site upon which it was built equal in value to his share of the site. *Vithobá Bává* v. *Haribá Bava*, 6 Bom. Rep., A. C. J., 1.

In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the *onus* lies in the first instance, on the plaintiff, who is not entitled under the circumstances to the ordinary presumption of Hindu law arising from the existence of joint family estate. *Hurish Chunder Dass* v. *Gouree Pershad Chatterjee*, 16 S. W. R., C. R., 163.

The father in an undivided family under the Mitakshara law has no interest in the ancestral property which can form the subject of a sale beyond the proceeds; having merely a life-interest in a common property, which he can neither give away nor sell. *Bhyro Pershad* v. *Basisto Narain Panday*, 16 S. W. R., C. R., 31.

The fact of a settlement being made with one member of a joint Hindu family does not negative the rights of other members to a participation in the property so settled; nor is it necessary for such other members, if living in commensality with the former as joint proprietors, to prove that they actually contributed money towards the acquisition of the property. *Huro Soonduree Debia* v. *Doorga Doss Bhuttacharjee*, 16 S. W. R., C. R., 215.

Suit by a brother's widow against his brothers to recover his share of joint ancestral property. Defendants pleaded separation, self-acquisition, &c. *Held* that in the absence of some written record of the terms of the separation at the time, the plea of separation was most improbable: and that, considering there was a certain nucleus of ancestral property from which a beginning might have been made, while on the other hand there was no evidence of self-acquisition by the defendants, the only inference was that the property had been acquired from the ancestral funds. Although the widow was unable to satisfy the Judge below as to each item of property for which she sued, and did not obtain a decree for the full amount claimed, yet she was held entitled to recover the whole of the costs incurred by her in a suit into which she had been forced by the defendants for the recovery of her property. *Shib Pershad Chuckerbutty* v. *Gunga Monee Debee*, 16 S. W. R., C. R., 291.

Concurrent findings of the lower Courts, based upon admissions made in written documents, that property which had been originally self-acquired had come into a common stock and become joint property, upheld. *Chellayamal* v. *Muttialamul*, 15 S. W. R., P. C., 1.

Where a member of a family claims an exclusive right to a house which he has built, the presumption of Hindu law against his claim arises only if the family is joint, having possession of joint property. *Gungadhur Chatterjee* v. *Soorjo Nauth Chatterjee*, 15 S. W. R., C. R., 446.

In a suit involving the question whether certain property which was sold in execution was the judgment-debtor's own separate property, or the joint property of plaintiffs and judgment-debtor, no presumption in favour of the property being joint was held to arise from the fact of plaintiffs and the judgment-debtor being members of a Hindu family; and as plaintiffs had once alleged separation, the *onus* was held to have been rightly placed on them of proving that the property was held jointly. *Prem Chund Dan* v. *Darimba Debia*, 15 S. W. R., C. R., 238.

The wives and mothers of the members of a joint undivided Hindu family, so long as they continue to live in the family and are supported out of its income, are just as much members of that family as their husbands and sons; and where property is purchased in the name of one such female member during the life of her minor son, the presumption of joint acquisition arising in such cases cannot be rebutted by the mere fact that her name was used

in making the purchase or entered in the Collector's books as the purchaser. *Chunder Nath Mootro* v. *Kristo Romul Singh*, 15 S. W. R., C. R., 357.

Where property is proved to be ancestral, the mere registration of one brother as proprietor is of little value as supporting a case of the property not being joint, and the burden of proving that the property is not joint rests on him who alleges that to be the case.

There was no sufficient proof of a family or local custom that the descent of the Zemindari, the subject-matter of dispute, was regulated by the rule of primogeniture. *Amrit Nath Chowdhry* v. *Gauri Nauth Chowdry*, 6 B. L. R., 232, and 15 S. W. R., P. C., 10.

The wrongful possession of a portion of a joint estate, in every portion of which the sharers have equal rights, by one of them is no bar to the partition of the whole, and does not warrant the exclusive assumption of another portion by another of them.

Assuming a plaintiff's right in the family estate not to have been lost, a deed of gift of a portion thereof is a violation of his right not justified by the circumstance that he had wrongfully appropriated some of the joint property in which the defendants might have recovered their rights by an action-at-law.

Plaintiff's hereditary right does not however entitle him to claim a partition of a portion only of the ancestral property. Vague and general evidence of plaintiff's gambling and licentious propensities is not sufficient to justify a finding that he has disqualified himself by "addiction to vice" for the performance of obsequies and such like acts of religion, and such evidence must disclose something like habitual maltreatment, or active and malignant hostility, to authorize a Court to pronounce the plaintiff "a professed enemy of his father," for the purpose of declaring him to have forfeited his right of inheritance by misconduct. *Kulka Pershad* v. *Budra Sah and another*, 3 N. W. R., 267.

Whilst the members of a Hindu family are found in possession of joint ancestral estate, all property in the possession of any member of the family is to be presumed to be joint, and it is incumbent on the member who claims property in his possession as his separate property to prove his sole title to it.

Separate property may be acquired by a member of an undivided family by gift, and the character of impartibility attaches to gifts made by a father to his unseparated sons.

What is acquired by the father's favour will subsequently be declared exempt from partition.

Separate property may be acquired by the exertions of a member of the family without detriment to the family funds.

It may be acquired with money borrowed on the sole credit of the borrower, and it may be acquired by the mutual agreement of the members of the family.

It is not necessary for the preservation of the joint nature of family property that the members of the family should live in commensality; they may dwell and mess apart, and yet remain joint in property.

Parties who allege that the acquisitions of the several members of a Hindu family are not to be brought into hotchpot, and divided per stirpes, must show that they were acquired in such a manner as to constitute them separate property and impartible.

And it is incumbent on those parties who admit that a partition has been made of certain portions of the family estate, and seek a repartition of the portion so partitioned, to show that a condition attached to the partition which rendered it inoperative, or that the members of the family have consented to a repartition of it.

Arrangements relating to the enjoyment of joint family property and acknowledgments of the right of the several members of the family to acquire separate property made by the adult members of the family, are to be held binding on the minor members of the family if they are not detrimental to their interest, and such arrangements consented to by a father should be held binding on his minor child.

The several members of a family may agree to take loans from the common fund, and treat the profits on such loans as the separate property of the several members by whom the loans have been respectively taken. *Rai Nursingh Dass* v. *Rai Narain Dass*, 3 N. W. R., 217.

Under Hindu law the interest in ancestral property taken by sons immediately on their birth is an estate and interest in immoveable property in respect of which a certificate of administration under Act XL of 1858 may be granted during the lifetime of their father. *Musumat Dheraj Kooer* v. *Adjoodhya Run Singh*, 3 N. W. R., 91.

A son during the life of his father, has as co-parcener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive.

Except in respect of his co-parcenary rights, a son is not in a different position as to the *corpus* of the ancestral property from that of any other relation who is an heir-apparent of the owner of property.

Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as co-parcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share of the property. *Rayachurlu* v. *Venkatarumaniah*, 4 Mad. Rep., 60.

(*b*) *Presumption.*

In a suit for certain property as belonging to plaintiff's judgment-debtor, in which the defendant, the adoptive mother of the judgment-debtor, claimed the property as purchased by her *bonâ fide* in the name of her son, but with her own funds,—

Held that this case could not be judged by the criterion laid down by the Privy Council in the case of Gossain *versus* Gossain, *viz.*, whence came the purchase-money; for the question in that case related to property acquired by a member of a joint Hindu family, where the presumption would ordinarily be that all the property is joint. *Nadirian Bibee* v. *Kureemoonissa Chowdhrain*, 12 W. R., 122.

Where a Hindu family lives joint in food and estate, the presumption of law is that all the property they are in possession of is joint property,

until it is shown by evidence that one member of the family is possessed of separate property.

The purchase of a portion of the property in the name of one member of the family, and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase-money comes. *Dhurm Dass Pandey and others* v. *Mussamut Shama Soondery Debia*, 6 W. R., 43.

The presumption obtains of a continuance of the joint right to ancestral property of a member of a joint Hindu family, unless it is shown that he has, either by his own act or by the act of some one competent to bind him, parted with that right. *Moonye Surmah* v. *Lomun Surmah*, 2 W. R., 289.

Certain Hindus descended from a common ancestor, after having lived in commensality and joint estate, separated, no deed of separation being executed, or reservation expressed of any kind. About eleven years after one of the parties to the separation sued the others, alleging that certain immoveable property, which stood in the name of the defendants or their ancestor, had remained in the possession of the defendants on the allegation of exclusive purchase; but that it could be proved to have been acquired by joint ancestral income during the time the family was joint.

Held that the common presumption of Hindu law in favour of members of a joint family did not apply to such a case, and it lay on the plaintiffs to show why they were silent so long. *Badul Singh* v. *Chutterdharee Singh and others*, 9 W. R., 558.

In a suit to establish the right of plaintiff's judgment-debtor in certain lands, in regard to which a claim was set up in the execution department, on the allegation that claimant had obtained it as a gift from her husband, the brother of the judgment-debtor, whose self-acquired property it was,—*Held* that plaintiff, having proved commensality and joint trade, and the existence of some joint property in the family before it separated, had sufficiently started a *primâ-facie* case to throw the burden of proof on the defendant. *Chundro Tara Dabea* v. *Buksh Aly*, 11 W. R., 305.

The mere circumstance that one of several brothers of a Hindu family occupied a separate dwelling-house does not rebut the presumption of the family being joint, if it appear that they dealt with the family property as joint property. *Mussamut Belas Koer* v. *Bhotaney Buksh and others*, Marsh., 641.

In a Hindu undivided family, the mere fact that one brother's name was used in documents relating to property affords no presumption of his being sole proprietor, especially when he is the eldest brother, or is shown to be the managing member of the family. *Janokee Dossee* v. *Kisto Comul Singh*, Marsh., 1; S. C., W. R., F. B., 3.

Suit by a member of a joint Hindu family. The plaintiff stated the family to be joint; the defendant admitted that it had once been joint. *Held* that the *onus* of proving a separation was on the defendant, failing which the property must, under Hindu law, be regarded as joint at the time of defendant's purchase; and that the *status* of the family was sufficient notice to the defendant that in purchasing from one member of the family alone he was not making a *bonâ-fide* purchase. *Beer Narain Sirkar* v. *Teencowrie Nundee*, 1 W. R., 316.

D., claiming as a widow of A., brought a suit of ejectment against the sons of A.'s brother, deceased. D. admitted that the property had originally been the joint ancestral property of A. and his brother. *Held* that the mere appearance on the face of the revenue records that A. was sole owner was not sufficient to rebut the presumption of Hindu law that the property remained joint. *Mussamut Jussoondah* v. *Ajodhia Pershad and others*, 2 Ind. Jur., N. S., 261.

Where property is not expressly shown to be separate, the presumption of Hindu law is that it is joint, and when one brother has managed the property and made collections and acquired property out of such collection, he is accountable to his other brothers who are entitled to share in the property so acquired. *Prankissen Paul Chowdhry* v. *Mothoora Mohun Paul Chowdhry*, 1 Ind. Jur., N. S., 73.

The normal condition of a Hindu family being joint, it must be presumed to remain joint, unless some proof of a subsequent separation is given, and where property is shown to have been once joint family property it is presumed to remain joint until the contrary is shown; but the mere fact of a family being joint is not enough to raise a presumption in law that property acquired by one member of that family is joint property.

Where A., as purchaser, claimed a share in property as being joint family property,—*Held* that A. was not only bound to show that the family was joint, but that the property in question became joint property when acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. *Shiu Golam Singh* v. *Baran Singh*, 1 B. L. R., A. C., 164; 10 W. R., 198.

The presumption of Hindu law as to joint property cannot apply in a case where the property is claimed through a son-in-law living in the house of his father-in-law. *Dossee Monee Dossee* v. *Ram Chand Mohur*, 7 W. R., 249.

So long as no partition of a joint estate is proved, the presumption is that the property is joint. The fact that certain parcels are admittedly held in severalty does not rebut the presumption as regards the rest of the joint estate. *Sreeram Ghose and others* v *Sree Nath Dutt Choudry and others*, 7 W. R., 451.

The presumption is that a Hindu's property is ancestral, and not self-acquired. *Vatinayagam Pillai* v. *Pachee and others*, 1 Mad. Rep., A. C., 326.

A debt incurred by the head of a Hindu family residing together is, under ordinary circumstances, presumed to be a family debt. *Tandai araya Mudali* v. *Valli Annual*, 1 Mad. Rep., 398.

When the manager of a joint Hindu family repurchases benamee property sold for arrears of revenue, the presumption is that the property so purchased is held by him for the benefit of the joint family. *Kalee Doss Mookerjee* v. *Mothooranath Banerjea*, 5 W. R., 154.

A son cannot control his father's act in respect of a property the succession to which is liable to obstruction. It is only in respect of property not subject to obstruction that the wealth of a father and grandfather becomes the property of his sons or grandsons

by virtue of birth. *Jawahir Singh* v. *Guyan Singh and others*, 3 Agra Rep., 78.

According to the Mitakshara law, sons have a vested interest in ancestral property, which interest is saleable at any time in satisfaction of claims against them. *Goor Suruz Doss* v. *Ram Surun Bhukut*, 5 W. R., 54.

The rule of Hindu law in cases of joint family property (*i.e.*, that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the property has passed by sale into the hands of third parties, and has been redeemed by private purchase by one of the former shareholders. *Goroo Persaud Roy and others* v. *Debee Persaud Tewaree*, 6 W. R., 58.

The presumption of Hindu law is that property not shown to be separate is joint. When an elder brother is long in the management of the joint estate, and in the receipt of the collections from it, and is accountable for them to his younger brother, if the money employed in the purchase of certain talooks formed part of those drawn from the joint estate, the younger brother, on a reunion, is entitled upon the general principles of Hindu law, and independently of the express provisions of any deed of agreement executed between the parties, to share in them as acquisitions made by the use of the joint funds. *Ramkishen Paul Chowdhry* v. *Mothooramohun Paul Chowdhry*, 5 W. R., P. C., 11.

(*c*) *Onus Probandi.*

Suit for share of joint ancestral property. The plaintiff claimed under A., who, when sued in 1812 as trustee for the defendant's father, then a minor, never pleaded that he was a co-parcener. *Held* that the plaintiff, if not estopped from contending that the property was joint, had still the full burden of proving that it was joint. *Surnomoyee Debia* v. *Gunga Gobind Roy*, 2 W. R., 264.

In a suit for a share of ancestral property, the *onus* is on the defendants to prove their allegation of separation at a certain time, they having admitted that the family was joint up to that time, and claiming the property as separately acquired subsequent to that date. *Bissumbhur Sircar* v. *Soorodhuny Dossee*, 3 W. R., 21.

In a Hindu family the presumption of law is that they are joint, and the *onus* of proving that the family is separate lies on the party making such assertion. The mere fact of property standing in the name of one brother does not prove that it is his separate and self-acquired property. *Munmohinee Dabee* v. *Soodamonee Dabee*, 3 W. R., 31.

Suit by widow of defendant's brother for half share of an alleged joint ancestral property. *Held*, under the circumstances of the case (the plaintiff making a stale claim), that very moderate proof was sufficient from the defendant. The defendant's evidence and the plaintiff's own conduct established that the original estate, which was the nucleus of the subsequent acquisitions, was the mother's estate and the acquisitions of the defendant made after the mother's death upon the estate to which he had succeeded after her. *Dukeena Dabee* v. *Kishen Chunder Sandyal*, 3 W. R., 97.

The burden of proof, in cases of alleged separate acquisition by a member of an undivided family possessed of joint estate, is on the person who advances such a claim. *Bipro Pershad Mytee* v. *Kena Dayee*, 5 W. R., 82.

In a suit for a share in a joint family property, the *onus* of proving joint enjoyment of the property within 12 years is on the plaintiff. Proof by the plaintiff of receipt of payment on account of his share within 12 years will save his suit from limitation under Clause 13, Section 1, Act XIV of 1859, and throw on the defendant the *onus* of proving his plea of separate property. *Umbika Churn Shet* v. *Bhuggobutty Churn Shet*, 3 W. R., 173.

In a suit for partition of joint family property, in which the defendant pleads that a partition has already taken place, the *onus* is on the defendant to prove the alleged partition. *Gooroo Pershad Mookerjee* v. *Kalee Pershad Mookerjee*, 5 W. R., 121.

Where a party admits that a family was joint, but sets up a partition, the *onus probandi* is on him. *Treelochun Roy* v. *Rajkishen Roy*, 5 W. R., 214.

In a case of separate messing by Hindus living in the same enclosure, and with no apparent separate incomes, though, as mere presumption of law, the estate may be assumed to be joint until it is proved to be separate, yet, as the law limits such claims to twelve years, any honest party must be in a position to show whether he has had any enjoyment of the estate, either jointly or by division of profits, within that time. *Hureehur Mookerjee* v. *Nobin Kishore Banerjee*, 5 W. R., 256.

The presumption of Hindu law being in favour of a family being joint, and of all property being acquired from joint funds until the contrary be shown, the *onus probandi* is on the party who alleges separate acquisitions obtained by means of a special gift. *Lukhun Chunder Dallal* v. *Modhoo Mockhee Dossee*, 5 W. R., 278.

In a suit to enforce the right to a share in immoveable property on the ground that it is family property, it is incumbent on the plaintiff to show that, within 12 years before the institution of the suit, the estate was in the possession of persons claiming under his ancestor, or that, if not actually in their possession, they received a portion of the profits during their lives from the defendant as trustee in possession. *Bydonath Ojha* v. *Gopal Mal and others*, 6 W. R., 170.

The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is the existence of a separate possession any evidence as to separate acquisitions, unless such separate possessor can prove consent of the other sharers to his keeping a separate account. *Lalla Beharee Lall and others* v. *Lalla Modho Persaud and others*, 6 W. R., 69.

In a suit for possession of certain properties, on the ground that they were joint, and that plaintiffs had been wrongfully kept out of their share after a separation between them, and in which defendants averred that the family had separated long prior to the time alleged by plaintiffs, and that the properties were acquired solely by their ancestor,—*Held* that, until the defendants gave proof of the separation alleged by them, the presumption was in favour of the family having been joint, and the *onus* of proving self-acquisition was on the defendants. *Pearee Lall and others* v. *Bhukhoree Lall and others*, 12 W. R., 124.

The original *status* of all Hindu families must be presumed to be joint and undivided. The *onus probandi* is on those who put forward claims upon the basis of separation and self-acquisition. Proof of separation of shares is not sufficient to shift the burden of proof. *Mussamut Bilash Koonwar* v. *Bhawanee Buksh Narain*, W. R., 1864, 1.

When a father and son live as a joint family, and property is purchased in the name of the son, the presumption is that the property was joint estate, and purchased in the name of the son, with a resulting trust in favour of the father. The burden of proving that it was separate estate is on those who claim it as such. *Sreemuttee Poornimah Chowdhrain* v. *Dropodee Dossee*, W. R., 1864, 103.

Where one member of a Hindu family claimed to participate in the property possessed by certain other members, alleging that it had been acquired from the proceeds of their joint estate, and it was found that the family property was not sufficiently large, after supporting the members, to leave surplus funds for the acquisition, and that the defendants were at the time pursuing lucrative employments, the plaintiff being a minor, it was held that there was no ground for the usual presumption as to joint family estate, and the *onus* lay on the plaintiff to prove his allegation. *Held* that the fact of defendant having received his education from the joint estate did not entitle plaintiff to participate in every property acquired by defendant by the aid of such education.

It is not incumbent on a Hindu, in every case in which he pleads self-acquisition, to show the source from which the money came. *Dhunookdharee Lall* v. *Gunput Lall and others*, 10 W. R., 122.

Where the purchaser of the rights and interests of one member of a Hindu family, in suing for possession, claimed a share of certain property which had been irregularly purchased by another member, on the ground that it had been purchased from joint funds,—*Held* that, before it could be presumed from the fact of the members having lived in commensality that the property was purchased from joint funds, plaintiff is bound to show that there were joint funds or other ancestral property, from which such funds could be derived. *Khelut Chunder Ghose* v. *Koonjlall Dhur*, 10 W. R., 333.

Although, under a recent ruling of the Privy Council, direct evidence of a butwarra in the shape of a deed, or of partition by metes and bounds, is no longer required to prove separation in estate, yet every Hindu family is presumed to be joint until circumstances clearly point to the contrary conclusion. *Dharoo Sooklain and another* v. *The Courts of Wards*, 11 W. R., 336.

The father and the son under the Mitakshara law are in the position of a joint Hindu family; and where ancestral estates are admitted to exist, the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property. The burden of proof, therefore, is on the member alleging self-acquisition. *Sudanund Mohapattar* v. *Soorjoomonee Daye and others*, 11 W. R., 436.

Every one who is entitled to a share in a joint-family property must account for such portion as may have come into his hands. *Gour Pershad Mookerjee* v. *Kalee Pershad Mookerjee*, 5 W. R., 121.

The presumption being that an estate purchased by one of several Hindu brothers living in commensality is the joint estate of all, if a plaintiff seeks to dispossess the other brothers under a title acquired from the brother in whose name the estate was purchased, the *onus* of proving that it was the sole property of such brother lies upon him. *Anund Mohun Roy and others* v. *Lamb and others*, Marsh., 169.

Where a party sues for a moiety of certain property on the ground that it is joint property, the *onus* is on him to prove that the property is joint, failing which his suit is liable to be dismissed. *Mussamut Soobheddur Dossee* v. *Boloram Rewan*, W. R., F. B., 57.

Where plaintiff, a member of a Hindu family, suing for a division of the family estate, admitted on the face of his plaint that he had taken possession of part of the family property, and for sixteen years lived separate, the *onus probandi* lies on him to show that the circumstances under which he became possessed of the portion of his property were consistent with his statement that the family remained undivided. *Somungowda Bin Dagamungowda* v. *Bhurmungowda*, 1 Bom. Rep., 43.

Held that the admission of certain property being joint ancestral, throws the burden of proving exclusive and adverse possession beyond limitation upon the sharer refusing to admit other heirs. *Dabee Suhai* v. *Sheo Doss Rai*, 1 Agra Rep., A. C., 285.

In a suit against a brother's widow for contribution, in respect of a decree for rents from 1259 to 1264, under a lease acquired in 1255, by the father of the parties in the name of the plaintiff before the family separated in 1258,—*Held* that the *onus* of proving that the lease was not joint was on the party who set up the plea that it was the self-acquired property of one member of a joint family. An admission by the widow's husband that the lease was the joint property of himself and the plaintiff, though not an estoppel, was held to be good evidence to be rebutted by the widow. *Sreenath Nag Mozoomdar* v. *Monmohinee Dossee*, 6 W. R., 35.

The *onus probandi* is on the party who pleads separate property. *Lalla Beharee Lall and others* v. *Lalla Modho Persaud and others*, 6 W. R. 29.

The *onus* of proving the partition of a joint Hindu family rests upon the person who alleges that such partition has taken place. *Kateama Nauchear* v. *The Rajah of Shivagungah*, 2 W. R., P. C., 31.

The *onus* of proof is on the party seeking to except any property from the general rule of partition according to Hindu law. *Luximon Row Madasew* v. *Mullar Row Bajee*, 5 W. R., P. C., 67.

After a general separation in food and a partition of estate, and after the brothers have commenced to live separately, if any one of them comes into Court alleging that a particular portion of property originally joint continues to remain so, the *onus* of proof lies on him. *Ram Gobind Koond and others* v. *Syud Hossein Ali and others*, 7 W. R., 90.

Where one member of a joint family claims a property as separate the *onus* is on him to prove

By Hindu law a widow is allowed, during her lifetime, to make the fullest use of the fisufruct of her husband's estate; but whatever part of it she leaves behind at her death becomes the property of the next heir, and is not liable for her personal debts, unless such debts have been contracted under legal necessity and for the benefit of the estate. *Chundrabulee Debia* v. *Brody*, 9 W. R., 584.

Held that a party succeeding as heir to an estate, the sale of which, by the widow of the person from whom he inherits, has been set aside, is bound to refund the purchase-money paid to the widow for the purpose of discharging liabilities on the estate. *Roostum Singh* v. *Alum Singh and Indur Singh*, 1 Agra Rep., A. C., 291.

Property inherited from another and distinct branch of the family cannot be sold for a father's debts. *Bissambhur Roy* v. *Luckhee Kant Neogy*, 3 W. R., 137.

According to Hindu law, a son who has not inherited his father's estate is not liable for his debts. *Maharajah Dheraj Mahatab Chand Bahadoor* v. *Hurro Mohun Acharjee*, W. R., 1864, Mis., 1.

According to Hindu law, a man's property is liable for his debts, and the debts of an ancestor must be satisfied before the heir has any interest in ancestral property. *Gunga Narain Paul* v. *Umesh Chunder Bose*, W. R., 1864, 277.

Heirs are liable for the debts of the person from whom they have inherited to the extent of the property which they have inherited. *Raj Roop Singh* v. *Buldeo Singh*, 2 W. R., 258.

According to Hindu law, a creditor cannot follow the property of a deceased debtor, but he may hold the heir personally liable. *Unnopoorna Dassea* v. *Gunga Narain Paul*, 2 W. R., 296.

19.—Limitation.

Where a decree is passed against ancestral property on confession of the ancestor, and the suit is brought by the sons to establish their reversionary right, or to obtain possession by setting aside the decree and confession,—*Held* that the twelve years' limitation is applicable to such suits.

Held, further, that in case of ancestral property the admission of a father may be used as evidence against his sons, but is not conclusive, and does not stop the sons from contending that such admission was collusive or erroneous.

Before partition a Hindu father has no definite share in joint ancestral property which he can aliene. *Nowbut Ram* v. *Durbaree Singh and others*, 2 Agra Rep., A. C., 145.

A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased; and that some land should be assigned to the widows for maintenance. The elder widow died in 1867, and the younger sued the heirs of the brother for recovery of possession of the property. The defence set up was that the suit was barred by limitation, as her cause of action arose not on the death of her co-widow, but on the death of her husband.

Held that as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow; that the possession of the elder widow was not adverse to the younger widow, as the elder widow was permitted to enjoy the possession of the husband's property during her lifetime, the younger widow receiving an allowance from the profits of the estate. *Mussamut Indubansi Kunwar* v. *Mussamut Gribhirun Kunwar*, 3 B. L. R., A. C., 289.

The possession of one member of a joint Hindu family is not an adverse possession, so as to bring a suit between members of the same family within the Law of Limitation. *Benud Naik* v. *Doorga Churn Naik*, 1 W. R., 74.

20.—Maintenance.

Suit by a widow for arrears of maintenance. Plaintiff's allegation of her separate maintenance was found to be inconsistent with her allegation of living in commensality in a former petition which she made to obtain the guardianship of the minor; and as her principal witness, the former guardian of the minor, failed to corroborate his statements of the alleged payments in way of maintenance by the production of any entries of account, her claim was held to be not proved. *Mussamut Raj Kalee Koowur* v. *The Collector of Shahabad*, 1 W. R., 252.

Where the maintenance of a Hindu widow was not made by her deceased husband dependent upon her living with his family, she is entitled to it, notwithstanding she leave the house of his family and go to that of her father. *Surnumoye Dassee* v. *Gopaul Lall Doss*, Marsh., 497.

The heir who takes and becomes possessed of the estate of the deceased must be held to continue to be primarily responsible both in person and property, for the maintenance of the widow, even though he should have fraudulently transferred that estate, or otherwise have improperly wasted it, and the widow is bound to look to the heir for her maintenance, and to claim it from him primarily rather than from the estate transferred or wasted, which may nevertheless be in the last resort answerable to her claim. *Ramchurn Tewaree* v. *Musst. Jussooda Koonwer*, 2 Agra Rep., A. C., 134.

Where a Hindu wife had left her husband's house and carried on an independent calling, and the husband did not object to the calling or give her notice to return,—*Held* that as she was desirous of returning, and the husband declined to maintain her, she was entitled to maintenance. *Nitye Laha* v. *Soondery Dassee*, 9 W. R., 475.

A Hindu died possessed of no property, but leaving a widow. On his death she left the house of her father-in-law, and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held* that she could not sue her father-in-law for a sum of money on account of maintenance. *Khetramani Dasi* v. *Kashinath Das*, 2 B. L. R., A. C., 15.

In a suit for maintenance brought by an illegitimate son of a Hindu zemindar deceased,—*Held* that it was established that the plaintiff was the

natural son of such zemindar, and recognized by him as such, it not having been essential to the plaintiff's title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein. Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zemindary or, if not, out of what property or fund, if any, the son was entitled to be paid. *Muttuswamy Jagavera Yettappa Naiken* v. *Vencutaswara Yettuppa*, 2 B. L. R., P. C., 15.

The fact of A. having been long supported by B., or of his having been purchased either as a slave or as a *chela*, will not entitle him to claim perpetual maintenance for himself and his heirs, especially where A. does not show that he has been deprived of ordinary means of livelihood which he might otherwise have commanded. *Narain Dass* v. *Maharajah Mahatab Chund Bahadoor*, 7 W. R., 137.

On what principle maintenance for a Hindu widow should be awarded. *Bhugwan Chunder Bose* v. *Bindoo Bashinee Dossee*, 6 W. R., 286.

A Hindu widow who had been supported by her father-in-law after his death sued his eldest son for maintenance, and obtained a decree for Rs. 150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely liable for the maintenance claimed.

Held that as this was a Small Cause Court suit an appeal did not lie. The maintenance of a widow is by Hindu law a charge upon the whole estate, and therefore upon every part thereof. The defendant might have the question raised by him decided by suing his brothers for contribution. *Ramchandra Dikshit* v. *Savitribai*, 4 Bom. Rep., A. C. J., 73.

A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned. *Illatra Suvatra* v. *Illata Narayin Nambidir*, 1 Mad. Rep., A. C., 372.

A Hindu wife is not entitled to maintenance if she leaves her husband without a justifying cause.

The husband's marrying a second wife is not such justifying cause.

Where, therefore, a Hindu husband married a second wife, and his first wife thereupon left him, —*Held* that the first wife had no implied authority to borrow money for her support.

Semble,—The prohibition against a plurality of wives, save under certain circumstances, is merely directory and not imperative. *Virasvami Chetti* v. *Apasvami Chetti*, 1 Mad. Rep., O. C., 375.

The widow of an undivided Hindu who leaves a co-parcener him surviving, has, like the widow of a divided Hindu who leaves male issue, merely a right to maintenance. Where, therefore, a widow sued for a Palaiyappattu as heir to the surviving brother of her husband,—*Held* that the suit must be dismissed. *Peddamuthe Viramani* v. *Apper Rau and others*, 2 Mad. Rep., 117.

Held that the appellant had failed to establish the alleged marriage of his father with his mother, and that consequently his claim as a legitimate son of the late Rajah of Ramnuggur could not be sustained; that he was not entitled to inheritance as the illegitimate son of the Rajah, because his father, who was a Rajpoot, was a Khatri, or one of the three regenerate or twice-born races whose illegitimate sons could not inherit; but that he was entitled to maintenance out of his father's estate. *Chusturya Run Murdun Syr* v. *Sahub Purlunad Syr*, 4 W. R., P. C., 132.

On a division of an estate, the Hindu law recognizes the right of a grandmother to maintenance, but not her title to any share of the estate. *Pudummookee Dassee* v. *Raeemonee Dassee*, 12 W. R., 409.

According to Hindu law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations. *Koodee Monee Dabea* v. *Tara Chand Chuckerbutty*, 2 W. R., 134.

A Hindu widow who, for no improper purpose, leaves her husband's family, does not thereby forfeit her right to maintenance. *Aholtya Bhai Dabea* v. *Luckhee Monee Dabee*, 6 W. R., 37.

There is no rule of Hindu law which recognizes any authority in a widow entitled only to maintenance to make contracts for necessary supplies binding upon the heir in possession of the family property and liable to maintain her. *Ramasamy Aiyn* v. *Minakshi Ammal and others*, 2 Mad. Rep., 409.

Held that the widow's right to maintenance being a charge on the property forming her deceased husband's estate, remains claimable out of the property, notwithstanding its alienation by the heirs, unless she bargains to forego it. *Heera Lall* v. *Mussamut Kousillah*, 1 Agra Rep., 42.

In a suit by a Hindu for arrears of maintenance, she not being able to show that she had lived apart from her family and had a separate maintenance, her claim was held to be not proved. *Mussamut Raj Kalee Koowar* v. *The Collector of Shahabad*, 1 W. R., 252.

There is nothing in the law to prevent an increase or a decrease of the amount of maintenance allowed to a Hindu widow, should sufficient cause be shown for either. The increase, if allowed, should be made from date of suit.

A widow's right to maintenance does not cease on her leaving her husband's house. *Sreeram Bhuttacharjee* v. *Puddomookhee Devia*, 9 W. R., 152.

A Hindu widow's claim to maintenance upon an estate does not necessarily render the sale of the property subversive of her right; for even if there be no other property out of which that maintenance can be derived, there is nothing to prevent her from suing to establish her right to make her maintenance a charge upon the property sold. *Anund Moyee Goopto* v. *Gopal Chunder Banerjea*, W. R., 1864, 310.

The High Court remanded the case for the determination of issues regarding the circumstances of a widow who claimed maintenance from her husband's father.

Semble,—Separation from her husband's family does not deprive a Hindu widow of her right to claim maintenance from them, if she happens to be

in needy circumstances. *Chandra Bhogabai* v. *Kashnath Vithal*, 2 Bom. Rep., 341.

A Hindu widow has a right to be treated with kindness, and suitably maintained by her father-in-law. *Deben Ramnath Roy Chowdhry* v. *Sreemutty Arnu Kally Debia*, W. R., 1864, 177.

It is not necessary that a Hindu widow should be maintained in the same state in which her husband would maintain her. *Kalleepersaud Singh* v. *Kupoor Koowaree*, 4 W. R., 65.

A Hindu widow's right to maintenance out of lands which belonged to her husband and have devolved on her son, is a purely personal right, which cannot be sold in execution of a decree or otherwise transferred. *Bhyrub Chunder Ghose* v. *Nubo Chunder Gooho*, 5 W. R., 111.

A father is not obliged by Hindu or Jain law to support a grown-up son, even if the son is labouring under a temporary disorder. *Prem Chund Pepara* v. *Hoolas Chand Pepara*, 12 W. R., 494.

Where property had descended to the possession of the brothers of a deceased Hindu,—*Held* that his widow had a right of subsistence from them, on condition of her residing with them as a member of their family. *Wooma Churn Chowdhry* v. *Nitumbenee Dabia*, 10 W. R., 359.

Held that a suit for maintenance by a Hindu widow is cognizable by a Court of Small Causes in the mofussil. *Judal Mulji* v. *Hera Mulji*, 4 Bom. Rep., A. C. J., 75.

Plaintiff was brought from his native place by defendant's adoptive father, D., who had no one to inherit his property, except his daughter's daughter, with a view to give her to plaintiff in marriage, and confer on him all he possessed. After marriage D.'s granddaughter died; but owing to defendant's being adopted plaintiff was deprived of all the cherished hopes of his wife's future inheritance. Accordingly the adoptive mother and defendant executed a moshairah-potro in plaintiff's favour, promising him, in consideration of the above facts, a monthly allowance for maintenance. The present suit was to recover a balance due of this allowance.

Held that, whether the English law is applied, or the principles of justice, equity, and good conscience, the deed disclosed a good and sufficient consideration for the promise to pay, and defendant was bound to pay the stipulated allowance. *Shib Nundun Roy* v. *Sree Naran Roy*, 11 W. R., 415.

The illegitimate son of a Sudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu law. *Muthusamy Jagavira Yellapa Naikar* v. *Venkatasubha Yettia*, 2 Mad. Rep., 293.

A Hindu widow, if destitute of the means of living, is entitled to maintenance from her husband's relatives, although she may have shared her husband's estate, and supported herself for a long period by trading. *Baee Lukmee* v. *Lukmee Doss Gopal Doss*, 1 Bom. Rep., 13.

No rule of Hindu law precludes the recovery of arrears of maintenance. The only bar to the enforcement of a purely legal right is the lapse of the time required by the Law of Limitations to bar the remedy. *Venkopadhyaya* v. *Kávari Hengusu*, 2 Mad. Rep., 36.

A woman divorced for adultery who had continued in adultery during her husband's life, and in unchastity after his death, is not entitled to maintenance out of the property of her deceased husband according to Hindu law. *Muttammál* v. *Kámákshy Ammál and others*, 2 Mad. Rep., 337.

Under the Hindu law, a wife who, without her husband's sanction, leaves him to live with her own family, has no right to ask maintenance from her husband. *Kullyansuree Debee* v. *Dwarkanath Surma*, 6 W. R., 116.

Held by Peacock, C. J., and Macpherson, J. (reversing the decree of the lower Court), that, according to the law as current in Lower Bengal, the widow of a son who has died without leaving any estate cannot compel her deceased husband's father to make her a pecuniary allowance by way of maintenance if she refuses to live with him as a member of his family. *Held* by Loch and Kemp, JJ., *contra*. *Kasheenath Dass* v. *Khettur Monee Dasee*, 9 W. R., 413.

A right to maintenance bequeathed to a person is not affected by any private arrangement entered into by the members of the testator's family, who are liable to pay the maintenance as a charge on the testator's estate.

A plaintiff, however, who has resided in and been supported by the family for twelve years after the testator's death without claiming the maintenance bequeathed to her, is presumed to have waived her right. *Ram Lall Mookerjee* v. *Mussamut Tara Soondery Debia*, W. R., 1864, 3.

A Hindu father and son lived joint in food and worship, but separate in estate. *Held* that the widow of the son has no legal claim upon the father for maintenance. *Rujjomoney* v. *Sibchunder Mullick*, 2 Hyde's Rep., 103.

A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral property. *Ayyavu Muppanar* v. *Niladatchi Ammal and others*, 1 Mad. Rep., 45.

Quære,—Whether a right to maintenance can descend as an estate. *Bawani Sankara Pandit* v. *Ambaybay Ammal*, 1 Mad. Rep., 363.

A daughter living apart from her father for no sufficient cause cannot sue him for maintenance. *Ilata Shavatre and another* v. *Ilata Narayanna Nanbudri*, 1 Mad. Rep., 372.

In a suit by a Hindu widow for administration under the will of her deceased husband, the Court will not give a decree for her general right to maintenance. *Bizjie Bebee and Amrit Bebee* v. *Monohur Dass*, 2 Ind. Jur., N. S., 118.

Arrears of maintenance due to a Hindu widow at her death do not necessarily revert to the estate from which they were to be derived, on the ground that they were not separated from the *corpus* of that estate during her life. *Court of Wards* v. *Rajah Mohessur Roy*, 16 S. W. R., C. R., 76.

A female, who is a member of a family governed by the Aliyasantana system of law, living apart from the family with her husband is not entitled to a separate allowance for maintenance out of the income of the family property.

Semble,—The husband is bound to maintain his

wife out of his self-acquired means so long as she continues to live with him. *Subba Hegadi* v. *Tongu*, 4 Mad. Rep., 196.

A Hindu widow does not forfeit her right to maintenance by quitting the family residence of her deceased husband. Undoubtedly it is more consonant with Hindu law that a widow should remain in the house of her deceased husband, but although her conduct in quitting the house and residing elsewhere may expose her to blame, it is not conduct so heinous as to work a forfeiture of her right to maintenance. It has never been ruled with respect to Hindu widows that they are not entitled to recover arrears of maintenance because the amount of maintenance has been settled by neither private agreement nor by judicial decision. The claim for arrears can only be decreed up to the date of the institution of the suit. *Rajah Pirthu Singh* v. *Ranee Raj Kooer*, 2 N. W. R., 170.

The question of the adequacy of the maintenance granted to widows and daughters must depend in each case on its own peculiar circumstances. *Dinobundhoo Chowdry* v. *Rajmohinee Chowdry*, 15 S. W. R., C. R., 73.

A Hindu widow's maintenance is a charge upon the family estate in whosesoever hands the estate may fall. *Mussamut Khukroo Misrain* v. *Ihoomuck Lall Dass*, 15 S. W. R., C. R., 263.

According to the Hindu or Jain law, a father is not bound to maintain a grown-up son. *Premchaund Peparah* v. *Rulaschand Peparah*, 4 B. L. B., Ap., 23; and 12 S. W. R., C. R., 494.

A Hindu kept a Mahometan mistress, and by such conduct compelled his wife under her religious feelings to leave the house. She went and resided with her mother, and continued to live in chastity. *Held*, the husband was bound to give maintenance to his wife. *Lala Gobind Prasad* v. *Doulut Batti*, 6 B. L. R., Ap., 85; and 14 S. W. R., C. R., 451.

Quære,—Whether a Sagaye wife is entitled to maintenance. *Jubhoo Sahoo* v. *Mussamut Jupoda Kooer*, 17 S. W. R., C. R., 230.

Plaintiff sued his elder brother for maintenance, calculated at Rs. 300 per month. The first Court gave a decree for Rs. 50 per month, which was reversed on appeal by the Judge, on the ground that he could recover no smaller amount than that claimed in his plaint. *Held*, in special appeal, that plaintiff had a right to a finding by the Judge as to what amount and what kind of maintenance he was entitled to receive from defendant. *Neeladree Singh* v. *Rajah Rughoonauth Singh*, 17 S. W. R., C. R., 411.

The Appellate Court agreed with the Court below as to the propriety of the practice, whenever a widow sued to have her right of maintenance declared, for her to ask not that her right should be declared generally, but that it should be enquired what is a fit and proper sum for her maintenance; but acting upon the rule in Courts of Equity that, if the plaintiff should mistake the relief to which he is entitled under his special prayer, the Court may yet afford him the relief to which he has a right under the prayer of general relief, provided it is such relief as is agreeable to the case made by the bill, *held* that the suit ought not to have been dismissed on the ground that it was only for a declaration of right, and did not ask for any relief, because, although no proposal was made for amending the form of the suit, the Court might, upon the plaint as it then was, have framed issues for the purpose of determining what should be allowed for the maintenance and expenses if the plaintiff should be found to be entitled to them, and remanded the case for re-trial accordingly. *Sreemutty Nistarini Dassee* v. *Mukhun Lall Dutt and Chunder Mohun Soor*, 17 S. W. R., C. R., 432.

As against an heir who has taken the property, the widow has a right to have her maintenance treated as a charge against the property, and she may follow the property in the hands of any one who takes it with notice of her claim against the heir. But the widow's maintenance is not in Bengal a charge on her husband's estate in the hands of an alienee without notice of her claim. *Sreemutty Bhuggobutty Dassee* v. *Kinney Lall Mitter*, 17 S. W. R., C. R., 433.

A Hindu widow cannot alienate for any purpose property entrusted to her solely that from its profits she may maintain herself. *Seith Gobind Dass* v. *Ranchora*, 3 N. W. R., 324.

A Hindu widow is entitled to charge on account of her maintenance a piece of land in the possession of her father-in-law (the defendant), which formed a portion of the ancestral property of the family, and had been allotted on partition to defendant, encumbered with a mortgage-debt of the family to the full value, and which had, subsequently to the partition in the lifetime of the plaintiff's husband, been redeemed by the defendant with self and separately acquired funds. *Held*, also, that the plaintiff's refusal to live in the defendant's house as one of his family did not disentitle her to maintenance. *Visalatchi Ammal* v. *Anunsamy Sastry*, 5 Mad. Rep., 150.

21.—Malabar Law.

According to Malabar law, a sale of family property is valid when made with the assent, expressed or implied, of all the members of the tarawad, and when the deed of sale is signed by the karanavan and the senior anandravan, if *sui juris*.

Such signature is *primâ-facie* evidence of the assent of the family, and the burden of proving their dissent rests on those who allege it. *Kondi Menon* v. *Sranginreagatta Ahammuda*, 1 Mad. Rep., 284.

By the law of Malabar all acquisitions of any member of a family which he has not disposed of in his lifetime form part of the family property. The acquirer, however, may, during his lifetime, hold, alienate at once, and encumber his self-acquisitions. A karanavan, in possession of the family funds, is presumed to have made all acquisitions with them and for the benefit of the corporate body. But such presumption is not irrebuttable, and his alienation or charge of such acquisitions made during his lifetime may be valid. *Kallati Kunju Menon* v. *Palat Erracha Menon*, 2 Mad. Rep., 162.

An individual member of a tarawad governed by the Marumakkatayam rule has no right to an account from the karanavan.

Each member of a tarawad has a right to succeed

by seniority to the management of the family property.

Semble,—An anandravan's right to maintenance is merely a right to be maintained in the family house. *Kunigaratu and others* v. *Arrangaden*, 2 Mad. Rep., 12.

Property assigned by the males of a Nayar family for the support of their females is still family property, and liable as such to be taken in execution of a judgment against the karanavan. *Parakel Kondi Menon* v. *Vadakentil Kunni Penná*, 2 Mad. Rep., 41.

The right of the eldest member of a Nambúdiri family to manage the illom is absolute, and where a junior member has in fact managed it, then this is presumed to have been with the permission of the former, who may at any time take up the actual control. *Nambiatan Nambúdiri* v. *Nambiatan Nambúdiri*, 2 Mad. Rep., 110.

A kanamdar's right to hold for twelve years depends on his acting conformably to usage and the janmi's interest and is lost if he repudiates the janmi's title. It makes no difference when this is first done in his answer. *Mayavanjari Chumaren* v. *Nimini Mayuran*, 2 Mad. Rep., 109.

An otti-holder, like a kanamdar, forfeits his right to hold for twelve years by denying the janmi's title. *Kellu Eradi* v. *Puapalli and others*, 2 Mad. Rep., 161.

It is the unquestionable law of Malabar that tarawad property is inalienable, except in cases of adequate family necessity. In such cases alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior anandravan is some (but rebuttable) evidence that the purpose was proper.

Semble,—That, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. *Koyelothputtonpurazil Manoki Koran Wayur* v. *Puthenpurazil Manoki Chanda Náyar*, 3 Mad. Rep., A. J., 294.

When the demisor of land under a kanam agreement is unable to give possession, the demisee may repudiate the contract and recover the amount advanced. *Vayalil Pudia Madathemmil Moidin Kuttiayipa and others* v. *Udaya Varmavalia Rajah*, 2 Mad. Rep., 315.

Division of family property cannot be enforced by one of the members of a family governed by the law of Aliya Santana.

In Canara females only are recognized as the proprietors of family property.

The Aliya Santana system of inheritance differs only from that of Malabar in more consistently carrying out the doctrine that all rights to property are derived from females. *Munda Chetti* v. *Timajee Hensu*, 1 Mad. Rep., 308.

Suits by a branch karnavan of a Malabar tarwad to recover certain lands belonging to his branch tarwad, which had been mortgaged by a former branch karnavan. Plea that the plaintiff had no right to sue without the authority of the senior member of the family, the vélia kaimal. Upon an issue sent (in special appeal) by the High Court, it was found by the Civil Judge that there was no binding and peculiar custom in the family depriving the senior member of all management of the property, and vesting it in the branch karnavans. Upon the final hearing it was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competent Courts.

Held by Holloway, J.—(1) That there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable; that perhaps it was not so even by the delegator, and still less was it so by his successors; (2) That the fact of the setting apart of santam property, if it was set apart, can make no difference, and as little can the circumstance of the income reserved; (3) That there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar tarwad; and (4) That the renunciation before the Sadr Court was not even irrevocable as against him who made it, and certainly could not have the effect of depriving the senior member, for all future time, of the rights which the law of the country conferred upon him, with the correlative duties upon his becoming senior.

By Scotland, C. J.—That the Court was not constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the family, as to the apportionment of the family property between two taverafs, and the management of each taveraf's allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation, of which there was proof in the records. That such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the tarwad; and that, assuming it to have been irrevocable by him, it was not binding on the third defendant, admittedly the head of the family by right of seniority. *Appuni the present Vèllia Kulmal of Ekanatha, styled Ayampalli Ráman Kumàrun* v. *Ayanepalli Ekanatha Thavni Varikarnavan Shanguni Velluthudutha Shàmu and three others*, 6 Mad. Rep., 401.

In Malabar the word "taverai" has several distinct meanings. In the families of the princes all the houses have separate property, and the senior in age of all the houses succeeds to the royalty with the property specially devoted to it. This mode of succession may be regarded as rather due to public than to private law. Private families have sometimes adopted the same customs, but there is the strongest presumption against the truth of this in the case of a private family. Families becoming very numerous have often split into various branches. In the language of the people, there is community of purity and impurity between them, but no community of property. In the only sense of the word with which Courts of Justice are concerned, people so related are not of the same tarwad. Where there are several houses bearing the same original tarwad name, but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest ground for concluding that this separation has taken place. *Erambapalli Korapur Nayar and two others* v. *Erambapalli Chenern Nayar and nine others*, 6 Mad. Rep., 411.

22.—MANAGER.

The mere fact of the name of the managing member of a joint Hindu family standing as the recorded proprietor of an estate is not, *per se*, sufficient to give title to a purchaser for valuable consideration from him, unless at the time of the purchase the purchaser was ignorant of the real state of the family, and was really led by that circumstance to believe that the recorded proprietor was the sole owner. *Gour Chundra Biswas* v. *Greesh Chundra Biswas and others*, 7 W. R., 120.

The manager of a joint Hindu family is not, by reason of his occupying that position, bound to render an account to the other members of the family. There is no analogy in this respect between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept on the understanding that the profits when realized should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member,—*Held* that this was in the nature of a partnership, and an account was decreed. *S. M. Ranganmani Dassi* v. *Kasinath Dutt*, 3 B. L. R., O. C., 1.

Members of a Hindu family, with vested interest in their joint property, choosing to continue in a state of commensality and joint fruition, do not possess individually any several proprietary right other than an alienable right to call for partition. The karta in general is the mere mouthpiece of the family, and not an agent with delegated authority in a fiduciary and accountable relation to the rest of the family.

As long as a member of such a family is a minor, the karta is in the position of a trustee for him of the joint property to the extent of his share in it, and is liable to account for it to him when the trusteeship ceases. *Chuckun Lall Singh* v. *Paran Chunder Singh*, 9 W. R., 483.

The appointment of a Hindu widow as manager of the estate of a lunatic is always undesirable if any other suitable person can be found. *Dinobundhoo Shaha* v. *Wooma Soondery Dossee*, 6 W. R., Mis., 52.

According to Hindu law, one brother is the manager and trustee for another brother's widow, and his possession is not adverse to her. *Bheem Ram Chuckerbutty* v. *Huree Kishore Roy*, 1 W. R., 359.

Where a member of a joint family is registered as jotedar in a zemindar's sherista, not as for himself only but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zemindar to make arrangements with any others he pleases. *Bykunt Nath Doss* v. *Bissonath Majhee and others*, 9 W. R., 268.

A member of a Hindu family, who had the management of the ancestral property, was sued by one of the tenants for illegal distraint. Plaintiff put in a pottah in which the rent was described as a fixed rent, and the tenancy an old and existing tenancy. The result of that suit was a solenamah, or compromise between the parties, in which the manager fixed or confirmed the rent of the tenure, and agreed that the rent should not be enhanced,—*Held* that the effect of the solehnamah was to confer upon the tenant and his descendants a mourosee mokurruree right in the land at a fixed rent, as far as the manager was capable of conferring such a right. *Bhoobunmohinee Dassee* v. *Dhonaye Karigur*, 15 S. W. R., C. R., 434.

23.—MARRIAGE.

According to the law and custom of marriage prevailing at Tipperah, the Rajah can legitimatize his children born of a kachooa by going through a marriage ceremony with the mother. Assuming that no marriage ceremony is necessary to institute a gondhorbo marriage, mere co-habitation, without any intent and mutual agreement to enter into a binding contract of marriage, is not sufficient. *Chuckrodhuj Thakoor* v. *Beer Chunder Joobrâj*, 1 W. R., 194.

According to the Hindu law prevalent in Madras, legitimate children of illegitimate parents of the Sudra caste can contract a legal and valid marriage.

According to the Hindu law, illegitimate children of the Sudra caste can inherit, and are entitled to maintenance.

The marriage between persons of different sections of the Sudra caste is valid and legal. *Inderan Valungypuly Taver* v. *Ramaswamy Pandia Talavr*, 3 B. L. R., P. C., 1; S. C., 12 W. R., P. C., 41.

In case of husband and wife living together, the presumption is that the wife is the husband's agent for contracting debts for the necessities of the family. But by Hindu law perhaps this presumption is not so strong as it is by English. *Verasvami Chetti* v. *Apposvam Chetti*, 1 Mad. Rep., A. C., 375.

The proposition that everything acquired by a woman during coverture is the property of her husband has foundation in Hindu law. *Ramasami Padeiyatchi* v. *Verasami Pedeiyatchi*, 3 Mad. Rep., A. C., 272.

The mere taking of a first wife's jewels, or the marrying of a second wife by the plaintiff, cannot be set up as a bar to his claim against the former for restitution of conjugal rights. *Jeebo Dhon Bangah* v. *Mussamut Sundhoo*, 17 S. W. R., C. R., 522.

The Court will not order the father of a Hindu girl, in a suit to which the girl is not a party, to specifically perform the marriage of his daughter with a person to whom the daughter has been betrothed. It will, however, award damages against the father for breach by him of the contract of betrothal.

Semble,—That according to Hindu law, a betrothal is not to be treated as an actual and complete marriage. *Umed Kika* v. *Nagindas Narotum*, 7 Bom. Rep., O. C. J., 122.

A custom which authorizes a woman to contract a nâtrâ marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognized. *Uji, daughter of Hargovan Ranchhod* v. *Háthi Lála*, 7 Bom. Rep., A. C. J., 133.

The question whether the ceremony of Rasee Bibaho was a part of the marriage ceremony during the continuance of which gifts to the bride came

under the denomination of yantuka, was held in this case to depend on the custom of the district in the caste to which the parties belonged. *Bistoo Pershad Burral* v. *Radha Soondur Nath*, 16 S. W. R., C. R., 304.

"Given before the nuptial fire" is only a term to signify all gifts during the continuance of the marriage ceremonies. *Bistoo Pershad Burral* v. *Radha Soonder Nath*, 16 S. W. R., C. R., 115.

Suit by a Hindu mother, as the guardian of her infant daughter, to have an alleged marriage of that daughter with the defendant set aside as null and void.

Held (Mitter, J., dissenting) that the Civil Courts have no power to declare a marriage null except as incidental to some right to property involved in the suit; and that plaintiff's remedy was to bring a suit as guardian to recover possession of her minor daughter, or for damages for loss of her daughter's services. *Anjona Dassee* v. *Proladh Chunder Ghose*, 14 S. W. R., C. R., 132.

The plaintiff sued the defendants, his wife and her father (first and second defendants) to recover damages for the non-performance of a contract, whereby the defendants agreed to deliver to the plaintiff a specified quantity of grain.

The plaintiff and the first defendant appeared before a punchayat composed of members of their caste, and the first defendant having refused to live any longer with the plaintiff the punchayat awarded the compensation claimed, and the defendants promised to deliver the grain. It was found that the award of the punchayat was in accordance with the custom of the caste in cases in which the wife refused to live with the husband.

Held that the plaintiff was enabled to maintain the suit. *Sooba Tevan* v. *Moothookoody*, 6 Mad. Rep., 40.

The plaintiff, the divided brother of the defendant's deceased husband, sued to obtain a declaration of his independent legal right to betroth the infant daughters of his deceased brother by the defendant to persons of his own choosing without the interference of the defendant, and of her obligation to accept any persons whom he may select and provide for the celebration of their marriages.

Held that the exclusive right sought to be enforced by the plaintiff was not warranted by Hindu law, apart from the legal position and rights of the defendant as the guardian of her daughters and possessor of her husband's property, which however presented still stronger grounds of objection to the plaintiff's claim. *Namasevayam Pillay* v. *Annammai Ummal*, 4 Mad. Rep., 339.

An agreement entered into between the plaintiff and defendants, members of the same caste, contained a stipulation that in the event of the defendant objecting to the receiving of a girl from, or the giving a girl to the plaintiffs in marriage, the defendant should be bound to return Rs. 500 with interest, which the plaintiffs had paid to the defendant under the agreement. It was found by the Civil Judge that the fifteenth defendant's son was engaged to be married to the second plaintiff's daughter, and that the marriage was broken off on the part of the fifteenth defendant.

Held, on special appeal, that this was *primâ facie* a breach of the agreement which entitled the plaintiffs to recover, and that it was for the defendants to show that it did not bring them within the terms of the agreement. *Keni Chetty* v. *Veriappa Chetti*, 4 Mad. Rep., 325.

24.—MINORITY AND GUARDIANSHIP.—(*See* LAW OF PERSONAL STATUS.)

The legal age of discretion of Hindus in India is uniformly sixteen years. Up to that age the father has an undoubted right to the custody of his children. *Re Hemnauth Bose*, 1 Hyde's Rep., 111.

A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interests if his share be not separately secured. *Chokalingam Pillai* v. *Suamiyar Pillai*, 1 Mad. Rep., A. C., 105.

The marriage of a Hindu minor is a legitimate cause of expense in regard to which his guardian can bind him, unless it is shown that the amount of the loan was extravagant for the purpose, considering the social or pecuniary circumstances of the minor, or that it was not duly applied and expended. *Juggessur Sircar* v. *Nilambur Biswas*, 4 W. R., 217.

Held that the paternal grandmother has the right to the guardianship of a Hindu minor, in preference to the step-mother. *Held* also, in the present case, that the paternal grandmother, with the assent of the nearest male relative, had power to dispose of the minor in marriage.

Semble,—In Act IX of 1861, "the Principal Civil Court of Original Jurisdiction in the district" means the Principal Court of Ordinary Original Civil Jurisdiction. A minor who is no party to the suit cannot appear by pleader. *Maharanee Ram Bunsee Coomaree* v. *Maharanee Soobh Coomaree and others*, 2 Ind. Jur., N. S., 193.

Held that Regulation V of 1827, Section 7, Clause 3, did not alter the Hindu law of minority, but only defined the period of limitation in cases of minority generally; and the term "minors" used in Section 12 of Act XIV of 1859 must be construed according to the law of the party in the case. *Hair Mahedaji Joshi* v. *Vasudeo Moreshoor Joshi*, 2 Bom. Rep., 344.

All acts of the guardian of a Hindu infant which are such as the infant might, if of age, reasonably and prudently do for himself, must be upheld when done for him by his guardian. Such a guardian may bind his ward by referring to a panchayat of their caste a question of customary partition.

Where a Sudra died leaving two wives, one with an only son and infant, and the other with two sons,—*Held* that the guardian of the infant might refer the question whether the deceased's estate should be divided according to Patni-bhaga or Putra-bhaga. *Temmakal* v. *Sebbamal*, 2 Mad. Rep., 47.

Under Section 3, Act XL of 1858, and under the Hindu law generally, a mother may ordinarily be guardian of her minor son, without either a certificate or a special order of Court. *Ramdhon Doss and others* v. *Ram Ruttun Dutt*, 10 W. R., 425.

If a person dealing with a Hindu representing himself to be the representative and manager of an

undivided family, comprising infant members, can show that, after reasonable enquiry, he believed in good faith that the person so representing himself was entitled to act, and was acting for the family, and that the transaction entered into with him by such manager was entered into for some common family necessity, or for the benefit of the infants, such act of the manager is valid and binding on the minor members of the family. *Trimbuck Anunt* v. *Gopalshet Bin Munhadshet Mahadoo*, 1 Bom. Rep., 27.

In a suit to set aside sales made by a minor's guardians, on the ground that the sales were not justified by any recognized legal necessity, the *onus* is on the defendant to prove the necessity. Nature of proof sufficient to discharge such *onus* explained. *Looloo Singh and others* v. *Rajender Laha*, 8 W. R., 364.

According to Hindu law, a paternal grandmother has a preferential right over a stepmother to the guardianship of a minor.

The paternal grandmother, with the assent of the nearest male kinsman on the father's side has (in preference to the stepmother) the right to dispose of a minor in marriage. *Maharanee Ram Bunsee Koonwaree* v. *Maharanee Soobh Koonwaree and others*, 7 W. R., 321.

The Hindu law does not prohibit a father from appointing, by writing or by word, any other person than the mother to be the guardian of his minor children. A person who disputes the authority of another to act as his guardian, and repudiates the acts done by such guardian in that capacity, cannot take advantage of those acts so far only as they are beneficial to him. *Soobah Brithe Lall Jha and others* v. *Soobah Doorgah Lall Jha and others*, 7 W. R., 73.

Though by the Hindu law no one but the father while he is alive can give his daughter in marriage, yet the father can delegate his authority to another. *Golamee Gopee Ghose* v. *Juggessur Ghose*, 3 W. R., 193.

A koolin Brahmin is not so much the natural guardian of his daughter as her mother. The want of a guardian's consent will not invalidate a marriage otherwise legally contracted and performed with all the necessary ceremonies. *Mudoosoodun Mookerjee* v. *Jadub Chunder Banerjea*, 3 W. R., 194.

A minor brother's share in a joint family estate was held not liable under a sale advertisement which referred solely to the rights and interests of his elder brothers who did not represent him. *Ram Lochun Shaha* v. *Unno Poorna Dossee*, 7 W. R., 144.

Proximity of connection does not necessarily entitle a person to the office of guardian. A person out of caste is not a proper person to be the guardian of Hindu minors. *Fuggoo Daye* v. *Ranah Daye*, 4 W. R., Mis., 3.

Discussion as to the limit of minority of Hindus (who are not proprietors paying revenue to Government), and as to the proper construction of Section 26 of Act XL of 1858. *Monsoor Ali* v. *Ramdyal*, 3 W. R., 50.

Eighteen years is the age at which an heir-at-law attains majority. *Abdool Hossein* v. *Luteefoonissa and others*, 11 W. R., 235.

Eighteen years, and not sixteen, is the period fixed by law for a Hindu to attain his majority. *Pormeshur Ojhâ* v. *Mussamut Goolbee and others*, 11 W. R., 446.

According to the Bengal school, in all matters unconnected with the possession of estates under Government, fifteen years is the age of majority of male Hindus. *Deobo Moyee Dossee* v. *Juggessur Hati*, 1 W. R., 75.

In preference to rulings of the Bombay High Court, the High Court at Fort William held itself bound to follow a ruling of its own Full Bench, to the effect that the provision as to majority in Section 26, Act XL of 1858, applies though proceedings may not have been taken in the Civil Court for the care of the person or protection of the property of one (not being an European British subject) who has attained the age of eighteen years. *Sarina Pershad Sein* v. *Dwarkanauth Rukhut*, 15 S. W. R., C. R., 451.

A Hindu, domiciled with his family at Serampore, in the Zilla of Hoogly, died, leaving a will in which was the following direction:—"In order to look after the affairs, to conduct suits, and manage the debts and dues relative to my real and personal estates, my eldest son, H. C. G., who has attained the age of majority, remains executor, for my younger son, G. C. G. is an infant; but as my eldest sister, S. H. D., is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G. C. G., will then come of age, both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain." G. C. G. after attaining the age of sixteen, but before he had reached the age of eighteen, applied for grant of probate of his father's will to himself, jointly with his brother, H. C. G., in respect of property in Calcutta. *Held* that he had not attained the age contemplated in his father's will at which he was to be joined in the executorship with his brother. *Ganga Prasad Gossain, In the goods of*, 5 B. L. R., 80.

The period of minority among Hindus, by the operation of Act XL of 1858, extends to eighteen years, as well within the original civil jurisdiction of the High Court, as within the jurisdiction of the Civil Courts in the Mofussil, and that whether the father is alive and of full age or not. *Jadunath Mitter* v. *Bolychaund Dutt*, 7 B. L. R., 607.

A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court *held* that she was of years of discretion to choose for herself under whose protection she would remain. *Queen* v. *Vaughan, In the matter of, S. M. Ganesh Sundari Debi*, 5 B. L. R., 418.

25.—MORTGAGE.

The same principle exists both in the English and the Hindu law, that the right of the mortgagor to redeem does not, in the absence of any circum-

stances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose, and therefore a suit for redemption of a Hindu mortgage cannot be brought before the time fixed by the mortgage for the payment of the mortgage-money. *Sakharam Narasimha Sardesai* v. *Vitto Lakha Gonda, heir of Vitto Gonda, deceased, and Rama, heir of Fatta Vith Gona, deceased,* 1 Ind. Jur., N. S., 250; 2 Bom. Rep., 237.

A dhrislabandhaka, or Hindu instrument by which visible property is mortgaged, which names a time for payment of the money borrowed, and stipulates that on default the mortgagee shall be put into exclusive possession and enjoyment of the property, will not be treated strictly as a conditional sale, even though the instrument expressly provides that on default the transaction shall be deemed an outright sale, and in a suit by the mortgagee for possession the Court, in decreeing the right thereto, will give the mortgagor a day for redeeming. *Venkata Reddi* v. *Parvati Ammal and others,* 1 Mad. Rep., 460.

Where a plaintiff fails to show that a mortgage, created by certain persons as executrix and executors of a Hindu will, has been validly created by them in that capacity, the Court will, unless it is manifestly inequitable to do so, allow him to raise an issue that the mortgage was validly created by the parties in another character.

Held (*per* Markby, J.) that the executors of the will of a Hindu cannot, by virtue only of their character of executors, mortgage the estate of the testator, in the absence of any power, express or implied, contained in the will. *Held,* on appeal, that a creditor who purchases under an execution against the general assets of a testator's estate takes subject to a mortgage created in pursuance of a power contained in the will, and in a suit to foreclose the purchaser is rightly made a party. Though the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of that property. *Nilkant Chatterjee* v. *Peari Mohan Dass,* 3 B. L. R., O. C., 7; S. C., 11 W. R., O. C., 21.

26.—Partition.

Where there is a partition after the father's death between several brothers, some of whom are by one wife, some by another, and either wife survives at the time of partition, the property should be first divided between all the brothers, and the widow takes an equal share with her own sons of the whole portion allotted to them.

Following the decisions quoted by Sir F. Macnaughten, in his considerations of Hindu law, but doubting their propriety. *Cally Churn Mullick* v. *Jonaya Dassee and others,* 1 Ind., Jur., N. S., 284.

Under the Hindu law two things at least are necessary to constitute partition: the shares must be defined, and there must be distinct and independent enjoyment.

Whatever is acquired at the charge of the patrimony is subject to partition; but if the common stock is improved an equal share is ordained. Where a co-parcener, with comparatively small detriment to the joint estate, acquires any separate property by his own labour or capital, the property is nevertheless to be considered joint, although the acquirer gets a double share. *Judoonath Tewaree* v. *Bishonath Tewaree,* 9 W. R., 61.

An actual partition by metes and bounds is not necessary to render a division of undivided property complete. But when the members of an undivided family agree among themselves, with regard to particular property, that it shall henceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and each member thenceforth has in the estate a definite and certain share which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided. *Appoovier* v. *Ramasubba Aiyan and others,* 8 W. R., P. C., 1.

Where the members of an undivided Hindu family have divided a portion of the estate, and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property has not been divided. A partition of joint property is valid as between the members of a Hindu family, although it has not been sanctioned by the Board of Revenue, it being shown that for several years after the partition the members of the family had separately enjoyed the shares which fell to them by the partition. *Mussamut Hoolas Koonwer* v. *Man Singh,* 4 Agra Rep., A. C., 37.

The doctrine that when, after a partition of a joint family estate, a portion of the estate remains undivided, the portion which remains undivided cannot afterwards be partitioned, refers to a partition made by a father amongst his sons and their co-heirs.

It does not refer to the case where a partition has been made by the joint owners amongst themselves. *Sreemutty Shamasoondery Dassee and Sreemutty Bermomoye Dossee* v. *Kartick Churn Mittra,* Bourke's Rep., O. C., 326.

Although there has been no actual partition by metes and bounds, a co-parcener holding an ascertained share in immoveable property is competent to alienate it without the consent of the other co-parceners. *Hurdwar Singh and others* v. *Luchmun Singh and others,* 3 Agra Rep., A. C., 42.

Following a ruling of the Privy Council, it was held that separate appropriation as well as separate holding and enjoyment of distinct shares are all that is necessary under the Hindu law of the Benares school to constitute a legal partition of a joint estate.

Every member of a joint undivided family has an indefeasible right to demand a partition of his own share. *Musst. Deo Bunsee Kooer* v. *Dwarkanath and others,* 10 W. R., 273.

Though actual partition by metes and bounds is not necessary to a separation between the members of a joint Hindu family, yet there must be some unequivocal act or declaration on the part of the family of their intention to separate. A suit by one member for a declaration of his right was held not to be a sufficient indication of such intention. *Debee Persad* v. *Phool Rooru,* 12 W. R., 510.

An act or declaration showing an intention on the part of any shareholder to hold his share separately, and to renounce all rights to the shares of his co-parceners, constitutes a complete severance

or partition. *Bulakee Lall* v. *Mussamut Indurputtee Kowar*, 3 W. R., 41.

Separation in dwelling and food would give rise in Hindu law to a presumption of separation in estate. *Jagan Kooer and others* v. *Rughoonundun Lall Sahoo and another*, 10 W. R., 148.

Where there has been a general partition, but some of the property remains joint, the widow of a deceased brother will not participate in the undivided residue. *Mussamut Badamoo Koowar* v. *Wuzeer Singh and others*, 1 Ind. Jur., N. S., 144.

Where there has been an agreement as to division of property, the Court will hold it to apply to property subsequently acquired accruing from the ancestral estate. *Maharanee Inderjeet Kooar* v. *Mussamut Isnudh Kooar and Soonneet Koonwar*, 1 Ind. Jur., N. S., 141.

A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the co-parceners from whom it is sought to recover it. *Kamakshi Ammal* v. *Chindambara Reddi*, 3 Mad. Rep., A. J., 94.

According to the Mitakshara, an agreement for a partition, although not carried out by actual partition of the property, is sufficient to constitute a division of the family, so as to entitle the widow of a deceased brother to succeed to his share of the ancestral property in preference to the surviving brothers.

The fact of the family having separate house and field is, according to the Mitakshara, sufficient evidence of partition.

The *onus* of proving re-union is upon the party pleading that there has been a re-union after partition. *Raja Suraneni Venkata Gopala Narasihma Roy Bahadur* v. *Raja Suraneni Lakshmi Venkama Roy*, 3 B. L. R., P. C., 41; S. C., 12 W. R., P. C., 40.

A partition can take place notwithstanding the minority of some of the co-parceners, and it is not necessary for the application of this rule that there should be more than one adult member in the family, or that they should be brothers only. The law of partition applies equally to all joint families, whatever the number of the members or the nature of their relationship. *Mussamut Deobunsee Kooer* v. *Dwarkanath and others*, 10 W. R., 273.

In cases of joint ownership each party has a right to demand and enforce partition. A shareholder of a putnee talook can claim and enforce a partition of such putnee talook as against his co-sharers, but such partition would not affect the liabilities of the parties under their contract with the zemindar.

The costs of the suit as well as for affecting a partition must be borne by each party, as such expenses are not caused by any wrongful act of either party, but by the nature of their tenancy. *Ranee Samasundari Debi* v. *Jardine, Skinner, and Co.*, 3 B. L. R., Ap., 130.

In a suit brought by a son against his father to compel a division of moveable and immoveable property inherited by the latter from his paternal cousin,—*Held* that as regards the jewels of which plaintiff required an account the plaintiff had no right of complaint, although his father, the defendant, had made an unjust and partial distribution of them. *Held* also that the suit to enforce a division of the immoveable property could not be maintained, inasmuch as neither the plaintiff nor the defendant acquired any right to such property by birth. *Rayadur Nalalambi Chetti* v. *Rayadar Mukunda Chetti*, 3 Mad. Rep., O. J., 455.

A member of an undivided family brought a suit for partition against his father, the managing member, and eight others, of whom second, third, and fourth defendants were plaintiff's infant brothers, and obtained a decree. The Judge proceeded to ascertain the amount of the plaintiff's share in the following manner. He assessed what he considered to be the sum received by the first defendant from the estate, deducted from that sum what he considered should have been the gross expenditure of the defendant, and decreed delivery by the defendant of one-fifth of the remainder. *Held* that such a decree is erroneous. *Tara Chand* v. *Rub Ram*, 3 Mad. Rep., A. C., 177.

Under the Mitakshara law there may be a partition in estate without any actual division of the lands into parcels, and allotment of those parcels to the different sharers to be held by them in severalty. *Mussamut Josoda Koonwar* v. *Gourie Byjonath Soae Singh*, 6 W. R., 139, and *Lala Sheerpersaud Mussamut* v. *Akoonjoo Koonwar*, W. R., 488.

According to Hindu law, the declaration of an intention to become divided in estate amounts to a valid separation, though not immediately perfected by an actual partition of the estate by metes and bounds. *Mussamut Vato Koer and others* v. *Rowshun Singh and others*, 8 W. R., 82.

An arrangement contained in a deed duly executed by the members of a joint Hindu family, to effect a separation of the property, is sufficient *primâ-facie* evidence of a valid separation under Hindu law, and in such a case an actual division by metes and bounds is not necessary. *Kulhonath Dass* v. *Mewah Lall and others*, 8 W. R., 302.

According to the Mitakshara, the mother, or the grandmother, is entitled to a share when sons or grandsons divide the family estate between themselves; but she cannot be recognized as the owner of such share until the division is actually made; she has no pre-existing right in the estate, except a right of maintenance. *Juddoonath Tewaree* v. *Bissonath Tewaree*, 9 W. R., 61.

Suit by a widow to recover her husband's share, whom she alleged to be a divided member of a Hindu family, under an agreement to the following effect: "When we lived together, a disagreement arising amongst females, we have divided. . . Thus we shall from this date divide and enjoy the income of the land. When the moiety of lands belonging to our uncle S. in the said three villages shall be equally divided, we shall also share our moiety equally, and obtain separate pottahs. . . We hold no pecuniary concern."

Held that when the members of an undivided family agree among themselves with regard to the particular property that it shall thenceforth be the subject of ownership in certain defined shares, each member has thenceforth a definite and certain share in the estate, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually divided. *Narayan Ayyar* v. *Lakshmi Ammal*, 3 Mad. Rep., A. C., 280.

A., one of four brothers in joint possession of

ancestral property, separates himself in food, worship, and estate, leaving his three brothers jointly possessed of their undivided three-fourth shares. A. dies unassociated, leaving a son and heir, B. The three brothers continue and die associated, two without heirs, and a third leaving a son and heir, C. B. has no claim to any part of the undivided three-fourth shares as against C., who takes the whole absolutely. *Jadub Chunder Ghose and another* v. *Benodbehary Ghose*, 1 Hyde's Rep., 214.

In a suit for division of a village between members of the same family, the defendant alleged that a former division relied upon by the plaintiff was merely nominal, and never intended to be carried out, and also that the village was in 1839 granted to his father for his sole use, and both these allegations were found against defendant, who appealed on the ground that the village, which is an inam, was granted to defendant for his sole use in 1857 on the death of his father.

Held that the grant to defendant was not a new grant, and was subject to the rights of the other members of the family.

Per Innes, J.—The defendant not having been prejudiced by the circumstance that no issue was framed upon the question whether a fresh grant was made to defendants, the decision of the lower Court ought to be confirmed. *Nattam Venkatarulnum* v. *Nattara Ramaiya*, 2 Mad. Rep.

Suit by plaintiff to recover from his brother's widow, the defendant, one and a quarter share at the Mailaveram Mutta, which he alleged to have been wrongfully delivered by the revenue authorities to the defendant, in accordance with a certificate granted by the Civil Court of Masulipatam. Plaintiff alleged that he was undivided, although there was an agreement for a division. Defendant pleaded that there was a complete division under the agreement, and that her husband after division had made a will bequeathing to her what the plaintiff now claimed. The Civil Judge found separate residence, and, on the authority of paras. 282, 283, and 284 of Mr. Justice Strange's Manual, decided that the family was undivided. *Held*, on appeal, that the agreement partially acted upon and not denied is conclusive evidence of the division previously come to by mutual consent; that, whether the property was actually divided or undivided, the family was divided, and the brothers became capable of contracting, and did contract; and that the right to sue upon the contract clearly survived to the defendant, who must have recovered; that she had, therefore, a perfectly valid defence to the present action. *Rajah Surennetty Lackshmi* v. *Rajah Surennetty Venkata*, 3 Mad. Rep., A. J., 40.

An actual partition by metes and bounds is not necessary to render a division of undivided property complete. According to Hindu law, there is a coparcenership between the different members of a united family, and survivorship follows upon it. *Lalla Mohabeer Pershad and others* v. *Mussamut Kundun Koowar*, 8 W. R., 116.

The proprietary right to a share in an undivided estate which includes and carries with it a right to claim and enforce a partition of that share, must be a right of an absolute and unlimited nature, and does not belong to a Hindu widow who has been placed in possession of her deceased husband's share for her maintenance; consequently, where the widow is not an absolute proprietor, but simply an assignee of the profits for a maintenance, she cannot claim partition of the share so assigned. *Bhoop Singh* v. *Mussamut Phool Kower*, 3 Agra Rep., 168.

A grandson may, by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of an ancestral family property. *Nagalinga Mudali* v. *Subbiranya Mudali*, 1 Mad. Rep., A. C., 77.

The ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance, *secus*, where the science has been imparted at the expense of persons not members of the learner's family. *Chalakonda Alason* v. *Chalakonda Ratnachalan*, 2 Mad. Rep., 56.

A division of property took place in 1837 between A., the mother and guardian of the plaintiff, and B., the husband of two childless widows, who became defendants in a suit to recover possession of the property on the ground that the division did not bind the plaintiff. *Held* that there being no proof of fraud, nor that undue advantage was taken of plaintiff's minority, and in the absence of proof of gross inequality in the distribution of the property, the division was valid and binding upon the plaintiff. *Nallapa* v. *Belammal*, 2 Mad. Rep., 182.

Where a division has taken place amongst the members of a Hindu family, one of whom is a minor, the circumstance that the father and minor continue to live together, and that their shares become mixed, does not conclusively constitute a state of re-union between the father and the minor, but is evidentiary matter only to prove the re-union. *Kuta Bully Veraya* v. *Kuta Chandapa Voothamula*, 2 Mad. Rep., 235.

Where a widow sued to recover, from the brothers of her deceased husband, a share of property which remained undivided at his death, a division of part of the family property having taken place during the lifetime of the husband,—*Held* that the plaintiff had no right to recover the property which was actually undivided at the death of her husband. *Timmi Reddy* v. *Achemma*, 2 Mad. Rep., 325.

When a suit was brought for a division of family property twelve years after the death of the head of the family,—*Held* that the suit was not barred by Clause 13, Section 1 of Act XIV of 1859. *Subhaiyar* v. *Sankara Subhaiyar*, 2 Mad. Rep., 347.

In a suit for division of a village between members of the same family, the defendant alleged that a formal division relied upon by the plaintiff was merely nominal, and never intended to be carried out; and also that the village was in 1836 granted to his father for his sole use, and both these allegations were found against defendant, who appealed on the ground that the village, which is inam, was granted to defendant for his sole use in 1857, on the death of his father.

Held that the grant to defendant was not a new grant, and was subject to the rights of the other members of the family. *Nittan Vencataratnum* v. *Nattam Ramaiya*, 2 Mad. Rep., 470.

A member of a Hindu family is not barred from his right of requiring a partition of the family

property, unless his conduct has led the other members of the family into a reasonable and well-grounded supposition that there has been a separation on his part, and an acceptance of a defined portion of the property instead of his family share. *Sreenath Dutt* v. *Nund Kishore Bose*, 3 W. R., 61.

The general rule of Hindu law is, that if a man die separate in estate from his kinsmen without leaving male issue or a widow surviving him, his daughters inherit his moveable and immoveable property. An alleged custom to the contrary with respect to any particular kind of property must be proved by ample and satisfactory evidence before the Courts will admit it as established.

Although Hindu law presumes joint tenancy to be the primary state of a Hindu family, and the general rule is that the burden of proof that partition has taken place lies upon him who asserts it, there are exceptions to this general rule, *e.g.*, when it is admitted or proved that property in dispute was not acquired by the use of patrimonial funds, the party alleging such property to be joint must prove his averment. So too when it is admitted or proved that partition has already taken place, the presumption is that it has been a complete partition, and it lies upon a person alleging that family property, in the exclusive possession of one of the members of the family after such partition, is liable to be partitioned, to make good his allegation by proof. *Narayan Bubaji et al.* v. *Nana Mamhar et al.*, 7 Bom. Rep., A. C. J., 155.

A member of an undivided family cannot sue his co-sharers for his share in a single undivided field, portion of the family property. He must sue for a general partition of all the property liable to partition. *Nánábhái Vallabdhas* v. *Náthábhái Haribhái*, 7 Bom. Rep., A. C., 46.

In a suit to obtain by partition half of an ancestral dwelling-house, in which defendant was living, the latter averred that the house in which plaintiff was living was likewise ancestral, and that, in a partition between them, the houses which they respectively occupied had fallen to their respective shares. Plaintiff had replied that his house was not ancestral, but had been purchased out of his own funds. *Held* that it was necessary to inquire into plaintiff's title under the whole circumstances of the case, and when it appeared that he was in separate occupation of a portion of the ancestral dwelling-house, whether he had a right to the partition of the one without bringing the other into hotchpot. *Ram Lochun Pattuck* v. *Rughoobur Dyal*, 15 S. W. R., C. R., 111.

Two co-heiresses, in joint possession of property by Hindu law, are in the nature of co-parceners, and one of them can enforce partition against the other notwithstanding the limited character of their tenure, and although such partition is not binding on the reversioners. A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that thereupon the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. *Srimati Padmamani Dasi* v. *Srimati Jugudumba Dassee*, 6 B. L. R., 134.

The acts of different members of a family in allowing separate portions of the banks of a tank to be held severally for so long a time that no one can tell when such possession began, constitute a separation of the land which cannot be disturbed at the instance of one member without proof that he has jointly or otherwise held possession of the lands in question within twelve years. *Surbessur Methoor* v. *Gossain Doss Methoor*, 17 S. W. R., C. R., 210.

Property acquired by a Hindu while drawing an income from his family is liable to partition, and the quality of the fund cannot be altered by the mode of its investment. *Bhagavat Panday* v. *Ramashee Shaiya Panday*, 4 Mad. Rep., 5.

By a deed of sharakatnama the members of a Hindu family, governed by the Mitakshara law, declared that each of the members was entitled to a definite fractional part of the whole estate. *Held* that this was not sufficient to constitute a valid partition according to the Hindu law. *Appoovier* v. *Rama Subba Aiyan and Raja Suraneni Senkata Gopala; Narashima Roy* v. *Ruja Suraneni Lakshmi Venkama Roy*, distinguished. *In the matter of the petition of Mussamut Puljhari Koer*, 8 B. L. R., 385.

In ascertaining whether property once joint has become divided and separate, regard must be had to the act and intentions of the co-sharers, but when the character of the property has once been ascertained the law fixes the course of succession.

A partition between surviving co-sharers and the widow of a deceased co-sharer may operate as a complete severance of the joint property. *Ram Pershad* v *Chaineram*, 1 N. W. R., Par. 1, p. 11.

In a suit to recover a share of family property, the Civil Judge found that the plaintiff in 1856 waived his right to a share of the family property by accepting a small portion, and dismissed the suit. The plaintiff shared with other members of the family the belief that by established family usage the property was impartible and passed at each succession to the eldest of the co-heirs according to the ordinary law, the other co-heirs being entitled only to a portion for maintenance. Under that belief the plaintiff accepted the allotment made to him in 1856 by the then eldest co-heir of a smaller portion of the property than he would be entitled to, and a partition as a sufficient provision for his maintenance. The plaintiff's younger brother instituted a suit in 1861, and succeeded in resisting the alleged custom, and obtained a decree for his full share. *Held* (reversing the decision of a Civil Judge) that the plaintiff was entitled to the relief asked for, it not appearing from the arrangement of 1856 that the parties intended the allotment to be in satisfaction and discharge of every right of the plaintiff as a co-parcener. *Subbiem Pillay* v. *Arnachala Irungol Pillay and others*, 5 Mad. Rep., 444.

A suit for a partition of family property was, upon the death of the plaintiff, revived on behalf of his minor sons with the permission of the Court of first instance and a decree for a partition given. The Appellate Court reversed the decree, upon the ground that as a partition can be enforced on behalf of minors only when it can be proved to

be necessary for the protection of the minors' interest, such suit did not survive to minors. *Held* by the High Court, that the Court of first instance having allowed the suit to be revived, considering that it had been brought on grounds which entitled the minors to the partition, the competency of the plaintiff to proceed with the suit was not open to objection in the lower Appellate Court. *Parvathi* v. *Munjayakarantha*, 5 Mad. Rep., 193.

The plaintiff's father, a member of an undivided Hindu family, signed an agreement by which he agreed to accept a provision in satisfaction of his claim for maintenance. The agreement was signed by reason of a mistaken belief entertained by the plaintiff's father and the other members of the family that there existed an established custom in the family which rendered the property indivisible. *Held*, in a suit by the plaintiff for a partition of the family property liable to partition, that the agreement having been come to under a mutual mistake, it was no bar to the plaintiff maintaining the suit, for it would not have prejudiced the right to the plaintiff's father if he had chosen to insist upon a partition. *Soobramania Telaver and others* v. *Sokha Telaver and others*, 5 Mad. Rep., 437.

When a family is joint it cannot be presumed that all the property in the hands of any member is joint. It is inconsistent with the strict principles laid down in the Full Bench decision of the 30th July, 1869, for a member of a Mitakshara family to sue separately for his share of the joint family property. *Quære*,—Is a mere signification of intention on the part of a member of a joint Hindu family sufficient to constitute a separation without an actual partition by metes and bounds? *Suderburt Pershad Sahoo* v. *Lotf Ali Khan; Mussamut Phoolbas Kooer* v. *Lall Juggessur Sahi*, 14 S. W. R., C. R., 340.

In a suit by the mother and guardian of one of two nephews to set aside a hibbanamah under which defendant, who was the wife of their uncle, claimed to hold separately one-third of the property in dispute, it having been objected that the property being, according to plaintiff's allegation, joint and undivided, the suit should have been on the part of all the co-sharers interested, plaintiff was permitted in appeal to have herself placed on the record as plaintiff in her double capacity of guardian of both the infants. The principle contained in the judgment of the Privy Council in the case of *Appoovier* v. *Rama Subha Aiyan*, namely, that there might be among the members of an undivided Hindu family an operative division of title without a corresponding division of the subject-matter to which that title relates, was held not to apply in a case where there was no deed or agreement between the parties contemplating the subject of separation, but only vague expressions and statements contained in petitions not directed to that particular subject. *Mooktakeshee Debee* v. *Oomabutty*, 14 S. W. R., C. R., 31.

27.—Presumption of Death.

A., a Hindu infant, disappeared and had not been since heard of. In a suit brought within twelve years from the date of his disappearance, by the next heir, for a declaration of right, and alleging waste by those in possession, and an apprehension that if the infant should not return within twelve years he (the plaintiff) would be barred by the Law of Limitation,—*Held* that there was no cause of action. *Guru Das Nag* v. *Mat-lul Nag*, 14 S. W. R., C. R., 468, and 6 B. L. R., Ap., 16.

The rule of English law, that a period of seven years' absence without tidings is sufficient to raise a presumption of death, cannot be applied in the case of a Hindu. The Hindu law has a rule of its own, requiring the lapse of twelve years before an absent person of whom nothing has been heard can be presumed to be dead. A testator by will left certain property to an idol and appointed a shebait. The person so appointed died without taking charge of the property or filling the office, and the lands remained in the possession of testator's family. *Held* that this property would follow the course of the other properties left by testator, and be divided with them among the devises under the will. *Saroda Soondori Debi* v. *Gobindmani*, alias *Braga Soondori Debi*, 2 B. L. R., A. C., 137.

Where a Hindu disappears, and is not heard of for a length of time, no person can succeed to his property, as heir, until the expiry of twelve years from the date on which he was last heard of. *Janmajoy Muzumdar* v. *Keshab Lall Ghose and another*, 2 B. L. R., A. C., 134; 10 W. R., 484.

28.—Priests.

A Hindu priest cannot sue in respect of the withholding of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non-performance of such observances may have caused him some ascertainable pecuniary loss. *Striman Sada Gopa* v. *Krista Tattachariyar and another*, 1 Mad. Rep., A. C., 307.

The obligation upon jujmans to employ a particular purohit to perform the ceremonies at the burning of Hindu bodies may be a matter of conscience, and not one which a Court of law can enforce; but the question of the right to enjoy the joint profits accruing from the performance of such ceremonies is cognizable by a Civil Court. *Becharam Banerjee* v. *Sreemuttee Thakooree*, 10 W. R., 115.

In a suit for "Huk Purohitee,"—*Held* that each "Jujman" has a right to select his own priest, and no suit to enforce such right would lie in the Civil Court. *Beharee Lall* v. *Baboo and others*, 2 Agra Rep., A. C., 80.

A suit will lie against priests for a certain share of their earnings, if brought on the ground of partnership or of contract express or implied. But in the absence of such partnership or contract such a suit will not lie, even against a priest newly appointed by the jujman, simply on the ground of hereditary right to perform the ceremonies of a particular family, such right not being enforceable at law. *Muggoo Pandean* v. *Ram Dyal Tewrua*, 15 S. W. R., C. R., 531.

Where a priest wrongfully officiates for another, and receives fees, he is bound to account for them to the rightful priest where such fees are by custom attached to the office. The sale of a hereditary priestly office will be upheld where the purchasers are the next in succession from the vendor to such office. *Semble*,—That a hereditary priestly office descends in default of males through females.

Sitarambhat et al. v. *Sitaram Gunesh et al.*, 6 Bom. Rep., A. C. J., 250.

In a suit between Hindus, the office of hereditary priest to a temple, though not annexed to, or held by virtue of, the ownership of any land, yet being by that law classed as immoveable property, should be held to be immoveable property within the meaning of Clause 12 of Section 1 of the Limitation Act. *Krishnabhat bin Hirajanji* v. *Kapabhat bin Mahalbhat*, 6 Bom. Rep., A. C. J., 137.

When a religious office with lands attached thereto is held by several gurus in succession, each holding such office by virtue of an appointment made on his accession, no proprietary right can be acquired by such gurus in the office or lands against the patron or owner, by prescription, as such a case does not come within the meaning of Clause 1 of Section 1 of Regulation V of 1827. *Tvatat Svomi* v. *Andanya Charanti*, 6 Bom. Rep., A. C. J., 132.

A Birth Moha Brahminy or right to officiate at funeral ceremonies is incapable of transfer. *Jhummun Pandey* v. *Dinnonauth Pandey*, 16 S. W. R., C. R., 171.

The owner of an idol is entitled to appoint anybody he likes to perform its poojah; the mere fact of a party and his ancestors having done so for a long period creates no right in his favour. *Maharanee Indurjeet Kooer* v. *Chundeeman Misser*, 16 S. W. R., C. R., 99.

Quære,—Whether, according to Hindu law, a woman can succeed to a priestly office? *Jay Deb Surmah* v. *Huroputty Surmah*, 16 S. W. R., C. R., 282.

The plaintiffs sued the defendants in the Civil Court for a declaration of their right by contract to share in the ministrations at a certain ghat, and to recover a sum of Rs. 75-9 as their share, under the contract, of moneys received by the defendants at that ghat. *Held* the suit would lie. *Magju Pandean* v. *Ramdyal Tewari*, 8 B. L. R., 50; and see 15 S. W. R., C. R., 531.

A Hindu priest was charged with knowingly and wilfully solemnizing a marriage between two persons, one of whom professed the Christian religion, the said priest not being duly authorized under Section 6 of Act V of 1865, an offence punishable under Section 56 of the same Act.

The Session Judge discharged the accused without trial on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindu form by a Hindu priest, though one of the contracting parties was a Christian convert. *Held* that this view of the law was erroneous, and that the accused was *primâ-facie* liable under Section 56 of the Act. 6 Mad. Rep., Rul. XX.

The plaintiffs, members of the Tengalai sect of Brahmins, sued the defendants, the trustees of a temple at Cenjeveram, for the recovery of the money value of certain holy cakes which they alleged they were entitled to receive from the defendants for commencing the recital of a Sanscrit verse and reading a certain Tamil chant, which offices they (plaintiffs) had the hereditary right of performing in the said temple. The Moonsiff decreed in favour of some of the plaintiffs. The defendants appealed. The Civil Judge dismissed the suit on the ground that the question incidentally involved was one of a religious character. *Held* that the Civil Judge was wrong; that the claim was for a specific pecuniary benefit, to which plaintiffs declared themselves entitled on condition of reciting certain hymns; and that undoubtedly the right to such benefits is a question which the Courts are bound to entertain. *Narasimma Chériár and eleven others* v. *Sri Kristna Tatu Chériár*, 6 Mad. Rep., 449.

Plaintiff sued to establish his right to receive certain honors in a temple as appertaining to his office of officiating priest of the temple, and to recover damages for the invasion of his right. In a former suit between the predecessor and the plaintiff and the first defendant, the claim to sit at the right side of the idol at festivals was admitted, but the right to receive a cake on the same occasion was disallowed. *Held* that the claim of the plaintiff, so far as it sought to establish the plaintiff's right, was *res judicata*. *Held* also that the suit of the plaintiff to recover damages for the invasion of the right of the plaintiff appertaining to an office in the temple was one which it was competent to the Civil Courts to entertain. *Archukam Srinivasa Dikshatula* v. *Helayagiry Anantha Churlee*, 4 Mad. Rep., 349.

29.—Recovered Property.

The Hindu law on the subject of "recovered" property applies to cases in which the property has passed from the family to strangers, and has been held by them adversely to the family, and not to cases where the property has been held by one claiming (though unfoundedly) to be a member of the family.

Merely obtaining a decree for possession is not "recovering" the property. "Recovery," if not made with the privity of the co-heir, must at least be *bonâ fide*, and not in fraud or by anticipation of the intentions of the co-heir. *Bissessur Chuckerbutty* v. *Seetul Chunder Chuckerbutty*, 9 W. R., 69.

The Court declined to extend to all the remote branches of a Hindu family separate in mess and estate, and having no common interests like those of brothers, the doctrine laid down in a solitary case in which an elder brother, who recovered certain property by his own money and labour, was awarded two-thirds of the property, and the younger brother obtained only one-third. *Bisheswar Chakravrati and others* v. *Shitul Chundra Chakravrati*, 8 W. R., 13.

The principle of the Mitakshara, law that if a father recover ancestral property which had been taken away by a stranger and not recovered by the grandfather, he need not share it against his inclination with his sons, was held to apply *à fortiori* where the property would have been irrevocably lost to the family, but was repurchased by a member who was at the time solely entitled, and who advanced the money out of his self-acquired property. *Bolakee Sahoo* v. *The Court of Wards*, 14 S. W. R., C. R., 34.

30.—Religious Endowments.—(*See* Miscellaneous Doctrines of Law and Equity.)

In a suit by the widow of one of the descendants

of the grantee of a varshasan annual allowance paid from the Government treasury for the performance of religious service in a Hindu temple to recover arrears due to her husband's branch of the family from another descendant who had received the whole stipend; and where it was found by the Court below that, by the usage of the family, the duties of the office had been performed in rotation, and the stipend distributed amongst the descendants of the grantee in certain fixed portions,—*Held* that it was not competent to the defendant (the special appellant) to raise the question of the non-divisibility of the varshasan.

Held also that this was not a suit for money due on a contract or "for personal property or otherwise," within the meaning of Section 6 of Act XI of 1865 cognizable by a Court of Small Causes in the mofussil.

Quære,—Whether the appropriation of an annuity which is in the nature of religious endowment as private property is justified by Hindu law. *Quære*,—Whether a Hindu female is competent to perform either in person or vicariously the services for the maintenance of which a religious endowment has been granted. *Keshavbhat* v. *Bhagirathibia*, 3 Bom. Rep., A. C. J., 75.

A woman who has given muntros which have been accepted, and was nominated by her deceased husband to be adhikaree, is not prevented by the Hindu law from being so.

Vyavasthas need not be called for, nor local testimony relied on, to prove the doctrines of Hindu law. *Puran Narain Dutt* v. *Kasheessuree Dossee*, 3 W. R., 180.

When a Hindu ancestor makes no endowment or trust for the support of the family idols, no legal obligation rests on his descendants to support the idols, nor can any suit for contribution lie against any of them for the expenses of the idols. *Sham Lall Set* v. *Huro Soonduree Goopta*, 5 W. R., 29.

The right of worship of an idol, being the joint property of the members of the family of the endower, cannot be transferred to a third party, a stranger to the family, so as to endure beyond the life of the assignor. *Ukoor Dass* v. *Chunder Sekhur Dass*, 3 W. R., 152.

A mohunt by his will appointed L. D., his spiritual brother, to be his successor, and after making such appointment his will thus continued: "Amongst all my disciples I think Greedharee is a little intelligent and clever, but of younger age than befits a mohunt. Should he receive instruction and learn the duties of mohunt under your guidance he might probably be competent. Wherefore I direct that you will keep Greedharee Dass with you, and initiate him well in the duties of a mohunt, and when you feel yourself incapable of conducting the business as above you can appoint Greedharee Dass as mohunt in your place, and not otherwise." *Held*, first, that a mohunt may appoint a spiritual brother, and L. D. being a spiritual brother, the appointment was valid, and he was entitled to succeed upon the testator's death. Secondly, That the direction for appointing Greedharee did not of itself vest the mohuntship in Greedharee, but that the intention of the testator was that L. D. should not appoint him if he should turn out to be in his opinion incompetent. Thirdly, That the testator had no power to attach any such conditions to the interest his appointee should enjoy in the mohunt. For a person having a fee simple in an estate, with the power of appointing to the succession, has no right to annex to it conditions which the person who gave him the power of appointment never gave the power to annex. In the absence of such power, therefore, a mohunt who once nominates his successor has no right to give directions to his successor, when his turn to nominate comes, as to whom he should nominate. Fourthly, That the testator having no power to give any directions as to the person who should be L. D.'s successor, L. D. was entitled, after he had succeeded to the guddee, to appoint as his successor a person other than Greedharee. Fifthly, That even, if by custom a power to appoint two mohunts in succession had been established, still under the words of the will a discretion would have been left to L. D. in the choice of his successor, and he would not have been bound to appoint Greedharee. It seems that in a suit for the recovery of an elective mohuntship to which the plaintiff claims to be mohunt, but does not show that he was elected, but merely that the defendant was not elected or was irregularly elected, the Court ought to dismiss the suit, and has no jurisdiction to direct a new election.

The period of limitation prescribed by Act XIV of 1859, Section 1, Clause 5, in the case of suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable, namely, "the period of one year from the date of the final decision award or order in the case," applies to the grant of a certificate under Act XXVII of 1860. It also applies to an order made under Act XIX of 1841, the Official Trustee Act, refusing to put the applicant in the possession of property as mohunt. *Greedharee Dass* v. *Nundkishore Dutt, Mohunt*, Marsh., 573; and see W. R. (1864), P. C., 25.

In 1801 A., the shebait and proprietor of the guddee of a debsheba at K., alienated part of the land by deed of gift to B., for the purpose of founding a sheba at C., which was accordingly done. In 1823 the then shebait of the debsheba of K. instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C., and in that suit it was declared that the sheba was independent of the debsheba, and thus the plaintiff was referred to a regular suit. In 1861 the then shebait of the debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held*, first, that the suit not having been instituted until after the lapse of more than twelve years from the plaintiff's succession to the shebait, was barred by the Statute of Limitations. Secondly, that the decree in the former suit operated as an estoppel against the plaintiff.

Semble,—That the Statute of Limitations barred the suit twelve years after the death of A. *Krishnanund Ashem Dundy* v. *Nurshingh Dass Byragee*, Marsh., 485.

In a contest between three trustees or managers of an endowment, each entitled to a third share in the profits of the property, if one of them withdraws from the contest, his share is held to have been relinquished in favour of the remaining partners, and to have merged in the general account to be rendered by the trustees or managers. *Buzl Ruhim*

v. *Moonshee Lutafut Hossein; Mussamut Khodejoonissa Bibee* v. *Moonshee Lutafut Hossein*, W. R., 1864, 171.

The paid managers of the affairs of a pagoda have no power as such to encumber the pagoda property, or to settle large outstanding demands against it.

Persons dealing with such managers are bound to enquire into the extent of their authority. *Sambanda Mudaliyar* v. *Nanasambandapandara and others*, 1 Mad. Rep., 298.

The Civil Courts will recognize and enforce the rights of persons holding offices connected with the management and regulation of pagodas; and if the holder of such an office were entitled to remuneration for his services in the way of salary or otherwise, he would have a civil right entitling him to maintain a suit, if that remuneration were improperly withheld. *Striman Sadagopa* v. *Kristna Tattachariyar and another*, 1 Mad. Rep., A. C., 307.

The vendee of a karaima right cannot compel the trustees of a pagoda to admit him to the office and give him the emoluments. *Keyake Ilata Kolel Honni* v. *Yadattil Vellayanyot Acaunda Pisharodi*, 3 Mad. Rep., A. J., 380.

A shebait is in the position of trustee for the founder, and cannot create permanent encumbrances to the injury of the endowed property. No prescription derived from the trustee can in such cases run against the heirs and representatives of the founder. *Prosunno Moyee Dossee* v. *Koonjo Beharee Chowdhry*, W. R., 1864, 157.

A judgment-debtor's right as sebait to perform the service of an idol cannot be sold in execution of a decree; nor can his right to the surplus profits of the sheba be sold so long as that right is unascertained and uncertain. *Jugger Nath Roy Chowdhry* v. *Kishen Persaud Surma*, alias *Raja Baboo*, 7 W. R., 266.

Where the whole of the profits are not devoted to religious purposes, but the land is a heritable property burdened with a trust, *e.g.*, the keeping up of a saint's tomb, it may be alienated subject to the trust. *Futtoo Bibee* v. *Bhurrutlall Bhukut*, 10 W. R., Cr., 299.

The case of a person alienating property which he holds as shebait of an idol is analogous to that of a Hindu widow alienating ancestral property, and the question as regards the power of a shebait to grant a putnee of a dewuttur land is whether, looking to all the circumstances of the case, the alienation was a prudent and wise act in respect of the purposes for which he was shebait; and in estimating the validity of a purchase of the putnee rights, it ought to be considered whether the purchasers satisfied themselves as far as they could that there was a fair and sufficient ground of necessity for the alienation. *Juggeshur Buttobyal* v. *Rajah Roodro Narain Roy*, 12 W. R., 299.

The Hindu law does not declare that the priest who performs the shradh, however temporary his incumbency may be, is entitled to the land endowed in consideration of the continuous performance of the recurring ceremonies of shradh and other rites for the spiritual benefit of the donor. *Ram Chunder Chuckerbutty and another* v. *Gooroo Churn Chuckerbutty*, 6 W. R., 305.

Under the Hindu law, places of worship and sacrifice are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship; and any infringement of the right to a turn in the worship can be redressed by a suit. *Anand Moyee Chowdhrain and others* v. *Boykantnath Roy*, 8 W. R., 193.

An ascetic, a mere life-tenant, cannot alter the succession to an endowment belonging to ascetics, by an act of his own in connection with the *status* under which he originally acquired the trust. *Mohunt Rumun Doss* v. *Mohunt Ashbul Doss*, 1 W. R., 160.

A Hindu widow, together with the next heir, joined in assigning to the defendant a dewutter estate, in consideration of the defendant conducting, at his own cost, proceedings for the ejection of Brahmins and Banians then in occupation as poojaries to conduct the worship of the idols; and upon the condition that he should thereafter conduct such worship, and out of the proceeds and offerings retain three-fourths for his own purposes and for hospitality, and pay the remaining fourth for the maintenance of the widow and the heir. *Held* that the assignment was valid, the purpose for which the lands were dedicated being provided for; and that although the transaction amounted to champerty, that was no ground for treating it as invalid. An assignment between Hindus of property the subject-matter of litigation, on conditions which constitute champerty, is not on that ground invalid. *Jadubindukarree* v. *Lukhinath Geru Odhi and others*, Marsh., 303.

The profits of a debutter mehal may be assigned so long as the *deb seba* is duly kept up. *Maharanee Shibbessuree Dabea* v. *J. Meekwith*, 3 W. R., Act X R., 152.

Land granted to an idol cannot be held to be debutter, unless it is found to be ancient hereditary debutter, publicly assigned as such prior to the donor's incumbency. *Soshikishore Bundopodhya* v. *Ranee Chooramonee Putto Mohadabee*, W. R., 1864, 107.

In a suit by the Bhukuts of the Komolabari Shaster in Assam for confirmation of their rights in that endowment and restoration of possession thereof, it was held that the plaintiffs had failed to make out their title; that by the original grant of Rajah Luckee Singh inscribed on a copper plate, the management of the debutter property was entrusted to the Odhikaree, over whom the Shormoho or general body of bhukuts have no control, either in respect to his duties as the religious head of the Komolabari Shaster or in the management of its revenues.

Held that the Odhikaree cannot turn the Bhukuts out of the Shaster without just cause. *Dooteeram Surma Dossee* v. *Luckee Kant Mossamee*, 12 W. R., 425.

The right of one of several co-sharers in an endowment to recover possession of the land from which he has been ousted by the other co-sharers, is a personal one, and does not descend to his heirs. A decree for that purpose obtained by him, if not executed by him in his lifetime, will become infructuous after his death. His widow, however, can recover in a regular suit whatever sums he paid out of his own funds for keeping up the service of the idols. *Radha Jeebun Mustofee* v. *Tara Monee Dossee*, 3 W. R., Mis., 25.

When a decree declares that whatever right A. has in a dewuttur property is to be sold in execution, it may be sold though A. holds the property only as a shebait. *Prannath Paurey* v. *Sree Mongula Debea*, 5 W. R., 176.

When a plaintiff and defendant are jointly entitled to the profits from an idol in the defendant's temple, and the plaintiff is obstructed by the defendant in the use and worship of the idol, the plaintiff may claim to have the idol removed to his own house during the period he is entitled to the profits of it. *Dwarkanath Roy* v. *Jannobee Chowdhrain*, 4 W. R., 79.

When there has been no direct endowment to support the worship of the family idol, Hindu usage and custom, although it would create a moral obligation, such obligation will not be held as having any legal operation. *Shamloll Sein* v. *Hurosoondry Gooptea*, 1 Ind. Jur., 36.

Devise upon trust for the use of a Thakoor, with direction that the wife, daughter, and daughter-in-law of testator be allowed to live in the house for their lives, and perform the worship of the idol, with limitation over to others on the decease of the survivors of them, and a sum of Rs. 16 allowed to the survivor of the first legatee for the purposes of the idol, and after her death that the same sum be applied to the expenses of the idol. When the legatee has for a time at her own expense kept up the service she is not entitled to have the money refunded. *S. M. Roymoney Dossee* v. *Ruggonath Sen*, Ind. Jur., N. S., 14.

Where the mohunt of a byragee muth died without having any chela,—*Held* that ordinarily his successor was appointed by the mohunts of other byragee muths, and that enquiry should be made as to the existence of a particular custom by which it was alleged that the property of the deceased passed to the brother of his spiritual preceptor. *Ramdoss Byragee* v. *Gunga Doss and others*, 4 Agra Rep., 295.

Suit for the exclusive right in the privilege of administering purohitam to pilgrims resorting to Ramaswaram. The privilege claimed was admitted to be capable of alienation or delegation, and was therefore no longer the subject of religious sentiment, but a mere proprietary right. On the merits the appellants were held to have failed to support their claim. *Ramasâwmy Aiyan* v. *Venkata Achari*, 2 W. R., P. C., 21.

An action is not maintainable by a purohit against another purohit for interfering with an alleged exclusive right of performing religious ceremonies at a particular place, there being no legal obligation upon the jujmans to abstain from employing another. *Damoodur Misser and others* v. *Roodurmur Misser*, 1 Marsh., 161.

A party holding land assigned for the support of an idol subject to the performance of the ceremonies of worship of the idol, who fails to perform the required service, may be compelled to do so, and on refusal may be removed; but such refusal would not enable a party claiming the land under a fresh assignment from a descendant of the original grantor to receive possession by a suit. *Mohesh Chundra Chuckerbutty* v. *Koylash Chundra Chuckerbutty and another*, 11 W. R., 443.

Held that a suit for a share of the collections made from "jujmans in return for spiritual instruction" is not cognizable in the Civil Courts.

Held, further, that such a suit is not of the nature cognizable by a Court of Small Causes under Act XI of 1865. *Choonee Lall and others* v. *Gouree Sunkur*, 1 Agra Rep., A. C., 84.

No suit lies to enforce payment of murjada (respect money) alleged to be a customary payment by persons of the kassary caste who have marriage ceremonies or shrads performed in their house to members of the community. *Nobeen Chunder Dutt* v. *Madhub Chunder Mundul*, 5 W. R., 225.

Under the Hindu law a permanent alienation by a shebait of endowed property, such as the creation of a putnee, is not absolutely null and void. A permanent alienation by a shebait of endowed property under special circumstances of necessity is valid. Want of funds for repairing the temple and restoring the image of the idol is a necessity sufficient under the Hindu law to warrant such an alienation. *Tayubunissa Bibi* v. *Kuwar Sham Kishore Roy*, 7 B. L. R., 621, and 15 S. W. R., C. R., 228.

A mortgage of debutter property by a shebait is *ultra vires*. *Ramonee Debia* v. *Baluck Dass Mohunt*, 14 S. W. R., C. R., 101.

Where a bond as a charge on a muth is given for antecedent claims against a muth, of which a portion would, but for the fresh right of suit given by the bond, have been barred by limitation, and where no proceedings have been taken for sequestration or attachment of the property, there is no necessity for giving the bond, and a suit to recover cannot succeed. *Ram Churn Pooree* v. *Nunhoo Mundle*, 14 S. W. R., C. R., 147.

A., a Hindu, by a deed of wukfnama (deed of endowment), after reciting that he had "erected and prepared a thakurbari (temple) and the image of thakur (idol), and also a sadavart (almshouse), and had in way of wukf (endowed property) dedicated certain property for the performance of the pujah (worship) of the said thakur and repairing of the house, flower garden, and thakurbari, and appointed his sister B. the manager and mutwali (trustee) of the same, authorized B. to spend the profits in the performance of the pujah, &c. As for the future, she (B.) should appoint such person to be the manager and mutwali as may be found by her to be fit, &c., and in like manner all successive mutwalis should have the right of appointing successive mutwalis. To these his heirs should not have right to prefer any claim, &c. B. died without having appointed any mutwali (trustee) to succeed her in the management of the trust. On a suit by the heir of B. to obtain possession of the property covered by the deed against the heirs of A.,—*Held* that the managership on failure of appointment of a trustee reverted to the heirs of the person who endowed the property. *Mussamut Jai Bunsi Kunwar* v. *Chuttur Dhari Sing*, 5 B. L. R., 181.

The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration is not transferable, and cannot be told in satisfaction of a decree against the shebait. *Dubo Misser* v. *Srinibas Misser*, 5 B. L. R., 617; 14 S. W. R., C. R., 409.

Plaintiff (appellant) sued to establish a religious trust created and confirmed by two deeds of dedication. *Held* that a family trust of this nature had

never, in modern times at least, been ruled to require the assent of the State; and that as the trust in this case appeared to be established as to the lands dedicated, it lay on respondent to show some subsequent legal conversion of the lands to the ordinary uses of property, by better evidence than a second deed of partition operating as a revocation of a former one, which second deed was not only not proved but discredited on every judicial examination of it. A partition being favourably viewed by the Hindu religion and law, and wanting no extrinsic support, their Lordships were of opinion that the alleged presumption against the first deed of partition, that it was a mere device because one member of the family was indebted, might more reasonably be removed than maintained by due attention to that fact; whereas the second deed did afford grounds for suspicion, inasmuch as it made no reference to the first deed, and professing to be the ordinary partition of a joint family appointed an insolvent as the shebait. As to respondent's contention that he was a *bonâ fide* purchaser for value without notice, the Privy Council considered that the very origin of his title, as well as the contention in the mutation of names in the Collector's registry, proved that the respondent must have had notice of the original trust, and that as he was not shown to have made enquiries as to his grounds for supposing that the trust was legally at an end, he could not exonerate the property from the trust which attached to it. *Juggut Mohinee Dassee* v. *Sookhumoney*, 17 S. W. R., C. R., 41.

Where land is dedicated to the religious services of an idol, the rents of the land constitute in legal contemplation the property of the idol, and the shebait has not the legal property, but only the title of manager of a religious endowment, and cannot alienate the property, though he might create proper derivative tenures and estates conformable to usage. The creation of a tenure at a fixed invariable rent would be breach of duty in a shebait. *Maharanee Shibessurree Dabee* v. *Mothoor Nauth Acharjee*, 13 S. W. R., O. C., 18.

R. D., a Hindu, died possessed of large property, both real and personal, and leaving surviving him two sons, P. D. and A. D., his sole heirs, who after his death came to an amicable partition of some portion of the joint estate, but continued to hold jointly the family dwelling-house and the land thereto attached. On 26th November, 1849, P. D. and A. D. executed a deed of trust of the joint family dwelling-house, among other properties, by which after reciting that they had kept certain property joint, and that they have been performing the family ceremonies, &c., and that it was their intention that they should be performed in the same manner at the family dwelling-house, and after setting apart certain real property for the expenses thereof, it was agreed that "we will, during our lifetime, jointly perform the said acts after that manner and according to practice; on the death of one of us, the survivor and the executor or representatives of the deceased person will act after that manner and according to practice, for a period of twenty years from the date of the death of him who shall die last; our executors or representatives will jointly perform, out of the proceeds of the aforesaid real property, the puja and so forth at our dwelling-house in Simla, in Calcutta, and entertain strangers at the garden which once appertained to R. S. B. The said real property and our dwelling-house and the baitakhana in Station Sulkea, &c., neither we nor our heirs or any of them will have the power to make a partition thereof during the said prescribed period. On the expiration of the said period, should our representatives wish to make a partition of all the said real property, &c., having made a division they will have the power to perform the acts and ceremonies separately." The said dwelling-house was thereafter held jointly by P. D. and A. D. on the trusts of the deed of 26th November, 1849. P. D., in December, 1849, died, leaving two adopted sons, M. D. and another, on the death of whom the plaintiff was adopted. P. D. also left a will whereby he directed that the purport of the deed of 26th November, 1849, should never be violated. A. D. died 30th January, 1856, leaving a will whereof he appointed the defendants N. D., C. G., and S. G., executors, and thereby he divided all his property subject to certain legacies to C. G. and S. G.; by his will he charged his executors not to fail to carry out the agreement. The ceremonies continued to be performed as directed in the deed by the plaintiff and the defendants M. N. D., C. G., and S. G. By deed dated 14th July, 1863, N. D., C. G., and S. G. mortgaged, for valuable consideration, to the defendant, A. B. M., certain property, including an undivided share of the said dwelling-house. A. B. M. afterwards instituted a suit on the mortgage against N. D., C. G., and S. G., and by the decree in that suit it was, on 14th April, 1870, ordered that the defendants should be absolutely foreclosed of all equity of redemption in the said family dwelling-house and other premises comprised in the mortgage. Subsequent proceedings taken by A. B. M. against the defendants, N. D., C. G., and S. G., resulted in A. B. M. obtaining a writ of possession against them, which he endeavoured, but unsuccessfully, to have executed. The present suit was brought to have the deed of trust of November 26th, 1849, established, and to have the trusts thereof declared. In 1854 two suits had been brought in the Supreme Court, one by M. D. and the present plaintiff, and the other by A. D., in which suits decrees were made declaring the will of P. D. and the agreement of 26th November, 1849, to be fully proved and established and binding on A. D. and his heirs and the representatives of P. D. It was found on the evidence in the present suit that the agreement of 26th November, 1849, was not fraudulent; that when A. D. died the estate belonging to the representatives of P. D., independently of the property set apart, was more than sufficient to meet any claims against the estate of P. D.; that the agreement of 26th November, 1849, had up to the present time been steadily acted on by the representatives of P. D. and by the representatives of A. D. until very recently; that A. B. M. took the mortgage with notice of the agreement, and of the fact that it was being acted on under the decrees of the Supreme Court. *Held* that the family dwelling-house was not absolutely dedicated by the deed of 26th November, 1849, to the worship of the deities and performance of the ceremonies mentioned therein, and therefore was not inalienable. But the prohibition in the deed of 26th November, 1849, against partition of the family dwelling-house for twenty years after the death of

the survivor of P. D. and A. D. implied also that there should be no alienation of it for twenty years. Until the end of the twenty years A. B. M. was not entitled to possession in any shape. *Anath Nath Dey* v. *A. B. Mackintosh*, 8 B. L. R., 60.

A person who succeeds his father as shebait or trustee of debutter lands is not bound by any acts of his father done in fraud of the trust. *Goluck Chunder Bose* v. *Rughoonauth Sree Chunder Roy*, 17 S. W. R., C. R., 444.

31.—Re-marriage.

The son of a Hindu widow having died after her re-marriage, she sued as guardian of her daughter by her first husband, claiming the estate of her son, and then applied to be made a co-plaintiff in her own right.

Held that the lower Court was not wrong in arraying the plaintiff amongst the parties to the suit, under Section 77, Act VIII of 1859, and that such amendment did not alter the character of the suit or affect the merits of the case.

Held (by Kemp, J., dismissing the appeal under Section 15 of the Letters Patent) that as plaintiff at the time of her re-marriage had no rights or interests in the estate of her deceased husband, or his son, none ceased and determined upon the re-marriage; and after her son died, the estate which he inherited from his father devolved on her, and under Section 5, Act XV of 1856, she did not forfeit her right thereto.

Held (by E. Jackson, J.) that under Section 2, Act XV of 1856, all right which the widow had in her deceased husband's property by inheritance to him and to his lineal successors ceased by reason of her re-marriage, as if she had then died, and thereupon the next heir inherited; and that Section 5 referred more especially to the new husband's property, including property left otherwise than to her late husband and his lineal descendants. *Akora Suth* v. *Boreani and others*, 10 W. R., 34.

A Hindu died, leaving a widow and minor son and daughter. The widow re-married after her husband's estate had vested in her son. The son subsequently died, and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. *Held* that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. *Akora Suth* v. *Boreani*, 2 B. L. R., A. C., 199; 11 W. R., 82.

The Hindu law disentitling a widow to inherit on re-marriage and marriage with a Mahometan does not apply to a widow who became a Mahometan before her marriage with a Mahometan. According to Section 3, Act XXI of 1850, and Section 9, Regulation VII of 1832, conversion does not involve forfeiture of inheritance. *Gopal Singh* v. *Dhungazee*, 3 W. R., 206.

32.—Re-union.

Of three brothers forming together a joint Hindu family, one separated himself therefrom and died, leaving a son, the plaintiff. The other two with their families remained joint. One died leaving a son, the defendant. The other died leaving a widow. On the widow's death this suit was brought to establish the plaintiff's right as one of the two next reversionary heirs. *Held* that a separated brother does not inherit, and that the defendant was alone entitled to succeed.—*Query*, as to the effect of reunion on inheritance. *Kasabram Mahapattar* v. *Nandkishor Mahapattar*, 3 B. L. R., A. C., 7; S. C., 11 W. R., 308.

Held that re-union must be made by the parties, or some of them, who made the separation. If any of their descendants think fit to unite they may do so; but such a union is not re-union in the sense of the Hindu law, and does not affect the inheritance. *Bisvanath Gungadhur* v. *Krishnagee Gunesh and others*, 3 Bom. Rep., A. C. J., 69.

According to Hindu law, mere living together in one residence or joint trade does not constitute a re-union after partition, but there must be junction of estate. When such reunion is satisfactorily established, Courts are bound to give a preference to the re-united parceners to the exclusion of the members or their issue who have not been so re-united. *Gopal Chundra Daghoria* v. *Kenaram Daghoria*, 7 W. R., 35.

In a Hindu family, when, after partition, certain members of the family reunite,—*Held* that if a re-union actually takes place between the proper parties, their representatives and descendants, however remote, will remain joint until a fresh partition takes place. The members of the re-united family and their descendants succeed to each other, to the exclusion of the members of the unassociated or not re-united branch. *Tara Chand Ghose* v. *Pudum Lochun Ghose*, 5 W. R., 249, and 1 Ind. Jur., N. S., 207.

Where the partition of a family property is made simply for the purpose of determining what the share of one member is, and after his secession the other members continue to live together and mess together, remaining to all intents and purposes as they were before, these others must be presumed to have re-united. *Petambur Dutt* v. *Hurrish Chunder Dutt*, 15 S. W. R., C. R., 200.

A Hindu died, leaving a widow, a brother, and two nephews, the plaintiff and the defendant. The brother was the defendant's father; he and the widow were since dead, the widow having died in the brother's lifetime. The plaintiff claimed to be entitled to a moiety of the estate of the deceased by inheritance. The defendant claimed the whole on the ground that the deceased lived as a re-united or associated brother with his (the defendant's) father, whereas the plaintiff was the son of a separated brother of the deceased. *Held* that the material issue to be tried in the case was whether the widow lived in a state of re-union with the defendant, as her husband had done with the defendant's father, or whether she at the time of her death lived separate from him, though in the same family house. *Ramhari Sarma* v. *Trihiram Sarma*, 7 B. L. R., 336; and 15 S. W. R., C. R., 442.

33.—Reversioners.

When the immediate reversioner is in possession of a part of the property, and not in a position to institute proceedings to set aside alienations, the next reversioner is entitled to sue to protect his own future rights. *Balgobind Ram* v. *Hirusranee*, 2 W. R., 255.

According to Hindu law, a widow in possession can relinquish, and, by relinquishing, anticipate for the reversioners their period of succession. A relinquishment in favour of second reversioners is also valid if made with the consent of the first reversioners. *Protab Chunder Roy Chowdhry* v. *Sreemutty Joy Monee Dabee Chowdhrain*, 1 W. R., 98.

Where a widow relinquished her right to her husband's property in favour of his then reversionary heirs, who were accordingly put into possession, and other persons subsequently claimed the property as the husband's heirs, the cause of action of such other persons was held to have accrued from the time when the then reversionary heirs came into possession of the property. *Kalee Coomar Nag* v. *Kashee Chunder Nag and others*, 6 W. R., 180.

A reversioner's cause of action against his ancestor's lessee does not accrue until the expiration of the lease, unless the reversioner is evicted or deprived of his rent, or rent is received adversely to him by a stranger from the lessee. *Hurronath Roy and others* v. *Rajah Indoo Bhoosun Deb Roy*, 8 W. R., 135.

Where a widow's estate is sold for arrears of rent it is not merely the widow's life interest that is transferred, and the reversionary heir cannot follow the estate after her death. *Tiluck Chuckerbutty* v. *Mudden Joogee*, 12 W. R., 504.

Where the transfer sought to be set aside was made by the widow in favour of her daughter, who was lawful heir to the property,—*Held* that the plaintiff, a reversioner, has no present ground of action as his reversionary right was not prejudiced thereby. *Held* also that Section 2, Act VIII of 1859, the former suit being of a different nature, does not bar the present suit. *Udhur Singh* v. *Mussamut Ranee Koonwar*, 1 Agra Rep., A. C., 234.

The consent of the then reversioner to a sale by a Hindu widow, though not binding evidence on the present heir, is strong presumption of the existence of necessity at the time of sale, to be rebutted only by proof of fraud and collusion, or of the absence of necessity. *Kalee Mohun Deb Roy* v. *Dhanajoy Shah and others*, 6 W. R., 51.

A suit by a widow to set aside the sale of a judgment-debtor's rights as reversioner is not maintainable. *Mussamut Shib Koonwar* v. *Sodho Singh*, 2 Agra Rep., A. C., 255.

Where a widow having lost her rights in her husband's estate on account of re-marriage under the provisions of Section 2, Act XV of 1856, was allowed to retain possession by the next reversioner, —*Held* that such arrangement by the next reversioner was only binding upon him, and not on the heirs of such reversioner, who, on the death of the former, were entitled to sue for possession of the property by dispossessing the widow. *Kaisho and others* v. *Mussamut Jumna*, 1 Agra Rep., A. C., 140.

A conveyance of ancestral property by a Hindu widow without proof of necessity can only operate as a conveyance of her life-interest. The purchase of a kismut sold for Government revenue does not destroy the pre-existing rights of the holders of the tenure. Reversioners are as much entitled to have a sale of their share in such a kismut set aside as a sale of any other property by the widow without necessity. *Tarinee Churn Banerjee* v. *Nund Coomar Banerjee*, 1 W. R., 47.

A reversioner has no right of suit during the lifetime of a widow to set aside a deed of alienation said to have been executed by his ancestor and supported by the widow. *Mussamut Ram Bunsee Koonwar* v. *Mussamut Moheshur Koonwar*, 1 W. R., 338.

A suit by a reversioner to set aside an alienation is cognizable if the title of the reversioner has been injured by a distinct act of alienation, and if the widow who ought to have brought the suit has relinquished her life-interest and signified her assent to the suit proceeding. *Bheem Ram Chuckerbutty* v. *Huree Kishore Roy*, 1 W. R., 359.

Where after the death of a Hindu who had been separate in estate from his brothers, and during the lifetime of his widow his brother's sons obtained mutation of their names on the Collector's rent-roll, and held possession of the estate, in right of inheritance, for more than 12 years,—*Held* that, under the Mitakshara law, the possession by the nephews being adverse to the widow, the claim of the reversioner on her death was barred. *Gopal Singh* v. *Kanhya Lall Sahebzada*, 2 B. L. R., Ap., 14; S. C., 11 W. R., 9.

Where a Hindu widow, exceeding her rights, alienates property which a reversioner claims, his suit is not barred if brought within 12 years from her death. *Gopal Mullick* v. *Onoop Chunder Roy and others*, 11 W. R., 183.

A person having only a contingent estate during the lifetime of a Hindu widow, is permitted to sue simply on the ground of the necessity that the contingent reversioner may be under of protecting his contingent interest. It is therefore essential to see that he has such an estate as entitles him to come in that way, *i. e.*, that he holds the character which he professes. *Thakoorain Sahibag and another* v. *Mohun Lall and others*, 7 W. R., P. C., 25.

Where it appeared there were other persons nearer than plaintiffs, and that there had been no disclaimer of their right on their part,—*Held* that plaintiff, who, according to the ordinary Hindu law of inheritance, was not the next heir, could not maintain the suit. *Gooshaeen Teekumjee and others* v. *Pursotum Lalljee and others*, 4 Agra Rep., 238.

A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death. A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. *Shewak Ram Roy* v. *Syad Mohammed Shamsul Hoda*, 3 B. L. R., A. C., 196; S. C., 12 W. R., 26.

Held, following a Full Bench case cited, that a reversioner can maintain a suit during the lifetime of a childless Hindu widow to set aside a deed of conveyance as inoperative on the death of the widow by whom it was granted. *Lalla Chuttur Narain* v. *Mussamut Wooma Koonwaree and others*, 8 W. R., 273.

Held that the plaintiff being an immediate reversioner might maintain his suit, and that his contributing his share of profit and his signature in putwaree's diary as lumberdar were not an admission of defendant's title as purchaser. *Nund Kishore* v. *Nuthoo Ram*, 1 Agra Rep., A. C., 223.

A reversionary heir is subject to all rights which exist against the property in consequence of acts done by, or decrees obtained against, the ancestor.

Rath Monohur Singh and others v. *Kooldeep Narain Singh and another*, 11 W. R., 515.

A widow (a life-tenant of an ancestral estate), having executed an ikrar transferring a share to N., her granddaughter, afterwards sued to set it aside on the ground that N. had not conformed to its terms. While the suit was in the appeal stage, the widow died, and her reversioner applied to be made, and was admitted as, her kaem mukam, to carry on the appeal on her behalf. He afterwards sued to recover possession of the share as reversioner, alleging that the succession opened out to him on the death of the widow.

Held that the causes of action in the two suits were different, and that it was not necessary for the reversioner, when he took up the widow's case in its appeal stage, to disclose his title and claim as reversioner, as he was not competent then to introduce any pleas arising out of a new state of facts not existing when the suit was instituted. *Deomnel Koonwar* v. *Mussamut Inderjeet Koowar*, 12 W. R., 234.

A Hindu widow, in 1824, assumed to adopt a son to her husband, and such son, and after him the defendant, his heir, was put in possession of the properties in suit. The widow died in 1861. The suit was instituted in 1866 to recover the property and to declare the adoption illegal. *Held* that such possession, during the life of the widow, could not be said to be adverse as against the widow. The cause of action to the reversionary heirs arose at the time of the death of the widow, and was consequently not barred by limitation. *Srenath Gungopadhya* v. *Mohesh Chundera Roy*, 4 B. L. R., F. B., 3; 12 W. R., F. B., 14.

The rights of a reversioner entitled to succeed on the death of a childless Hindu widow, if he shall happen to survive her, cannot be sold in execution of a decree of Court. *Koraj Koonwar* v. *Komul Koonwar and others*, 6 W. R., 34.

Following a decision of a Division Bench of the High Court, it was held that, on the death of a Hindu widow, her deceased husband's heirs became entitled to all his immoveable property which was in her hands, except only so much as might have been disposed of by her under circumstances which would render her alienations binding against them. *Ram Shewuk Roy and others* v. *Sheo Gobind Sahoo*, 8 W. R., 519.

R. C. D., a Hindu, died possessed of property, leaving as his heiress his widow, R. D. He also left four daughters, two of whom died in the lifetime of their mother, each leaving a son. R. D. died, leaving her surviving two daughters, P. D. and J. D., who succeeded to the estate of R. C. D. *Held* that J. B., one of the sons of J. D., had no such interest in the property as could be attached and sold in execution of a decree against him. *Bhoobunmohun Banerjea* v. *Thakoordoss Biswas*, 2 Ind. Jur., N. S., 277.

A reversionary interest may be sold in execution of a decree. *Gourhuree Dutt* v. *Radhagobind Shaha*, 13 W. R., 54.

The consent of all the reversioners is necessary to make a sale by a childless Hindu widow valid in law; but the purchaser is entitled to hold the property during the widow's lifetime. Only immediate reversioners are entitled to impeach a sale by a widow. *Mussamut Radha* v. *Mussamut Koar*, W. R., 1864, 148.

Declarations of title may be granted to reversioners and alienations by a Hindu widow set aside during the widow's lifetime, although possession of the estate itself will not ordinarily be given. *Mussamut Shibo Koeree and others* v. *Joogun Singh and others*, 8 W. R., 155.

A reversioner cannot, during the lifetime of a Hindu widow, sue to set aside a sale made by her if twelve years have elapsed since the date of the sale, though he may during her lifetime sue to have the sale declared void and to prevent waste. Such limitation does not affect the right of suit of the reversioner after the widow's death when he succeeds as heir. *Syud Ameer Ali* v. *Mohendronath Bose; Behas Koomaree* v. *Mohendranath Bose; Shuvadara Bibee* v. *Mohendranath Bose*, 2 W. R., 271.

A reversioner cannot sue to dispossess a widow or a purchaser holding under her, though he is entitled to sue for a declaration that a sale by the widow is invalid against him on his proving that the sale was made without legal necessity. *Haradhun Nag* v. *Issur Chunder Bose*, 6 W. R., 222.

The fact of a reversioner being an attesting witness to a conveyance by a Hindu widow is an acquiescence on his part which precludes him from impeaching the sale on the ground of waste.

A decree against a Hindu widow for a loan to pay Government revenue is binding on the reversioner. *Gopal Chunder Manna* v. *Gour Monee Dossee and others*, 6 W. R., 52.

A judgment-debtor, who had been permitted to retain possession of disputed property pending an appeal to England on furnishing security for mesne profits and costs, having died, his widow offered her life-interest in his estate as such security. *Held* that as her interest was only temporary it could not be accepted as competent security, and that as she was under no legal necessity to carry on the appeal to the Privy Council and did not do so for the benefit of the estate, she could not bind the estate as against the reversioner for the purpose of raising the necessary funds. *Mussamut Phool Koer*, alias *Kunhya Koer* v. *Dabeepersaud*, 12 W. R., 187.

A reversionary contingent interest subject to the life-estate of a Hindu widow may be assigned. The assignee of such an interest is entitled to restrain the widow from committing waste. *Rychurn Paul* v. *Mussamut Peary Monee Dassee*, Marsh., 622.

The immoveable property of a Hindu widow was sold under a decree against her, and A. was the purchaser at the sale. Afterwards and during the lifetime of the widow the lands in question were sold for arrears of revenue due by A. to Government in respect of other lands, and B. was the purchaser at the sale. C., the owner of the reversion expectant on the life-interest of the widow instituted a suit in her lifetime to set aside the sale of the estate; but this suit was dismissed under Act I of 1845, Section 24, on the ground that more than a year had elapsed since the sale for the arrears due to Government. After the death of the

widow the reversioner sued B. for recovery of possession of the lands.

Held, first, that the life-estate of the widow was alone acquired by the purchaser at the sale under the decree, and sold at the sale for arrears of Government revenue, and that interest having expired the reversioner was entitled to recover the possession of the lands. Secondly, that the plaintiff is not barred by the dismissal of the suit instituted in the lifetime of the widow; the object of that suit being to set aside the assignments of the widow's interest, and not for the assertion of the plaintiff's right to the reversion. *Doorga Churn* v. *Kashee Chunder Moitra*, Marsh., 539.

In a suit by a reversioner to set aside a sale of property made by a Hindu widow, the Court cannot direct possession to be given to the reversioner, but can only declare the sale to be invalid, and leave the widow or her vendees as her tenants in possession. *Goluck Chunder Dass* v. *Gopal Kishen Sein*, W. R., 1864, 250.

The consent of all the heirs living at the time of the execution of a bill of conveyance by a Hindu widow, either directly or by attestation, is requisite to make the sale binding against the reversioners. *Kartick Kurmokur* v. *Dhunno Monee Goopto*, W. R., 1864, 268.

A reversioner may sue during the widow's lifetime to obtain a declaration that a conveyance made by the widow is invalid, as made without legal necessity, and therefore not binding beyond the widow's life. *Oodoy Chand Jhah* v. *Dhun Monee Debia*, 3 W. R., 183.

A Hindu widow held her husband's property till within twelve years of the date of suit. At that time one of the defendants claimed the property as belonging to his own separate talook; and she thereupon gave it up, and ever since refused to enter on it. In a suit by the reversioner's heir of the husband to have his title declared, and to obtain possession of the property,—*Held* that possession of the defendant was adverse to the widow and reversioners; that the reversionary heirs therefore had a right to sue for a declaration of their title at any time within twelve years from the date of the adverse possession; that as the widow refused to have anything to do with the property, and the reversioners had no right to possession till after the death of the widow, the proper course for the Court to adopt was to appoint a manager to collect the assets of the estate, who should account for them to the Court; and the Court should hold them for the benefit of the reversionary heir. *Radha Mohan Dhar* v. *Ram Das Dey*, 3 B. L. R., A. C., 326.

During the existence of a Hindu widow's interest in an estate, the assignee of a reversionary heir to her husband has no interest therein as such assignee, which will enable him to bring a suit to have a mortgage and a decree affecting the estate set aside. This is so even though the assignee is the next heir to the property after the assignor. *Raicharan Pal* v. *Pyari Mani Dasi*, 3 B. L. R., O. C., 70.

A reversionary heir has no right to set aside a deed of sale executed by a Hindu widow during her lifetime. *Ram Monohor Singh and others* v. *Kooldeep Narian Singh and another*, 11 W. R., 514.

When a childless Hindu widow is the heiress and legal representative of her husband, the reversionary heirs are bound by decrees relating to her husband's estate which are obtained against her without fraud or collusion; and they are also bound by limitation by which she, without fraud or collusion, is bound.

The words "cause of action" in Act XIV of 1859, refer, not to a new cause of action accruing to the reversionary heir personally, but to the cause of action which accrued to the heir or representative for the time being of the deceased.

When alienations of her husband's estate are improperly made by the widow they are good as against her for her life; and the reversionary heir's cause of action does not accrue until her death. But when property belonging to the husband's estate is held adversely to the widow, and never reaches her hands, the cause of action accrues to her, and a suit, whether by her or by the reversionary heir, must be brought within the usual period, counting from the commencement of the adverse possession. *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty*, 9 W. R., 505.

Held that a daughter was competent to sue during the lifetime of her mother, the encumbrancer; the daughter being the immediate reversioner to the property, and her reversionary right being seriously threatened. *Mussamut Gohab Koomer* v. *Sib Sahai and others*, 1 Agra Rep., 55.

Though a reversioner cannot obtain possession during the lifetime of a Hindu widow, yet he may be entitled to a declaration whether the alienations made by the widow are or are not valid and binding on the absolute heir. If the reversioner can prove that wilful default is about to take place, he will be entitled to such relief from the Court as will prevent the apprehended occurrence of a sale for arrears. *Surut Chundra Sein* v. *Muthoora Nath Pudatic*, 7 W. R., 303.

The cession of her right by a Hindu widow, during enjoyment, to the heir of her husband is valid, the recipient becoming absolutely entitled to the property, which passes on his death to his heirs. *Shama Soonduree and others* v. *Shurut Chunder Dutt and others*, 8 W. R., 500.

A reversioner in the position of son or stepgrandson may sue in the lifetime of a Hindu widow in possession to prevent waste. *Chunnoo Mohunt and others* v. *Rajendra Shahoo*, 7 W. R., 119.

Where a transfer is made by a widow in fraud of the rights of the presumptive reversioner,—*Held* that he is entitled to a declaratory decree that the widow's act is null and void, as it may affect the interests of the reversioner, and for provision, if necessary, to prevent any waste of the estate by the appointment of a receiver, but not to a more extensive remedy. His reversionary interest is not accelerated by the transfer. Where a daughter was colluding with the widow in making transfer of divided property,—*Held* that plaintiffs, the next reversioners after the daughter, were competent to maintain the suit to have the transfer declared null and void. *Jwala Nath and others* v. *Kulloo and others*, 3 Agra Rep., 55.

A reversioner may sue to have a conveyance by a Hindu widow declared void as against him, but he cannot sue simply for ejectment and possession

during the lifetime of the widow. *Hurrish Chunder Sein Lushker* v. *Bromo Moye Dossia*, 5 W. R., 131.

Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner in possession, assigning maintenance to the widow. A manager should be appointed to the estate accountable to the Court. The reversioner may be appointed such manager. *Mussamut Maharani* v. *Nundolall Misser*, 1 B. L. R., A. C., 27, 10 W. R., 73.

A. and B. were two brothers. A.'s widow sued B.'s son, but being unable to carry on the litigation, sold a portion of her rights and interest in the suit to G. and J., and a joint decree was passed in the names of G. and J., as well as of the widow. The widow soon afterwards died, and B.'s son became A.'s heir. *Held* that as A.'s widow had only a life-interest in her husband's property, on her death her rights and interests ceased as well as those of G. and J. as decree-holders; and that B.'s son, the judgment-debtor, became in effect, as A.'s heir, the sole judgment-creditor, and entitled to the whole property. *Gobind Narain Dey* v. *Gour Monee Debia*, 17 S. W. R., C. R., 20.

Although an alienation of property by a widow for other than allowable purposes may be declared void, yet the reversioners are not entitled to immediate possession, unless the widow has committed some act involving forfeiture of the property. *Mussamut Kishoree* v. *Kheala Ram*, 2 N. W. R., 424.

Although a suit to set aside an alienation, alleged to have been illegally made by a Hindu widow, of property belonging to the estate of her deceased husband, should usually be brought by the next and not by a remote reversioner, yet such a suit may be brought by other than the next reversioner where it can be considered as one brought by a person who, by the express declaration of those having prior rights, was entitled to maintain it by reason of their consent, and of their relinquishment in his favour of the right of suit.

When this relinquishment is once shown, the suit is open to no objection on the score of its having been instituted without the plaintiff, at the time of the institution, having shown that the prior rights of others had been waived or abandoned in his favour. *Ammur Sing* v. *Mardun Singh*, 2 N. W. R., 31.

A party who, subject to the life-interest of his mother, has a real and vested interest in remainder such as a Hindu has the power of creating, has a right to sue to obtain a declaration of the invalidity of a will set up to his prejudice, which purports to take away altogether his future right and interest in the property. *Annund Mohun Mullick* v. *Indro Monee Chowdrain*, 16 S. W. R., C. R., 214.

The mere execution and registration of a deed as between strangers, without any ulterior act directed against a Hindu widow in possession, or against the reversionary heir or his possession, cannot give the latter any cause of action, or entitle him to ask for a declaratory decree. *Sooruj Bunsee Koonwar* v. *Mohuput Singh*, 16 S. W. R., C. R., 18.

In a suit to recover possession of property held by a widow, the reversioner was held to have been erroneously made a co-defendant. *Kristo Sunkur Dutt Roy* v. *Koylash Nauth Dutt Roy*, 15 S. W. R., C. R., 6.

A reversionary heir to his uncle's property may sue, during the life-time of the widow, for a declaratory decree to the effect that an alienation will not bind him in the event of his surviving the widow. *Lykunt Nath Roy* v. *Grish Chunder Mookerjee*, 15 S. W. R., C. R., 96.

The possession in right of inheritance of a widowed daughter having sons alive is not adverse to a reversioner. *Poorun Chunder Nundee* v. *Sreeshteedhur Chuckerbutty*, 15 S. W. R., C. R., 147.

A reversioner obtained a decree declaring that he was then the nearest heir to certain ancestral property, and would be entitled to succeed on the death of two widows of his cousin who were in possession. After the death of the widows, it was found that the reversioner had become insane, and was therefore incapacitated by Hindu law from inheriting. Upon this his son, who had been appointed manager on behalf of his father under Act XXXV of 1858, applied for execution of the above-mentioned decree as his representative,—*Held* that it was necessary to look to the status of the heir at the time the succession opened out to him, and that the applicant, in the capacity of representative of the reversioner (who was not the heir of the widows' husband), was not entitled to execute the decree. *Brijo Bhookun Lall* v. *Bechun Dobey*, 14 S. W. R., C. R., 329.

A Hindu widow being in possession of certain lakheraj lands in which she had a life-interest, the zemindar brought a suit against a minor reversioner and others to resume the land, obtained an *ex-parte* decree, and, whether under colour thereof or not, afterwards obtained possession. The widow who was then dispossessed brought a separate suit to recover the property, in which the reversioner, who had meantime come of age, was joined as a co-plaintiff. Owing to a petition presented by the widow, this suit was treated as having come to an end,—*Held* that, in the circumstances, and the consequent jeopardy to the title of the reversioners, the reversioner above referred to was competent, without showing fraud on the part of the widow, to bring a suit to have the land reduced to his possession, and to prevent the zemindar from acquiring title by adverse possession. *Chunder Koomer Gangooly* v. *Raj Kishen Banerjee*, 14 S. W. R., C. R., 322.

K., a Hindu widow, assigned one moiety of her share in her husband's estate to H. S., in consideration that H. S. should conduct and pay all costs of a suit which was then to be instituted against her husband's brothers, of whom B. C., the present plaintiff, was one, to recover the share to which she was entitled, and also to pay her maintenance in the meantime. The assignment was dated 24th December, 1864. The suit was brought, and a certain sum, in Government paper and notes, was decreed to K. on August 5th, 1868. This sum was paid into Court by B. C., on 10th March, 1869, and upon K.'s application was, on 10th March, 1871, paid out to her. B. C. then sued as reversionary heir to have the deed of assignment set aside, and that H. S. should be restrained from receiving the moiety. The plaint was filed on 14th March, 1871. In it he alleged his apprehension of waste by K.

Held that the suit, so far as it was based on the allegation of apprehended waste, was not barred by the Law of Limitation. *Biswanath Chunder* v. *Khantamani Dasi*, 7 B. L. R., 131.

A. brought a suit against C. and D., alleging that he was an heir-expectant upon the death of B., a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate, said to have been executed by C. in favour of D., set aside as affecting A.'s future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. *Held* that A. had disclosed no cause of action against C. and D. *Mussamut Suraj Bunsi Kunwar* v. *Mahiput Singh*, 7 B. L. R., 669.

Limitation reckons against the reversioners or next heirs of a deceased person only from the death of the widow or the immediate heirs of the deceased. *Greedharee Singh* v. *Mussamut Indro Kooer*, 17 S. W. R., C. R., 237.

Suit by a Hindu daughter, for herself and as guardian of her minor son, to recover possession of her deceased father's separate estate. The legal representatives of the estate were, first, the deceased's widow, and after her the plaintiff and her son. The widow not only failed to occupy and manage the estate, but, in collusion with the other defendants claiming under a hostile title, abandoned her rights, alleging that her husband was not separate, but a member of a joint family, and left the hostile holders undisturbed. To preserve the separate estate from becoming extinguished by the operation of the Law of Limitation, it was necessary to remove the adverse occupants and to place the estate in the possession of some person to be appointed to represent it; and as the widow (the legal representative) never was in possession and did not ask for it, but repudiated all claim to it, it was held that no one had a better right to the possession than the plaintiff, and possession was accordingly decreed to her as manager during the widow's lifetime. *Gunesh Dutt* v. *Mussamut Lall Muttu Kooer*, 17 S. W. R., C. R., 11.

34.—School of Law.

The question being whether the succession in this case was regulated by the Bengal or Mithila law,—*Held*, in accordance with the Court below, after an examination of the whole evidence, that the Mithila law was applicable. *Rany Padmavati* v. *Doolar Singh and others*, 7 W. R., P. C., 41.

The question being whether the descent in the family in this case was to be regulated by the Dyabhaga or the Mitakshara,—*Held*, upon the evidence, that the Dyabhaga applied to the decision of the cause. *Rani Sreemutty Dibeah* v. *Rany Koond Luta, Ram Lung Luta and others*, 7 W. R., P. C., 44.

Hindu families are ordinarily governed by the law of their origin, not by that of their domicile. The presumption is in favour of the law of origin until the law of a new domicile is proved. *Lukkea Debea* v. *Gungagobind Dobey*, W. R., 1864, 56; and *Pirthee Singh* v. *Musst. Sheo Soondery*, 8 W. R., 261; and *Sonatun Misser* v. *Ruttem Maltab*, W. R., 1869, 95.

The presumption that a Hindu family, immigrating into Bengal from the North-Western Provinces, imports its own customs and law as regulating the succession and the ceremonies of Hindu law in that family, may be rebutted by showing that, except as regards marriage, all other ceremonies are performed according to the law of the Bengal school and by Bengal priests. *Ram Bromo Pundah* v. *Kaminee Soondery Dossee and others*, 6 W. R., 295.

In a case where a Hindu family migrates from one territory to another, if they preserve their ancient religious ceremonies they also preserve the law of succession. The presumption is, until the contrary be proved, that the family so migrating have brought with them, and retain, all their religious ceremonies and customs; especially when the family is shown to have brought with it its own priests, who, and their descendants after them, continued their ministrations down to the period of contest. *Junaruddeen Missir* v. *Nobin Chunder Perdhani*, Marsh., 232, and *Ootum Chunder Bhuttacharjee* v. *Obhoy Churn Tuissee*, W. R., F. B., 67.

The ex-Rajah of Coorg died in England in 1859, leaving considerable moveable property which he had himself acquired and accumulated, chiefly by means of his pension and some ancestral jewels and ornaments. By his last will and testament he left all his property to trustees in trust to pay thereout certain legacies, and to divide the residue in certain proportions among various members of his family. Some difficulty having arisen after his death regarding the distribution of his estate, the Court of Chancery stated a case and propounded certain questions under 22 and 23 Vict., Cap. 63, for the opinion of Her Majesty's late Supreme Court at Fort William in Bengal, with reference to the Hindu law as administered by that Court, and so far as the same was applicable to the facts set forth in the case stated. The first and chief question propounded was "What school of Hindu law would govern the succession to the estate of the deceased Rajah, and the rights and interests of the members of his immediate family, with reference to the will and facts stated, and also supposing he had died without having made any testamentary disposition of his property?" In answer to this question the Court held that the doctrines of the Benares school of Hindu law, as laid down in the Mitakshara, should govern the decision of the case regarding the succession to the estate of the deceased Rajah, on the ground that the Mitakshara is the leading authority of Hindu law throughout Southern India, as well as Benares, and that the Court had no reason to suppose that the doctrines of the Mitakshara had been in any way varied or altered by any text-book recognized as an authority in Coorg, although some variations prevail in various parts of Southern India. The Court were further of opinion that the doctrines of the same school of Hindu law would govern the case, supposing the Rajah died without having made any testamentary disposition of his property. The succession to the property of a Hindu is governed by the laws which regulate his religious rites and ceremonies, and not by the domicile of himself or his family. *J. L. Login and another* v. *Princess Victoria Gouramma of Coorg*, 1 Ind. Jur., O. S., 109.

The Hindu Law for Bengal Proper, that is, the

Dyabhaga, is applicable to Assam. *Deepo Debia* v. *Gobindo Debi*, 26 S. W. R., C. R., 42.

Where a Hindu family came from the Punjab accompanied by their priests at a time when they were not governed by the Bengal law, and it was afterwards alleged that they were now governed by that law, the *onus* of proving the allegation was held to be with those who made it.

The mere adoption of local customs, and the observances of occasional local festivals and ceremonies, would not prove that the law which originally governed a family had been set aside and another law substituted. *Huro Pershad Roy Chowdry* v. *Shibo Shunkuree Chowdrain*, 13 S. W. R., C. R., 47.

35.—Self-acquired Property.

By the law current in the Madras Presidency, an undivided Hindu is entitled during his lifetime to the separate enjoyment of his self-acquired immoveable property; but on his death without male issue such property, unless it has been previously disposed of, devolves on his surviving co-parceners, and his widow is only entitled to maintenance. *Varadiperemál Udaiyan* v. *Ardanari Udaiyan and others*, 1 Mad. Rep., 412.

While the members of a Hindu family enjoy in common undivided property, money expended in its improvement or repair is considered as spent on behalf of all the members alike, and all have the benefit of the outlay when a division takes place.

There is no rule of law precluding one member of an undivided Hindu family, though living together, from entering into an agreement with his co-parceners in respect of the expenditure on family property, and repayment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately. *Multasvami Gaundan* v. *Subbiramanyya Gaundan and others*, 1 Mad. Rep., 309.

According to the Mitakshara law, a father is not incompetent to sell immoveable property acquired by himself.

Landed property acquired by a grandfather, and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons, so as to enable them to dispose of it by gift or sale without the consent and to the prejudice of the grandson. *Muddun Gopal Thakoor* v. *Ram Buksh Pandey*, 6 W. R., 71.

In a suit for confirmation of possession of a share of ancestral property as the self-acquisition of two grandsons of the common ancestor,—*Held* that the plaintiff was bound in the first place to prove his allegation of self-acquisition, and also fully to show his possession. *Gobind Nath Sen and others* v. *Gobind Chunder Sen*, 10 W. R., 393.

Where the heirs of a deceased Hindu, by an arrangement with a third party who claimed to be an heir, distributed the property between them, such property after its distribution retained its character as ancestral property, and shares taken under the arrangement are not to be regarded as the self-acquired property of the heirs who took them. *Ranee Mewa Koonwer* v. *Lalla Oudh Beharee Lall*, 2 Agra Rep., 311.

The burden of proof in cases of alleged separate acquisitions by a member of an undivided family possessed of joint estate is on the person who advances such a claim, though not to the extent of tracing the very fund with which each purchase was made, from the time of its acquisition in a given year to the moment when it was paid to the seller of the property. Though an important criterion in such cases is to consider from what sources the money comes with which a purchase was made, yet there is no rule as to any particular mode of proof. *Bipro Persad Mytee* v. *Kena Dayee*, 5 W. R., 82.

Where other property was proved to have been separately acquired by the members of the family, it was held that there was no more presumption of joint than of separate acquisition. *Badul Singh* v. *Chutterdharee Singh and others*, 9 W. R., 558.

The doctrine of Hindu law that a father takes a share in his son's self-acquired property applies only to cases of families in joint estate, but not where separation in estate has taken place. *Anund Mohun Paul Chowdry* v. *Sreemutty Shamasoonderee*, W. R., 1864, 352.

Under the Mitakshara law, a father can dispose of his self-acquired property, moveable and immoveable, at his own will, and he can, by will, make an unequal distribution of the same amongst his heirs. *Bawa Messer* v. *Rajah Beshen Prokash Naran Singh*, 10 W. R., 287.

There is no difference between the position of a rajah holding an impartible raj and that of an ordinary zemindar in respect of his power to relinquish the property in favour of his next legal heir. Such a relinquishment is not forbidden by the Hindu law.

Where the effect of such a relinquishment is to give the property entirely into the hands of the son, he can during his father's lifetime question and challenge any acts done, and any acts that are alleged to have been done, by his father, and which are denied by the father. *Luchma Narain Singh* v. *Gillon*, 14 S. W. R., C. R., 197.

36.—Stridhun.

The burden of proving property (the subject of a gift of a Hindu widow) to be stridhun rests with those claiming under her. *Sreemutty Chunder Monee Dossee* v. *Joykissen Sircar*, 1 W. R., 107.

A Hindu directed his wife to settle certain property after his decease upon their daughter. She did so by deed of gift (hibbanama), giving it to their daughter, "to be enjoyed by her, her sons, and grandsons, &c., one after another; the other heirs not to have any concern with it." *Held* that the plaintiff as the daughter's daughter had no right to share therein with her brothers, the daughter's sons.

A betrothed daughter is not entitled at her mother's death to share in her stridhun, but the unbetrothed daughter alone inherits with the sons.

When stridhun has once devolved as such upon an heir it does not continue to devolve as stridhun, but afterwards devolves according to the ordinary rules of Hindu law. *Sreenath Gungopadhya* v. *Surbomungola Dabi*, 2 B. L. R., A. C., 144.

By the law of the Western schools, as well as by the law of Bengal, a Hindu widow is restricted from alienating any immoveable property which she has inherited from her husband.

Quære,—Is there any distinction in respect of moveable property?

Semble,—The stridhun of a childless Hindu widow, according to the law of the Western schools, goes to the collateral heirs of her husband, in preference to her own next of kin. *Mussamut Thakoor Deybee* v. *Rai Baluk Ram and others*, 2 Ind. Jur., N. S., 106, and 10 S. W. R., P. C., 3.

A decree in a suit brought for a zemindary by a Hindu widow binds those claiming the zemindary in succession to her.

According to the Mitakshara and the Vivada Chintamonee, *all* property that a woman inherits does not thereby become stridhun, so as after her death to descend to her heirs. Immoveable property which in default of other intervening heirs has been inherited by a mother from her son descends, on the mother's death, not to her heirs, but to the heirs of the son from whom she inherited it. *Punchanund Ojhab* v. *Lalshan Misser*, 3 W. R., 140.

A widow has no power to dispose by will of immoveable property inherited by her from her husband. The word "inherited" used in the Mitakshara, in regard to a woman's stridhun, does not include immoveable property so as to make it her *peculium*, but refers only to personal property over which alone she has absolute dominion. *Goburdhun Nath* v. *Onoop Roy*, 3 W. R., 105.

Sowdaick stridhun created by the husband descends, not to his heirs, but to the heirs of the wife. *Kassee Chunder Roy Chowdhry* v. *Gour Kishore Gooho and others*, 10 W. R., 139.

A son adopted by one wife may succeed to a co-wife's stridhun. *Teencowree Chatterjee* v. *Dinonath Banerjee*, 3 W. R., 49.

According to Hindu law, property acquired by a woman by inheritance is not to be classed as stridhun. *Vengamalathammal* v. *Valaynda Mudali*, 3 Mad. Rep., A. J., 312.

A Hindu wife or widow may alienate her stridhun, whether it be moveable or immoveable, with the exception, perhaps, of lands given to her by her husband. *Doe* v. *Kuppu Pillai*, 1 Mad. Rep., 85.

A gift of money by a son to his mother for her maintenance comes within the definition of stridhun in the Hindu law. *Mussamut Doorga Koonwar* v. *Mussamut Tejoo Koonwar*, 5 W. R., Mis., 53.

A Hindu banker dying intestate left two widows (D. and M.) as his co-heiresses. A document put forward by a third party (H.) as a will of the deceased having been set aside by the Courts, an order was passed in a summary suit, under Act XIX of 1841, by which the property was equally divided between the widows. One of them (D.) subsequently died, leaving a will disposing of her share to her relatives. Steps were taken during D.'s life by the other widow (M.) and by H. to resist the registration of the will; and after D.'s death M. applied for the attachment of D.'s share, and the appointment of a curator. Her application being dismissed, she commenced a regular suit.

Held that M.'s original acquiescence in the title set up by H. did not deprive her of any rights which accrued to her as one of the co-heirs of her husband when that claim was decided to be untenable, nor could her alleged alienation of her share bar her present suit.

Held that according to the law of the Benares school, no part of her husband's estate, whether moveable or immoveable, to which a Hindu widow succeeds by inheritance, forms part of her stridhun or peculiar property; and the text of Katyayana must be taken to determine, first, that her power of disposition over both is limited to certain purposes, and secondly, that on her death both pass to the next heir of her husband. *Bhugwandeen Doobey* v. *Myna Baee*, 9 W. R., P. C., 23.

The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu law. *Rámasâmi Padeiyatchi* v. *Virasâmi Padeiyatchi*, 3 Mad. Rep., A. J., 272.

Held that under the Hindu law, as understood in the Benares school, a widow has an absolute right to dispose of the personalty inherited by her from her husband; that under the Hindu law Government promissory notes ought to be treated as personal property; that jewels, shawls, &c., are of the nature of stridhun; and that in Hindu law books the word "corrody" is used solely with reference to land, and that Government promissory notes cannot be included in the said term "corrody." *Mussamut Doorga Doyee* v. *Mussamut Poorun Doyee*, 1 Ind. Jur., N S., 128.

Land received by a woman from her husband as stridanum cannot be alienated even after the husband's death to the prejudice of the daughters as next heirs without their consent. *Gangadaraiya* v *Parameswaramma*, 5 Mad. Rep., 111.

37.—SUCCESSION.

Under the Mitakshara law, a grandson (his father being dead) shares equally with a son the self-acquired property of the grandfather. *Luchomun Pershad* v. *Debee Pershad*, 1 W. R., 317.

A son's next heir is entitled to succeed after the mother, in preference to a sister's son born more than a year after the death of the mother. *Bama Soonduree Dossee* v. *Anund Moyee Dossee*, 1 W. R., 353.

A deceased ryot's father-in-law and brother-in-law are his legal heirs; and the plaintiffs, the owners of the lands, on which trees stand, are, in default of heirs, entitled to proprietary possession of trees as "lawarisee" which had been planted by the deceased ryot. *Bhairow Deen and Ganesh Deen* v. *Mookta Ram and Chunde Deen*, 1 Agra Rep., A. C., 13.

As regards the rights of sons by different wives to inherit, whether in co-parcenary or as sole heir (except, perhaps, the son of the first wife) the priority in point of time of their mothers' marriages has never been regarded when the wives were equal in caste and rank, and the rule of primogeniture was and is the same in the case of sons of several wives of equal caste and rank as in the case of sons by one. *Sivanaranja Perumal* v. *Muttu Ramlinga*, 3 Mad. Rep., A. J., 75.

(*a*) *By Survivorship.*

A member of a Hindu family living under the Mitakshara law, and having joint family property, died entitled to an undivided share in such property, leaving two widows him surviving. The widows were sued in their representative capacity in

respect of debts incurred by him during his lifetime on his own account, and decrees were obtained against them. In execution, an interest in certain portions of the joint family property, to the extent of the share to which the deceased was entitled in his lifetime, was sold, and the auction-purchasers obtained possession of it.

Held that the share of the deceased did not at his death pass to his widows, but that (there being no male issue) it passed to the remaining members of the family by survivorship, and could not be rendered liable to the debts of the deceased in a suit against his widows.

Quære,—Whether those who take the share by survivorship are liable for the debts of the deceased to the extent of his share. *Sadabert Prasad Saha* v. *Foolbash Koer*, 3 B. L. R., F. B., 31.

Plaintiff, claiming title by succession both as heir by the general Hindu law and according to family custom, sued to recover the Totapalli estate in the Zillah of Rajahmundry. Defendant, the widow of the person last in the enjoyment of the estate, pleaded that the plaintiff was not of the royal stock, but merely a dependent of the family; that he had an elder brother alive, and therefore could not sue, and that, in accordance with her husband's instructions, as contained in his will, she was about to adopt a son. She also alleged that plaintiff should have become a party to an appeal pending before the Privy Council from the decree in suit No. 3 of 1860, under which the defendant's husband had recovered possession of the estate from the widow of the prior possessor, Jaggopu Dora. The lower Court found that the plaintiff was an undivided member of the family in which the right to the estate was vested, and a dayadi of the defendant's late husband in the 12th degree through their common ancestor, Bapam Dora, and decreed in plaintiff's favour. Pending this appeal, the Privy Council delivered judgment in the appeal from the decree in suit No. 3 of 1860, to which plaintiff and defendant had become parties. *Held*, in accordance with the judgment of the Privy Council, that the estate was acquired not by Jaggopu Dora, but by his father, Bapum Dora, the common ancestor, through whom plaintiff traced his kinship, and has ever since enjoyed as ancestral property derived from the said Bapum Dora. That accordingly the question of succession raised in this suit, similarly to that in the appeal before the Privy Council, was determinable by the law regulating the devolution of indivisible ancestral property, which had vested in the last possessor.

That the objection to the plaintiff's title as heir by the general law was thus reduced to the questions: Whether his alleged kinship to the last possessor was proved, and if so, whether, according to the ordinary course of legal succession to such property, he, or the defendant, as the widow of the last possessor, was heir to the estate. That upon the first question plaintiff had proved his kinship to the last possessor, and upon the second that plaintiff was heir to the estate, in preference to the defendant, the widow of the last possessor.

On the question of the extent to which property of the nature of an impartible raj is excepted from the general law by a special rule of succession entitling the eldest of the next of kin to take solely,—*Held* that such a usage does not interfere with the general rules of succession further than to vest the possession and enjoyment of the *corpus* of the whole estate in a single member of the family, subject to the legal incidents attached to it as the heritage of an undivided family. The unity of the family right to the heritage is not dissevered any more than by the succession of co-parceners to partible property; but the mode of its beneficial enjoyment is different. Instead of several members of the family holding the property in common, one takes it in its entirety, and the common law rights of the others, who would be co-parceners of partible property, are reduced to rights of survivorship to the whole, dependent upon the same contingency as the rights of survivorship of co-parceners *inter se* to the undivided share of each, and to a provision for maintenance in lieu of co-parcenary shares.

The sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, in the way pointed out, are entitled to unity of possession and community of interest, according to the law of partition, are co-heirs, irrespective of their degrees of agnate relationship to each other, and that on the death of one of them leaving a widow and no near sapindas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor, to the exclusion of the widow. But when her husband was the last survivor, the widow's position as heir, relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self and separately acquired property. *Sri Rajah Agenumula Gavuridivamma Garu* v. *Sri Rajah Agenumula Rumandora Garu*, 6 Mad. Rep., 93.

(*b*) *Lineal Succession.*

A father-in-law, although of Reddi caste, cannot disinherit his heir in favour of his son-in-law. *Tainmani Reddi* v. *Perammal Reddi and others*, 1 Mad. Rep., A. C., 51.

A grandson born after the death of his maternal uncle, but during the lifetime of his maternal grandmother, may inherit from her the property which she inherited from the uncle (her son). *Radha Gobind Doss* v. *Sheikh Meajan*, 1 W. R. 124.

Where property is acquired while a Hindu family is joint, according to the Bengal law, the inheritance goes *per capita*, and not *per stirpes*. *Ramgutty Doss and Poorno Chunder Doss* v. *Nundo Coomar Doss*, 2 W. R., 11.

By Hindu law the eldest male heir of a deceased trustee succeeds as trustee to him from whom he inherits. *Purappavanalingam Chetti* v. *Nulnulla Sevanchetti and others*, 1 Mad. Rep., 415.

Where there is a plurality of wives equal in caste, the sons of each wife (not being the first wife) take precedence according to the dates of their respective births, and without reference to the dates of the marriages of their respective mothers.

Succession in consequence of primogeniture amongst Hindus in India seems to be the rule only in the case of large zemindars and estates which partake of the nature of principalities.

In estates in which the ordinary Hindu law of inheritance administered in Western India applies, it is not competent to a father to dispose of his ancestral property to one son to the prejudice of

the others. *Bhujangerav bin Dovalatrav Ghorpade* v. *Malojiravbin Davalatráv Ghorpade*, 5 B. R., A. C., 161.

The right of an after-born son to share as a co-parcener divided, properly depends upon his mother being pregnant with him at the time of partition. *Yekayamian* v. *Aginswarian*, 4 Mad. Rep., 307.

The illegitimate son of a sudra being the offspring of an incestuous intercourse (intercourse between a father-in-law and his daughter-in law), is not entitled to inherit or share in the family property according to Hindu law.

Semble,—To entitle the illegitimate sons of a sudra by a sudra woman to inherit a share in the family property, the intercourse between the parents must have been a continuous one, and the woman must have been an unmarried woman. Therefore the illegitimate son of a sudra by a sudra woman living with him in adultery is not entitled to a share in or to inherit the family property. *Datti Parisi Nayuda* v. *Dutti Bangaree Nayuda*, 4 Mad. Rep., 204.

(*c*) *Of Brothers and Brothers' Sons.*

It is an ordinary rule of Hindu law with respect to succession that a step-brother cannot inherit in preference to a uterine brother. *Ishen Chunder Chowdhry* v. *Bhyrub Chunder Chowdhry*, 5 W. R., 21.

In cases of property undivided and immoveable uterine and half-brothers succeed equally. When no brothers are living the nephews of the whole blood have a preferential right to succeed over those of the half-blood. *Kylash Chunder Sircar* v. *Gooroo Churn Sircar*, 3 W. R., 43.

Uterine and half-brothers succeed equally to the estate of a deceased brother. *Tiluck Chunder Roy* v. *Ram Luckhee Dossee*, 2 W. R., 41.

According to the Mitakshara law, a step-brother inherits after the widows if he survives them, otherwise a uterine brother's son succeeds. *Burham Dev Roy* v. *Punchoo Roy*, 2 W. R., 123.

According to Hindu law, a brother's daughter's son is no heir. But considering the unsettled state of the law on this point till recently the plaintiff was declared entitled to a decree against a party holding under no title whatever, on proof of the plaintiff's father (a brother's daughter's son) and the plaintiff having *de facto* succeeded and held for a long period. *Choorah Monee Bose* v. *Prosono Coomar Mitter*, 1 W. R., 43.

In default of brothers, brothers' sons succeed, taking according to numbers, and not by representation as grandsons; but brothers' sons are totally excluded by the existence of brothers. *Brojokishoree Dossee* v. *Sree Nath Bose*, 9 W. R., 463.

A whole or uterine brother has, under Hindu law, a better claim to succession than a half-brother. *Beerchunder Joobraj* v. *Neelkissen Thakoor*, 1 W. R., 177.

On the death of a ryot having right of occupancy, a nephew may succeed to his holding by right of inheritance if he were residing with him in the village, and not elsewhere. A zemindar cannot lay claim to the crops on the ground at the ryot's death, even supposing that the occupancy right lapsed in his favour, as it formed a part of the property belonging to the deceased, and passes to his legal representatives. *Doorga Pershad* v. *Doochur Pershad and others*, 3 Agra Rep., 188.

On the death of a son adopted by a Hindu as the son of one of his two wives, the property descends (the adoptive mother having died before the son) not to the other wife, but to the next legal heir. *Kasheeshuree Debia* v. *Greesh Chunder Lahoree*, W. R., 1864, 71.

Where two brothers, members of the same family, succeeded to equal shares in the paternal estates, the mere fact of one brother being absent, and the home-staying brother being in possession, does not deprive the former of his rights of inheritance, unless it is clearly shown that the possession by the latter was adverse to the absent brother. *Mussamut Woozeeram* v. *Noorul Jan*, 9 W. R., 98.

Whether a nephew takes his uncle's share by mere survivorship or by inheritance, if he takes on the ground of their having been joint in estate he "succeeds to," and "becomes entitled to the effects of," the deceased within the meaning of Act XXVII of 1860. *Mussamut Jusoda Koonwar* v. *Gouree Byonath Sohae Singh*, 6 W. R., 139.

This case upholds a former decision relating to the succession, according to the Hindu law, of nephews of the whole and half-blood. *Gooroo Churn Sircar* v. *Koylash Chunder Sircar*, 6 W. R., 93.

Under the Mitakshara a nephew succeeds, not as the heir of his father, but as the direct heir of his uncle. *Brojo Mohun Thakoor* v. *Gouree Pershad Chowdry*, 15 S. W. R., C. R., 70.

S. died leaving three sons and ancestral property, of which K., one of S.'s sons, took a third share. On the death of another of S.'s sons, without issue, K.'s original share was increased by his deceased brother's share,—*Held* that according to the Mitakshara law, one of K.'s sons was entitled, during K.'s lifetime, to bring a suit to assert his right in the share of K., inherited from his deceased brother, such share being ancestral property. *Gungoo Mull* v. *Bunseedhur*, 1, 6 N. W. R., 79.

(*d*) *Of Mother.*

By Hindu law the mother is a possible heir under certain circumstances. *Sreemutty Tara Soondurée* v. *Sreemutty Rash Moonjuree*, 12 W. R., 78.

According to Hindu law, a mother inheriting from her son has not an absolute property in the estate, but merely a life-interest, without power of alienation. *P. Pachi Raza* v. *Venkata Nadu*, 2 Mad. Rep., 402.

Held that in a separated family a Hindu mother succeeding to her son's immoveable property takes in it the same estate as a Hindu widow takes in the immoveable property of her husband dying without male issue.

A Hindu died leaving by his first wife, who predeceased him, three sons, from whom he had separated, his second wife and a minor son by the latter. The minor son died in infancy. *Held* that the mother succeeded to the immoveable property of her minor son, but took only a life-interest in it. *Narsáppá Linguppa et al.*, v. *Sakharum Krishna*, 6 Bom. Rep., A. C. J., 215.

Where a partition of joint family property is made after the death of the sons the grandmother is not

entitled to one-fifth share. *Rajee Monee Dassee* v. *Puddum Mookhee Dassee*, 13 S. W. R., C. R., 66.

(*e*) *Of Daughters and Daughters' Sons.*

Married daughters are not excluded from succession by either the Dyabhaga or Mitakshara. *Binode Koomaree Debee* v. *Purdan Gopal Sahee*, 2 W. R., 176.

According to the Mitakshara law, a maiden daughter does not succeed to her father in preference to her paternal uncle. *Mussamut Toolsee* v. *Mohadeb Raot and others*, 6 W. R., 197.

The sons of a daughter cannot succeed to the estate of their grandfather till after the death of their mother. They are entitled to sue for their rights within twelve years of the death of their mother, and to require the period of their minority to be taken into consideration according to Section 11, Act XIV of 1859. *Kummul Sha Bennick* v. *Ramjee Sha Bennick*, 2 W. R., 277.

According to the Hindu law current in Bengal, in default of son, grandson, great-grandson, or widow, the unmarried daughter succeeds in preference to married daughters; and if the unmarried daughters should subsequently marry and die leaving male issue, her son will succeed to the exclusion of the married sisters and their male issue. *Radha Kishen Manjee* v. *Rajah Ram Mundul and others*, 6 W. R., 147.

According to Hindu law, a person cannot succeed as the adopted son of a daughter who has brothers alive, and who cannot be an appointed daughter if she had brothers when she married. Nor can he succeed as claiming under a bought son. *Zachereddy Chimna Bassavapa* v. *Zachereddy Gowdapa*, 5 W. R., P. C., 114.

Held that, according to Hindu law current at Benares, the daughters' sons inherit in default of qualified daughters; and that if there be sons of more than one daughter they take *per capita*, and not *per stirpes*. The widow was incompetent to modify the terms of the original transaction injuriously to the reversioners.

The plaintiff is equitably entitled to recover the profits of the share adjudged to him from which he has been unjustly excluded in consequence of his grandmother's illegal proceedings. *Ram Surwath Pandey and others* v. *Basdeo Singh*, 2 Agra Rep., A. C., 168.

Under the Hindu law, where property is proved to be a separate and divided property, the daughters and daughter's son are the legal heirs entitled to it, and not more remote relations to the deceased. *Burriyar Singh and others* v. *Mussamut Hunsee and others*, 2 Agra Rep., A. C., 166.

A distant relation (such as those who are called distant sapindas and samanodakas) of a deceased ryot is not entitled to succeed by inheritance to the cultivation of a hereditary ryot.

Held, with reference to the above principle, that the son of the daughter is too remote to succeed to the tenure of cultivating occupancy held by his maternal grandfather. *Ram Surun Sokool and others* v. *Sheorutun Kovrinee and others*, 2 Agra Rep., 166.

According to the Hindu law of descent, the son of a son's son is preferred, in the order of succession, before a daughter's son. *Goorpogobind Chowdhry* v. *Hurrumadhub Roy*, Marsh., 398.

A Hindu, an inhabitant of Bombay, entitled to separate moveable and immoveable property, dies without male issue, leaving a widow, four daughters, and brother, and the male issue of other deceased brothers. The widow is entitled to the moveable property absolutely, and to the immoveable property for life. Subject to the widow's interest the immoveable property descends to the daughters absolutely, in preference to the brother and the issue of the deceased brothers. *Pranjeevandas Toolsedas* v. *Dewcooverbaee*, 1 Bom. Rep., 130.

As between two married daughters, the circumstance of having a son is no qualification, on this side of India, giving the married daughter having a son a prior claim to the inheritance of her parent's property over the married daughter not having a son; such priority of claim depending on the several daughters being respectively endowed (sadhar) or unendowed (nidhar), the unendowed daughter having the preference.

Semble, — A daughter who becomes incurably blind in her infancy has no right to inheritance, but only to maintenance. *Bakubai* v. *Mauchhabai*, 2 Bom. Rep., 5.

A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue. Daughters can only succeed on failure of widows.

Where A. had two wives, B. and C., and B. predeceased A., leaving three daughters, and C. survived A., and was childless,—*Held* that C. succeeded to A.'s property in preference to the three daughters. *Peraumcal* v. *Venkattaeyaen*, 1 Mad. Rep., A. C., 223.

According to the law which prevails in Madras, the sons of a granddaughter are excluded from the inheritance. The plaintiff brought a suit for a moiety of the estate of his deceased second cousin, who left no issue or nearer kindred, claiming through his maternal great-grandfather. *Held* that the plaintiff was not entitled to inherit the estate of the deceased. *K. Kissen Lala* v. *Javallah Pershad Lala*, 3 Mad. Rep., O. A. J., 346.

Held that a daughter can claim a declaration of her rights in paternal estates during the lifetime of her mother. *Jeewan Ram* v. *Mussamut Roonta*, 1 Agra Rep., A. C., 240.

According to the Hindu law, an uncle's son succeeds in preference to a childless widowed daughter. *Taramonee Gooptea* v. *Mussamut Lukheemonee Dassea*, Marsh., 29.

Under the Mitakshara law a daughter can inherit a separated share; but where the property is held jointly the widow or daughter cannot succeed, but are only entitled to maintenance. *Koolodah Debia* v. *Rajmotee Debia*, 12 W. R., 456.

On this side of India having male issue does not determine the right to inherit. Comparative poverty is the only criterion for settling the claims of daughters to their father's estate. A nirdhun (unendowed) daughter has preference over a sadhun (endowed) daughter. *Bakubai* v. *Mancharam* (2 Bom., H. C., Rep., 5) followed. *Poli* v. *Narotam Bapu et al.*, 6 Bom. Rep., A. C. J., 183.

Under the Hindu law, the daughter of a deceased member of a family, to whom a separate property

was awarded for maintenance, is a superior heir to a brother's grandson.

There seems no authority for the proposition that, on the death of junior members of a family to whom certain properties were awarded for maintenance, not only the property so awarded, but the profits made upon it by the donee, revert to the donor. *Chowdry Hureehur Pershad Doss Puhraj* v. *Gocoolanund Dass Mohuputter*, 17 S. W. R., C. R., 129.

According to Hindu law, when the sons of daughters succeed to the property of their grandfather they take by direct right of succession, as being his nearest heirs, like the sapindas of a man succeeding to his property on the death of his widow, but *per capita*. The rule of succession exists as laid down in the Dáya Bhága, *à fortiori* in the case of the daughter and grandson, whose pretensions are inferior to the wife's; and it rests upon the great principle of the entire Hindu law of succession to property, that nearness in regard to the attributed capacity and sacred duty to confer spiritual benefits by the offering of funeral oblations, either immediately or mediately, confers the right to inherit temporal wealth.

Unmarried or married daughters, on whom as a class paternal property devolves, take a joint life-interest with rights of survivorship. The estate of inheritance passes from their father to the sons of all the daughters as his nearest heirs; and on the death of the last surviving daughters the sons take the property equally. *Srimutu Muttu Vizia Rugunada Rani Kolandapuri Nachiar* alias *Kuttama Nachiar* v. *Dorasinga Tewar* alias *Gauri Valaba Tewar*, 6 Mad. Rep., 310.

According to Hindu law, a deceased daughter's son has no right of inheritance to the estate of his maternal grandfather during the life of any of his mother's sisters. *Musst. Ramdan* v. *Beharee Lall*, 1 N. W. R., Par. 7, p. 114.

By Hindu law, on the death of one of two sisters to whom the joint hereditary office of dancing girls attached to a pagoda had passed on the death of their mother, the share of the deceased sister in the office devolves on her daughter, and not on the surviving sister by survivorship. *Kamakshi* v. *Nagarathuam*, 5 Mad. Rep., 161.

(*f*) *Of Sisters and Sisters' Sons.*

If a sister's son is alive at the death of his uncle's last preceding female heir who succeeded to the property he takes the succession. *Sata Ram Gossain* v. *Fakeer Chaund Chuckerbutty*, 15 S. W. R., C. R., 433.

Held by the majority (Shumbhoo Nath Pundit, J., differing) that "grandsons in the female line" do not include sisters' sons. *Mussamut Brojo Kissore Dossee* v. *Sreenath Bose and others*, 8 W. R., 241.

According to Hindu law, neither a sister nor a sister's daughter can inherit. *Kalee Pershad Surma* v. *Bhoirabee Dabee*, 2 W. R., 180; *and Anund Chunder Mookerjee* v. *Teetooram Chatterjea*, 5 W. R., 215; *and Ramdyal Deb* v. *Mussamut Magnee*, 1 W. R., 227.

According to the Hindu law in force in the Madras Presidency, a sister's son does not inherit. *Doe* v. *Kuppu Pillai*, 1 Mad. Rep., A. C., 85.

The right of succession accrues to nephews (sisters' sons) whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow; and the nephews can sue to question the validity of alienations made by the widow without legal necessity. *Gobind Monee Dossee* v. *Sham Lall Bysack; Kali Coomar Chowdhry* v. *Ramdass Shaha*, W. R., 1864, 153.

A Hindu, an inhabitant of Bombay, entitled to separately acquired moveable and immoveable property, died, leaving a widow, an infant son, three daughters, and a brother. The son died in infancy, and without having married.

Held, on demurrer, that the widow as mother of the son inherits his property, as to the moveables absolutely, as to the immoveables for life, with remainder to the sisters of the son as his heirs absolutely; and that as against the defendants (the widow and daughters) the plaintiffs (as sons of a separated brother) have by Hindu law no claim as heirs to any part of the property.

The word "parents" in the order of succession, as laid down in the Mitakshara, includes father and mother, and in like manner "brethren" includes sisters as well as brothers.

Held on appeal that, in a separated family, sisters take as heirs to an unmarried and intestate brother in preference to relations of the father. Marriage does not exclude them from the inheritance. *Vinayek Anundra and others* v. *Luxmeebaee*, 1 Bom. Rep., 117, and 3 W. R., P. C., 41.

According to Hindu law, one brother is the manager and trustee for another brother's widow, and his possession is not adverse to her.

A sister's son is not an heir according to law. *Bheem Ram Chuckerbutty* v. *Huree Kishore Roy*, 1 W. R., 359.

A sister's son, except in Bengal, is no heir according to the Mitakshara or the Mithila school. *Jowahir Rahoot* v. *Mussamut Kailassoo*, 1 W. R., 74.

A sister's son, in order to have a preferential title over his paternal uncle, must have been born or conceived when the succession opened out.

It is contrary to Hindu law that a mother should be a trustee for a son who may hereafter be conceived. *Rash Beharee Roy* v. *Nimaye Churn*, W. R., 1864, 223.

A sister cannot succeed her brother as heir by Hindu law. *Srimati Rukkini Dasi* v. *Kadarnath Ghose*, 5 B. L. R., Ap., 87.

According to the Hindu law of succession in force in the Madras Presidency, a sister's son is in the line of heirs.

Semble,—He is a Bandhu. *Chelikani Tirupati Rujaninguru* v. *Raja Suraneni Venkata Gopala Zemindar*, 6 Mad. Rep., 278.

A half-sister by the mother is entitled to succeed only when the deceased has left no children. *Mothooranauth Mosoomdar* v. *Ensuff Ali Khan*, 14 S. W. R., C. R., 356.

(*g*) *Of Unborn Child.*

An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son). The succession must vest in the heirs existing at the time of the death of the person whose inheritance

descends. *Koylasnath Doss* v. *Gyamonee Dossee*, W. R., 1864, 314.

Proprietary right is created by birth, and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance remains in abeyance until the result of the conception is ascertained. If the child be still-born the estate goes, not to his heir, but to the heir of the last owner.

A son or grandson's right of prohibition to his unseparated father making a gift, donation, or sale of effects inherited from his grandfather, cannot be exercised in favour of an unborn son. *Mussamut Goura Chowdhrain* v. *Chummun Chowdhry*, W. R., 1864, 340.

(*h*) *Of Distant Heirs.*

Amongst sapindas the nearest sapinda excludes those more remote. *Khetter Gopaul Chatterjee* v. *Poornoo Chunder Chatterjee*, 15 S. W. R., C. R., 483.

Under the Mitakshara system of Hindu law, in default of all heirs a brother's grandson can succeed. *Kureem Chand Gurain* v. *Oodung Gurain*, 6 W. R., 158.

According to Hindu law, the grandson of a brother of the grandfather of the deceased is heir to his property in default of nearer heirs. *Braja Kishore Mitter Mozumdar* v. *Radha Gobind Dutt*, 3 B. L. R., A. C., 435.

In the absence of nearer relatives a man may be heir to his mother's brother as regards property subject to the Mitakshara. *Amarita Kumari Debi* v. *Lakhinarayan Chuckerbutty*, 2 B. L. R., F. B., 28.

A plaintiff who sues by right of inheritance for the recovery of lands in the possession, not illegal or forcible, of defendants, to the rents whereof it was held in a previous suit, in which he intervened, that he had not been in the actual enjoyment, is bound to prove as well his title to the estate, as his lineal descent from, or relation in such degree of contiguity as would entitle him to part succession to, the original acquirer thereof. A descendant of a brother of the original acquirer, and a descendant not less than six generations, are not entitled under Hindu law to a share of the property. *Chytun Mytee and others* v. *Lukeechurn Patnaik*, 8 W. R., 258.

According to Hindu law, a sister's daughter cannot become an "appointed daughter" nor her son a "putrika putra," nor is the adoption of a "putrika putra" valid in the present day.

"Samanodakas" (or persons allied by a common oblation of water) belonging to the "gotra" (or race, or general family) of a deceased person are, according to Hindu law, sufficiently cognate to succeed to property in default of parties nearer of kin. *Nursing Narain* v. *Bhuttun Lall*, W. R., 1864, 194.

The great-grandson of a deceased proprietor's great-grandfather is a sapinda of such proprietor, and equally with him entitled to offer undivided oblations to their common ancestor (the great-grandfather), and as such inherits the estate. *Brojo Kishore Mitter* v. *Radhagobind Dutt*, 12 W. R., 339.

In certain cases a priest may, according to Hindu law, be the heir of a deceased disciple. *Jugdanund Gossamee* v. *Kessub Nund Gossamee*, W. R., 1864, 146.

According to Hindu law a chela is the heir of a deceased mohunt, and as such entitled to a certificate to enable him to collect his debts. *Mohunt Sheoprokash Doss* v. *Mohunt Joyram Doss*, 5 W. R., Mis., 57.

Under the Mitakshara law, if there be no kindred to the same general family, and connected by funeral oblations, the successions devolve on kindred connected by libations of water. Gentiles must be exhausted before the cognates can succeed. *Mussamut Dig Dye and others* v. *Bhutum Lall and others*, 11 W. R., 500.

The enumeration of bundhoos or cognates who succeed, given in Section 6, Chapter 2 of the Mitakshara, is an exhaustive one, and therefore those bundhoos only succeed who are enumerated therein. A maternal uncle or a father's maternal uncle cannot inherit, as they are not among the persons enumerated. *Government* v. *Greedharee Lall Roy*, 4 W. R., 13.

The enumeration of bandhus, or cognate kindred, given in Mitakshara II., Section 6, Art. I., is not exhaustive. The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown.

In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the party claiming as heirs, the *onus* is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. *Giridhari Lall Roy* v. *The Government of Bengal*, 1 B. L. R., P. C., 44; S. C., 10 W. R., P. C., 31.

According to the Hindu law obtaining in Western India, the wives of all gotraja sapindas and samonadakas have rights of inheritance co-extensive with those of their husbands immediately after whom they succeed. *Lakshmibai* v. *Jayrum Hari et al.*, 6 Bom. Rep., A. C. J., 152.

A father's brother's daughter's son is entitled to be recognised as an heir according to the Hindu law current in the Bengal school. *Guru Gobind Shaha Mandal* v. *Anand Lal Ghose Majamdar*, 5 B. L. R., 15; 13 S. W. R., F. B., 49.

The great-grandson of the great-great-great-grandfather of the deceased is, according to the Mitakshara, a nearer heir to the deceased than his father's sister's son. *Thakur Tibnath Singh* v. *Court of Wards*, 5 B. L. R., 442; 14 S. W. R., C. R., 117.

According to the Mitakshara the great-great-great-grandson of the great-great-great-grandfather of the deceased is entitled to succession as one of the Gentiles. *Byha Ram Singh* v. *Agar Singh*, 5 B. L. R., 293; 14 S. W. R., P. C., 1.

Under the Mitakshara law a brother's grandson may be an heir. *Mussamut Oorhya Kooer* v. *Rujoo Nye Sookool*, 14 S. W. R., C. R., 208.

The words, "the heirs of the preceding kurnum," in Section 7 of Regulation XXIX of 1802, means his next of kin according to the order of succession of several grades of legal heirs, and not heirs in the order of succession to undivided divisible ancestral property.

A daughter's son is one of the nearer sapindas, and in the line of heirs before a brother's son according to Hindu law.

Semble,—An illegitimate son of a sudra by his

concubine is his heir in preference to a brother's son. *Krishnamma* v. *Papa*, 4 Mad. Rep., 234.

(*j*) *Miscellaneous.*

The succession to a zemindary which is admitted to be in the nature of a principality, impartible and capable of enjoyment by only one member of the family at a time, is governed (in the absence of a special custom of descent) by the general Hindu law prevalent in the part of India in which the zemindary is situated, with such qualifications only as flow from the impartible character of the subject.

The succession to such a zemindary may be governed by a particular or customary canon of descent. *Kattamar Nauchear* v. *The Rajah of Shivagungah*, 2 W. R., P. C., 31.

On the death of a Brahmin (whether sacerdotal or not) without heirs, the sovereign power in British India is entitled to take his estate by escheat, subject however to the trusts and charges previously affecting the estate. *The Collector of Masulipatam* v. *Cavaly Vencata Narainapah*, 2 W. R., P. C., 59.

A person died childless, leaving two widows, and gave authority (verbal) to each of the widows to adopt a son. *Held* that he could not confer an authority on the widows which he himself could not have legally exercised, had he in his lifetime intended to adopt. Found on evidence that the proof adduced by plaintiff to prove the authority was insufficient, and that the plaintiff who claimed to have derived his title from his father, the adopted son of the deceased, could not under the circumstances maintain the suit to succeed to the property left by the other adopted son of the deceased describing him as his paternal uncle. *Held*, further, that the property being of the nature of an endowment, a claim to succeed under ordinary Hindu law of inheritance was not maintainable. Plaintiff might have sued to get the management of the property in preference to the defendant, a widow, by the custom or practice of the sect. *Goosaeen Sree Choundawalee Bahoojee* v. *Girdhareejee*, 3 Agra Rep., 226.

Partibility is the general rule of Hindu inheritance; the succession of one heir, as in the case of a raj, the exception. *The East India Company* v. *Kamachee Boye Sahiba*, 4 W. R., P. C., 42.

No words of inheritance are requisite to continue to his heirs a Hindu's interest in a freehold estate. *Anundmohey Dossee* v. *John Doe*, 4 W. R., P. C., 51.

According to the Hindu law, a rajah has full right to nominate a joobraj or heir-apparent, and a whole or uterine brother has a better title than a half-brother. *Beerchunder Joobraj* v. *Neelkissen Thakoor*, 1 W. R., 177.

A Hindu subject to the Mitakshara dying possessed of a share in joint family property, and also of separately acquired property, the two will not necessarily devolve on the same heir; but they may either descend to different persons, or, if descending to the same persons, may descend in a different way and with different consequences. *Mussamut Pitum Koonwar*, alias *Munar Bibee* v. *Joy Kishen Dass*, 6 W. R., 101.

Byragees are not excluded from inheritance. *Treluck Chunder* v. *Shama Churn Prokash*, 1 W. R., 209.

A daughter-in-law is not the heiress of her mother-in-law according to Hindu law. *Bandam Settah* v. *Bandam Mlaho Lukshy*, 4 Mad. Rep., 180.

There is no one rule of Hindu law regulating the descent of all Hindu rajahs and their estates; but in every case in which a departure from the ordinary law of succession and inheritance is relied on, a particular custom or koolacha must be proved. *The Court of Wards on behalf of Raj Coomar Sheoraj Nundum Singh* v. *Raj Coomar Deo Nundun Singh*, 16 S. W. R., C. R., 143.

If a Hindu wife dies childless all property given to her by her father at the marriage ("before the nuptial fire") goes to the husband. *Bistoo Pershad Burrant* v. *Radha Soonder Nath*, 16 S. W. R., C. R., 115.

According to the Hindu law as current in Bengal, the husband is entitled to succeed to the property, which a woman receives from her father either before or after her marriage, in preference to her brother or mother. *Juddoonunth Sircar* v. *Busunt Coomer Roy Chowdry*, 16 S. W. R., C. R., 105.

Where there are rival claimants, the right of succession to a raj must be determined by the custom as known to the public functionaries of the district, as recognized by the family of the late rajah, and established by precedents.

Where an impartibility of a raj has its origin in the raj itself, the nature of the raj would not exclude from inheritance any persons of either sex, if without physical or intellectual infirmity. *Maharanee Heerananth Kooera* v. *Burm Narain Singh*, 15 S. W. R., C. R., 375.

The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate. The Shivagunga case explained. *Stree Rajah Yanumalu Venkujamah* v. *Stree Rajah Yanumalu Boochi Venkudbra*, 13 S. W. R., P. C., 21.

(*k*) *Of Widows*—(See 39, WIDOW).

A widow under the Hindu law is entitled to succeed to her husband's property, and to have her name registered as proprietor. *Dehoo Debia* v. *Gobind Deb*, 16 S. W. R., C. R., 42.

A Hindu widow who has inherited immoveable property from her husband, though possessed of a limited power of alienating portions of such property for necessary purposes or spiritual uses, cannot dispose by a gift in dharam or krishnaipau of the whole of such immoveable property without the consent of the heirs of her husband.

A sister on this side of India, taking as heir to her brother, takes his property as stridhun with an absolute power of disposition over it; and such property upon her death passes in the first instance to her daughters. The sons of such sister have not a vested interest in it as co-parceners with their mother. Property acquired by a married woman by inheritance, with the exception of property inherited by a widow from her husband, classes as

stridhun, and descends accordingly. *Bhaskar Trimbak Acharyee* v. *Mahadeb Ranaji et al.*, 6 Bom. Rep., O. C. J., 1.

A widow is entitled by law to a life-estate in her husband's property. *Ghirdharee Singh* v. *Koolbahul Singh and others*, 6 W. R., P. C., 1.

A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue.

Where A. had two wives, B. and C., and B. pre-deceased A., leaving three daughters, and C. survived A. and was childless,—*Held* that C. succeeded to A.'s property in preference to the three daughters. *Perammal* v. *Venkatommal*, 1 Mad. Rep., 223.

A Hindu widow's right to succeed to her husband's ancestral undivided property is only as his immediate heir.

A widow can only inherit family property where there has been a partition among the co-parceners of whom her husband was one, or where the whole property has vested in her husband by the death of all the other co-parceners. *Peddamatee Virashami* v. *Appa Ram and others*, 2 Mad. Rep., 117.

A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property inherited by her for her life. She takes as heir a proprietary estate in the land absolute for some purposes, although in some respects subject to special qualifications, and her disposition of the property is good for her life.

The proposition that a widow has no estate in her husband's immoveable property, but only the personal enjoyment of the usufruct, is untenable. *Kamavadhani Venkata Subhaya* v. *Joysa Nara-singappa*, 3 Mad. Rep., A. J., 116.

One Venkava Gandu died, leaving no son but two widows, Krishnamma and Rindamma. A dispute having arisen Krishnamma brought a suit against Rindamma and obtained a decree dividing equally between them the lands of the deceased husband. Krishnamma took possession of her moiety and held the same till her death, when Rindamma took possession.

In a suit by the sons of the deceased daughter of Krishnamma against Rindamma for the property held by Krishnamma,—*Held* that they were not entitled in preference to the surviving widow. *Rindamma* v. *Venkataramappa*, 3 Mad. Rep., A. J., 268.

According to Hindu law current in Southern India, two or more lawfully married wives (patnis) take a joint estate for life in their husband's property with rights of survivorship and equal beneficial enjoyment.

A claim by one of several widows to an absolute partition of the joint estate, giving to each a share in severalty, is not maintainable.

The position of senior widow gives her, as in the case of other co-parceners, a preferable claim to the care and management of the joint property.

A case may be made out of entitling one of several widows to the relief of separate possession of a portion of the inheritance. Such relief ought to be granted when from the nature or situation of the property and the conduct of co-widows or co-widow, it appears to be the only proper and effectual mode of securing the enjoyment of her distinct right to an equal share of the benefits of the estate.

Upon the death of the late Rajah of Tanjore, the Government of Madras in the exercise of their sovereign power took possession of the estate and private property of the Rajah. Subsequently the Government made over to the widows and daughter of the Rajah the landed and personal property, having previously obtained the opinion of the Hindu law officers of the Sudder Court on a question put with the view of ascertaining the Hindu law as applicable to the case. The order of Government contained the following direction: "The estate will therefore be made over to the senior widow, who will have the management and control of the property, and it will be her duty to provide in a suitable manner for the participative enjoyment of the estate in question by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Rajah, or failing her the next heirs of the late Rajah, if any, will inherit the property. In a suit by two of the widows against the senior widow, and the 14th defendant, the alleged adopted son of the late Rajah, for a division of the moveable property which had been made over to the senior widow by the Government of Madras, and for the cancellation of the adoption of the fourteenth defendant,—*Held* that the claim of the fourteenth defendant by right of adoption being as lineal heir to the Rajah in preference to the widows, would not be maintainable, assuming the adoption to have been valid. To that claim the absolute ownership of the Government in the interval from the death of the Rajah until the act of estate by which the transfer was made to the widows and daughters is fatal. *H. H. M. Jijailamba Baye Shaiba* v. *H. H. M. Kámakshi Bayi Shaiba*, 3 Mad. Rep., A. J., 424.

A. by his will appointed a guardian to his son and widow, and directed that the son should not take the management of the property before his twentieth year, and that in the event of his death the guardian should see that the widow adopted a son without delay. The guardian having died or declined to act,—*Held* that on the death of her son the widow was entitled to succeed as his heir, the provision to adopt not being imperative. *Dino Moyee Chowdhrain* v. *A. D. C. Rehling*, 2 W. R., Mis., 25.

Where property is acquired by the members of a joint Hindu family from funds derived from the ancestral property and held by them in joint possession, on the death of one of them his share does not devolve on his widow. *Mussamut Tacknoo* v. *Mussamut Moonia and others*, 7 W. R., 440.

In the case of property, of which part is the common property of a joint Hindu family, and part the separate acquisition of a deceased brother, his widow, in default of male issue, succeeds to his separate estate. *Kateama Nauchear* v. *The Rajah of Shivagungah*, 2 W. R., P. C., 31.

Under the Hindu law a widow, though she takes as heir, takes a special and qualified estate. If there be collateral heirs of her husband she cannot of her own will alienate the property, except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the

spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necessity. The restrictions on her power of alienation are inseparable from her estate, and independent of the existence of heirs capable of taking on her death. If for want of heirs the property, so far as it has not been lawfully disposed of by her, passes to the Crown, the Crown has the same power of protecting its interest as an heir by impeaching any injurious alienation by the widow. The *onus* is on those who claim under an alienation from a Hindu widow to show that the transaction was within her limited powers. *The Collector of Masulipatam* v. *Cavaly Vencata Narainapah*, 2 W. R., P. C., 61.

A childless widow, under the Mitakshara law, takes only a limited interest in her husband's estate, similar to that taken by a childless widow according to the law of the Bengal school. *Panch Chowdhry Maktoon and others* v. *Kalee Churn and others*, 9 W. R., 490.

Where a Hindu dies intestate, leaving no issue and several widows, the widows succeed equally, and are entitled to equal shares in his estate, and the ordinary course would be to grant them a joint administration. Infidelity in a wife, or incontinence in a widow, in order to constitute a disqualification to inherit, must be positively proved, or at any rate there must be a reasonably well-grounded suspicion of it having taken place. But, *quære*, as to anything less than positive proof being sufficient. *Rumea* v. *Bhagee*, 1 Bom. Rep., 66.

According to the Mitakshara law, where property is joint and undivided, a widow cannot succeed, but is entitled to maintenance only. The withdrawal by her husband's brothers of their claim to his share cannot give her a title to succeed to it. *Mouhuron Koonwur, pauper*, v. *Thakoor Pershad*, 5 W. R., 176.

The widow of one of the brothers of a divided Hindu family, governed by the Mitakshara law, does not acquire an absolute interest in her husband's separate estate, but only such an interest as would render her acts conveying her interest to a third party binding as against herself, but not as against the reversionary heirs, unless the alienations were made under legal necessity. *Chut Banoo* v. *Ram Kishen Singh*, W. R., 1864. 102.

Suit by a widow for possession of her husband's share of joint property inherited from his grandfather. *Held* that if her husband died before his grandfather she had no title, but that if he had outlived his grandfather his widow would be entitled to his share on proof of her having lived in commensality with the defendant within twelve years from the date of her dispossession. *Bindoo Bashinee Dassee* v. *Anund Chunder Paul*, 2 W. R., 179.

Where a widow sued to recover from the brothers of her deceased husband a share of property which remained undivided at his death, a division of part of the family property having taken place during the lifetime of the husband,—*Held* that the plaintiff had no right to recover the property which was actually undivided at the death of her husband. *Timmi Reddy* v. *Achanama*, 2 Mad. Rep., 325.

D., a Pardesi Hindu residing at Nasik, died leaving two widows, B. and P. B., who was the first wife, though not incontinent, had been turned out of his house by her husband some time after he married P.

In a suit by B. to recover a moiety of D.'s estate, P., while admitting that she herself had been leading a life of prostitution since D.'s death, resisted a partition of his estate, on the grounds that B. had, since D.'s death, cohabited with M., and subsequently married R., both of which allegations B. denied.

Held that, though by Hindu law, incontinence excluded a widow from succession to her husband's estate, yet if the inheritance were once vested it was not liable to be divested, unless her subsequent incontinence were accompanied by degradation; but that, by Act XXI of 1850, deprivation of caste can no longer be recognized as working a forfeiture of any right or property, or affecting any right of inheritance.

Held however also that if B. had duly remarried she would have ceased to have any right to recover or hold any part of her late husband's property; and as the District Judge, on appeal, had left the fact of B.'s re-marriage unascertained, that his decree must be reversed, and the case remanded for finding on that question. *Párvati* v. *Bhikú*, 4 Bom. Rep., A. C. J., 25.

Unchastity in a Hindu widow does not divest her of property which has become vested in her after the death of her husband. *Abhiram Doss* v. *Sreeram Doss*, 3 B. L. R., A. C., 421; 12 W. R., 336.

In the absence of evidence to the contrary, the rules of inheritance of the Jains must be taken to be the same as those of the orthodox Hindus in that part of the country in which the property is situate. Therefore where the widow of a Jain claimed as heiress of her husband, who was separate in estate, property situate in a district in which the Mitakshara prevails,—*Held* that she was entitled to succeed.

Held also upon the facts, *per* Peacock, C. J., (L. Jackson, J., *dubitante*), that the family was separate in respect of the property in dispute. *Lalla Mahabeer Pershad and others* v. *Mussamut Kundur Koonwar*, 2 Ind. Jur., N. S., 312; 8 W. R., 116.

A Hindu died possessed of self-acquired property in land, leaving no sons or sons' sons, but one widow, a daughter by the widow, and another daughter by an elder wife, deceased. The last died in the widow's lifetime, leaving two sons. *Held* that the daughters, as co-heiresses, took an estate in remainder vested in interest on their father's death, and that such vested right, on the death of one of them during the widow's lifetime, passed by inheritance to her sons, who upon the widow's death became entitled to enter into possession of their mother's half as her representatives.

The widow in Western India has only a particular estate for life in the immoveable separate property of her deceased husband *Jameyatram and Uttamram* v. *Bai Jamua*, 2 Bom. Rep., 10.

Held that a widow cannot under Hindu law claim to inherit the estate left by her husband's uncle, and could not consequently question the title of the defendant (widow of another brother's son), who was admittedly in possession of the estate claimed. *Mussamut Gouree and others* v. *Mussamut Oomrao Koonwar*, 1 Agra Rep., A. C., 149.

According to the Dayabhaga, a Hindu widow is the heiress of her husband in preference to his brother. *Chunder Kant Surmah and others* v. *Bungshee Deb Surmah*, 6 W. R., 61.

According to Hindu law, the right of inheritance is not suspended by pregnancy or until adoption. *Dukhina Dossee* v. *Rash Beharee Mozoomdar*, 6 W. R., 221.

Where the Mitakshara law prevails, the widow of a member of a joint Hindu family cannot succeed to her husband in preference to the husband's brother, and is no heir to her brother-in-law, or to his widow after their death. *Baney Pershaud* v. *Mussamut Mahaboodhy and others*, 7 W. R., 292.

The deceased, a Hindu, died intestate and childless, leaving two widows, to the elder of whom he had been married thirty years, and to the younger eight years. Four or five years before deceased died the elder widow left his house in consequence of some family dissensions, and lived with her father until her husband's death. *Held*, first, on the authority of the Mayukhu, that the two widows were *primâ-facie* entitled to equal shares of the property; and, second, that to exclude a Hindu widow from the inheritance upon the ground of incontinence or infidelity, the proof of her incontinence or infidelity must be positive, or at any rate there must be reasonably well-founded suspicions. *In the goods of Dadoo Munia, deceased*, 1 Ind. Jur., N. S., 59.

Held that under Hindu law a widow was not entitled to inherit the estate of her husband's brother, and she having no *locus standi* in Court could not question the title of the party in possession of the disputed estate. *Choora and others* v. *Musamut Busuntee*, 1 Agra Rep., A. C., 174.

The rule of Hindu law is that, in the case of inheritance the person to succeed must be the heir of the last full owner. On the death of the last full owner his wife succeeds as his heir to a widow's estate; and on her death the person to succeed is the heir at that time of the last full owner. *Bhoobun Moyee Debia* v. *Ram Kishore Acharjee*, 3 W. R., P. C., 15.

38.—Succession, Exclusion from.

(*a*) *Miscellaneous.*

Held that a cousin in the third degree has no right of inheritance in the presence of cousins in the second degree. *Mahabeer Persad and others* v. *Ram Sarun*, 3 Agra Rep., A. C., 6.

Where an estate was held jointly by four sons, the widow of the eldest is not entitled to inherit, but only to maintenance. *Dharoo Sooklain and another* v. *The Court of Wards*, 11 W. R., 336.

A paternal uncle's daughter's son cannot inherit according to Hindu law as laid down in the Dyabhaga. *Raj Gobind Dey* v. *Rajessuree Dossee*, 4 W. R., 10.

According to the Mitakshara law, a maternal uncle or a father's maternal uncle cannot inherit. *The Government* v. *Greedharee Lall Roy*, 4 W. R., 13.

A member of a Hindu family cannot as such inherit the property of one taken out of that family by adoption.

The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them. *Ramkista Charyar* v. *Kuppanaaugar*, 1 Mad. Rep., A. C., 180.

According to the Mitakshara law, a daughter or son's daughter does not inherit. *Koomud Chunder Roy* v. *Seetakunt Roy*, W. R., F. B., 75.

A father's brother's daughter's son cannot inherit according to Hindu law. *Gobindo Hureekar* v. *Woomesh Chunder Roy*, W. R., F. B., 176.

A brother's son's daughters are not heirs according to Hindu law. *Radha Pearee Dossee* v. *Doorga Monee Dossia*, 5 W. R., 131.

A step-mother cannot take by inheritance from her step-son. *Lalle Jotee Lall* v. *Mussamut Dooranee Kooer and others*, W. R., F. B., 173.

According to the Mitakshara, a sister's son cannot inherit. *Thakoorain Sahibag and another* v. *Mohun Lall and others*, 7 W. R., P. C., 25; but see other decisions.

The widow of a paternal uncle is, according to Hindu law, no heir to her nephew. *Upendra Mohan Tagore* v. *Thanda Dasi*, 3 B. L. R., A. C., 349.

According to the law which prevails in Madras, the sons of a granddaughter are excluded from inheritance.

The plaintiff brought a suit for a moiety of the estate, if his deceased second cousin left no issue or nearer kindred claiming through his maternal great-grandfather. *Held* that the plaintiff was entitled to inherit the estate of the deceased. *K. Kishur Lala* v. *Janallah Pershad Lalla*, 3 Mad. Rep., A. J., 346.

(*b*) *Illegitimacy.*

The Hindu law, independently of especial usage or custom, does not make illegitimacy an absolute disqualification for caste so as to affect in the relations of life, not only the bastard, but also his legitimate children.

A Hindu of a caste governed by the Shastras may contract a valid marriage with the daughter of a bastard.

The Hindu, unlike the English, law recognizes a bastard's relation to his father and family.

By birth, and without any form of legitimation, bastards of the three twice-born classes are now recognized as members of their father's family, and have a right to maintenance.

The illegitimate son of a khatriya cannot inherit.

In the case of sudras, the law has been and still is that bastards succeed their fathers by right of inheritance.

The illegitimate son of a sudra is not an outcast. *Pandayá Télaver and another* v. *Puli Télaver and others*, 1 Mad. Rep., A. C., 478.

The illegitimate son of a sudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu law. *Muttusamy Tagavira Yettapa Naikar* v. *Vencata Suva Yettia*, 2 Mad. Rep., 293.

The illegitimate son of one of the mixed classes between the second and third of the regenerate classes has no title to inherit by the ordinary rules of Hindu law, and the circumstance that the father was illegitimate does not alter the law. *Sri Gajapute Nilamani Patta Mohadeve Garu* v. *Sree*

Gajaputee Radheca Patta Mohadeve, 2 Mad. Rep., 369.

The son of a sudra by a slave-girl is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side. *Nissar Murtojah* v. *Kowar Dhunwur Roy*, Marsh., 609.

(*c*) *Loss of Caste, Disease, &c.*

The doctrine of Hindu law that outcasts are incapable of inheritance has no bearing upon the case of the members of new families which have sprung from persons so degraded. *Tara Chund* v. *Rub Ram*, 3 Mad. Rep., A. J., 5.

Held that the mere fact that the plaintiffs (whose near relationship to maintain the suit was established) are out of caste, and that the men of pure blood of their tribe do not eat with them is, of itself, no ground of exclusion from inheritance, Section 1, Act XXI of 1850, having annulled any such disqualification. *Taij Singh* v. *Mussamut Kousilla and others*, 1 Agra Rep., A. C., 90.

Dumbness, if from birth, is a cause of disinherison in females as well as in males. A Hindu widow born dumb is, according to the law prevailing on this side of India, incapable of inheriting from her husband. Such widow is, however, entitled to her stridhun and to maintenance out of the property of her deceased husband. Case remanded to have the widow made a party to the suit, that it might be determined whether she was born dumb, and if so that the amount of her stridhun and of her maintenance might be ascertained. *Vallabhrâm Shibnarayan* v. *Bai Hariganga*, 4 Bom. Rep., A. C. J., 135.

According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his grandfather. A. died leaving four sons. One, B., was born deaf and dumb. B. lived in commensality with his brothers. Some time after A.'s death a son was born to B. *Held* that B.'s son was not entitled to succeed as heir to a share of the property descended from A. *Pareshmani Dasi* v. *Dinonath Das*, 1 B. L. R., A. C., 117.

A Hindu died in 1832, leaving an only son who had been blind from his birth, and two widows, the survivor of whom died in 1849. On the death of the surviving widow the nephew succeeded as heir, the blind son being by Hindu law excluded from inheritance. The blind man having married, a son was born to him in 1858. The blind man died in 1861. *Held* by Norman, J., that on the birth of the blind man's son he became entitled to the inheritance from which his father had been excluded. *Held* on appeal (by a Full Bench) that by Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person if, having been begotten and being in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting. *Kalidas Dass and others* v. *Krishan Chunder Dass*, 2 B. L. R., F. B., 103.

The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy, is not necessarily utter mental darkness.

A person of unsound mind, who has been so from his birth, is in point of law an idiot.

The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. *Tiramagal Ammal* v. *Ramasvami Ayyangaly and others*, 1 Mad. Rep., A. C., 214.

When it is contended that a Hindu is incapable of inheriting by reason of an incurable disease, the strictest proof of the disease will be required. *Issur Chunder Sein and Luckee Monee Dossee* v. *Ranee Dossee*, 2 W. R., 125.

Although, according to Hindu law, a lunatic has no rights of inheritance, he is not debarred from taking an estate duly conveyed to him. *Gourenath and others* v. *The Collector of Monghyr and others*, 7 W. R., 5.

To a suit brought by a Hindu husband against his wife for the restitution of conjugal rights, the fact that he is at the time of such suit suffering from a loathsome disease, such as leprosy, is a good defence. *Bai Premkavar* v. *Bhika Kalanji*, 5 Bom. Rep., A. C. P., 209.

It is only when leprosy assumes a virulent and aggravated type that it is by Hindu law made a ground for disqualification for inheritance. *Janárdhan Pandarung* v. *Gopal and Vasadea Pandarung*, 5 Bom. Rep., A. C., 145.

39.—WIDOW.

Although the shastras impose on a Hindu widow the duty of living with her deceased husband's relatives, the duty has been regarded by the British Courts as a moral duty which they will not lend their aid to enforce, and of which the non-performance does not deprive the widow of her right to inherit.

By consent of the parties, and for the protection of the estate, which consisted of cash, the Court ordered the amount to be invested in Government promissory notes in the joint names of the widow and brothers of the deceased, and directed that the interest should be paid to the sole receipt of the widow, with liberty for her to apply to the Court to order a sale if any necessity arose which would justify a sale under the Hindu law. *Umrit Koweree* v. *Kidernath Ghose and others*, 3 Agra Rep., 182.

A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights, and with respect to appeal against an adverse decision. Where a cause of action with regard to her husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death. *Tarinee Churn Gangooly* v. *John Watson*, 3 B. L. R., A. C., 437; 12 W. R., 413.

After the death of a member of a Hindu family his widows were sued in their representative capacity, and decrees were obtained in respect of debts incurred by him in his lifetime on his own account. *Held* that the decrees could only be executed against that property which passed from the deceased to his widows in their own right, and not against other portions of the joint family property. *Mussamut Phoolbas Kooer* v. *Lall Juggessur Sahi; Sudaburt Persaud Sahoo* v. *Lotf Ali Khan; Ram-*

dhyan Kooer v. *Mussamut Phoolbas Kooer*, 14 S. W. R., C. R., 340.

A Hindu died leaving a widow and an adopted son, who continued, after his death, to reside in the same dwelling-house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate. The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent. Subsequently the son sold the house, as his property by inheritance, to a stranger, who gave the widow and tenants a week's notice to quit,—*Held* that the son, even if he had attained his majority, could not evict the widow, or authorize a purchaser to do so, without providing some other suitable dwelling for her; nor in any case could the tenants be turned out without a month's notice.

It seems that the passage in Katyayana (2 Colebrook's Digest, p. 133) is a restriction, and not a moral precept only, and that the heir of the deceased has not such a right in the dwelling of the family that he can at once, of his pleasure, turn out the females of the family, or sell it and give the purchaser a right to turn them out. *Mangalu Debi* v. *Dinanath Bose*, 4 B. L. R., O. C., 72, and 12 S. W. R., A. O., 35.

A Hindu widow in possession and the apparent next taker, by joining in one conveyance, can make a complete title. *Mohunt Kishen Geer* v. *Busgat Roy*, 14 S. W. R., C. R., 379.

A Hindu widow, in whom the property of her husband has once vested, does not forfeit by her unchastity her right to such property.

Semble,—Unchastity, followed by degradation or expulsion from caste, would not be sufficient to deprive a widow of an estate which she has taken by inheritance. *Srimati Matangini Debi* v. *Srimati Jaykuli Debi*, 5 B. L. R., 466; 14 S. W. R., A. O., 23.

A decree was made in favour of K., a Hindu widow, in a suit brought by her against B. C., which declared that she was entitled to one-fifth share of the accumulations of the estate of the father of her husband from his death to the death of her husband, to be held by her as a Hindu widow, and to one-fifth of the subsequent accumulations absolutely. Execution of the decree was taken out, and the sum to which K. was declared entitled was paid into Court by B. C. in March, 1869. Macpherson, J., in delivering judgment, expressed a doubt whether the suit was brought for the benefit of the plaintiff, and stated that he would consider any application to protect any rights the reversionary heirs might have in the amount received by the plaintiff. No steps however were taken by B. C., by suit or otherwise, to protect the interests of the reversionary heirs in the sum paid into Court, but on K.'s applying, in March, 1871, to have the money paid to her out of Court, B. C., on behalf of himself as reversionary heir, filed an affidavit in opposition to K.'s application, charging her on information and belief with leading an immoral life, and of having assigned half the amount in Court to H. S., and expressing his apprehension of waste, and that if the money were allowed to be taken out of Court it would be lost to the reversioners. *Held* that K. was entitled to have the money paid out of Court to her. *Biswanath Chandra* v. *Khantomani Dasi*, 6 B. L. R., 747.

A decree in a suit against a widow in temporary possession for a debt arising out of her own neglect to do her duty, is not binding on all persons who take the estate in succession to her. A sale made in execution of such decree passes no more than the widow's personal interest. *Bri Bhookun Lall Awastu* v. *Mohadeo Dobey*, 17 S. W. R., C. R., 422.

A widowed Hindu mother, who refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low caste person, thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law. *Manmahini Dasi* v. *Balak Chandra Pandit*, 15 S. W. R., C. R., 498; and 8 B. L. R., 22.

As against one who takes as heir, a Hindu widow has a right to maintenance out of the property in his hands. She also has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir.

By the law of Bengal she has no lien on the property for her maintenance against all the world irrespective of such notice. *Srimati Bhugabuti Dasi* v. *Kanailall Mitter*, 8 B. L. R., 225.

The canon of the Hindu law of Northern India, in regard to the succession of widows, is "that a wedded wife, being chaste, takes the whole estate of a man, who being separated from his co-heirs and not subsequently re-united with them, dies leaving no male issue." The limit of the "co-heirs" must be held to include undivided collateral relations, who are descendants in the male line of one who was a co-parcener with an ancestor of the last possessor. Collateral kinsmen answering the above description have interests which pass *inter se* by right of survivorship, and a widow's right as heir is excluded by the text when any of such collateral kinsmen survive her husband. The governing principle of the rule is co-parcenary survivorship, which precludes alike the right of the widow and every other member of the family, who has no right to the enjoyment of the estate before the death of the possessor. *Sri Rajah Yenumula Gavuredèvamma Garu* v. *Sri Rajah Yenumula Ramandora Garu*, 6 Mad. Rep., 93.

It is not the universal rule that a Hindu woman cannot inherit so long as there is a male representative of the family. Her right to inherit depends on the nature of the property. If the property be the joint property of an undivided Hindu family, females are only entitled to maintenance; but if the property be held as a separate or divided property it devolves upon the female heirs in their proper order of succession. *Musumut Soorjoon* v. *Ishru Bramma*, 3 N. W. R., 74.

Where the widow has been allowed to exercise acts of ownership in respect of landed property belonging to her deceased husband incompatible with a mere right to maintenance from his estate, the *onus* of proof that the widow is entitled to nothing beyond a bare maintenance lies upon the party asserting this. *Newindh Singh and another* v. *Musumut Sohun Kooer*, 3 N. W. R., 12.

40.—Wills.

(*a*) *Construction and Validity thereof.*

V. and M., Hindus residing in Bombay, made a

deed of partition in 1823 of the whole of the family property, moveable and immoveable, which had come into their joint enjoyment on the death of their father. V. died in 1850, having made a will prepared by an English solicitor, in the English language and form, by which after various bequests to members of the family he disposed of the residue of his estate, one-third share to his son V. absolutely; another third to his son L. absolutely; "and the remaining clear third share to my grandsons K., V., G., and N., the sons of my late son Moroba, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike."

These residuary bequests, it was provided, were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life; but the estate was divided by the award of arbitrators in 1855, after making a provision for the widow, in substantial accordance with the directions of the will. V. and L. immediately thereafter took possession of their respective third shares of the moveable and immoveable estate, but the third share allotted to the four sons of M., who were all still infants, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property allotted to them remained unapportioned, and was managed first by the widow of M. till her death in 1855; then by his eldest son K., till his death, without male issue, in 1859; then by the next eldest son V. till his death, without issue, in 1864; and afterwards by the elder of the two surviving sons; and the proceeds were treated throughout as though the property was held in co-parcenary by the four sons as a joint and undivided Hindu family.

In a suit brought by L., the widow of K., against K.'s surviving brothers, and S., the widow of his brother V., in which L. claimed to be absolutely entitled as heir of her husband [and also as heir of her daughter, who died after her husband's death, childless and unmarried,] to a fourth part of the third share of the estate allotted by the award of 1855,—*Held* (1) that the words "share and share alike," occurring in the will of V., ought not to be construed as necessarily constituting a tenancy-in-common, with all the incidents attached thereto in English law; but that each of the four sons of M. took a separate share in the third of the testator's residuary estate; the share of each son going on his decease to those who would, according to Hindu (and not according to English) law, be his heirs as a separated Hindu; (2) that with regard to the immoveable property devised by the will and allotted by the award to the sons of M. there never was a union of estate, a co-parcenary from the commencement; and consequently there was no reunion in the sense of the Hindu law, notwithstanding joint enjoyment and common residence; but only postponement for a time, and for purposes of convenience, of an apportionment of the estate, which was accordingly (among other things) decreed. *Lakshmibai* v. *Gunpat Moraba et al.*, 4 Bom. Rep., O. C. J., 150.

V., a Hindu, being possessed of property, both moveable and immoveable, which he acquired by making partition with his brother of their joint ancestral estate, died in 1850, after making a will in the English language, by which, after various bequests, he disposed of the residue of his said property: one-third to his son V. absolutely, one-third to his son L. absolutely, "and the remaining clear third share to his grandsons, K., V., G., and N., the sons of my late son Moraba, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life.

The estate was divided by arbitrators in 1855, after making provision for the testator's widow, in substantial accordance with the will, and V. and L. immediately entered into possession of their third shares; the third share allotted to the four sons of M., who were then infants, represented by their mother and guardian, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property continued unapportioned, the bill stating that it was not for the interest of the minors then to apportion it; and the sons of M. continued to enjoy the rents and profits, living together as an undivided Hindu family, the property being successively managed by the eldest surviving brother. In 1866 the then surviving sons of M., having attained their majority, joined with V., the son of the testator, in conveying to a purchaser a bangla, which had been allotted to him as portion of his share under the will.

In a suit brought by L., the widow of K., against K.'s surviving brothers, and S. the widow of his brother V., in which L. claimed to be absolutely entitled, as heir of her husband (and also as heir of her daughter, who died after the husband's death childless and unmarried), to a fourth part of the third share of the estate allotted by the award of 1855,—

Held that the surviving brothers of K. had, by their conduct since attaining their majority, adopted the acts of their mother and guardian, and had agreed to treat the will of the testator as a valid will, and were accordingly estopped from disputing provisions.

Held, further, that the language of the testator showed an intention that his grandsons should take the one-third between them in severalty, and as members of a divided family, and that the will must be so construed.

A Hindu widow succeeding to the immoveable property of her deceased husband, and also claiming as heir to her only daughter, who died after her father childless and unmarried, is only entitled during her life to a widow's estate. The doctrine laid down in the Division Court that ancestral property after partition can be disposed of by will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindu law. *Gunpat Moraba and Narayana Moraba* v. *Moraba*, 5 Bom. Rep., O. C. P., 128.

Nobin Chunder Ghose, a Hindu, died without issue, leaving a widow (the plaintiff). He left a will by which he gave a conditional power of adoption in the following words:—

"My wife is supposed to be pregnant with

child; if her conception be true, and she be delivered of a male child, then there shall be no necessity for the adoption of children as mentioned below, but if a daughter be born, she will, in that case, adopt the twain mentioned below, and whatever property there shall exist, consisting of moveables and immoveables, &c., my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority, and if a son be born and happen to die before attaining majority, in that case she shall adopt the sons of my sisters mentioned below, and for that purpose I give her, that is to say, my said wife shall, in conformity with our shaster, adopt the illustrious Sodanund Ghose, the third son of Srijoot Ramrutton Ghose, and Obhoy Churn Ghose, the youngest son of Srijoot Sreenath Ghose, an inhabitant of Autpoore, that is to say, the two sons of my two uterine sisters, in doing which there shall be no deviation. Should my wife not adopt the children after my decease, then the executors named hereinafter shall, according to this will and in pursuance of the permission given by me, cause the said two children to be received in adoption. If any of the said adopted sons depart this life before attaining the age of majority, then one of the uterine brothers of the deceased adopted son shall be received in adoption according to law in the room of deceased adopted son," &c.

The plaintiff did not give birth to either son or daughter, nor did she adopt either of the persons indicated by the will. Sodanund Ghose died in 1865, and Obhoy Churn was living at the date of the suit and was of age. *Held* that whether the two persons indicated could or could not be legally adopted as pointed out by the will, according to Hindu law, there was a gift to them as devisees by implication. *S. M. Doss Money Dossee* v. *S. M. Prosonomoye Dossee*, 2 Ind. Jur., N. S., 18.

Any Hindu within these provinces, whether governed by the Bengal mode of succession or otherwise, possesses a power to bequeath an estate by will co-extensive with his power over the estate in his lifetime.

When it is sought to exclude female heirs from succession to a husband or father under the Mitakshara, on the grouud that the estate is joint, it must be shown to have been so at the time of the husband's or father's death, and not merely at the death of a predeceasing brother, the father of the claimant. *Mussamut Pitum Koonwar* v. *Munar Bebee and Joy Kishen Doss*, 6 W. R., 101.

A Hindu on his death-bed, a few days before he died, caused certain Government paper to be given to his son in his presence in these words: "Bring out the papers, and give them to my son;" but he did not make or direct endorsement thereof. Subsequently, being asked to endorse them, he said, "I am very weak; how can I sign so many papers? When I get a little strength I will sign them. What cause have you for being anxious?"

Held by Phear, J., that it was a good *donatio mortis causâ*. A *donatio mortis causâ* has not the same signification here as in England.

Held on appeal by Peacock, C. J.—The gift was not governed by the strict principles of English law, but by the Hindu law. By English law there was a valid *donatio mortis causâ;* assuming it to be a gift *inter vivos*, it was a valid gift by Hindu law, and the principal and interest secured by the Government papers, and not the mere paper, passed to the donee.

By Macpherson, J.—The circumstances amounted to a gift by a nuncupative will made in contemplation of death. *Kumara Upendra Krishna Deb Bahadur* v. *Nabin Krishna Bose*, 3 B. L. R., O. C., 113; S. C., 12 W. R., O. C., 4.

A testamentary paper drawn up in the lifetime of the testator, when, though very ill, he was in full possession of his senses, and duly attested by the subscribing witnesses, who depose that it was drawn according to the instructions of the testator, and that he in their presence signified his assent thereto, was held to be sufficient under Hindu law. *Tara Chand Bose* v. *Nobeen Chunder Mitter*, 3 W. R., 138.

A Hindu testator, after the death of his widow, gave a moiety of his property to his brother A., and on his death to A.'s two sons, B. and C. A. died in the lifetime of the testator's widow, and a complete division of all A.'s property which was held in co-parcenary was agreed upon by B. and C. B. also died in the lifetime of the testator's widow, and on the death of the testator's widow B.'s widow claimed his share.

Held that B. and C. took A.'s moiety under the will as tenants in common, and that each of them had a vested interest in a one-fourth share, though the actual enjoyment was postponed until the death of the widow; and that the claim of B.'s widow was not barred by the doctrine of Hindu law that a widow succeeding as heir to her husband cannot recover property not in the possession of her husband, which doctrine was held to be inapplicable to the case of property in which the husband had a vested interest under a will or deed, though the actual enjoyment thereof was postponed during the lifetime of another.

According to the Hindu law, a widow cannot claim an undivided property. *Rewan Persaud* v. *Mussamut Radha Beeby*, 7 W. R., P. C., 35.

R. R. D. died possessed of certain property in Calcutta, and left him surviving S. D., widow of his son J. C., deceased, and three granddaughters, upon whose marriages he directed H. P., his executor, to expend Rs. 1,600, and to pay his debts, &c.; and further directed that if there should not be money forthcoming for the purpose specified in the will, that the property should be sold to make up the deficit. H. P. expended on the marriages much more than was limited by the will, and for this purpose mortgaged the property to T. C. and others, who were proceeding to foreclose when S. D. sued to have the mortgage deed set aside as against the heir of R. R. D., which she claimed to be, through U. S., deceased, whom she had adopted under a direction in the will of her husband that she should adopt three sons in succession, a direction which H. P. was enjoined by R. R. D.'s will to see carried out. The mortgagee resisted her claim on the grounds that she had not adopted a second son, that the powers of sale to H. P. included a power of mortgage, and that the property was necessarily mortgaged for family purposes. Judgment was given for the plaintiff.

Held that R. R. D. had no power to mortgage the property; that an attorney or executor under a Hindu will has not the same power over a testator's

estate as an executor would have over leasehold estate according to English law; that, according to Hindu law, a manager or an executor under a will has only a limited and qualified power over the immoveable estate of the testator; that the general power of a manager under a will may be restricted by the will; that a manager under a will is bound to act according to the directions in the will; and that where an attorney or manager under a will has power to mortgage for specific purposes, it is the duty of the mortgagee to enquire into the circumstances under which, and the authority upon which the mortgage was effected.

That when a will directs a certain sum to be expended for marriage purposes, the manager or executor has no power to expend a larger sum thereon; that a mortgagee having notice of such a bequest is not justified in lending a larger sum for that purpose; that a direction in a will to sell houses, and invest the surplus proceeds in Government securities, does not authorize the executor to borrow money at a high interest, and amounts to a direction not to mortgage the houses; that when a plaintiff seeks to set aside a mortgage, on the ground that the mortgagor had no power to mortgage, and that the mortgagees had acted fraudulently, the Court can grant relief even if the fraud be not made out, the issue as to the mortgagor's power to mortgage being found in favour of the plaintiff; and that when a widow neglects to adopt a second son on the death of the first adopted son, as directed by her deceased husband, she commits a wrong, but may nevertheless be the heiress of the first adopted son. *Sreemutty Dossee, heiress of Rajmohun Roy, deceased* v. *Tarrachund Coondoo Chowdhry and others*, Bourke's Rep., A. O. C., 48.

A., a Hindu, died leaving two grandsons, B. and C., to whom his estate descended. They were joint in food, worship, and estate. The property was wholly situate in Bengal, and the family, who originally came from the Western Provinces, had long been resident there. C. died, leaving his widow D. and his brother B. surviving him. B., who was manager, died 2½ years after C. After B.'s death D. brought her suit to establish her right as widow of C. to a moiety of the family property. The representatives of B. set up an instrument, which they alleged to be the will of C., whereby he bequeathed his share to B., reserving the maintenance to D.

The Judge of the Zillah Court of Nuddea held that the alleged will of C. was genuine, and dismissed D.'s suit. The High Court, on appeal, held (1) that D. ought firstly to have shown her title to sue, *i.e.*, she having admitted that the family came from Mithila, she ought to have shown that they were no longer governed by the Mitakshara; (2) that for several generations the rule of inheritance had been according to the Dayabhaga; (3) that the alleged will was not proved (there was evidence before the Court of the *factum* of the will adequate to the proof of an ordinary will, but the Court held that this evidence was outweighed by the internal improbabilities); (4) that if the rule of inheritance was not according to the Dayabhaga the will was inofficious.

On appeal to the Privy Council,—*Held*, first, it would be a rash conclusion, on the state of the evidence in the case, to suppose a preference of the law of Bengal likely to be operative on the mind of the testator; and therefore there was no foundation for treating the will as inofficious. Second, it was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitakshara. Third, the evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will sufficient to discredit it.

Hindu law is in the nature of a personal usage or custom, and probably migratory families or tribes would retain their own usages. The presumption is in favour of the continuance of the ancient family custom. The decision of the High Court reversed, and the decision of the Court of Nuddea restored and affirmed. *Surendra Nath Roy* v. *Hiramoni Burmoni*, 1 B. L. R., P. C., 26; 10 W. R., P. C., 35.

A Hindu inhabitant of Calcutta died in 1837, leaving three sons, G., T., and M., and several daughters; he left property, moveable and immoveable, and a will dated 29th October, 1836, as well as a deed of gift of even date, but executed in point of time prior to the will. By the deed of gift he gave his property as follows:—

To his three sons, G., T., and M., his self-acquired estate and his patrimony (*i.e.*), his own share, agreeably to the will of his father, giving to them power of making a gift or sale, and to hold and enjoy, themselves, sons, grandsons, and so on in succession. His family dwelling-houses to remain in equal shares, his sons to dwell therein, but not to be able to let or sell them to any one else; then followed certain provisions with regard to a family idol, for religious observances, &c., after which the deed went on to say: "You will divide in three equal shares and receive the ready money and company's papers and bank's shares, &c., which I have; you will not be able to give in gift, or sell these properties under twenty years of age; the children legitimately begotten by you will receive the same. If no son or daughter be born, or if there be no probability of its being born to any one of you (then), he will have the right and power of making a gift or sale of these. If any leave only a childless widow, then that childless widow shall have no claim or demand for any share in my real and personal property, &c., and the debsheva, and so forth. She shall not be able to make any claim on the plea of my having made a gift to her husband. Being for life under the control of my sons who may be in existence, she shall, for her food, raiment, and other expenses, get interest on Rs. 4,500. No gift and sale, &c., shall be made without providing for this. Finis."

After which followed certain provisions for his daughters, &c. The will, after appointing one of his sons and three other persons executors, contained in its earlier clause similar provisions to those contained in the earlier part of the deed of gift; it also referred in express terms to a deed of gift. It afterwards went on to make several dispositions, among them the following:—

"10th Section. If no issue be born to any of my sons and his wife survives him, she will enjoy and possess the share of her husband during her lifetime, she will not become vested with the right and power of making gift or sale (thereof). As long as she lives she will live under the control and in the

family of such of my sons as shall be alive; those sons will preserve the said property and maintain her. If she remain not under (their) control, then in that case she will have no concern with the said property, (but) during her life she will receive her food and raiment in consideration of her *status* (in life). All of the surviving sons will get that property in equal shares. Finis."

"20th Section. Besides the property of mine specified in this deed of gift, whatever property will (*i.e.*, may) be acquired after the date of this my will the same shall be taken by my sons in equal shares."

"23rd Section. The property of which I have made a gift to my sons they shall not be competent to make a sale or gift thereof within twenty years; when there will be any grandsons in the male line they shall get all that property; if any one of them do not have a son, (or) if there be no probability of (his) having a son at a subsequent period, he shall have power to make a sale or gift. Finis."

It appeared that the testator had, at the time he executed these instruments, an intention to go on a pilgrimage to Brindabun. G. and one of the other executors proved the will; the other executor died in 1844, since which time G. remained in possession of the property. T. died about 1858 without issue, and his widow B. sued the surviving brothers G. and M. for her husband's share in the estate. This suit they compromised by a payment to B., G., and M. afterwards, and within twenty years had issue sons and daughters. In a suit to have the will and deed construed it was held that although the deed was not produced when probate of the will was taken out, it was sufficiently proved before the Court in the present suit to allow its being acted on, that the provisions in the will controlled the inconsistent provisions in the deed of gift; that consequently the son's childless widow took her husband's share for life; that the sons having male issue took only a life-interest; that the grandsons during the lifetime of their fathers took nothing, but after the death of their father respectively took among them equally their father's share; the share of each son going to his own son or sons only, and not to grandsons of the testator generally. The restriction on alienation extended to both the moveable and immoveable property.

Held also that the widow of T., having received a sum of money from M. and G. in lieu of T.'s share, that share went to M. and G. in equal shares for life, and on the death of either of them his share would go to his own sons absolutely. *Satcowrie Sein and others* v. *Gobind Chunder Sein and Muddoosooddun Sein and others*, 2 Ind. Jur., N. S., 56.

Notwithstanding that a Division Bench of the High Court, on appeal in 1863, give its opinion on certain points in a previous suit between the same parties, the High Court, on the present appeal, held that the parties were entitled to the Court's opinion on the same points, as they pointed out that these points did not arise in the previous suit (which was brought for an object different to that for which the present suit was instituted), and the opinion of the Court in 1863 was therefore *ultra vires*, and did not conclude the parties.

In this country there are no formalities to be gone through in order to the constitution of a valid will, and all that is required is that the intention of the testator should be ascertained in whatever way it may be ascertained, whether by word of mouth or in writing, clearly and unmistakably.

A son under the Mitakshara law is entitled jointly with his father from the moment of his birth, or, in the case of his adoption, to ancestral estate, and also to the profits accruing after his birth. *Sudanund Mohapattur* v. *Soorjomonee Debee*, 8 W. R., 455.

Under a bequest by a Hindu of Rs. 10 per month, followed by a direction to the following effect: "In this manner continue to pay in the legatee's name so long as he shall be alive; after his death continue to pay the same to his descendants from generation to generation,"—*Held*, 1st, that the legatee took only a life-interest under the bequest; 2nd, that the words "from generation to generation" did not import more than "absolutely" and "for ever" import in an English instrument; 3rd, that the descendants in existence at the time of the tenant for life's death took absolutely as a class; and 4th, that such descendants were entitled in equal shares to an amount sufficient to produce the monthly sum of Rs. 10.

Remarks on the construction of Hindu wills.

Descendants of the testator in a Hindu will would include children and grandchildren living at his decease, but does not include the testator's brother or widow.

There is no rule of Hindu law imposing any restriction in point of time on the operation of a bequest creating a series of successive life-interest in each generation of a legatee's descendants; but, *semble*, the grounds of the rules against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period. *Arumagam Madali* v. *Ammi Ammal*, 1 Mad. Rep., O. C., 400.

Held that a will made by a Hindu dividing unequally ancestral property between his sons, and assigning a share to his wife, with the power of disposing of it, was illegal under Hindu law.

The widow was entitled to receive for maintenance a share of the property or profits equal to the share of one son. *Rajah Buldeo Singh* v. *Koonwar Mahabeen Singh and others*, 1 Agra Rep., A. C., 155.

Held, on the construction of the will, that the testator did not give his widow a full proprietary right which she could transmit to her daughter, so as to entitle the latter's husband to succeed to the estate on her dying childless. *Rao Pertab Singh* v. *Koonwer Khoosial Singh and others*, 2 Agra Rep., A. C., 90.

S., a Hindu, having a wife and one daughter, executed in his last illness a document attested by two witnesses as follows: "S., the proprietor of, &c. Up to this date I have no son of the body. Under these circumstances the malicks of the whole of my estate, real and personal, are my wife B. C., and my daughter W. C. Therefore I, considering this, for the purpose of registering the names of my wife and daughter in substitution of my own name, appoint B. as my attorney. It is proper that the aforesaid attorney, after presenting himself before the

hazoor, should petition to the above effect asking for a mutation. Whatever is done in the management of the case, I confirm it as my own act. Dated, &c." Three days before the death of S., B., the person named as mookhtear, presented a petition of S. to the Collector, reciting the want of heirs male, and which then continued thus: "Under these circumstances my wife B. C. and my daughter W. C. are my heirs. Be that as it may, after my death all my property, paying revenue to Government or rent-free, will devolve upon my aforesaid wife and daughter; consequently, keeping this in view, I file this petition to you, praying that, on striking off my name, the names of B. C. my wife and of W. C. my daughter be substituted for my name as proprietors in regard of the estate, revenue paying and rent-free, in the books of mutation and the Collectorate papers, and may remain current from this date." *Held* that these two documents constituted a disposition of his property by S., by a testamentary instrument, valid according to Hindu law; and that upon the death of S. his wife and daughter acquired a joint interest in the property.

There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance, a gift by a parent to an idiot child to operate after the parent's death is valid. *Kooldebnarain Shaheo and others* v. *Mussamut Woma Coomaree*, Marsh., 357.

A will of a Hindu in writing signed by him, but not attested by witnesses, is to be admitted to probate, and operates to pass not only moveable but also immoveable property. *Muncherjee Pestonjee* v. *Narayen Luxamonjee and others*, 1 Bom. Rep., 77.

A Hindu will need not be attested. A Hindu may make a nuncupative will. *Vallivyagam Pillai* v. *Pacha and others*, 1 Mad. Rep., A. C., 326.

S. being desirous of securing and settling his property, executed a deed of trust whereby he conveyed and assigned all his real and personal property unto trustees, upon (among others) the following trusts: that immediately after his death the trustees should convey, assign, transfer, and make over all the premises mentioned in the deed unto such person or persons as S. should, by his last will, attested by two witnesses, direct and appoint, and in default of such direction and appointment unto the next heirs of S., their heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and profits of the real property, and employ the residue and accumulations as well as the produce and accumulations of the personal property "in such a manner as may procure the daily worship of the household idols" mentioned in the deed, and pay what they considered a fair and proper sum to the wives and family of S. living at his death and residing in the family dwelling-house. By his will, dated the same day as the deed, S. declared that he ratified and confirmed the deed, subject to such provisions as were contained in his will, which were that the trustees should not charge the fund for the maintenance of those who should not live in the family dwelling-house and for the appointment of new trustees.

Held, first, upon the authority of Wilson *v.* Pigott, that the powers of the trustees (under the deed) did not cease on the death of S., and that the directions in the will, although not strictly within the word, amounted to a good appointment in equity, so that instead of the trustees of the deed conveying the property on the death of S. to his son, they should contrive to hold subject to the trusts of the deed as modified by the will.

Secondly, that the words "in such a manner as may procure the daily worship," &c., meant in such manner as shall be sufficient to procure the daily worship, &c., and that the trustees were not authorized to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably sufficient for those purposes. General debts and liabilities are not charges against property forfeited upon conviction of felony. *Horeedoss Banerjee* v. *C. S. Hogg (Administrator-General of Bengal) and others*, 1 Ind. Jur., O. S., 86.

When property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him, the *onus* of proving which is on the person alleging it. *Sreemutty Sursutty Dossee* v. *Poornochunder Roy*, 4 W. R., 55.

A woman cannot execute a will regarding any property she inherits from her husband or father. She may dispose of her stridhun by gift, will, or sale, unless it is immoveable property given her by her husband. *Teencowree Chatterjee* v. *Dinonath Banerjee*, 3 W. R., 49.

A Hindu by will attempted to create a trust for the accumulation, for 99 years, of the surplus income (after certain yearly payments) of his estate in the purchase of zemindaries, &c., from time to time, and empowered his trustees to continue such trust after the expiration of the 99 years' term. The will contained no disposition of the beneficial interest in the zemindary so to be purchased. *Held* that such trust was void.

Semble,—Perpetuity (save in the case of religious and charitable endowments) is not sanctioned by Hindu law. *Kumara Asima Krishna Deb* v. *Kumara Krishna Deb*, 2 B. L. R., O. C., 11.

A Hindu may make an alienation of his property to take effect after his death.

The Hindu law in Madras admits of the testamentary disposition of property, whether ancestral or self-acquired.

Semble,—That a Hindu's will would not be invalidated merely by its omitting to provide for his widow. *Vallivyagam Pillai* v. *Pacha and others*, 1 Mad. Rep., A. C., 326.

A Hindu may make a nuncupative will of property, whether immoveable or moveable. *Crinivasammal and others* v. *Vijayammal and others*, 2 Mad. Rep., 37.

The meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to these subjects.

A testator directed his sons, using the words "living jointly in respect of food," to take care of and look after his property, moveable and immoveable, and carry on his trading business.

Held that this interest is not accurately represented by the words joint estate in England, nor is it analogous to the case of a testator in England who gives property to executors for the purpose of

carrying on his trade, but is more analogous to the tenancy in common which prevails in England.

The will also directed that on the death of a son, if that son died leaving a son, the share of that son was to go to that son's son, and if the son dying left no son that the share should go to the survivors. *Held* that the share of profits made during the joint lives of the sons, which belonged to the deceased son, goes over to the other sons of the testator as they would go according to law, as from a consideration of the various terms of the will itself there was an absence of all directions on the part of the testator to accumulate the profits, or to dispose of the profits which were the property of the son. *Prankisto Chunder* v. *Sreemutty Bamasoondery Dossee*, 9 W. R., 1.

By the first clause of the will of a Hindu the testator devised all his real and personal estate to his five sons. By a subsequent clause the testator provided as follows: "But should peradventure any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them, will get any share out of the share that he has obtained of the immoveables and moveables of my said estate. In that event of the said property, such of my sons and my sons' sons as shall then be alive they will receive that wealth according to their respective shares. If any one acts repugnant to this it is inadmissible. However, if my sonless son shall leave a widow, in that event she will only receive Company's rupees ten thousand for her food and raiment." *Held*, firstly, that by the words "not leaving any son from his loins, nor any son's son," the testator meant not an indefinite failure of male issue, but a failure of male issue of any of his sons at the time of the death of that son.

Secondly, that there is nothing in such a devise by a Hindu against public convenience, or generally mischievous or against the general principles of Hindu law. *Sreemutty Soorjeemoney Dasee* v. *Denobundo Mullick*, 1 Ind. Jur., O. S., 37; 4 W. R., P. C., 114.

A widow, by virtue of the authority given to her by her husband's will, under which she adopted a son, discarded him for misbehaviour. *Held* that the validity of the will could not be summarily contested by the adopted son, who, on attaining majority, applied to the Court for the withdrawal of the certificate granted to the widow on the strength of the will, and for the grant of certificate to himself, and that the question between the parties could only be decided by a regular suit. *Issur Chunder Baboo* v. *Poorana Bebee*, 4 W. R., Mis., 16.

A testamentary paper drawn up in the lifetime of the testator, when, though very ill, he was in the full possession of his senses, and duly attested by the subscribing witnesses, who depose that it was drawn according to the instructions of the testator, and that he in their presence signified his assent thereto, was held to be sufficient under Hindu law. *Tara Chand Bose* v. *Nobeen Chunder Mitter*, 3 W. R., 138.

The land sued for was originally an impartible raj, and by family custom descended on the death of each successive raja to his eldest male heir. It was confiscated by Government; and in 1790, when the Decennial Settlement was made, was permanently conferred on A., a Hindu. A. in his lifetime, by his acts and otherwise, showed that he wanted the estate to descend to a single heir, and shortly before his death he made B., the son of his eldest grandson, such heir, and left a testamentary paper in furtherance of that object.

The present suit was brought by some of the grandsons of A., who claimed to be co-heirs with B. under the ordinary Hindu Law of Inheritance, and contended that the will was a forgery; that A. had no power to make it; and that the special law of inheritance ceased when the first proprietor was expelled.

It was observed that a person who rests his title on so uncertain a foundation as the spoken words of a man since deceased is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place. The finding below as to the *factum* of will in this case was however upheld.

It was also found from the acts of the Government, and its dealings with the property, that A. derived his title by grant from the Government, who had full dominion over the estate. The estate consequently must be taken to have been the separate and self-acquired property of A., and the nature of the estate granted was held to be a fresh grant of the family raj, as it had existed before the confiscation, with its customary rule of descent, the omission of the title of raj in the grant (there being no sunnud in this case) not affecting the case, the title of raja not being absolutely essential to the tenure of the estate as a raj.

Regulation XI of 1793 does not apply to this case, in which the grant was made before the passing of that Regulation, which moreover does not affect the descent of large zemindaries held as raj, or subject to family custom.

The grant being of the nature found, it was further held that the question as to whether A. had by law power to make a will did not really arise in this case, the only person who could impeach the will being the eldest grandson of A., who had waived his right in favour of his son B., there being no inchoate rights of inheritance in the junior members of the family. *Beerpertab Shahee* v. *Maharajah Rajendro Pertab Shahee*, 9 W. R., P. C., 15.

The testamentary power of disposition by Hindus has been established in Bengal by the decision of Courts of Justice. The nature and extent of such power cannot be governed by any analogy to the law of England. *Bhoobun Moye Debia* v. *Ram Kishore Acharjee*, 3 W. R., P. C., 15.

The title of a remote kinsman, though heir of a Hindu testator, who died without leaving issue, or any near relative surviving him, and with whom that remote kinsman had not been united in food, worship, or estate, cannot prevail against the title of a devisee of that testator, whether such property was by the testator self-acquired or held in severalty, either by virtue of a partition, or of the non-existence, or, if any did ever exist, the extinction of co-parceners. *Nurothun Jagrivan* v. *Karsandas Huriksandas*, 3 Bom. Rep., A. C. J., 6.

The will of a Hindu in the Mofussil need not be signed by the testator, or made with any particular formality; all that is requisite is that it be a

complete instrument, and express the deliberate intentions of the testator. Where a separated Hindu made a will and subsequently adopted a son, the boy adopted and his father being aware of the provisions of the will, in which an adequate provision was made for the adopted son, it was held that the subsequent adoption did not invalidate the will. *Vinayak Narayan Joy* v. *Govindrav Chintaman Joy*, 6 Bom. Rep., A. C. J., 224.

By will, dated in 1837, a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1848 she adopted a son under the will, with the knowledge of the members of the family, and the will was for a period of twenty-seven years generally recognized and acted on by the testator's family. The Judicial Committee held (reversing the decree of the High Court), in accordance with the finding of the Principal Sudder Ameen, that the will was proved. Where a will was executed by the testator signing with the Bengali letter "M," and it was argued that the testator being in very weak health the firm way in which the "M" was written threw discredit upon it, the Judicial Committee preferred the decision of the native Judge on this point to that of the English Judges of the High Court, and expressed doubt as to the value of the style of such writing as evidence in favour of the will being forged. *Rajendra Nath Halder* v. *Jagendra Nath Halder*, 7 B. L. R., 216; and 15 S. W. R., P. C., 41.

A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereinafter described), to certain persons named, and "to their successors in the trust of the settlement thereinafter provided," declaring the "trusts and objects" of his said will and settlement, and the "methods, plans, and acts" he desired "to be performed and observed" by such persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, &c., in the eighteenth clause he directed, "With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like manner invested, and that when and so soon as the aggregate thereof shall amount to Rs. 300,000, it is to be transferred to and divided among my sons or the survivors, or survivor, together with the descendants of such of them as may be deceased, *per stirpes*; and as soon as new accumulations arise in the hands of the executors and trustees, that the same be again in like manner divided among my sons then living, or the survivor of their descendants, as before, and so on from time to time." In the twenty-first clause the testator made provision for the appointment of new "executors and trustees," "as it is my intent and desire that the disposition, the conditions, and control I am now devising in regard to the future arrangement and enjoyment of my property be perpetuated."

In the Court below, held *per* Markby, J., that trusts cannot be created by Hindus, but a testator may burthen his heir or devisee with a payment of a simple sum of money to a specified person (including an idol) in existence at the death of the testator. Such bequest cannot be held good as a trust created for the benefit of the legatee, but may be treated as creating an ordinary obligation for the payment of money.

On appeal, *held*, *per* Peacock, C. J., that trusts have been and can be enforced against Hindus; the trustees in this case take upon such trusts as are valid; so far as they are invalid, the heirs are entitled to the beneficial interest. A Hindu cannot by his will do indirectly by intervention of trusts what he cannot do directly.

Per Macpherson, J.—Both by Hindu law and the practice which has always prevailed in the Courts in India and in the Privy Council, a Hindu may legally deal with his property so as to create a trust, or relation in many respects similar to, although not necessarily identical with, that known in English law as the relation of trustee and *cestui que* trust. Even if trusts are not expressly recognized by the old Hindu law, there is nothing in it forbidding them, or repugnant to them, or inconsistent with their existence.

Held, both in the Court below and on appeal, that the general scheme of the will failed, because the trusts were intended for an illegal purpose, namely, for the purpose of creating a perpetuity.

Per Peacock, C. J.—The 18th Clause is repugnant and void, also bad, because the persons to take were unborn at the time of the testator's death, and on the ground of uncertainty, it being impossible to ascertain at the testator's death who would be entitled to participate in the several divisions of accumulation directed to be made.

As to the bequests in the second, third, and fourth clauses of the will, *held* in the Court below, *per* Markby, J., that they could only operate in favour of specified persons in existence at the death of the testator.

On appeal, *held*, *per* Peacock, C. J., That they operated as "gifts to the sons for life, with remainders to such children of the sons as were in existence at the time of the death of the testator *per stirpes*."

Per Macpherson, J.—There was a good gift in remainder to the children of such sons as were alive at the time of the testator's death. It is not a violation of the principles of Hindu law to support estates which are to vest on the expiry of a life in being, in a case like the present, where the testator has given his property to trustees who have accepted it, and are prepared to carry out his wishes. Their acceptance would be sufficient if any is necessary. *S. M. Krishnaramani Dasi* v. *Aunund Krishna Bose; Aunund Krishna Bose* v. *Kumara Rajendra Narayan Deb*, 4 B. L. R., O. C., 231.

P. K. T. died leaving an only son, G. M. By his will, after reciting, "I have already made such provision for my son, G. M., as I consider sufficient, and he will take nothing whatever under this my will," he devised and bequeathed all his property, both real and personal, unto and to the use of R. N., W. M., J. M., and D. P. M. (thereinafter called the

trustees), their heirs, executors, &c., according to the nature and tenure of the property, to have and to hold upon the trusts thereinafter declared, that is to say, as regards personalty, upon trust to collect and get in the same, and thereout to pay his funeral expenses and debts, and such legacies as might be payable in the ordinary course of administration, within one year from the time of the testator's death; after paying the funeral expenses, debts, and legacies, upon trust, to sell and convert into money such portion of the personal estate as should remain unexpended, and not consist of money or security for money, and to invest the proceeds on good securities; and out of the annual income of the whole, upon trust, to pay the annuities given by the will, and also any of the legacies so far as it would suffice; and after payment of the annuities and legacies to pay the surplus unexpended unto the person or persons for the time being entitled to the beneficial enjoyment of the real property, or of the rents and profits or surplus rents and profits thereof; and so soon as all the annuities and legacies should have fallen in and been fully paid and satisfied, in trust absolutely for the person or persons entitled to the beneficial or absolute enjoyment of the real property.

As regards realty upon trust, until all the debts and legacies have been paid, and all the annuities have fallen in and been fully satisfied, to receive and collect the rents, issues, and profits thereof, and thereout, in the first instance, to pay such (if any) of the legacies and of the annuities as the personal estate or income derived from the trust-moneys and securities should be inadequate to defray, and to pay the residue to the person or persons for the time being to whom the real estate is devised, for the absolute use of such person or persons respectively. The testator then desired the trustees to hold the real estate generally for the use and benefit of such last-mentioned person or persons for the time being, so far as was consistent with the trusts and provisions of the will; and further he directed that out of the net annual income the person entitled to the beneficial enjoyment of the real property, or of the income or surplus income thereof, should receive for his own use every year Rs. 2,500 a month, or Rs. 30,000 a year, and that the various legacies and annuities should only be paid gradually, and as found possible by the trustees, out of the balance remaining after the last-mentioned payment; and so soon as all the legacies and annuities have fallen in, or been paid or fully satisfied, then in trust forthwith to convey the real estate unto and to the use of the persons entitled to the beneficial interest therein, with and subject to such and the like limitations, provisions, and directions, thereafter contained and expressed of and concerning the real estate, so far as the then condition of circumstances will permit, and so far as such limitations or directions can be introduced into any deed of conveyance or settlement without infringing upon or violating any law against perpetuities which may then be in force and apply to the real estate or the conveyance or settlement of it as last aforesaid (if any such law there be). The testator then desired that all the gifts, devises, and limitations in his will thereinafter contained, should be read and taken as subject to the devise and bequests thereinbefore made to the trustees, and the various provisions and declarations made by him with reference thereto. The testator devised all his real property (subject to before-mentioned devise to the trustees) unto and to the use of J. M., for the term of his natural life, and from and after the determination of that estate to the use of the eldest son of J. M., born during the testator's life, for the life of such eldest son; and after the determination of that estate to the use of the first and other sons successively of the eldest son of J. M., according to their respective seniorities, and the heirs male of their respective bodies issuing successively; and upon the failure or determination of that estate to the use of the second and other sons of J. M., born during the testator's life, successively according to their respective seniorities; and upon the failure or determination of that estate to the use of the first and other sons successively of such second or other sons of J. M., and the heirs male of their respective bodies issuing; so that the elder sons of J. M., born in the testator's lifetime, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and taken before the younger of the sons of J. M., born in the testator's lifetime, and his and their respective first and other sons successively and the heirs male of their respective bodies issuing. And after the failure or determination of the use and estates thereinbefore limited to the use of each of the sons of J. M., who should be born after the testator's death successively, according to their respective seniorities, and the heirs male of their respective bodies issuing, so that the elder of such sons and the heirs male of his body may be preferred to and taken before the younger of such sons and the heirs male of their and his respective bodies issuing. On failure of these estates there were similar limitations to other members of the testator's family and their sons, sons' sons, &c. Further, the testator declared his will and intention to be "to settle and dispose of the estate in manner aforesaid as fully and completely as a Hindu born and resident in Bengal may give or control the inheritance of his estate, or a Hindu purchaser may regulate the conveyance or descent of property purchased or acquired by him, and not subject to any law or custom of England, whereby an entail may be barred, affected, or destroyed; provided always, and I thereby declare, that if any devisee or tenant-for-life, or in tail or otherwise, or any person entitled to take as heir by descent or adoption or otherwise in any manner, under the limitations hereinbefore contained shall permit or suffer the property so devised, &c., to be sold for arrears of Government revenue, &c., then and immediately thereupon the devise and limitations in this very will declared and contained shall wholly cease and determine as to him." Finally he appointed the trustees executors of his will.

J. M. had no son born during the life of the testator.

G. M., the son of the testator, sued to have the will set aside except as regards the payment of debts, legacies, and annuities. He also charged the executors with waste, and asked for an account.

Held, both in the Court below and on appeal, that the devises were not void merely upon the ground that the estates were devised upon trust, and that the testator had power to create, by means of a devise to trustees, such estates and beneficial

interests as he could have created without the intervention of trustees. But the entails intended to be created by the will were void, estates-tail being wholly opposed to the general principles of Hindu law.

The plaintiff could not claim maintenance, sufficient provision having been previously made for him by his father.

Held, in the Court below, that although the testator could not create an estate-tail, yet as it is clear that he intended to dispose of the whole inheritance, the devise must be construed as amounting to the creation of several successive life-interests, each commencing on the termination or failure of the preceding, the whole completed by the gift of the entire estate of inheritance to take effect on the expiration of the last life-interest. The first series of such devises is not bad for remoteness, for there is nothing in Hindu law to prevent a testator from making a gift of property to an unborn person, provided the gift is limited to take effect, if at all, immediately on the close of a life in being; therefore as concerns only the succession of gifts for life only to J. M. and his sons, terminated by the absolute gift of the inheritance to an unborn person, the will is unimpeachable because each of these gifts must take effect, if at all, at or before the close of a life in being; and the like conclusion would hold with regard to each of the other series of devises taken alone; but taken in the aggregate they may violate the rule against perpetuities; but the first series could not be affected by this, and therefore as long as it stands the plaintiff has no claim to a decision of the Court upon the validity of a devise which is subsequent in order of time.

The plaintiff's suit must be dismissed. He is not entitled to immediate relief of any kind.

Held, on appeal, that the devise to J. M. was valid, though it created only a life estate. The intention of the testator was that J. M. should take an immediate vested beneficial interest in the real estate, subject to the charges for payment of legacies, annuities, &c., and in the Rs. 2,500 a month. The devise to J. M. was not bad for uncertainty. But the devises of estates-tail must be rejected as void, and cannot be converted by the Court into devises creating larger estates than the testator intended. The words of the devise cannot be construed to pass a general and absolute estate. As J. M. had no sons born in the lifetime of the testator, the devise to the use of the first and other sons successively of the eldest son of J. M. lapsed. By Hindu law a gift cannot operate to pass property unless the donee is in existence, so that as soon as the property is relinquished, and passes out of the donor, it may vest in the donee. That in the case of a will would be at the time of the death of the testator, from which moment the will operates as a relinquishment (except in the case of a posthumous child of the testator or a son adopted by the widow of a testator). Therefore the devises to the sons of J. M. to be born or adopted after the death of the testator are not valid according to Hindu law. The gift to trustees does not cure the invalidity, for the law will not permit that to be done indirectly which cannot be lawfully done directly.

The gift of the personalty fails because of the want of certainty at the time of the death of the testator, who would be the donee, and whether the donee was a person in existence or not. The gift over of the *corpus* of the personalty after the payment of the legacies and annuities was bad, and consequently the property in it is vested in the son and heir of the testator subsequently to the trusts for the payment of debts, legacies, and annuities, &c. But the right to receive the surplus rents and profits of the real estate and of the interest and dividends of the personalty, if there be any, is vested in J. M. for life, or until the time arrives for the conveying of the real estates, and the vesting of the *corpus* of the personalty. The heir-at-law cannot be disinherited by words expressing that he is not to take any benefit under the will. He will take by descent, by his right of inheritance, whatever is not validly disposed of by the will.

Subject to the trusts for payment of the funeral and testamentary expenses and of the debts, legacies, and annuities, the plaintiff, as the heir-at-law of the testator, is entitled (notwithstanding the will) to a general estate of inheritance in reversion to the immoveable property of the testator, and by the terms of the will no estate, larger than an estate for life, has been validly created, and there is a resulting trust in the plaintiff's favour. The plaintiff is not entitled to a declaratory decree against the unborn sons of J. M. or the subsequent unborn devisees. The plaintiff is entitled to have the question of waste tried. He is also entitled to have an account of the moneys and securities which have come into the hands of the trustees, and to see how they have been applied.

Per Norman, J.—The power of a Hindu to make a will is not of modern introduction, nor is it of local origin. Wills were known to and in use amongst Hindus not in the presidency towns only, but from one end of the peninsular to the other. The right to make a will is part of the Hindu law itself. The extent and nature of the disposition which a Hindu testator is capable of making is not a question of public expediency or of custom or usage, but must be regulated by rules to be found in or directly deduced from Hindu law. *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore*, 4 B. L. R., O. C., 103.

The testator, a Hindu, made a will in the English form and language, in which he bequeathed (*inter alia*) as follows: "To each of my domestic servants in Calcutta who shall have been in my service ten years and upwards at the time of my death Rs. 100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff had been in the service of the testator for about 40 years as sirang on board a steamer which the testator kept on the river, and in which he used to visit his zemindaries and perform other journeys by water. The plaintiff was in the habit of daily attending at the testator's residence, and there obeying any orders that might be given him. If the steamer was not needed the plaintiff used to attend at the testator's residence from early in the morning to about one in the afternoon, returning to take his meals and stop on board the steamer. *Held* that he was entitled to take under the legacy as a domestic servant of the testator. *Dhanno Sirang* v. *Upendra Mohan Tagore*, 8 B. L. R., 244.

A Hindu testator died possessed of considerable property, and leaving a will dated 12th September, 1870, by which he appointed his wife executrix in

the following words: "I appoint my wife A. D. executrix on my behalf, and vest her with entire authority and responsibility. After my decease my said wife shall perform all duties according to my instructions embodied in the following paragraphs." After reciting that his wife was a purdah woman, and that his three sons were disobedient and extravagant, he appointed certain persons managers to perform certain duties under the will which could not be performed by a purdah woman; and after various minor bequests and directions he directed that if it should appear to the executrix or executors for the time being that they would not be able to protect the property, then they should form a family fund in the Government trust fund of all the property, and that the interest thereof should be employed in the performance of certain religious ceremonies and the family expenses, and then bequeathed as follow: "Whatever Company's paper, moveable and immoveable property, &c., shall be formed into a family fund in the Government trust fund, my great-grandsons shall, when they attain majority, receive the whole to their satisfaction, and they will divide and take the same in accordance with the Hindu law. God forbid it! but should I have no great-grandsons in the male line, then my daughters' sons when they are of age shall take the said property from the trust fund, and divide it according to the Hindu shastras in vogue." The testator left living at the time of his death one son's son, three sons, and a daughter and her son, but no great-grandson. *Held* that the bequest to the great-grandsons was void and inoperative for remoteness; that the bequest to the daughters' sons was dependent on and not alternative to the gift to the grandsons, and therefore a bequest void under Section 103 of the Succession Act. *Held* also that A. D. was invested under the will with only a representative character, and was therefore not entitled beneficially to any residue of the estate as against parties who might have any interest therein. The effect of the Hindu Wills Act, which makes (among others) Section 180 and 242 of the Succession Act applicable to Hindus, is to make the probate of the will evidence of the will against all persons interested under the will. *Brajanath Dey Sirkar* v. *S. M. Anand Mayi Dasi*, 8 B. L. R., 208.

Where a testator directed in his will that (1st) "On the death of either of my four sons leaving lawful male issue, such issue shall succeed to the capital or principal of the respective shares of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of twenty-one years;" (2nd) "If either of my four sons shall die leaving male issue, and the whole of such issue shall afterwards die under the age of twenty-one years and without male issue, the share or shares of the sons so dying shall go and belong to the survivors of my said sons and to my two grandsons (named in the will) for life and their respective male issue absolutely after their death;" and (3rd) "On the death of either of my sons without leaving any male issue, his share is to go and belong to the survivors of my said sons and my two grandsons (named in the will) for life, and their respective male issue absolutely after their death, in the same manner and proportions as hereinbefore described respecting their original shares." It was held,—

1st. That a vested interest was conferred upon the issue immediately upon the death of the father. The expression "to be paid or transferred to them respectively on attaining the age of twenty-one years" was a mere attempt to defer the period of payment to or enjoyment by such issue.

2nd. That the gift over was void, because the event on which it was to take effect might be indefinitely remote, even if the words "male issue" be construed as meaning sons. The meaning of "male issue" is not confined to sons alone.

3rd. That in accordance with the ruling in Ganendra Mohun Tagore *v.* Upendro Mohun Tagore, a gift by a Hindu to a person not ascertained or capable of being ascertained at the time of the death of the testator cannot take effect; therefore the gift to the unborn male issue of the sons and grandsons of the testator must fail. Where there is a gift to a class, and sane persons constituting such class cannot take in consequence of the remoteness of the gift or otherwise, the whole bequest must fail.

Held also, in accordance with Ganendra Mohun Tagore *v.* Upendra Mohun Tagore, that a Hindu cannot under any circumstances make a gift by will to an unborn person or persons. *Srimati Bramamaji Dasi* v. *Jages Chundra Dutt*, 8 B. L. R., 400.

(*b*) *Probate and Executors thereof*—(See I., ADMINISTRATION).

Grant of probate of the will of a Hindu confers no title upon the executor, but he derives his title from the will itself. Probate is evidence of his title only so far as a decree of the Court granting it would be, namely, between the parties and those privy to the suit in which the decree is made. *Sharo Bibee* v. *Buldeo Doss*, 1 B. L. R., O. C., 24.

Government promissory notes belonging to the estate of a deceased Hindu were endorsed over, without consideration, by A. (who had taken out probate of a forged will, and was acting under the same as executor) to B., who received the same *bonâ fide*, but without due enquiry, and on obtaining a renewal of the same endorsed the renewed paper back to A. for the purpose of enabling him to raise money thereon, believing that A. had a right so to do. *Held* that B. was liable to account to the representatives of the deceased for the value of the said promissory notes as assets of the deceased come into his hands. The property in the moveable estate of a deceased Hindu does not pass to his executor as such. *Srimati Joy Kalli Debi* v. *Shibnath Chatterjee*, 2 B. L. R., O. C., 1.

The Court will, on the application of one who is next of kin of a deceased Hindu, order a person in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant. *In the goods of Balkristana Gunputjee*, 1 Bom. Rep., 114.

Probate granted of the will of a Hindu to his widow and heiress, who was universal legatee under the will, as executor by necessary implication, there being no executor mentioned in the will. *Radhika Mohan Sett, in the goods of*, 7 B. L. R., 563.

XIX.

MAHOMETAN LAW.

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1.—MISCELLANEOUS.

The custom of taking interest as between Mahometans is recognized by the Courts.

The Small Cause Court Acts (IX of 1850 and XXVI of 1864) form one procedure, and the High Court can therefore exercise, in cases referred under Section 55 of Act IX of 1850, the extended powers given to it by Section 8 of Act XXVI of 1864.

Semble,—Per Phear, J. (dissenting from Ramlal Mookerjee *v.* Haran Chunder Dhur), Act XXVIII of 1855 repealed the Mahometan laws relating to usury. By "laws relating to usury" the Legislature meant laws affecting the rate of interest. *Mia Khan and Mame Khan* v. *Bibi Bibijan and Bibi Amnujan*, 5 B. L. R., 500, and 14 S. W. R., C. R., 508.

Although a purchase by a Mahometan with his own money of an estate in the name of his son raises a presumption of the son's name being used benami for his father, proof that the father's object was to affect the ordinary rule of succession as from him to that property is sufficient to give, as respects strangers, a title to the son independent of and adverse to the father.

Where *bonâ-fide* creditors of the ostensible owners of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami. *Ruknadawala Nawab Ahmed Ali Khan* v. *Hurdwari Mull*, 5 B. L. R., 578.

In a suit to recover possession of a share of landed property where plaintiff claimed on the ground of purchase from the heirs of the proprietor, who had been missing for many years, and in which the defendant set up a mukurruree and pleaded that as ninety years had not elapsed since the disappearance of the proprietor the property could not, under Mahometan law, be inherited by his heirs, and the alienation by them was therefore invalid,—

Held that as plaintiff had been found in possession under the conveyance from the heirs, who did not dispute his title, the defendant, a stranger, who had failed to prove either title or possession under the mukurruree which he set up, was not in a position to advance the plea in question.

Held that ninety years is the least period within which, according to Mahometan law, the estate of a missing person can be alienated by his heirs. *Hosseinee Khanum* v. *Tijun Lall*, 14 S.W. R., C. R., 293.

To the due performance of the ceremony of talab-i-ishtehad, it is not necessary that any particular form of words should be employed. The right of pre-emption exists among Hindus in

Behar. *Ramdular Misser* v. *Jhumack Lal*, 8 B. L. R., 455; and 17 S. W. R., C. R., 264.

By Mahometan law, an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it.

The relationship existing between cousins is not a sufficient consideration to support such an agreement.

Parol evidence is inadmissible to show that in an agreement to pay an annuity there was a consideration for the granting of the annuity different from that expressed in the agreement. *Jáfur Ali Nizám Ali* v. *Ahmed Ali Imám Háidurbuksh*, 5 Bom. Rep., A. C., 37.

In a suit by a member of a Mahometan family to recover possession of a share in landed property alleged to be ancestral, where defendant claimed the same as his separately acquired property,—*Held* that it was not necessary for defendant to show that he had funds sufficient to enable him to obtain the property, and that the burden of proving that the property was acquired for and enjoyed by the whole family jointly was upon the plaintiff. *Mahomed Afak* v. *Ekram Ali*, 14 S. W. R., C. R., 374.

The application to Mahometans of their own laws in cases other than those coming under the denomination of inheritance, marriage, and caste (*e.g.*, in case of gifts), is the administering of justice according to equity and good conscience. *Johooroodeen Sirdar* v. *Baharoollah Sircar*, W. R., 1864, 185.

A sale of Mogulan dues by a Mahometan widow annulled, as made without proof of power to sell. *Bowanjee Muncherjee* v. *Syud Hossain Abdoollah*, 5 W. R., P. C., 61.

In a dispute between two grandsons as to proprietary right in a village which had been registered in the name of a member of the elder branch of the family, the Privy Council held that the *ratio decidendi*, according to which the legal presumption was in favour of one grandson claiming against another, and the *onus probandi* placed on the one claiming to be sole possessor was more consistent with equity and common sense than a hard and fast rule requiring the party who claims a joint interest to prove that the registered proprietor has duly accounted to him for his proportionate share of the profits. *Hyder Hossein* v. *Mahomed Hossein*, 17 S. W. R., C. R., 185.

2.—Divorce.

A husband entered into a private agreement with his wife, authorizing her to divorce him upon his marrying a second wife during her life, and without her consent. *Held* that the Mahometan law sanctioned such an agreement, and that the wife, on proof of her husband having married a second time without her consent, was entitled to a divorce. *Badranissa Bibe* v. *Mafiattalu*, 7 B. L. R., 442, and 15 S. W. R., C. R., 555.

According to Mahometan law, the divorce of one acting under compulsion from threats is effective. *Ibrahim Mulla* v. *Enayetur Ruhman*, 4 B. L. R., A. C., 13, and 12 S. W. R., C. R., 460.

Suit by a Mahometan female against her husband for maintenance. Defendant pleaded that he had divorced the plaintiff on the 8th January, 1862. Both the lower Courts found that no divorce had taken place upon the following facts. Defendant went to Trichinopoly, leaving his wife at Tinnevelly. While at Trichinopoly he received letters from Tinnevelly informing him that his wife was leading an immoral life. He therefore went before the Town Kázi of Trichinopoly, made a written declaration in the shape of a letter to plaintiff to the effect that he had divorced her, and repeated the divorce three times successively before the Town Kázi of Trichinopoly. Defendant directed also that the letter of divorce should be sent to the plaintiff, but there was no evidence of her having received it. *Held*, upon special appeal, that it was clear upon the authorities that there had been a valid divorce. The compressing the expression of the intention into one sentence seems, on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral. *Sherif Saib* v. *Usanubibi Ammul*, 6 Mad. Rep., 452.

By the old Mahometan law, divorce by khola, although granted at the instance of the wife, who gives or agrees to give a consideration to her husband for her release from the marriage tie, is the sole act of the husband; and such divorce is not invalidated by the non-fulfilment by the wife of the terms upon which it was procured.

By the mere allegation of khola on the part of the husband, the divorce of the wife is fully established. *Moonshee Buzl-ul-Ruheem* v. *Luteefoortee Nissa*, 1 Ind. Jur., O. S., 1.

Where a Mahometan was shown to have been duly married, her subsequent divorce should not be presumed only from the fact of her husband having taken another woman to live with him, in consequence of which his wife left his house and went to live with a relative, nor from the fact of his having stated in his will that he had no wife, lawful or *nicca*. *Noor Bibee* v. *Naivas Khan*, 1 Ind. Jur., N. S., 221.

An instrument of divorce signed by the husband in the presence of, and given to, the wife's father, was held to be valid, notwithstanding that it was not signed in the presence of the wife. *Mussamut Waj Bibee and others* v. *Azmut Ali*, 8 W. R., 23.

The dissolution of a marriage contract by death or otherwise leaves the parties or their heirs, according to Mahometan law, no more related than the heirs of *quondam* partners in a mercantile firm. *Mussamut Ekin Bebee* v. *Meer Ashruf Ali*, 1 W. R., 152.

3.—Dower.

A Mahometan widow, even though she have a valid claim for dower against her husband's estate, cannot take possession of the estate as against the heirs, but must sue them regularly for the amount due to her. *Bibee Selamut* v. *Sheikh Mowla Buksh*, 5 W. R., 194.

According to Mahometan law, the deed of dower itself is not necessary to prove a grant of dower. *Tajoo Beebee* v. *Nooram Beebee*, 1 W. R., 31.

In a suit by a Mahometan wife against her husband for her dower,—*Held* that the cause of action arose when the suit was instituted, and at no earlier period, and that therefore the claim was not

barred under any of the sections of Act XIV of 1859.

Held also, as no specific amount of dower has been declared exigible, and as there was no clear evidence of what was customary, that the Assistant Judge in appeal committed no error in law in holding that one-third of the whole may be considered exigible during the life of the husband, the remaining two-thirds being claimable on his death. *Fatma Bibi* v. *Sadruddin Valad Nizamuddin*, 2 Bom. Rep., 307.

Held that the period prescribed by the Limitation Act does begin to run in the lifetime of her husband against a Mahometan woman's claim for dower, until she has demanded such dower. *Held* also that separation does not make it incumbent upon her to make any such demand. *Natthie* v. *Daud*, 2 Bom. Rep., 309.

The very best description of oral evidence is absolutely necessary to support a claim for dower where no kabinamah is produced. *Mussamut Husseena* v. *Mussamut Husmutoonissa*, 7 W. R., 495.

A deed of dower is not in all cases indispensable to the truth, and soliciting of a claim for dower.

Semble,—There appears to be no reason why a mukzernamah or statement made (not on oath before the Court) by parties in a position to know the facts, should not have a certain weight. *Mussamut Bebee Jumulla* v. *Mussamut Bebee Mulka*, 1 Ind. Jur., N. S., 26.

According to Mahometan law, mojul or exigible dower is payable on demand at any time from the consummation of the marriage up to the death of the wife, and a suit preferred by heirs for their mother's mojul dower will be in time if brought within twelve years of the mother's death.

Mowujul or non-exigible or deferred dower is claimable on the dissolution of the marriage either by death or divorce. Shares of dower when received by the legal inheritors thereof cease to be dower, and become part of the recipient's estate. *Hossimooddeen Chowdhry* v. *Tajumnissa Khatoon*, W. R., 1864, 199.

When nothing is expressed at the time of marriage, whether the dower is to be exigible or deferred, it must, under Mahometan law, be considered exigible, and as such demandable and recoverable from the husband at any period during coverture. Limitation is not applicable to a suit for exigible dower, except in a case of dissolution of marriage by death or divorce. *Mussamut Bebee Jumula* v. *Mussamut Mulluka*, W. R., 1864, 252.

Held that a widow in possession of the share of her deceased husband's heirs in lieu of dower, is not competent to alienate it, and the heirs can sue for the avoidance of such transfer made by the widow. *Mahomed Ussud-ool-lah Khan* v. *Mussamut Ghashea Beebee*, 1 Agra Rep., A. C., 150.

Where a Mahometan widow was improperly deprived of a portion of such estate under a decree in a suit by an heir of her husband, the question as to her right of dower having been before the Court, but not disposed of by the Judge in that suit,—*Held* that the heir must be treated as having taken the property subject to a right of lien which was not divested by the decree in the former suit. *Mussamut Janee Khanum* v. *Mussamut Amatool Fatima Khanum*, 8 W. R., 51.

Among Mahometans deferred dower becomes payable on the dissolution of the marriage, whether by divorce or by the death of either of the parties. According to Mahometan law, when the heirs of a woman claim dower from her husband, which was mowujul or deferred, and not due or payable till her death, their claim is a simple money claim founded solely on the contract made by the husband; and a suit for such dower must be brought within three years of the wife's death (Act XIV of 1859, Section 1, Clause 10).

The husband is not a trustee for the wife in respect of her dower, nor has the wife a lien on her husband's property. *Quære* as to the nature of the wife's claim for dower against the heirs of her husband.

Mental derangement is no impediment to succession under the Mahometan law. *Mir Mahar Ali* v. *Amani and others*, 2 B. L. R., A. C., 306; S. C., 11 W. R., 212.

Where in a suit for dower the original kabinnamah, which is the basis of the suit, cannot be produced, its non-production must be proved by secondary evidence of a reliable nature. *Abdool Jubbar Chowdhry and others* v. *The Collector of Mymensing and Dacca*, 11 W. R., 65.

The widow of a Mahometan, in possession of her husband's estate under a claim of dower, has a lien upon it as against those entitled as heirs, and is entitled to possession as against them, till her claim of dower is satisfied.

According to the Punjab Code (held to be in force in Oudh in the years 1859 and 1860), the dower mentioned in a marriage contract (instead of being enforced as an absolute deed, as claimed by the appellant) is subject to a modification at the discretion of the Court, both in the case of a divorce and of the death of the husband. *Mulkah Do Alum Nawab Tajdar Bohoo* v. *Mirza Jehan Kude*, 2 W. R., P. C., 55.

The period prescribed by the Limitation Act in claims for dower does not begin to run in the lifetime of her husband, until the wife has made a demand. *Daud* v. *Nathi*, 1 Ind. Jur., N. S., 112.

A widow who is in possession of the property in lieu of dower cannot alienate what did not absolutely belong to her, and an heir to a certain portion of the property has a *locus standi* to seek to set aside the alienation, though he cannot claim possession before the dower is paid. *Bebee Ajeemone* v. *Asgur Ally and another*, 3 Agra Rep., 167.

The heir of a deceased Mahometan having dispossessed the widow of deceased, who was in possession in lieu of dower, takes the estate subject to her lien for the amount of her dower. *Syud Umed Ali* v. *Mussamut Saffiham*, 3 B. L. R., A. C., 175.

An heir to a share of the estate of a deceased Mahometan is not entitled to recover possession from the widows so long as any portion of the dower remains unsatisfied, nor can he be entitled to mesne profits. His proper course is to bring a suit for an account of what is due as dower, and to pray that on satisfaction of that amount he may be put into possession of his share of the estate. *Ahmed*

Hossein v. *Mussamut Khodea and others*, 10 W. R., 369.

A Mussulman on his marriage entered into a written agreement (unregistered) with his wife to pay her a lakh of rupees, one-fourth as prompt (mooujjul) dower, the remainder as deferred (moowujjul) dower. A separation occurred between the husband and wife, but there was no divorce. During the separation, on 3rd May, 1861, the wife petitioned for leave to sue as a pauper to recover the balance of her prompt dower. The husband, on the 1st July, 1861, filed a petition denying her claim against him. The wife's application to sue as a pauper was rejected on 27th January, 1862. The husband died on 30th August, 1867. On the 13th May, 1869, the widow brought her suit to recover the balance of prompt dower and the whole of the deferred dower. *Held* that she could only recover the latter. The cause of action in respect of deferred dower could not arise until the husband's death. But the cause of action in respect of prompt dower arises upon demand by the wife and refusal by the husband. In this case there was a demand by the wife and a refusal by the husband, *viz.*, in their petition of 3rd May and 1st July, 1861, respectively, more than three years before suit, therefore the claim to prompt dower was barred by Clause 9, Section 1 of Act XIV of 1859. *Ameeroonissa* v. *Mooradoonissa*, distinguished. *Mussamut Rani Khijarannissa* v. *Rani Risannissa Begum*, 5 B. L. R., 84; 13 S. W. R., C. R., 371.

Where a husband granted a dower of five lakhs of Lucknow rupees, and subsequently directed Sicca rs. 4,50,000 Company's paper to be set aside for her,—*Held*, under the circumstances, that this was to be presumed to be a payment on account of dower, and not a gift. *Iftikarunissa Begum* v. *Nawab Amjad Ali Khan*, 7 B. L. R., 643.

The widow's claim for dower, under the Mahometan law, is only a debt against the husband's estate. It may be recovered from the heirs to the extent of assets come to their hands. It does not give the widow a lien on any specific property of the deceased husband so as to enable her to follow that property, as in the case of a mortgage, into the hands of a *bonâ-fide* purchaser for value.

Semble,—Under the Mahometan law, there is not hypothecation without seisin; but a creditor, whether widow or any other creditor, if in possession of the husband's property with the consent of the debtor or his heirs, might hold over until the debt is paid; and that the cases cited to show that the widow had a right to hold until her dower was paid off proceeded on this principle.

Per Hobhouse, J.—It is very questionable whether the Court is bound to apply the Mahometan law to this case under the provisions of Regulation VII of 1832, the case not being one of succession, inheritance, marriage, caste or religious usage; but simply one of contract. *Mussamut Wahidunnissa* v. *Mussamut Shubrattun*, 6 B. L. R., 54; and 14 S. W. R., C. R., 239.

According to Mahometan law a simple contract for a money-payment in lieu of dower does not necessarily give the wife a lien over her husband's property, unless the terms of the contract are such as to give her the security of specified property. If on the death of the husband the heirs allow her to get possession of any of his property, and to hold it in lieu of payment, she will have a lien on that as against the heirs. *Bibee Mehrun* v. *Mussamut Kubarum*, 13 S. W. R., C. R., 49.

Where a Court holds that a defendant is in possession of certain landed property in lieu of dower and that the plaintiff is not entitled to sue for possession of the property until such claim for dower has been satisfied, it is unnecessary to determine the question of the amount of such dower, plaintiff having pleaded that the dower had been surrendered.

A Mahometan widow is entitled to a lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due, having reference to the amount originally filed as dower, or to the amount satisfied by payments. An heir to a share of the estate is not entitled to recover possession from the widow so long as any portion of the dower remains unsatisfied, nor can he be entitled to mesne profits, but his proper course is to bring a suit for an account of what is due as dower, and to pray that in satisfaction of that amount he may be put into possession of his share of the estate.

Payment of the widows, like every other debt, must be made before the estate can be distributed amongst the heirs. *Baland Khan* v. *Musumat Janee*, 2 N. W. R., 319.

In a suit against a Mahometan widow for property in which she sets up a claim to have a lien on account of her unsatisfied dower, she is bound to prove the existence and amount of her dower in a clear and satisfactory manner. *Bibee Wuhudun* v. *Syud Wasee Hossein*, 15 S. W. R., C. R., 403.

In a suit against a Mahometan widow by her husband's heir to recover possession of property held by her in virtue of a claim for dower, should proof of forcible dispossession fail and no other origin of defendant's possession be alleged, a Court would be justified in finding, as a matter of inference, that the defendant had got into possession on the ground alleged by herself with the consent of the other heirs. *Kurreem Buksh Khan* v. *Mussamut Doolhin Khoori*, 15 S. W. R., C. R., 82.

Where a Mahometan lady had been in possession upwards of twenty years of property alleged to have been given her by her husband under a kabinnamah, it was held that neither he nor his creditors could assert a title against her on the ground that when he gave the kabinnamah he had not the property in his possession, and therefore could not pass it under Mahometan law. *Samboonath Misser* v. *Furpootoonissa Bibee*, 14 S. W. R., C. R., 279.

The hypothecation of an estate for dower is a right that does not arise under the Mahometan law as the consequence of the gift of dower.

The right of a widow in possession is founded on her power, as a creditor for her dower, to hold the property of her husband, of which she has lawfully and without force or fraud obtained possession, until her debt is satisfied, with the liability to account to those entitled to the property, subject to the claims for the profits received. As to the amount of dower in this case, the question was whether it was fixed at Rs. 40,000 and one gold mohur, as alleged by the widow, or at 500 dirruns under the Mahometan law, as contended for by

the respondents. The respondents, however, after the husband's death, became aware of the widow's claim for dower; and although they opposed the widow's claim to possession, yet, after she had obtained possession, they took no steps for ten years to interfere with her possession, thereby rendering the proof of the agreed dower more difficult, and perhaps relying upon that very difficulty. The Privy Council, therefore, treating this conduct of the respondents as indicating not only a consciousness on their part that the dower had been fixed at a considerable amount, as inferred by the High Court, but also a consciousness on their part that what the appellant asserted to be the amount was a true and proper amount, were of opinion that there was reasonable evidence to support the appellant's case to the dower she claimed. *Mussamut Bebu Bachun* v. *Shaikh Hamid Hossein*, 17 S. W. R., C. R., 113.

The Privy Council reversed so much of the decision of the High Court as ruled that the effect of an arrangement between the plaintiff and her son, by which the son relinquished his share in his late father's property, was not that the mother took an absolute interest in the property in satisfaction of her claim for unpaid dower, but that she should have only a life-interest, the son retaining the legal reversion in himself; the Privy Council being of opinion that the creation of such a life-estate did not seem to be consistent with Mahometan usage, and that there ought to be very clear proof (which had not been shown in this case) of a transaction so unusual and so improbable amongst Mahometans. A widow's claim for unpaid dower, when it does not, by virtue of a bye-mokusa executed by her husband, become a preferential charge on the estate, constitutes a debt payable *pari passu* with the demands of other creditors. *Mussumat Hameeda* v. *Mussumat Budhen*, 17 S. W. R., C. R., 525.

A suit for the maujjil or exigible portion of dower due to plaintiff under a kabinnamah is cognizable by a Small Cause Court, under Section 6, Act XI of 1865, notwithstanding that questions of very considerable difficulty may be raised in it collaterally with regard to the validity of the marriage. The decision of the Small Cause Court on such collateral matters has not the same effect as the decision of the Court which had jurisdiction to determine them in a suit regularly brought for that purpose. *Hula Khoory Bibee* v. *Shaikh Batoo Koshye*, 17 S. W. R., C. R., 512.

According to Mahometan law dower is presumed to be prompt in the absence of express contract, and may be enforced at any time. *Tadiyu* v. *Hasanebiyari*, 6 Mad. Rep., 9.

In the case of an advance of money on a contract that it should be held on loan by the husband (a Mopla following the Mahometan law) without liability to interest, the repayment to be made by the husband in the event of a divorce taking place, or out of his effects at his death,—

Held that the Mahometan law of dower was not applicable to the suit, and that the period of limitation was three years from the date of the divorce or the death of the husband. Referred Case, No. 15 of 1870, 5 Mad. Rep., 280.

4.—Endowment.

According to Mahometan law, wukf or endowed property is alienable. Wukf property is not the less wukf property because of the use of the words "inam" and "altamgha" in the grant, provided the grant clearly appears to have been intended for charitable purposes. A mutwallee or superintendent of an endowment is not barred by limitation if he sues to recover possession of endowed property within twelve years from the date of his appointment. *Jewan Doss Sahoo* v. *Shah Kubeerooddeen*, 6 W. R., P. C., 3.

By local custom in the Broach district, wukf land left as a religious endowment may be mortgaged, although such practice is contrary to Mahometan law. *Abbas Ali Zenool Aradin* v. *Goolum Mahomed Wallud Baba Mirza*, 1 Bom. Rep., 36.

In a Mahometan religious endowment, when it is essential that the superior or manager should have certain qualifications which succession by descent would not always ensure, the theory of hereditary succession is most unlikely and out of place. *Bibee Syedun* v. *Syud Allah Ahmed*, W. R., 1864, 327.

According to Mahometan law, the trustees of an endowment cannot create a valid mouroree tenure at a fixed rent by granting a lease of any portion of the wukf property. *Soojat Ali* v. *Zumeerooddeen*, 5 W. R., 158.

In dealing with the mutwallee of an endowment, it is not necessary for the purchaser to look further than to the power of the mutwallee under his deed of trust. If the deed gives the mutwallee the power and discretion to make a sale, it is not a matter of concern to the purchaser whether that power or discretion is judiciously exercised or not. *Moonshee Golam Ali* v. *Mussamut Sowlutoosnissa Bibee*, W. R., 1864, 242.

An appointment as manager, by the trustee for the time being of a Mahometan religious endowment, was held not effectual beyond the incumbency of the nominator. *Shah Moheeooddeen Ahmed* v. *Elahee Buksh and others*, 6 W. R., 277.

Held (by Kemp, J., whose opinion prevailed) that the mere fact of a mortgage subsisting at the time when an endowment of property is made, does not render such endowment invalid under the Mahometan law; and that the appropriation of money is not the appropriation of a thing "consumed in using" in these days when Mahometans openly disregard the prohibition to take interest, inasmuch as money can be invested in Government securities, and the interest appropriated to the purpose of the endowment.

Held (by Markby, J.,) that there can be no complete endowment of mortgaged property until the property is released, and that the appropriation creates a valid obligation on the appropriator and his heirs to release the property. If the release is effected by sale the surplus proceeds will have to be invested in the purchase of immoveable property for the purpose of the appropriation. *Khaja Hossein Ali* v. *Shahazadee Hazara*, 12 W. R., 344.

In the case of wukf land, the mere stoppage of religious service does not start limitation. *Doyal Channel Mullick* v. *Syud Keramut Ali*, 16 S. W. R., C. R., 116.

According to Mahometan law a woman may

manage the temporal affairs of a mosque, but not the spiritual affairs connected with it, the management of the latter requiring peculiar personal qualifications. *Hussain Bibee* v. *Hussain Sherep*, 4 Mad. Rep., 23.

The fact that a mortgage is in existence over property, at the time when it is set apart as an endowment, does not invalidate the endowment under Mahometan law. It is an endowment subject to a mortgage. If after a mortgage the mortgagor endows the land and dies leaving sufficient assets, his heirs are bound to apply those assets to the redemption of the mortgage, so that the endowment may take effect freed from the mortgage by the application of other assets of the endower. But if necessary the mortgagee may enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as against the latter, the surplus sale proceeds will be subject to the endowment.

On appeal under Section 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. *Shahazadi Hajra Begum* v. *Khaja Hossein Ali Khan*, 4 B. L. R., A. C., 86; and 12 S. W. R., C. R., 498.

The primary objects for which lands are endowed under the Mahometan law are to support a mosque and to defray the expenses of worship therein. The mere charge upon the profits of an endowed estate of certain items which must in time cease, and the lapse of which will leave the whole profits available for the purposes of the endowment, does not render an endowment invalid under the Mahometan law. *Muzhurool Huq* v. *Puhraj Ditarey Mohaputter*, 13 S. W. R., C. R., 235.

The khaleefa of an endowment having, by a will or testamentary paper, appointed a successor, and given various directions respecting the endowed property, sent a copy of the paper to the Committee appointed under Act XX of 1863 for their information. The Committee having thereupon expressed their opinion that the document was of no effect, the khaleefa sued "to prevent the Committee from illegal interference, and to reverse their order respecting the will." *Held* that such a suit was not maintainable, and that no legal cause of suit appeared. *Hakeem Hisam-ood-deen Khan* v. *Khaleefa Unwar-vol-lah*, 2 N. W. R., 400.

The chief elements of wukf are special words declaratory of the appropriation and a proper motive cause; and where the declaration is made in a solemnly published document the wukf is completed.

A valid wukf cannot be affected by revocation or by the bad conduct of those responsible for the carrying out of the appropriator's behests, nor can it be alienated.

The fact of a person being a shiah does not disqualify him for the supervision of a wukf made by a soonee. *Doyal Chund Mullick* v. *Syud Keramut Ali*, 16 S. W. R., C. R., 116.

5.—Evidence.

Additions made to the joint estate by the managing member of a Mahometan family will be presumed, in the absence of proof, to have been made from the joint estate, and will be for the benefit of all the members of the family entitled to share. *Vellai Mira Ravuttan* v. *Varisai Mira Ravuttan and others*, 2 Mad. Rep., 414.

Where a Mahometan lady with her daughters was found to be living with her brother, and to be supported by him from the proceeds of the patrimonial estate, it was held to be a proper and correct inference that the lady and her daughters were in possession along with the brother, who was the manager of the property. *Achina Bibee and another* v. *Aeegoonissa Bibee and others*, 11 W. R., 45.

Semble,—Among Mahometans where a purchase is made during a father's lifetime in the name of his son while living in the father's house, there is no such presumption as arises in the case of a similar purchase made in the lifetime of the father of a joint Hindu family; and the *onus* is not on the son to prove that the purchase was not made really for and by the father, but by the son for himself and with his own funds. *Golam Mackdoom* v. *Mussamut Hafeezoonnissa*, 7 W. R., 489.

According to Mahometan law, where an acknowledgment is binding it does not amount merely to *primâ-facie* evidence, but establishes the fact acknowledged. *Mussamut Jaibun* v. *Bibee Nujeebunissa*, 12 W. R., 497.

Where a Mahometan husband was found to have paid the purchase-money for a putnee talook standing in the name of his wife, it was held that his having been in possession of the money was *primâ-facie* evidence that the putnee talook belonged to himself and not to his wife, and that presumption was not rebutted by the fact that he purchased the putnee in the name of his wife. *Ranee Surnomoyee* v. *Luchmeeput Doogur*, 9 W. R., 338.

Where a Mahometan lady came into a Court to ask for a certificate under Act XXVII of 1860, on behalf of the minor son of her late husband, relying upon the *factum* of the marriage between her husband and the minor's mother, and failed, in opinion of the Judge to prove such marriage,—*Held* that applicant was not thereby deprived of the benefit of any and every presumption which the Mahometan law admits of in favour of marriage and the minor's legitimacy. *Bibee Najeeboonissa* v. *Bibee Zumeerun and others*, 11 W. R., 426.

6.—Gift.

According to the Mahometan law, one of two sharers can give over his share to the other even before partition. *Mussamut Ameena Bibee* v. *Mussamut Zeifa Bibee*, 3 W. R., 37.

In a suit for arrears of rent due on defendant's putnee talook, though the rate was admitted, it was pleaded that, in consequence of a dacoity having taken place in the defendant's house, she had been allowed by the plaintiff (her brother-in-law) a remission of rent annually for a certain number of years, and defendant professed her readiness to pay if the remission were allowed. Plaintiff's agreement set forth that, in consequence of defendant's house having been plundered, she was entitled to assistance to enable her to replace what she had lost, and that the rajah (zemindar) not being able to make good the amount at once took this method of assisting his connexion.

Held that the gift (or remission of rent for the years in suit) was complete at the termination of

each year; in other words, delivery had been made to the donee, and it could not be recalled under the Mahometan law, which is precise as to the impossibility of revoking a gift after delivery without the decree of a Judge or the consent of the donee. *Khajah Enaet Hossein* v. *Bibee Khoobunnissa*, 11 W. R., 320.

A Mahometan lady can sell or give away her property as she pleases. When a mother makes a gift to her children, and one of them seeks to set it aside as fraudulent, so far as it affects the plaintiff's right of inheritance, so long as the mother is alive and admits the execution of the deed of gift the plaintiff is not in a position to disturb it; and it is quite immaterial in such a case whether the plaintiff's consent was or was not given. *Mahomed Zaheerul Huq* v. *Mussamut Butoolun*, 1 W. R., 79.

A Mahometan husband executes a "hibbah," or deed of gift, without consideration in favour of his wife, comprising a house in which they are residing at the time, with its furniture and two other houses. He at the same time delivers the hibbah and the keys of the houses to his wife, quits the house of residence, leaving her in possession of the same. *Held* that the requirements of the Mahometan law, with regard to gifts without consideration, *viz.*, acceptance and seisin on the part of the donee, and relinquishment on the part of the donor, have been complied with, though the husband shortly afterwards returns to the house, resides there with his wife till his death, and receives the rents of other parts of the property comprised in the hibbah. The continued occupation or residence and receipt of rents are in such circumstances to be referred to the character which the donor bears of husband and to the rights and duties connected with that character. *Amina Bebee* v. *Khatija Bebee*, 1 Bom. Rep., 157.

A deed of gift such as a tuluknamah executed at a time when the grantor was labouring under a sickness from which she never recovered, cannot operate save as a will. If such a deathbed gift or will is made in favour of one who is an heir, the will or gift, so far as it relates to that heir, will be inoperative without the consent of the other heirs. *Ashruffunissa* v. *Mussamut Azeemun*, 1 W. R., 17.

Where a Mahometan transferred certain property (Company's paper) to his son, reserving the interest to himself for life, the object of the disposition being to give the son a larger share of the father's property than would come to him by succession *ab intestato*,— *Held* that the transaction could not be impeached on moral grounds as a design to alter the disposition of property so as to defeat a succession by an alienation, which the law allows is simply a design to conform to the law while working out an unforbidden object.

Held that the intention of the parties did not violate any provision of the Hedaya, and the transfer was complete, and the gift valid. *Nawab Umjad Aly Khan* v. *Mohumdee Begum and another*, 10 W. R., P. C., 25.

According to the Mahometan law, in order to make a gift operate as a *donatio mortis causâ*, the delivery must be upon the condition that it should become effectual as a gift on the death of the donor. Where therefore it was found that a deed of gift was executed in the last illness of the donor, and was in the possession of the donee after her death, —*Held* that this was not enough to make it operate as a *donatio mortis causâ*, but that it was necessary to find the further fact, whether the deed was delivered by the donor before her death, and whether such delivery was in contemplation of death, and with the intention that it should become effectual on the death of the donor. *Mussamut Nussebun Bibee* v. *Meer Ashruff Ally*, Marsh., 315.

According to the Mahometan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two-thirds going to the heirs. In the absence of heirs, a will carries the whole property. *Mussamut Ekin Beebee* v. *Meer Ashruf Ali*, 1 W. R., 152.

According to Mahometan law, no formal delivery and seisin are necessary to the validity of a gift of property by a father to a minor son.

The rule that an undefined gift of joint undivided property, mixed with property capable of division, is invalid by Mahometan law, does not apply to a gift by a father to a minor son.

By Mahometan law there can be no revocation of a gift by a father to a son when the donee has alienated the thing given. *Wajeed Ali* v. *Abdool Ali*, W. R., 1864, 121.

According to Mahometan law, a gift is invalid when the donor is to remain in possession during his lifetime. *Zohurooddeen Sirdar* v. *Baharoollah Sircar*, W. R., 1864, 185.

According to Mahometan law, if a person executes a gift while labouring under a sickness from which he never recovers, and which ultimately proves fatal to him, effect can be given to the instrument only to the extent of one-third. *Mussamut Kureemun* v. *Mullick Enaet Hossein*, W. R., 1864, 221.

Held that it is not necessary by the Mahometan law that possession should follow to complete gift by father to his infant child. *Syad Gyasooddeen Hyder* v. *Mussamut Fatima Begum and others*, 1 Agra Rep., A. C., 238.

A deed by a Mahometan, in which he declared "I have adopted A. B. to succeed to my property," was held to be neither a deed of gift nor a testamentary gift to take effect after the death of the donor, there being a complete absence of any relinquishment by the donor or of seisin by the donee. *Jeswant Singhjee* v. *Jet Singhee*, 6 W. R., P. C., 46.

A Mahometan widow or any other woman, holding property in her own right, may give it away to whomsoever she pleases, unless she delays the gift till upon her death-bed, when such a gift would be looked upon as a will, and be inoperative beyond a certain limit. *Mussamut Luteefoonissa Bibee* v. *Syud Rajaoor Ruhman and others*, 8 W. R., 84.

A gift is not necessarily hibbabil-iwuz by an allusion in the deed to the good behaviour of the donee, and his supplying a certain amount to the donor to enable the latter to do some act in respect of the property. *Ussud Ali Khan* v. *Mussamut Alfut Bebee*, 4 Agra Rep., 237.

Held that a donee holding from a Mahometan widow does not acquire a better title to the property than the donor herself had. *Mahomed Noor Khan* v. *Hur Dyal*, 1 Agra Rep., A. C., 67.

To make a deed of gift valid under the provisions of the Mahometan law, seisin is necessary; if the donor is not in possession at the time the

gift is void. *Abedonissa Khatoom* v. *Amerunissa Khatoom*, 9 W. R., 257.

Ejectment title proved. A hebabil-ewaz, or deed of gift, made in contemplation of marriage, is not a revocable instrument. *Bibee Kulsom* v. *Bibee Ameerunnissa*, 1 Hyde's Rep., 150.

According to the Mahometan law, possession under a deed of bye-mokasa, executed in lieu of dower, is not necessary to its validity. *Nuseeboonissa* v. *Syed Danush Ali*, 3 W. R., 133.

Under the law of the Sherra, gifts are not valid until possession is given by the donor and taken by the donee. *Abedur Reza* v. *Mahomed Muneer*, 16 S. W. R., C. R., 88.

Where a conveyance between Mahometans, though in form a deed of sale, is in reality a gift, its validity should be tested by the rules of law applicable to gifts, and not by those applicable to deeds of sale. In determining whether a transaction is one of sale or gift, the intention of the parties, rather than the form of the instrument used, should be considered. A deed of gift, in English form, of a house to three persons as joint tenants (without discrimination of shares) is good according to Mahometan law, as it shows an intention on the part of the donor to give the property in the whole house to each of the donees. A gift by a Mahometan in Bombay which contravenes the principles of English Courts of Equity with regard to gifts to persons standing in a fiduciary relation to the donors will not be upheld.

Where a Mahometan lady conveyed to her confidential adviser and two other persons the house in which she dwelt by deed of gift, which (though read over and explained to her by a clerk who acted both for the donees and her) was executed by the lady without independent professional advice, and without the advice of the heads of her caste, it was decreed, at the instance of her heirs after her death, that the deed should be set aside. *Rujábái et al.* v. *Ismáil Ahmed*, 7 Bom. Rep., O. J., 27.

Judgment of the High Court dismissing a plaintiff's suit confirmed on the evidence, in a case in which plaintiff sought in the lower Court to set up a deed of alleged sale from a Mahometan purdanasheen lady in favour of her niece, which position he abandoned before the High Court, where he suggested that although it was not good as a deed of sale it would be good as a deed of bounty, the sale being colourable for the purpose of giving effect to a gift which otherwise it might be difficult to make under the Mahometan law. *Mussamut Kumeeroonissa Begum* v. *Mirza Syuffoollah*, 16 S. W. R., P. C., 32.

A gift of land made by a Mahometan is invalid if the interest of each of the donees is not defined by the gift.

Semble,—That the continued receipt by the donees of the rents of land, which had been let by them as the managers of the donor, is not a sufficient taking possession to satisfy the requirements of the Mahometan law. *Sayad Valimia Alimia et al.* v. *Galam Kadar Mohedin*, 6 Bom. Rep., A. C. J., 25.

Maibibi and her son, Sidi, departing on a journey, made a conditional gift of their property to Abubekur. On their return, Abubekur, under the award of a punchayat, restored their property, but by the instrument reconveying it their estate was limited to a life interest, and they were restrained from alienating it. The lower Courts held this instrument to be a deed of gift, and that the conditions attached to the gift were void by Mahometan law. *Held*, on special appeal, that the lower Courts were wrong in so treating it, as it was in fact a compromise, the terms of which should be carried out, and Maibibi and her son should be restrained from wasting or alienating the property. *Abubekur bin Hagada Hujisaba* v. *Maibibi et al.*, 6 Bom. Rep., A. C. J., 77.

A heba-bel-ewaz differs from an out-and-out sale as well as from a gift, while it partakes of the character of both, and if supported by sufficient consideration is binding under the Mahometan law upon the heirs of the party executing such deed. *Solah Bibee* v. *Keerun Bibee*, 16 S. W. R., C. R., 175.

Plaintiff, the Nicka wife of the late Nawab of the Carnatic, sued for a declaration of her absolute title to certain premises (Nos. 1, 2, 3, and 4), for possession of certain other premises (Nos. 5 and 6), for delivery to her by defendant of the title-deeds of all the premises except No. 1, and for cancellation and delivery up of a sheriff's bill of sale of No. 1 in favour of T. A., of a mortgage of Nos. 2, 5, and 6 to R. and Co., of a mortgage of No. 4 to A. A., and of all assignments by T. A. R. and Co., or A. A., to defendant. She claimed this relief under an alleged gift to her by the late Nawab on or about the 6th January, 1851. Defendant said (and it was so found) as to 2, 5, and 6, that he had never had anything to do with the said premises or with the title-deeds thereof. As to the other premises, that the several assignments in his possession were made to him as Receiver of the Carnatic property, under Act XXX of 1858, but that he had not obtained possession of the said premises nor of any of the title-deeds thereof, except the sheriff's bill of sale of the 29th November, 1855. Issues were settled raising the following questions: Whether the gift was made as alleged? Whether, if so, it was valid against creditors of, or subsequent purchasers for valuable consideration from, the donor? Whether the gift was revocable, and revoked? Whether defendant has, or ever had, possession of all or any of the title-deeds of Nos. 2, 5, and 6? And lastly, whether plaintiff's claim was either wholly or in part barred by Act XIV of 1859? *Held* that a complete gift had been made and not revoked. That it was valid against the creditors of the donor, and also (as the donor and donee were both Mahometans) against subsequent purchasers for valuable consideration from the donor. But that defendant had never had possession of the title-deeds of Nos. 2, 5, and 6, so that the suit could not be maintained as regards them; and that it was barred as to Nos. 1, 3, and 4, by Section 1, Clause 16, of Act XIV of 1859. Under Mahometan law, "in the instance of a wife who may give a house to her husband the gift will be good, although she continue to occupy it along with her husband and keep all her property therein, because the wife and her property are both in the legal possession of the husband. So also it has been held by some that if a father transfer his house to his minor son, himself continuing to occupy it and to keep his property therein, the gift is valid, on the principle that the father in retaining possession is acting as agent for his son, according to which doctrine his possession is equivalent

to that of his son." Reason requires that the same principle should be applied to the case of a gift by husband to wife. The wife may, according to Mahometan law, hold property independent of her husband, and as a husband may make a valid gift to his wife, it can only be necessary that the gift should be accompanied with such a change of possession as the subject is capable of, and as is consistent with the continuance of the relation of husband and wife. *H. H. Azim Unissa Begum* v. *Clement Dale, Receiver of the Carnatic Property*, 6 Mad. Rep., 455.

Plaintiff, during his son's minority, gave certain property to him, and on the delivery of possession got from him a document stipulating (1) That he would not alienate; (2) That at his death the property should return to the father. This document was deposited with the father, and not heard of until the property was taken in execution for the son's debts, many years after the gift. *Held* that, by Mahometan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. *Nabad Amiruddaula Muhammad Kakya Hussain Khan Bahadur Amir jung Varu* v. *Nateri Srinivâsa Charlu*, 6 Mad. Rep., 356.

The plaintiff's deceased sister in her lifetime was the owner of three and a half undivided shares in a village, which she mortgaged in 1846, upon the terms that the mortgagee should be put into possession, and that he should credit the produce of two shares on account of the mortgage-debt, and should pay the mortgagor one share and a half for her maintenance. Subsequently, in 1853, she made an absolute gift in writing of three of the shares to the fourth defendant and his mother. The produce of the shares was applied during the lifetime of the donor after the gift just as it had been before the gift. *Held* that there was no such surrender and delivery of the property to the donee as is requisite to make a valid gift according to Mahometan law. *Khader Hussain* v. *Hussain Begum*, 5 Mad. Rep., 114.

Certain lands, choultries, and moveable property had been, by instrument in writing, given to the brother of the donor and his heirs for the purpose, in perpetuity, of keeping in repair the choultries and affording strangers the charities of shelter, and, if circumstances permitted, food also, as well as for supplying the wants of the donees, with clauses restraining alienation by them. *Held* that the instrument effected a transfer of the property to the donees subject to the trust of applying the profits of the lands, &c., in perpetuity to certain charitable purposes, and was not revocable, whether the transaction be viewed as a pure trust or as a gift. The power of revoking gifts is given under the Mahometan law only in the case of private gifts for the donee's own use, no relationship existing between the donor and the donee. The rule of Mahometan law that a muttawala, or superintendent of an endowment, is removeable for mismanagement does not apply to the case of a trustee who has a hereditary proprietary right vested in him. It is essential for the exercise by the donor of the power of removing a superintendent that such power be specially reserved at the time of the endowment. *Aji Ajom Tadallah Saib Kuraishi* v. *Gulam Hussain Saib Saiyad*, 4 Mad. Rep., 44.

In a suit upon a hibbanama alleged to have been executed by the husband of the plaintiff, giving her twenty-two shares in a village as a gift in lieu of her dower, the Civil Judge dismissed the suit upon the ground that the omission of the amount of the dower rendered the instrument of no validity according to Mahometan law. *Held* (reversing the decree of the Civil Judge) that the suit was maintainable, the instrument expressing plainly the specific shares of the property, and that the gift was made in lieu of the whole dower, and there being no room for doubt as to the meaning and intention of the contracting parties in regard to the particular subjects either of the gift or of the consideration. *Sahiba Begum* v. *Atchamma*, 4 Mad. Rep., 115.

7.—Legitimacy.

The mere residence of a woman in the house of a Mahometan as a menial servant, and the circumstance that she had a son, do not raise the presumption of marriage or legitimacy of the son. Cohabitation means something more than mere residence in the same house. It should be shown that cohabitation continued, that children were born, and that the woman was treated as a wife, and lived as such, and not as a servant. *Mussamut Kureemoonissa* v. *Attaoollah and others*, 2 Agra Rep., A. C., 211.

The Mahometan law allows legitimacy to be inferred from circumstances without direct proof. *Khajah Mahomed Gowher Ali Khan* v. *Haratoonissa*, 2 W. R., 52.

According to the Mahometan law, a public acknowledgment of paternity will of itself raise a presumption of marriage between the person who makes it and the mother of the child, without the father specifically connecting his paternity with any particular woman. To rebut this presumption the *onus* of proving the impossibility of the marriage is on the other side. *Rook Begum* v. *Shahzadah Walagowhur Shah*, 3 W. R., 187.

The Mahometan law is very scrupulous in bastardising the issue of any connexion in which it can be shown by presumption that there has been cohabitation and acknowledgment of paternity. Under the Mahometan law a gift cannot depend upon a contingency or be postponed, but possession must be immediate. *Ranee Roshun Jahan* v. *Rajah Syud Enaet Hossein*, 5 W. R., 4.

According to Mahometan law, the acknowledgment of a father renders a son or daughter a legitimate child and heir, unless it is impossible for the son or daughter to be so. *Oomda Bibee* v. *Syud Shah Jonab Ali*, 5 W. R., 132, and 1 Jur. N. S., 143.

Legitimacy under the Mahometan law is held not to be established in a case in which there was no acknowledgment of the son by the alleged father, and the other evidence was doubtful. *Syud Furnund Ali* v. *Mussamut Ushrufunissa Begum*, 1 W. R., 303.

Though there is no evidence of the celebration of any marriage ceremony, still the fact of a woman having constantly lived as a married woman with her husband, and the fact of her children having lived as legitimate children with their parents, make the case fall within the rule as to the presumption of marriage and legitimacy laid down by

the Privy Council in 8 Moore's Indian Appeals, 136, and by this Court in 1 Marshall's Reports, 428. *Ashruffunissa* v. *Mussamut Azeemun; Ashruffunissa* v. *Mussamut Boroda Kooery*, 1 W. R., 17.

According to Mahometan law, the acknowledgment of the father renders the son a legitimate son and heir, whether the mother was or was not lawfully married to the father. *Nugeroodeen Ahmed* v. *Bibee Zuhoorun and others*, 10 W. R., 45.

According to the Mahometan law, the legitimacy or legitimation of a child of Mahometan parents may be presumed or inferred from circumstances, without proof, or at least without any direct proof of a marriage between the parents, or of any formal act of legitimation. *Mahomed Bauker Hossein Khan Bahadoor* v. *Shurfoonissa Begum*, 3 W. R., P. C., 37.

According to the Mahometan law, a child born out of wedlock, if acknowledged, acquires the status of legitimacy. *Bibee Nujeeboonissa* v. *Bibee Zumeerun and another*, 11 W. R., 426.

If a child has been born to a father of a mother where there has been not a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to a marriage, according to the Mahometan law, the presumption is in favour of such marriage having taken place, and the mother and child are entitled to inherit. *Shums-oon-nissa Khanum* v. *Raj Jan Khanum*, 6 W. R., P. C., 52.

According to Mahometan law, mere continued cohabitation, without proof of marriage or of acknowledgment, is not sufficient to raise such a legal presumption of marriage as to legitimatize the offspring. Marriage and acknowledgment may be presumed, but the presumption must be one of fact, and as such subject to the application of the ordinary rules of evidence. A subsequent marriage, so far from furnishing a ground for presuming a prior marriage, *primâ-facie* at least excludes that presumption. *Ashruffoodowlah Ahmed Hossein and another* v. *Hyder Hossein Khan*, 9 W. R., P. C., 1.

The celebration of the seventh month of pregnancy, and the celebration of the birth of the son, are sufficient to prove the marriage and legitimacy of the son. *J. P. Wise and others* v. *Sunduloonissa Chowdhranee and others*, 7 W. R., P. C., 13.

According to Mahometan law, continued open cohabitation, accompanied by declaration that the woman is the man's wife, and that the children, the issue of the cohabitation, are his children, or by conduct showing that he considers them to be so, is sufficient evidence from which to infer marriage. Even where the cohabitation has been casual only, and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of marriage, and that the children are legitimate; but in such a case presumption may be rebutted. *Mussamut Nawabunnissa and others* v. *Mussamut Fuzooloonissa*, Marsh., 428.

The acknowledgment of a child, as being the son of the acknowledger, is valid when the ages of the parties admit of the alleged relationship, and where the descent from another of the person acknowledged has not been already established. *Mussamut Jaibun* v. *Bibee Nujeeboonissa*, 12 W. R., 497.

When a man acknowledges a person to be his daughter he must be taken to mean his legitimate daughter, unless the contrary appears. *Fuzeebun Bibee* v. *Omdah Bibee and Shah Janab Aly*, 10 W. R., 469.

A Mahometan plaintiff who had not undergone circumcision was allowed to conduct his case on the ground of his having been the illegitimate son of a Mahometan woman, on a construction of the Immeea Code found at p. 265 of "Baillie's Digest of Mahometan Law." *Sahebzadee Begum* v. *Mirza Hummut*, 12 W. R., 513.

The children of fornication or adultery (wahid-uz-zina) have no nasab or consanguinity, hence the right of inheritance being founded on nasab, one illegitimate brother cannot succeed to the estate of another.

A man cannot acknowledge a brother so as to establish the nasab. *Mussamut Shahebzadi Begum* v. *Mirza Himmut Bahadur*, 4 B. L. R., A. C., 103, and 12 S. W. R., 512.

An acknowledgment by a Mahometan that a certain person is his son is not *primâ-facie* evidence of the fact which may be rebutted, but establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them, and where the descent of the party acknowledged has not been already established from another. *In the matter of the Petition of Mussamut Bibee Najibunissa*, 4 B. L. R., A. C., 55.

According to Mahometan law, illegitimate sons can claim no relation with their father's family. *Mussamut Bibee Boodhun* v. *Jan Khan*, 13 S. W. R., C. R., 265.

Under Mahometan law, where the husband gives the wife an option as to declaring herself repudiated and she avails herself of it, the repudiation or divorce is binding on him; and a discretion to repudiate when attached to a condition need not be limited to any particular period, but may be absolute as regards time. Such option is not lost by non-user where there is nothing in the contract between the parties obliging the wife to exercise the option directly a breach of the condition occurs.

Notwithstanding Mahometan law, a Court of Justice cannot pronounce a child to be the legitimate offspring of a particular individual when such a conclusion would be contrary to the course of nature and impossible. *Meer Ashruf Ali* v. *Meer Ashud Ali*, 16 S. W. R., C. R., 260.

According to Mahometan law, the acknowledgment of a father renders a son or daughter a legitimate child and an heir, unless it is impossible for the son or daughter to be so; and the acknowledgment need not be of such a character as to be evidence of marriage. *Bibee Wuhudun* v. *Syud Wasee Hossein*, 15 S. W. R., C. R., 403.

Under the Shiah, as well as the Soonee law, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery is denounced as "zina," or fornication.

Both schools prohibit sexual intercourse between a Mooslnah, *i.e.*, a Mahometan woman, and a man who is not of her religion.

According to the Shiah law, marriage must in all cases be lawful, except when there is error on the part of both or either of the parents.

"Nasab" or consanguinity is established by a

valid marriage or the semblance of it, and is not established by "zina" or illicit intercourse. A walud-oz-zina or child of fornication has no nasab. The admission of nasab on the part of an illegitimate brother does not operate under Mahometan law if made at a time when he has a known heir. *Mirza Himmut Bahadoor* v. *Mussamut Saheb Zadee Begum*, 14 S. W. R., C. R., 125.

8.—Marriage.

The Mahometan law does not provide for the nature of the evidence required to prove a divorce. *Quære*,—Whether the husband's statement that he has divorced his wife is sufficient proof of the fact. *Buksh Ali* v. *Ameerun Bebee*, 2 W. R., 208.

A charge of adultery by a Mahometan against his wife does not operate as a divorce, though if false it might be an item of ill-usage towards making up a sufficient answer to his claim for restitution of conjugal rights. The husband cannot enforce his right to his wife till he pays the dower, —in the absence, that is, of any sufficient answer to his claim. Ill-treatment by him and his second wife would justify the first wife in leaving him. *Jaun Beebee* v. *Sheikh Moonshee Beparee*, 3 W. R., 93.

Under the Mahometan law, a wife may (except with fraudulent intent) purchase property as her own during her husband's lifetime with money given to her by him on account of dower. *Shaikh Nasoo* v. *Mahatal Beebee*, 4 W. R., 7.

A verbal contract of dower for a large sum is admissible only if proved by most clear and satisfactory evidence.

A customary dower must be proved by showing a custom of the women of the wife's family to receive, rather than of the men of the husband's family to pay, a certain dower; the Mahometan dower being the consideration paid by the bridegroom for the marriage, and therefore regulated by the position and conduct of the bride, especially as Mahometan men often contract most unequal marriages, though the means and position of the bridegroom must not altogether be excluded from consideration. *Shah Nujeemooddeen Ahmed* v. *Bibee Hosseinee*, 4 W. R., 110.

The production of a deed of dower is not indispensable to the truth and validity of a claim for dower; nor is such a claim to be set aside by reason of the largeness of the amount of dower. *Molleeka* v. *Bibee Jumeela*, 5 W. R., 23.

According to Mahometan law a divorce is irreversible if the husband does not take back the wife before the expiration of her edit, or term of probation. *Syud Mozuffur Ali* v. *Mussamut Kumeerunissa Bibee*, W. R., 1864, 32.

A Mahometan in the kubinnamah or deed of dower on his marriage with S. stipulated that he should not take a second wife without the permission of S. *Held* that S. was not entitled to leave him upon his taking a second wife without her permission. *Sheikh Mohabut Ally* v. *Sreemutty Mymonissa*, Marsh., 361.

According to the Mahometan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two-thirds going to the heirs. In the absence of heirs a will carries the whole property. Whatever may be the position and rights of a husband, being the only surviving heir of his wife, according to the Mahometan law, there is no representation in matters of succession, and therefore those rights do not descend to the heirs of a husband who has predeceased the wife, and who are themselves no relation of the wife. In fact, under the Mahometan system, after the dissolution of a marriage contract by death or otherwise, the parties or their heirs bear no more relation to one another than the heirs of *quondam* partners in the same mercantile house. *Mussamut Ekin Bibee* v. *Meer Ashruf Ali*, 1 W. R., 152.

Where rights of ownership had been exercised for a series of years by the husband, and never by the wife, over property which had descended from his wife's father (his own uncle), the husband having mortgaged the property and dealt with it in all respects as if he were the owner, and the wife possessing none of the documents which she would have been able to produce if she had acted as the owner, it was held that she had no such interest in the property as entitled her to maintain a suit to recover possession of it after it was sold in satisfaction of the husband's debts. *Oozeeroonissa Bibee* v. *Ramdhone Roy and another*, 11 W. R., 17.

According to Mahometan law, the divorce of one acting upon compulsion from threats is effective. *Ibrahim Mollah* v. *Enayuntoor Ruhuman*, 12 W. R., 460.

According to the Mahometan law, the non-payment by the wife of the consideration for a divorce does not invalidate the divorce. The divorce is the sole act of the husband, though granted at the instance of the wife, and purchased by her. The kholanamah, or the deed securing to the husband the stipulated consideration, does not constitute the divorce, but assumes and is founded upon it. The divorce is created by the husband's repudiation of the wife and the consequent separation.

The husband having distinctly alleged a divorce by khola, and relied on two instruments, one, an ibranamah (or deed of voluntary release by the wife of her denmohr or dowry) to which there was no satisfactory proof that she ever gave her assent with a knowledge of its contents, and a kholanamah (surrendering the wife's settlement) obtained from her mother by means of cruelty and ill-usage practised on her daughter, to confirm the ibranamah,—*Held* that instruments so obtained could have no legal effect when used as a defence against the wife's claim to her dowry. *Buzl-ul-Ruheem* v. *Luteefutoonnissa*, 1 W. R., P. C., 57.

There is nothing in the Mahometan law to show that a Soonee is incapacitated from marrying a Shea. *Syud Gholam Hossein Chowdhry* v. *Mussamut Setabah Begum*, 6 W. R., 88.

In a suit by a Mahometan lady against her husband after divorce for recovery of property belonging to her which her husband held before divorce, the cause of action to the wife arose at the time of the separation. The possession of the husband being the possession of the wife, the *onus* lay on the husband to prove his right to the property; till that was done the presumption was that the property so held by the husband was held by him on

behalf of the wife. *Abdool Ali*, alias *Shoageea* v. *Kurreemoonissa*, 9 W. R., 153.

The District Judge's decision that a Mahometan married woman cannot execute a valid lease which may endure beyond her lifetime, of property of which she is one of several tenants in common, held bad in law. *Nichhabai Pragji* v. *Issekhan*, 2 Bom. Rep., 313.

A Mahometan husband may institute a suit in the Civil Courts of India to enforce his marital rights by compelling his wife against her will to return to cohabitation with him, and such suit must, under the imperative words of Section 15, Regulation IV of 1793, and the nature of the thing be determined according to the principles of Mahometan law. If the wife raise a defence of cruelty she must prove violence of such a character as to endanger, or cause a reasonable apprehension of danger, to her personal health or safety. The *ratio decidendi* in such a case considered and laid down. *Judoonath Bose* v. *Shumsoonnissa Begum*, 8 W. R., P. C., 3.

Regulation XXVI of 1793 applies to proprietors out of possession as well as to those in possession, and is not overridden by the Mahometan law with reference to the validity of the marriage contract. *Rajah Syud Enayet Hossein* v. *Ranee Rosun Jahan*, 5 W. R., 5.

A Mahometan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband. *Reg.* v. *Khátálai*, 6 Bom. Rep., Cr. Ca., 9.

In a suit for restitution of conjugal rights brought against a wife and certain persons said to be detaining her from her husband, the proper form of decree is one enjoining the wife to return to her husband, and the other co-defendants to abstain from preventing her return. *Jaffer Khanum* v. *Imdad Hossein*, 2 N. W. R., 314.

According to Mahometan law cohabitation as husband and wife will raise a presumption of a marriage if the parties are Mahometans, or persons between whom a valid marriage can be celebrated. *Monowar Khan* v. *Abdoollah Khan*, 3 N. W. R., 177.

According to Mahometan law, until there has been an ascertainment of the rate at which maintenance is payable, no right to maintenance accrues to a wife on which she can found a suit. *Mahomed Masah-ood-deen Khan* v. *Clara Jane Mushooddeen*, 2 N. W. R., 173.

Where a Mahometan wife, in reconveying to her husband the property received from him in lieu of dower, took from him a written agreement in which he covenanted to pay her a certain sum of money annually without objection or demur,—*Held* that the husband could not avoid payment on any of the pleas on which a Mahometan husband could avoid the payment of maintenance to a wife. *Yusooj Ali Chowdry* v. *Mussamut Fyzoonissu Khatoon Chowdrain*, 15 S. W. R., C. R., 296.

9.—Minority and Guardianship—(*See* Law of Personal Status).

Held (according to a futwa of the cazee-ool-cozaat) that amongst Sheas the custody of a female child rests with the mother only up to the seventh year. *Mussamut Raj Begum* v. *Nawab Reza Hossein*, 2 W. R., 76.

According to the Mahometan law, a mother has the right of custody of the person of her minor son up to seven years of age.

Quære,—Where she does not maintain him, has she, as against a relation on the father's side, the right of custody and control after that age? *Ameeroonissa and others, appellants*, 11 W. R., 297.

A marriage contracted by the mother and grandmother of a Mahometan minor was held to be lawful where a nearer guardian was precluded by absence from acting. *Kaloo Sheikh* v. *Gureeboolah Sheikh*, 10 W. R., 12.

Under the Mahometan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant.

A purchaser from such guardian cannot defend his title on the ground of the *bona fides* of the transaction.

An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters. *Mussamut Bukshan* v. *Mussamut Maldai Kooeri*, 3 B. L. R., A. C., 423; S. C., 12 W. R., 337.

Under the Mahometan law, remote guardians, among whom are brothers, can under no circumstances aliene the property of a minor; their guardianship only extends to matters connected with the education of their wards, and the near guardians alone have limited power over the immoveable property. *Ruttun* v. *Doomee Khan and others*, 4 Agra Rep., A. C., 21.

According to Mahometan law, a mother has a preferential right over the paternal uncle to the guardianship of minors and to the custody of their persons. *Shaikh Alimodeed Moallem* v. *Mussamut Syfoora Bibee*, 6 W. R., Mis., 125.

According to Mahometan law, the mother is entitled, in preference to the father, to the custody of an infant under seven years of age. *Shahzada Futteh Ali Shah* v. *Shahzada Mahomed Mukeem Oodeen; Shahzada Futteh Ali Shah* v. *Mussamut Fuzeeluttunissa Bebee*, W. R., 1864, 131.

Held that under Mahometan law the bride's father can set aside the marriage on the ground of inequality between the parties to the marriage if it had taken place without his consent, the consent of the bride's mother and brother notwithstanding, and that the bride herself is legally competent to refuse herself to her husband so long as her dowry remains unpaid. *Mohundee Begum* v. *Bairam Khan*, 1 Agra Rep., A. C., 130.

According to Mahometan law, a mother is entitled to the custody of her child, if such child be a male, till it shall have attained the age of seven years; if such child be a female, till it shall have reached the age of puberty. *In the matter of Tayhet Ally, an infant*, 2 Hyde's Rep., 63.

In the case of Mahometans not subject to the Court of Wards, the limit of minority is at least sixteen years. *Abdool Oahab Chowdhry and others* v. *Mussamut Elias Banoo and others*, 8 W. R., 301.

The question of legal necessity does not necessarily arise in cases of sale under the Mahometan law, though it may properly be an element for consideration when the conduct of a guardian is

called in question. The Mahometan law looks to the benefit of the minor, and permits the guardian to dispose of moveable property if it be for the benefit of the minor. In this case a sale made to carry on important litigation was held *bonâ fide* and for the benefit of the minor, the decision in Grose's case (12 W. R., Original Jurisdiction, p. 13) not being applicable. *Mussamut Syedun* v. *Syud Velayet Ali Khan*, 17 S. W. R., C. R., 239.

10.—PRE-EMPTION.

(*a*) *Miscellaneous.*

Where a vendor in selling his property got the vendee to execute another deed in his favour for certain beegahs of land for his maintenance, and subsequently, on the completion of the bargain, a co-sharer took that property by right of pre-emption,—*Held* that the agreement, being in fact a part of the consideration for sale and *bonâ fide*, was binding on the pre-emptor, who cannot claim to have the bargain made with him on more favourable terms than those offered by the stranger and accepted by the vendor, the fact that he was no party personally to the agreement notwithstanding. *Khait Singh* v. *Heera Dass*, 1 Agra Rep., A. C., 75.

According to the Mahometan law, it is essential to the performance of the Tuhib-ishhad that third persons should be formally called upon, either in the presence of the purchaser or on the land; or, if the vendor is in possession, in the presence of the vendor, to bear witness to the demand. *Golakram Deb* v. *Brindaban Deb*, 6 B. L. R., 165; and 14 S. W. R., C. R., 265.

A claim for pre-emption under Section 2 of Act I of 1841 is sustainable in respect of an imperfect puttudaru tenure. *Sheik Kadir Bun* v. *Ram Tahul Bhugut*, 3 N. W. R., 125.

A sharer in the appendages has not an equal right to pre-emption with a sharer in the body of the estate. *Golam Ali Khan* v. *Agurjut Roy*, 17 S. W. R., C. R., 343.

The Mahometan doctrine of pre-emption is not law in the Madras Presidency. *Ibrahim Saib* v. *Mani Mir Udin Saib*, 6 Mad. Rep., 26.

In order to establish a right of pre-emption on the part of a sharer it is not necessary that the property sold should be actually separated or defined. *Gobind Chunder Goopto* v. *Raj Kishore Sein*, 14 S. W. R., C. R., 365.

Where one of two neighbours has sold his land to a stranger, and the other neighbour has thereupon claimed a right of pre-emption, no subsequent dissolution of the contract affects the right of the pre-emptor which has once accrued and been duly asserted. *Bhadu Mahomed* v. *Rhada Churn Bolia*, 4 B. L. R., A. C., 219; 13 S. W. R., C. R., 332.

Per Peacock, C. J., and Kemp and Mitter, JJ.—A Hindu purchaser is not bound by the Mahometan law of pre-emption in favour of a Mahometan co-partner, although he purchased from one of several Mahometan co-parceners, nor is he bound by the Mahometan law of pre-emption on the ground of vicinage. A right of pre-emption in a Mahometan does not depend on any defect of title on the part of his Mahometan co-partner to sell except subject to the right of pre-emption, but upon a rule of Mahometan law, which is not binding on the Court, nor on any purchaser other than a Mahometan. *Per* Norman and Macpherson, JJ. (*dissentientes*).—Wherever a Mahometan co-sharer or neighbour has a right of pre-emption, whose property is sold by his neighbour or co-sharer, also a Mussulman, his right is not defeated by the mere fact that the purchaser is a Hindu. *Sheikh Kudratulla* v. *Mahini Mohun Shaha; Syama Kumar Roy* v. *Jan Mahomed; Farman Khan* v. *Bhurat Chundra Shaha Chowdry*, 4 B. L. R., F. B. R., 134; 13 S. W. R., F. B. R., 21.

The plaintiff claimed a right of pre-emption as sufee-shurikh, or partner in the thing sold. The Court of first instance gave him a decree, on the ground of long possession as proprietor. The lower Appellate Court reversed the decision on the ground that the plaintiff's title depended on a deed of purchase, which it was admitted had been set aside in a former suit in 1855, and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved that he had preferred an appeal from that decision, and alleged that it had been overruled; but there was no proof of the result of the appeal, as the records of that suit had been burnt in the mutiny. *Held* on appeal to the High Court, that, under the circumstances, proof of long possession as proprietor was sufficient. *Tufani Sing* v. *Mussamut Durgaban*, 4 B. L. R., Ap., 21.

On the foreclosure of a mortgage, after the expiry of the year of grace, but before a decree for possession had been obtained by the mortgagee, a suit to enforce the right of pre-emption, in respect of the property mortgaged, is maintainable. *Mussamut Tara Kunwar* v. *Mangri Meeah*, 6 B. L. R., Ap., 114.

Where an offer of sale was made to a pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger,—*Held* that after a sale to a stranger he could not set up his right of pre-emption. *Brajah Kishore Surma* v. *Kirti Chundra Surma*, 7 B. L. R., 19, and 15 S. W. R., C. R., 246.

Under a deed of sale the vendor conveyed to the purchaser five plots of land. In a suit by a third party to enforce a right of pre-emption in respect of one out of the five plots,—*Held* that he could not divide the bargain and sue on the ground of pre-emption for a portion only of the property covered by the deed of sale. *Sheikh Izzatulla* v. *Sheikh Bhikun Molla*, 6 B. L. R., 386; and 14 S. W. R., C. R., 469.

The word khalit is not improperly used in a plaint in a pre-emption suit to designate a sharik or partner in the substance of a thing; and if it is not clear whether the plaintiff claimed pre-emption as khalit or sharik it may be shown by express words, or it may be inferred from the written statement whether the plaintiff claimed on the one or on the other ground.

Where the intention of the co-proprietors of an estate is to make a complete batwara of the whole, but an inconsiderable part is by oversight or accident left out of the division, that will not have the effect of giving one co-proprietor a claim of pre-emption on the sale to a stranger by another co-proprietor of his share or division of the estate.

Semble,—Where an integral portion of property, as a wall, is left purposely joint and undivided, the

community of interest continues. *Lala Prag Dutt* v. *Sheikh Bundi Hossein*, 7 B. L. R., 42; and 15 S. W. R., C. R., 225.

A shureek or partner in the substance of the thing sold is preferred to a shuffee-khuleet, or partner in the rights of water or way; and where a plaintiff sues as a shureek the lower Court ought not to raise the issue as to whether he claims as a shuffee-khuleet. *Sheoguttun Roy* v. *Anwar Ali*, 13 S. W. R., C. R., 189.

The term shureek cannot be restricted to cases in which the parties enjoy the properties jointly. In the contemplation of Mahometan law those who occupy other houses in the same mansion are regarded as partners together with the person the sale of whose share in a house gives rise to the question of pre-emption. *Gureeboollah Khan* v. *Kebul Lall Mitter*, 13 S. W. R., C. R., 124.

Unless delay on the part of a pre-emptor indicates his intention of relinquishing his right, the mere fact that he takes a short time to ascertain whether the news of the sale is correct or not is not sufficient to invalidate his demand of mowasibut, if made immediately after he has ascertained that the sale has taken place. *Amjud Hossein* v. *Khurug Sein Sahoo*, 13 S. W. R., C. R., 299.

In a suit to establish a right of pre-emption to property which had been sold, in which plaintiff alleged that the actual value was different from that which was recited in the deed of sale between the defendants, the vendor, and the vendee,—*Held* that it was for plaintiff to give some evidence in support of the allegation that the amount stated as the price by the defendant was wrong. *Held* that plaintiff was entitled to have the property at the price agreed upon between the vendor and the vendee, but not to the benefit of an arrangement by which a portion of the price had been allowed to remain in the hands of the vendee that he might pay off a mortgage debt. *Sheikh Golam Ayhya* v. *Joy Mungle Sing*, 13 S. W. R., C. R., 435.

Mere possession gives no "huk shuffa" according to Mahometan law: there must be ownership (mileck) in the contiguous land. *Beharee Ram* v. *Mussamut Shookubdra*, 9 W. R., 455.

The privilege of shuffa refers to cases in which the sale has been actually completed by the extinction of the rights of the vendor. *Mussumut Ladun* v. *Bhyro Ram*, 8 W. R., 255.

Where what a plaintiff substantially asked for was to have his right of pre-emption declared on the ground that he was a partner in the thing sold, a mistake in the wording of his claim—*viz.*, the use of the words "shuffa khullutt" (which means a partner in the commensality and appendages of the land), instead of "shuffa sharik"—was held not to prejudice his *status* in the suit. *Wahed Ali Khan* v. *Hunoman Pershad*, 12 W. R., 484.

The mere fact of two parties having jointly sued and obtained a decree by right of pre-emption against a third party does not preclude either from contending that by agreement they were not to take equal shares in the purchase. *Mussamut Berunga Koeree* v. *Hurpershad Lall*, 3 Agra Rep., 235.

The pre-emptor obtained a decree from the first Court, which decree provided a certain time within which the sum ascertained to be the purchase-money was to be deposited. The pre-emptor appealed against the amount fixed by the first Court, but failed: he did not deposit the money within the fixed time, and the Judge declined to fix any further time. *Held* that the plaintiff in appealing from the original decree could not escape from the obligation which it imposed, and the lower Appellate Court was not bound by law to insert in its decree any special direction concerning such deposit, unless occasion called for it, although it was competent to have done so. *Sheo Pershad Lall and others* v. *Thakoor Rai and others*, 4 Agra Rep., 254.

In a suit for the right of pre-emption, on the ground that plaintiff was a shuffee khulut, defendant, who alleged that plaintiff was only a benamee shareholder, offered to establish his case on the deposition of the plaintiff alone. The latter not appearing on summons, the suit was decreed against him under Section 170, Code of Civil Procedure. On this he appealed, and the Judge ordered the Moonsiff to give him further time to appear. This was granted, and then extended again and again, by a Moonsiff who, on the plaintiff failing to appear again, gave a decree against him under the same law as before. The case was then appealed to the Judge, who ordered the case to be tried on its merits, remarking that the presence of the plaintiff was not necessary. *Jhoomuck Singh* v. *Jeetun Lall*, 12 W. R., 359.

Held that a purchaser is entitled to the profits of the property purchased by him accruing between the time of purchase and subsequent transfer to a pre-emptor. In such cases the pre-emptor ought to be made a party to the suit. *Buldeo Pershad* v. *Mohun*, 1 Agra Rep., R. A., 30.

Where the wajib-ool-urz provided that alienation shall be first made to brethren of common ancestor, and then to the other sharers of the puttee,—*Held* that the brethren in whose favour the first right of pre-emption was secured must be construed to be brethren who were sharers in the puttee. *Hur Sahai and others* v. *Jawala and others*, 2 Agra Rep., 31.

Held by a Full Bench, in concurrence with the lower Court, that the proper construction of the words *shikmee showkayan* used in a clause of the administration paper was that they gave a preference to sharers in the *thoke* over those who are merely sharers in the village. *Jey Mull* v. *Tooree and others*, 1 Agra Rep., F. B., 171.

Held that where a pre-emptive claim is based on the wajib-ool-urz, it is not to be assumed that the claimant of pre-emption complied with the peculiar conditions which, under the Mahometan law, are essential to give validity to such a claim, unless expressly provided by the wajib-ool-urz, and the Court construing such contracts ought to consider the intention of the parties as expressed in those contracts, and to give effect to them without alteration or addition. *Chowdhry Brij Lall* v. *Rajah Goor Sahai and others*, 1 Agra Rep., F. B., 128.

When a mortgagee in possession purchased the property mortgaged,—*Held* that his possession as proprietor commenced from the date of purchase, and limitation would run from the date of the purchase against a claimant by right of pre-emption. *Mahomed Banazeer and others* v. *Gunga Ram and others*, 4 Agra Rep., 260.

Held that the plaintiff, having refused to purchase at the sum actually given, could not come into Court and ask for a conditional decree, which is

given in cases where a higher price than was actually paid has been alleged to have been paid to the prejudice of the pre-emptor. *Kudhara and others* v. *Khuman Singh*, 1 Agra Rep., A. C., 265.

In a suit by A. to enforce a right of pre-emption, in which the purchase to B. was admitted, but it was alleged that B.'s deed of purchase had been ante-dated, the *onus* lay on A. to prove that B.'s deed had been ante-dated; and on the failure of A. to substantiate that fact, and to prove that B. had taken possession within one year previous to institution of the suit, A. was held barred by Clause 1, Section 1, Act XIV of 1859. *Kumar Ali and others* v. *Azmut Ali and others*, 8 W. R., 383.

A contract having been entered into for sale and purchase of certain property, the plaintiff, pre-emptor, was not bound to defer the enforcement of his right of purchase till the bill of sale had been delivered or registered, or payment made. *Luchmee Narain and others* v. *Bheemul Doss*, 8 W. R., 500.

In a suit to enforce a right of pre-emption, where there is no other evidence, and the Court can come to a distinct finding upon it, it is not incumbent on the Court to put the purchaser upon his oath. Where evidence is gone into the Court must decide according to the view it takes of the evidence, any preference which may be given to the evidence for the person claiming the right of pre-emption being given only in the event of the evidence being very evenly balanced. *Hunsraj Singh* v. *Rash Behary Singh and others*, 7 W. R., 211.

In a suit to enforce a right of pre-emption where there is evidence in support of the pre-emptor's statement of price, the Court is justified in proceeding on that evidence alone, without calling on the purchaser to take oath to the amount of purchase-money. *Hunsraj Singh* v. *Choka Singh and others*, 7 W. R., 486.

Held that, in a previous ruling of the High Court (1 W. R., 234), the Court only meant to say that it could not be held upon decisions that were in conflict with other decisions of the same district that the custom of pre-emption prevailed there; it did not say that when there were decisions tending the same way, that that would not be satisfactory proof of the fact. *Kodrutoollah* v. *Mohuree Shaha and others*, 9 W. R., 537.

In decreeing a right of pre-emption a Civil Court has no power to make the decree-holder's right depend on payment of the purchase-money within a specified time. *Syud Asan Aly* v. *Sahokhee Bibee*, 10 W. R., 53.

Conflicting decisions of the Subordinate Courts held not to prove that the custom of the right of pre-emption under the Mahometan law prevails among the Hindoos of Chittagong. *Inder Narain Chowdhry* v. *Mahomed Nazirooddeen*, 1 W. R., 234.

Quære,—Whether the Hindus of Chittagong have adopted the Mahometan law of pre-emption. *Nasirooddeen Khan* v. *Indernarain Chowdhry*, 5 W. R., 237.

Where a party sues under a title by pre-emption to an estate which has been sold, he cannot claim to recover money paid as revenue on account of the estate until the suit has been decided. *Mussamut Wozeer Begum* v. *Mussamut Fuzloonissa*, W. R., 1864, 373.

The custom of pre-emption has been recognized among Hindus in the Province of Behar. *Mussamut Joy Koer* v. *Suroop Narain Thakoor*, W. R., 1864, 259.

When a Mahometan claims pre-emption against a Hindu under Mahometan law there must be a distinct plea of custom as a plea of fact. *Hubeebul Hossein* v. *Lalla Dewkee Nundun*, W. R., 1864, 75.

The right of pre-emption by a Mahometan as against a Hindu purchaser can only be enforced in Tipperah after proof of the right or custom of pre-emption existing generally in that part of the country, in cases in which Mahometans are not, or are only partially, concerned. *Dewan Bunwar Ali* v. *Syud Azhurooddeen Mahomed*, 5 W. R., 270.

Quære,—Whether the law of pre-emption extends to transactions as between Hindus in Jessore. *Madhub Chunder Nath Biswas* v. *Tamee Bewah*, 5 W. R., 279.

Where shares in a mouzah were by arrangement between the parties made over to manage upon trust to pay part of the profits to the debtors of the transferers, and the residue of the profits to the transferers, who bound themselves not to alienate until the debts were paid,—*Held* that it was not such alienation as would confer on the plaintiff a right of pre-emption under wajib-ool-urz. *Outar Singh* v. *Mussamut Ablakhee Koonwur*, 3 Agra Rep., 328.

A claim to mesne profits due before the date on which a right to pre-emption arose cannot form the subject of pre-emption. *Emamoodeen Sowdagur* v. *Abdool Soobham and others*, 7 W. R., 117.

A share in a mouzah, together with the dwelling-house of the proprietor, was exchanged for a share and dwelling-house in another mouzah. *Held* that the transaction being an exchange of property for property was a sale, and that the right to purchase the land, but not the house, was claimable by a co-sharer by right of pre-emption.

The consideration payable by pre-emptor is the estimated value of the property given in exchange, and not that of the property claimed. *Sewa Ram* v. *Rissal Chowdhry*, 1 Agra Rep., A. C., 144.

(*b*) *Nature of Pre-emption.*

Under Mahometan law, the right of pre-emption does not accrue until a sale has been actually made, and it is not incumbent on the pre-emptor to produce the price at the time of making his claim; nay, he may contest the matter during the sitting of the Judge, but he should produce the price after the decree has been pronounced.

A shareholder in the property sold has the first and strongest right of pre-emption; there is nothing in the Mahometan law which restricts the right of a co-parcener in the property of the land sold to a small or large portion of land, and it devolves on his relinquishing it even to a partner on the road. *Jahangir Buksh* v. *Bhikaree Lall*, 11 W. R., 71.

Pre-emption applies only to sales. A lease in perpetuity, with a rent (however small) reserved is not a sale, and cannot therefore be the subject of pre-emption. *Mooroly Ram* v. *Huree Ram and others*, 8 W. R., 106.

An unsigned wajib-ool-urz is not binding on the co-sharers, and cannot originate a right of pre-emption if no prior usage existed. To prove usage it

is not necessary that documentary evidence should be adduced. *Joykishore Singh* v. *Thakoor Dass and others*, 4 Agra Rep., 75.

Held that the wajib-ool-urz does not confer any right of pre-emption on the co-sharers where it only provides that the shareholders should sell with the consent of brethren and co-sharers. *Bubboo Doobey* v. *Ishree*, 4 Agra Rep., 74.

Held that the right of pre-emption, when once allowed and exercised by the pre-emptor, cannot be disputed at subsequent occasions of sale, and that neither manhood, puberty, justice, or respectability of character, are conditions of pre-emption under the Mahometan law. *Mussamut Punna* v. *Juggur Nath*, 1 Agra Rep., A. C., 236.

Held that the parties to pre-emption being Mahometans must be bound by the strict conditions of law of pre-emption, and that the offer to purchase before the Registrar at the time of registration of the sale deed is not a sufficient compliance with the provisions of that law. *Kareemooddeen* v. *Moizooddeen Khan*, 1 Agra Rep., A. C., 184.

The right of pre-emption is not matter of title to property, but is rather a right to the benefit of a contract; and when a claim is advanced on such a right it must be shown that defendant is bound to concede the claim either by law or by some custom to which the class of which he is a member is subject on grounds of justice, equity, and good conscience. *Mohesh Lall* v. *John Christian and Co.*, 8 W. R., 446.

The right of pre-emption accruing during minority is not to be kept suspended until majority. *Meer Murtaza* v. *Lala Nursing Suhae and others*, 7 W. R., 86.

A re-sale cannot destroy the right of pre-emption in a property the sale of which is admitted by the vendor. *Puttooaram* v. *Sham Lall Shahoo and another*, 7 W. R., 206.

The Mahometan law of pre-emption was never intended to apply to a case in which the purchaser is not a stranger, but one who is already either a shareholder or a neighbour. *Teeka Dharee Singh* v. *Mohor Singh and others*, 7 W. R., 260.

A co-parcener has a higher right of pre-emption than a neighbour, and there is nothing in the Mahometan law to prevent his enforcing his right when the purchaser happens to be a neighbour. *Hur Dyal Singh* v. *Huru Lall*, 16 S. W. R., C. R., 107.

During the minority of two out of four brothers an ikrarnamah was entered into between them to the effect that no separation was to take place without the consent of all, and that if one of them separated without such consent he was to forfeit his share of the family property, and that if any one wished to dispose of his share he was to give his brothers the preference. One F. purchased at a private sale the share of M., one of the brothers. On this two of the brothers, A. and I., brought a suit against F. to set aside the sale as contrary to the terms of the ikrarnamah, and urged their claim to pre-emption. The suit was decreed with a stipulation that the purchase-money should be paid back. This not having been done, F. sued M., got a decree, and in execution put up for sale M.'s rights and interests in the family estate, bought them himself, and took possession. The present suit is by A. and I. to recover possession on the ground that M. had no rights and interests left which could be sold in execution.

Held that as M. had never separated, his share had not been forfeited, and that the only other privilege left to the plaintiffs under the ikrar, *viz.*, pre-emption, could not be exercised, inasmuch as M. had not sold his share, the sale having been the act of the Court. *Shaikh Ferasut Ali* v. *Aushootosh Roy Singh*, 15 S. W. R., C. R., 455.

A right of pre-emption attaches to the sale of the share of the zemindaree in the case of a co-sharer, though it may not attach on the ground of vicinage. The right of pre-emption is not one which attaches to property, and the obligation it implies may be limited to the residents of a district or to a family, or to any particular class of persons, it being for the claimant in each case to show that it attaches to the defendant. *Akhoy Ram Shahaja* v. *Ram Kunt Roy*, 15 S. W. R., C. R., 223.

Properties bearing separate numbers in the Collector's rent-roll are separate estates in the legal sense of the word "estate," implying such a separation as bars a claim to pre-emption on the ground of co-parcenary. *Joobraj Singh* v. *Fookun Singh*, 14 S. W. R., C. R., 477.

Where a party claiming certain land by right of pre-emption failed to set up her rights in which the purchaser of that land sued her for possession, and obtained a decree, it was held that she was not entitled to bring a fresh suit to enforce the same rights. *Asgur Mahomed* v. *Nuzeema Bibee*, 14 S. W. R., C. R., 272.

A right of pre-emption in a separate and distinct estate cannot be allowed merely on the ground of vicinage, except in regard to small plots of land and houses. *Shaikh Mahomed Hossein* v. *Shah Moshun Ali*, 14 S. W. R., C. R., 266.

It is not a binding rule of law that the tulub-ishad by a pre-emptor, if made within a day after the receipt of intelligence of the purchase, is necessarily in time for the preservation of the right of pre-emption. The due and sufficient observance of the formality of tulub-ishad, as to time, is a question to be decided in each case by the Court which has to deal with the facts. *Mussamut Jamilan* v. *Latif Hossein*. 16 S. W. R., F. B., 13; 8 B. L. R., 160.

In a suit to enforce the right of pre-emption on a sale of a share of a zemindaree estate, the period of limitation should be computed from the date of the sale, not from the date of the mutation of names, the purchaser having acquired by his purchase such possession as the nature of the property sold admits of. Mutation of names, although it may be regarded as evidence that a transfer has been made, is not essential to give validity to the transfer. *Omrao Khan* v. *Imdad Aly Khan*, 1 N. W. R., Par. 1, p. 9.

A pre-emption suit is not barred by the fact that the property in suit had been the subject of confiscation. *Sheo Dutt Ram Tewary* v. *Ramadhree*, 1 N. W. R., Par. 2, p. 35.

According to Mahometan law, a shareholder in the property sold has the first or strongest right of pre-emption.

A private partition, though not sanctioned by official authority, if full and final as among the parties to it, will have the same effect as the most formal partition on the right of pre-emption. *Gopal Sahi* v. *Ojoodhea Pershad*, 2 W. R., 47.

There is no right of pre-emption where there has not been a real *bonâ-fide* sale according to the Mahometan law. *Mussamut Mohno Bibee* v. *Juggernath Chowdhry*, 2 W. R., 78.

A claim to rights of pre-emption on the ground of vicinage alone will not lie in the case of large estates, but only when either houses or small holdings of land make parties such near neighbours as to give a claim on the ground of convenience and mutual service. *Ejnash Kooer* v. *Sheikh Amjud Ally*, 2 W. R., 261.

In the absence of sufficient ground for refusing to take the whole of the lands to be sold, the right of pre-emption cannot be asserted as to a portion only. *Cazee Ali* v. *Sheikh Musseeutoollah*, 2 W. R., 285.

As, according to Mahometan law, when either the seller or buyer repudiates the sale, there can be no sale, so neither can there be any right of pre-emption in such a case. *Mussamut Ojheoonissa Begum* v. *Sheikh Mustum Ali*, W. R., 1864, 219.

Where there is a plurality of persons entitled to the privilege of pre-emption, the right of all is equal without reference to the extent of their shares in the property. *Moharaj Singh* v. *Lalla Bheechuk Lall*, 3 W. R., 71.

The right of the first purchaser is simply a vendor's lien, *i.e.*, to retain the property until he has the money from the party claiming pre-emption. It is no part of the Mahometan law that the claimant of a right of pre-emption must carry the money in his hands and tender it to the first purchaser. A right of pre-emption may be decreed in respect of land within the puttee of the party claiming such right. *Dulbood Singh* v. *Mahaedo Dutt*, 2 W. R., 10.

The Mahometan law nowhere recognizes the right of pre-emption in favour of a mere tenant upon the land. *Gooman Singh* v. *Tripool Singh and others*, 8 W. R., 437.

The right to pre-emption is very special in its character, and is founded on the supposed necessities of a Mahometan family arising out of their minute subdivision of ancestral property; and as the result of its exercise is generally adverse to public interest, it will not be recognized by the High Court beyond the limits to which those necessities have been judicially decided to extend. *Nusrut Roza* v. *Umbul Khyr Bibee and others*, 8 W. R., 302.

A person entitled to pre-emption under the Mahometan law has a right to take over a bargain in its entirety, but not to have it divided, and the consideration apportioned between the several lots of the property *Rughoo Nundun Singh* v. *Muzbooth Singh*, 10 W. R., 379.

No right of pre-emption arises on a mere conditional sale or mortgage while any right of redemption remains in the mortgagor.

A mere declaration of an intention to exercise a right not yet accrued is not a claim of a right of pre-emption. It is immaterial whether a formal demand of pre-emption is made at any other time than after the sale become absolute (*dissentiente* Bayley, J.). *Goordyal Sundur* v. *Rajah Teknarain Singh*, 2 W. R., 215.

According to the Mahometan law, a partner has a right of pre-emption in villages or large estates. But a neighbour cannot claim such a right on the ground of vicinage. *In the matter of the Petition of Chatternath Jha*, alias *Jhinga Jha; Sheikh Mahomed Hossein* v. *Shah Moshin Ali*, 6 B. L. R., 41, and 14 S. W. R., F. B., 1.

The owner of land is not entitled by Mahometan law to pre-emption of a house standing thereon. The plaintiff's property in the land is wholly separate and distinct from the defendant's property in the house, and they have nothing in common between them. *Pershadi Lal* v. *Syud Irhad Ali*, 2 N. W. R., 100.

Where two persons have by vicinage an equal right of pre-emption the property is to be decreed to them in halves, on payment of their respective moieties of the purchase-money. *Misr Khan Kurun* v. *Misr Sata Ram*, 2 N. W. R., 257.

It is the practice of the Courts to allow claims to pre-emption to be asserted on the grounds both of contract and custom in one and the same plaint. *Nechul* v. *Jhan Singh*, 2 N. W. R., 222.

Where the rights of a judgment-debtor in a putterdaree estate were sold at auction in execution of decree, and bid for by the son of the judgment-debtor, who gave the name of his father-in-law, to whom the property was knocked down (and who was not a co-parcener in the estate) as the actual purchaser, such father-in-law subsequently waiving his claim as auction-purchaser in favour of the judgment-debtor,—*Held*, under Section 14 of Act XXIII of 1861, that the property had been knocked down to a stranger, and that the right of pre-emption attached in favour of the person entitled thereto on such sale, he having done all that was necessary to assert his claim. *Gunga Ram* v. *Moola*, 2 N. W. R., 210.

Where a Hindu father made a partition of his property among his sons, reserving to himself an interest in one village, which upon his death was to be divided among his sons,—*Held* that during the father's lifetime no son could claim a right of pre-emption in respect of the village so reserved by the father. *Ram Adheen Pandey* v. *Goordial Pandey*, 2 N. W. R., 434.

Where two co-sharers entitled to pre-emption in certain villages associated strangers with them in the purchase of such villages, and other landed property,—*Held* that they must be regarded in the light of total strangers in respect of the whole of the property included in the sale deed, and that a note at the foot of the sale deed mentioning the interest severally purchased by each of the vendees will not entitle them to retain the shares respectively purchased by them. *Guneshee Lal* v. *Taraut Ali*, 2 N. W. R., 343.

Under the Mahometan law, the owner of the land, through which the land in respect of which a right of pre-emption is claimed, receives irrigation, has a preferential right to purchase rather than a mere neighbour. *Chand Khan* v. *Naimat Khan*, 3 B. L. R., A. Cr., 296; S. C., 12 W. R., 162.

(*c*) *Preliminaries to be observed.*

To establish the right of pre-emption, the tullubuishtishad, or affirmation before witnesses, must be performed in the presence of the person in possession of the lands, whether it be the vendor or the purchaser. *Chamroo Pasbun* v. *Phulwun Roy* 16 S. W. R., C. R., 3.

In the case of pre-emption strict proof is neces-

sary of the performance of the preliminaries. According to the Mahometan law, strict adherence to the rules for the performance of the tulub-ishad is especially necessary. In performing the tulub-ishad the pre-emptor must clearly declare his right and invoke witnesses. He must declare that "he has a right of pre-emption to which he has laid claim, and that he still claims it," and invokes witnesses "to bear witness therefore to the fact." *Jadu Sing* v. *Rajkumar*, 4 B. L. R., A. C., 171; 13 S. W. R., C. R., 177.

According to the Mahometan law, the mere fact of the pre-emptor taking a short time before performance of the tulub-mawasabat for ascertaining whether the information conveyed to him was correct or not, does not invalidate his right. The Mahometan law allows a short time for reflection before performance of the first demand. *Syad Amjad Hossein* v. *Kharagsen Sahu*, 4 B. L. R., A. C., 203.

On hearing of a sale the pre-emptor must immediately make his demand called tulub-mawasabat. Where a pre-emptor, on hearing of the sale of a property to which he had a right of pre-emption, went to the property in dispute, and there declared his right as pre-emptor,—*Held* that such delay was fatal to his claim. *Ram Charun* v. *Narbir Mahtan*, 4 B. L. R., A. C., 216; 13 S. W. R., C. R., 259.

The personal performance of the tulub-ishhad, or demand for pre-emption by the pre-emptor, depends on his ability to perform it. He may do it by means of a letter or messenger, or may depute an agent, if he is at a distance and cannot afford personal attendance.

Where a defendant, after the case had been gone into on the merits, set up that the suit had been undervalued, and the Court of first instance found in favour of the plaintiff on that issue, but the lower Appellate Court was of a contrary opinion and dismissed the suit,—*Held* that the lower Appellate Court should, before dismissing the suit on that ground, have allowed the plaintiff the option of supplying the necessary stamps, as the first Court would have done, under Section 31, Act VIII of 1859. In any case the order of the first Court was not one affecting the merits of the case or jurisdiction of the Court, and therefore, under Section 350, Act VIII of 1859, the suit could not be dismissed on appeal upon that ground. *Syed Wajid Ali Khan* v. *Lala Homimem Persaud*, 4 B. L. R., A. C., 139, and 12 W. R., 484.

The right of pre-emption is lost where there is a dispute as to the purchase-money, if the plaintiff (instead of offering by his plaint to pay the real amount, whatever it may be) claims to purchase a specific quantity of land at a specific price, and that right is shown to have no existence. *Achurbur Panday* v. *Bukshee Ram*, 2 W. R., 38.

To entitle a person, otherwise favourably situated, to the right of pre-emption, two conditions must be fulfilled: first (Tulub-i-mawathubut), on receiving information of the sale he must immediately declare his intention to assert his right; and, secondly (Tulub-i-istishuhad), he must, as soon after as possible, make the demand of the vendor or purchaser, or upon the premises, and in the presence of witnesses. *Jhotee Singh* v. *Komul Roy and others*, 10 W. R., 119.

A party alleging a right of pre-emption in respect of property which is the subject of a conditional sale, is bound to make his claim immediately on the expiry of the year of grace mentioned in the notice of foreclosure. *Syud Meer Ali* v. *Soondery Debia and others*, 6 W. R., 116.

A delay of one day is not such a delay as to interfere with the right of pre-emption under the Mahometan law. The demand by affirmation should be made with the least practicable delay. The ceremony of affirmation should be carried out before either the vendor or the purchaser, or be performed on the premises. *Mahomed Waris* v. *Hazee Imamodeen*, 6 W. R., 173.

Where a right of pre-emption under Mahometan law is claimed it is not incumbent on the pre-emptor to tender or produce the price at the time of making his claim. *Heera Lall and others* v. *Moorut Lall*, 11 W. R., 275.

To establish a claim to pre-emption under the Mahometan law it is not enough to prove that the ceremony of tulub-mowasibat was performed; it is also necessary to prove the tulub-istihad. *Narbhase Singh and others* v. *Luchee Narain Poree and others*, 11 W. R., 307.

Although, according to Mahometan law books, it is not necessary, in respect to the tulub-mowasibat, or first preliminary required to establish a right of pre-emption, that witnesses should hear the exclamation it involves, yet it does not follow that, as matter of evidence, Courts of law are bound to decree a suit to establish such a right simply on the deposition of the plaintiff. *Abdool Hossein Khan* v. *Gobind Chundra Shaha and others*, 11 W. R., 404.

It is necessary to the enforcement of the right of pre-emption that all the prescribed formalities should be strictly complied with.

To the ceremony of istihad or tulub-istihad, it is essential that there should be an express invocation of witnesses. *Prokas Singh* v. *Jogeshur Singh*, 2 B. L. R., A. C., 12.

The "tulubi istihad" is a preliminary act as essential as the "tulubi mowasibat" to secure to the claimant the right of enforcing pre-emption. There should always therefore be a distinct finding as to whether it was properly made or not. *Rajeeooddeen* v. *Zeenut Bibee*, 8 W. R., 463.

A claim to pre-emption should be made as soon as the claimant becomes aware of the completion of the sale. *Mohunt Ajoohhya Poorea and others* v. *Mohun Lall and others*, 7 W. R., 428.

It is not incumbent on a pre-emptor to tender the price at the time of making his claim. *Khoffeh Jan Bibee* v. *Mohomed Mehdee*, 10 W. R., 211.

According to the Mahometan law of pre-emption, the first thing to be done by the claimant of pre-emption is to make the preliminary declarations. First going to his house to get the money is not a compliance with the law. *Mona Singh* v. *Mosrad Singh*, 5 W. R., 203.

To establish a claim to pre-emption it is indispensable that all the necessary ceremonies should be performed. *Isaur Chunder Shaha* v. *Mirza Nisar Hossein*, W. R., 1864, 351.

The act of a claimant rising from his seat to claim his right of pre-emption, instead of claiming it as he sat, is not a delay sufficient to entail a forfeiture of his right. *Maharaj Singh* v. *Lallah Bheechook Lall*, W. R., 1864, 294.

Under the Mahometan law it is essential to the right of pre-emption to prove the performance of the tullubi istahad. *Bhowanee Dutt* v. *Lokhoo Singh*, W. R., 1864, 61.

In a suit for pre-emption proof of performance of the preliminaries prescribed by the Mahometan law is essential. *Mussamut Hosseinee Khanum* v. *Mussamut Lallun*, W. R., 1864, 117.

According to Mahometan law, the affirmation by witness need not be made by the claimant of the right of pre-emption in person, but may be made by a duly constituted agent. *Mussamut Ojheoonissa Begum* v. *Sheikh Rustum Ali*, W. R., 1864, 219.

Under Mahometan law, the right of pre-emption does not arise until the seller's right of property has been completely extinguished. *Mussamut Soonder Kooer* v. *Lalla Rughoobor Dyal and others*, 10 W. R., 246.

(*d*) *Where Pre-emption is Allowed.*

A person having a right of pre-emption under the Mahometan law is not precluded from claiming that right at a period subsequent to the sale of the property, if he neither declined the purchase nor gave permission for the sale to others. *Huro Doot Naran Singh* v. *Beer Naran Singh and others*, 11 W. R., 480.

Held (by Kemp, J.) that a partner's right of shuffee or pre-emption is not extinguished until a formal division has taken place defining each co-proprietor's share. *Wahed Ali Khan* v. *Hunooman Persaud*, 12 W. R., 484.

Where there is imperfect partition, *viz.*, where the land is divided, but the joint liability to the Government remains, and the property is not made into separate mehals, the right of pre-emption is not lost. *Ram Persaud* v. *Buljeet Singh*, 2 Agra Rep., A. C., 252.

Held that the person in whose favour a preferential right of purchase is stipulated for, by the terms of the wajib-ool-urz, is entitled to a decree if he comes forward and claims his right, without unreasonable delay, after he hears that a sale has been made without any tender to him, although he may not have proved specially that he has fulfilled all the conditions required in the case of a claim of pre-emption under the Mahometan law of Shuffa. *Koula Put* v. *Moharaj Doobey*, 1 Agra Rep., A. C., 378.

Held that the plaintiff who had a preferential right to purchase, and had no opportunity offered him, had a right to enforce those conditions, a compliance with which was essential before alienation to others. *Abdoollah Khan* v. *Ameerun and others*, 1 Agra Rep., A. C., 274.

Held that a preferential right to purchase is not lost merely by the inclusion of the names of the sons of the purchaser in the sale deed, if it be proved that the actual purchaser was the father, and the names of the sons were included in accordance with the prevailing usage, without any intention to defraud the other co-sharers. *Dowlut Singh and others* v. *Kedar Singh and others*, 4 Agra Rep., A. C., 25.

Held that the indebtedness of the pre-emptor does not invalidate his right of pre-emption. *Ram Khelawan Rai and others* v. *Shiva Dass and others*, 1 Agra Rep., 76.

Exercise of right of pre-emption allowed in respect of a kotee and golah, as it was proved that according to local usage and custom such properties were subject to pre-emption. *Kesho Rai and others* v. *Binayak Rai and others*, 4 Agra Rep., 179.

One of two joint sharers has no preferential title to the right of pre-emption in his capacity of neighbour, but is equally entitled with his co-sharer to the privilege of pre-emption, without regard to the extent of their shares. *Roshun Mahomed and others* v. *Mahomed Kulum and others*, 7 W. R., 150.

In a putteedaree village the sharers in each puttee have a preferential claim to the right of pre-emption in that puttee. *Maharaj Singh* v. *Beechook Lall*, 1 W. R., 233.

When part of an estate is sold in execution of a decree, a co-sharer in the estate is a partner in the thing actually sold, and according to Mahometan law is entitled to the right of pre-emption. *Imamooddeen Sowdagur* v. *Abdool Sobhan*, 5 W. R., 170.

A pre-emptor may sue any time before the expiry of a year from the date of transfer of possession. A mortgagee's absolute right and his claim to pre-emption arise from the time the sale becomes absolute. *Mussamut Jankee Kooer* v. *Mussamut Teranee Kooer*, W. R., 1864, 285.

The right of pre-emption, according to the Mahometan law, may be exercised upon a re-sale of the property, after a previous sale which has fallen through, and with respect to which no claim of pre-emption was made. *Busunt Koomaree* v. *Kali Persad Singh*, Marsh., 11.

In a suit based on a right of pre-emption, where plaintiff had proved the due observance of the necessary preliminaries, and claimed as a partner in certain julkur and nemuksaher which was still held joint, though the land had been divided between plaintiff and the defendant's vendor,—*Held* that notwithstanding the division of the land the immunities and appendages thereof were still held in co-parcenary. Plaintiff, as owner of one puttee, was entitled to a right of pre-emption over a stranger in respect of the other puttee which was sold. *Mahtab Singh* v. *Ram Tehal Misser*, 10 W. R., 314.

A right or custom of pre-emption is recognized as prevailing among Hindus in Behar and some other provinces of Western India. In districts where its existence has not been judicially noticed the custom will be matter to be proved. Such custom, where it exists, must be presumed to be founded on and co-extensive with the Mahometan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as to the circumstances under which the right may be claimed, where it is shown that the custom in that respect does not go the whole length of the Mahometan law of pre-emption. But the assertion of right by suit must always be preceded by an observance of the preliminary forms prescribed in the Mahometan law. *Fukeer Rawot*

and others v. *Sheikh Emam Buksh and others*, W. R., F. B., 143.

Where Government confiscates the share of a convict, and sells it for valuable consideration, the co-sharers have a right to claim such share by right of pre-emption on such sale, and the condition of wajib-ool-urz is binding on Government as much as it was on the original owner, Government acquiring the share subject to the same condition as the former held it. *The Collector of Futtehpore* v. *Syud Yad Ali*, 1 Agra Rep., A. C., 88.

Where the wajib-ool-urz provided that, in cases of transfer by "sale, &c.," the co-sharers will have preferential right to the same,—*Held* that the co-sharers were entitled to claim by right of pre-emption to take over an usufructuary lease which was made for the term of eight years. *Ahmed Ali Khan and others* v. *Ahmed and others*, 1 Agra Rep., A. C., 101.

Held that a pre-emptor is not precluded from claiming the property by right of pre-emption because he opposed the mutation of names only on the ground that the vendor was not in possession.

Held also that the mere admission of the vendor that an old debt of Rs. 500 formed part of the consideration was not conclusive evidence of the allegation. *Peera and others* v. *Shimbhoo and others*, 3 Agra Rep., 348.

(*e*) *Where Pre-emption is not Allowed.*

Possession of a separate share of an estate divided by butwarra gives the owner no right of pre-emption as a "suffeh-khullut" over the remaining portion.

Where possession of such separate share and vicinage have been alone urged in the lower Courts as the grounds of a claim to pre-emption, plaintiff cannot be allowed for the first time in special appeal to rest the claim on the fact of joint ownership with the defendant in the appendages of the land, even though evidence of such fact is found in the butwarra papers on which plaintiff based his suit. *Mokadeo Singh* v. *Mussamut Zeenutoonissa and others*, 11 W. R., 169.

In a suit to recover by right of pre-emption, on the ground that plaintiff was in the position of a co-partner in the property to be sold, notwithstanding a private separation having taken place between the shareholders, inasmuch as he was still liable for arrears of Government, and might still apply for a public butwarrah,—*Held* that, as plaintiff had divided off his own share by regular metes and bounds, and made himself in every respect independent of his co-partners so far as lay in his power to do so, he had by his own act deprived himself of any advantage which the law might have given him under different circumstances. *Byj Nath Singh* v. *Dooly Matoon and others*, 11 W. R., 215.

In a suit for a declaration of plaintiff's right of pre-emption in a property which had been originally mortgaged, but which, owing to a subsequent arrangement, had not passed from the mortgagor to the mortgagee,—*Held* that as the ownership was still with the mortgagor, who could redeem his property within a stipulated period, no right of pre-emption had arisen from the Mahometan law. *Bhowanee Pershad* v. *Purshonno Singh and others*, 11 W. R., 282.

There is no judicial finding to the effect that the custom of pre-emption is recognized among the Hindus of the Province of Behar.

It is doubtful whether, even under Mahometan law, the owners of two adjacent lakheraj estates, wholly unconnected with one another, could either of them claim a right of pre-emption on the ground of vicinage. No such right of pre-emption on the ground of the mere vicinage has been known to exist among Hindus. *Kantiram and others* v. *Woli Sahu*, 2 B. L. R., A. C., 330; 11 W. R., 251.

The right of pre-emption on ground of vicinage is limited to parcels of land and houses, and does not extend to the purchase of an entire estate, even though it be entirely surrounded by the lands of the would-be pre-emptor. *Abdul Asim* v. *Khondkar Hamed Ali*, 2 B. L. R., A. C., 63; 10 W. R., 356.

When a plaintiff seeks to establish his right of pre-emption upon the ground of partnership he cannot obtain a decree upon the ground of vicinage. *Shiu Suhai Mullick* v. *Lalla Hari Sahia Singh*, 3 B. L. R., Ap., 142.

Quære,—Whether, as between owners of adjacent plots of land, pre-emption can exist by right of vicinage. *Nirput Muhtoon and others* v. *Mussamut Deep Koonwar*, 8 W. R., 2.

Unless a prescriptive usage and local custom be clearly established a Hindu defendant is not bound by the Mahometan law in a case in which a Mahometan seeks to enforce his right of pre-emption. *Sheraj Ali Chowdhry* v. *Ramjan Bibee and others*, 8 W. R., 204; 2 Ind. Jur., N. S., 249.

Where a resumed maáfee "chuck" was aliened by the holder thereof, and a preferential right to take it was claimed by a sharer in the zemindaree under the terms of wajib-ool-urz agreed to by the co-sharers at the time of settlement, and to which the holder of the "chuck" was no party,—*Held* that such alienation was not an alienation of a share within the meaning of the wajib-ool-urz; that the holder of the "chuck" could neither confer on its possessor a right of pre-emption, nor subject his estate to such right in the event of alienation. *Sheo Lall Sahoo* v. *Sheikh Rumzanee*, 2 Agra Rep., A. C., 35.

Held, on the construction of "wajib-ool-urz," that the condition stipulating that alienations should be made with the consent of all the sharers does not stipulate for the existence of pre-emption, and that the claim based on that was untenable. *Ram Pershad Shahoo and others* v. *Sheikh Rumzanee*, 1 Agra Rep., 37.

Held that occasional instances, in which a claim to pre-emption on the ground of vicinage may have been admitted, or for special reason the vendors submitted to the claim, are not sufficient to prove the custom of pre-emption in a mahullah, but repeated instances of the assertion of pre-emption as a right and of its recognition or enforcement, ranging over a long period of time and in various places, should be shown. *Sheo Churn Kandoo* v. *Goodur Burnawar*, 4 Agra Rep., 138.

Held that a claim for pre-emption would not lie against the purchaser of a confiscated property sold by the revenue authorities. *Mohamed Villayet-ool-lah Khan* v. *Ahmed Hossein Khan and others*, 4 Agra Rep., 70.

Held that in a case of private sale the right of pre-emption must be based on usage or contract,

and that an instance of pre-emption in an auction sale is not sufficient. *Mussamut Bhui Koonwar* v. *Zahoor Ali and Jiman Singh*, 1 Agra Rep., A. C., 258.

Held that a solitary case or two is not sufficient to prove the custom or pre-emption in a locality where the privilege is not binding upon the parties by positive law. *Benersee Doss* v. *Phool Chund*, 1 Agra Rep., A. C., 243.

Where a plot of land formerly held rent-free situate in a pure zemindaree estate is sold at auction,—*Held* that the claim of preferential purchase under Section 14, Act XXIII of 1861, would not lie, as the estate was not a putteedaree estate within the meaning of Section 2, Act I of 1841. *Ghooro Singh* v. *Dabee Dyal*, 2 Agra Rep., A. C., 280.

In a suit claiming a right to pre-emption, where it was found as a fact that the sale had not been completed, and that there had not been cessation of the vendor's right, it was held that, whether under the ordinary principles which relate to contracts of sale, or under the principles of Mahometan law, no right could arise in favour of the pre-emptor. *Mussamut Ladun* v. *Bhyro Ram*, 8 W. R., 255.

The Mahometan law of pre-emption on the score of vicinage applies only to houses or small plots of land, and not to large estates, or to a claim based on partnership when it is in proof that a separation of the estate has been effected. *Chowdhry Joogul Kishore Singh and others* v. *Poocha Singh and others*, 8 W. R., 413.

Petitioner was a co-sharer in an estate in Zillah Sylhet. The right and interest of another co-sharer in the same estate being put up for sale in execution of a decree, the petitioner claimed it under Section 14, Act XXIII of 1861. The Principal Sudder Ameen thereupon substituted him for the actual purchaser. The Judge in appeal reversed this order, on the ground that putteedaree estates were unknown in Sylhet. Petitioner asked for the interference of the Court under Section 35 of the same Act. *Held* that, in such circumstances, the Court executing a decree had no authority to substitute the claimant for the actual purchaser without the consent of the latter, and that a party claiming a share under the section cited is simply in the position of a party who, having a right of pre-emption, has observed the requisite formalities to enable him to assert the right, and must resort to a civil suit to obtain the benefit thereof. The orders of the lower Courts were set aside accordingly. *Syud Abdool Jaleel* v. *Kalee Coomar Dutt*, 6 W. R., Mis., 3.

No right of pre-emption can exist as against a co-parcener.

The custom of pre-emption, as applicable to Christians in Bhaugulpore, must be proved on the same principle as has been applied to Hindus in Behar. *G. Christian and others* v. *Moheshee Lall*, 6 W. R., 250.

A plaintiff suing to establish a right of pre-emption, on the ground of co-partnership with the vendor, cannot be allowed to travel beyond his plaint, and obtain a decree by right of vicinage. *Koonj Behary Lall* v. *Gridharee Lall*, 10 W. R., 189.

The plaintiff relies upon the custom of pre-emption prevailing between Mahometans and Hindus in Sylhet. *Held* that unless he can show that the custom is undoubted and invariable he is not entitled to a decree. *Jameelah Khatoon* v. *Pagul Ram*, 1 W. R., 251.

Section 14 of Act XXIII of 1861 is not applicable to permanently-settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto.

When property is sold by public auction at a sale in execution of a decree, and the neighbour or partner has the same opportunity to bid for the property as other parties present in Court, the law of pre-emption does not apply. *Abdul Jubel* v. *Khelatchunder Ghose*, 1 B. L. R., A. C., 105; 10 W. R., 165.

The property of several co-sharers, some of whom were minors, was sold to a single purchaser, under a deed of sale, which contained a covenant by the vendors, who professed to act on behalf of themselves and the minors, that they would compensate the vendee for any loss he might incur should the minors when they came of age, not ratify the sale. A. sued to enforce her right of pre-emption in respect of the lands sold. The lower Appellate Court was of opinion that A. could not enforce her claim of pre-emption in respect of the share of the minors; and on the Court's suggestion the plaint was amended, so as to ask only for enforcement of her claim in respect only of the shares of the vendors of full age.

Held that A. was bound to claim her right against all the shares, and could not enforce it in respect of some only.

Semble,—A plaint cannot be amended in an Appellate Court. *Abdul Gafoor* v. *Mussamut Nurbanu*, 1 B. L. R., A. C., 78; 10 W. R., 111.

A person who has been offered his right of pre-emption and has refused it cannot afterwards reassert that right as against a sale made with his direct permission to a third party. *Sheo Tahul Singh* v. *Mussamut Ram Kooer*, W. R., 1864, 311.

Pre-emption is not a right to be found in any Hindu law book, but is allowed and practised by custom in some parts of the country. Before the right can be claimed, the plaintiff must prove the existence of the custom in the district where the property is situated. *Ramgutty Surma* v. *Kasi Chunder Surma*, W. R., 1864, 317.

A transfer without money or other consideration, and which is in fact a gift, is held not to be a sale to which the right of pre-emption attaches. *Syud Ameer Ali* v. *Mussamut Bebee Pearun*, W. R., 1864, 239.

The right of pre-emption cannot be exercised by a judgment-creditor in respect of the sale of property in execution of his decree. *Sheikh Nuzmoodeen* v. *Kunye Jha*, Marsh., 555.

Where a stipulation in the wajib-ool-urz prohibits alienation by any member of the co-parcenary body, without the consent of the other co-sharers,—*Held* that such a condition does not confer any right of pre-emption on a co-sharer, and no decree for pre-emption can be given on the basis thereof, but a co-sharer has the right to have the sale cancelled if made without his consent. *Gayadeen* v. *Ramshal and others*, 3 Agra Rep., 181.

11.—SUCCESSION.

Suit in the nature of ejectment, by principal

respondent as residuary heir according to the Mahometan law of a deceased person, to recover from his widow, the appellant, three-fourths of her deceased husband's estate, of the whole of which she had for upwards of eleven years been in possession. His title as residuary heir was put in issue, as well as other issues touching the widow's dower, &c. The Privy Council, thinking it of the utmost importance that those who had thus sanctioned a long possession should not be allowed lightly to disturb it, or to escape from those legitimate inferences and presumptions which on a conflict of evidence arise from their own acts and conduct, decided in favour of the widow, holding that the respondent had failed to establish his title upon which he sued.

According to the Mahometan law there may be a renunciation of the right to inherit, and such a renunciation need not be expressed, but may be implied, from the ceasing or desisting from prosecuting a claim maintainable against another. As a general rule a widow takes no share in "the return," *i.e.*, in failure of residuaries; but some authorities seem to hold that if there are no heirs by blood alive the widow would take the whole estate to the exclusion of the fisc. *Mussumat Hurmut-ool-Nissa Begum* v. *Allabdia Khan and Haja Hidayat*, 17 S. W. R., C. R., 108.

Held that the question as to succession of property between parties who, though originally Hindus, subsequently embraced the Mahometan religion, and professed that religion for successive generations, must be disposed of under the Mahometan law; and the plea of usage opposed to Mahometan law must not be recognized. *Surmue Khan and others* v. *Kadir Dad Khan and others*, 1 Agra Rep., F. B., 39.

An assignment of his property made by a Mahometan in favour of his widow and his two sons, reserving to himself full power over it during his life, and restricting the sons' right to alienate during their mother's life, as she was to enjoy it in lieu of her dower, held to be a disposition of a testamentary nature, and void of the requisites of a sale under the Mahometan law. *Mussamut Bogal Begum* v. *Fukeorun Bebee*, 4 Agra Rep., 288.

Under the Mahometan law, a sister is entitled to obtain a share of the estate left by her deceased brother. *Boolinisharu Bibee* v. *Bukavollah*, 17 S. W. R., C. R., 140.

Under the Mahometan law, offices like that of suffada-nusheen should descend to persons in the male line, and those who are descended from females are regarded as not belonging to the family of the founder, but strangers.

Where such an office has been once diverted for sufficient cause (*e.g.*, default of male issue) from a particular line of descent, it is liable to be brought back into the line of a previous holder when the person claiming under that holder is a descendant in the female line. *Shah Ahmud Hossein* v. *Shah Mohiooden Ahmud*, 16 S. W. R., C. R., 193.

A step-sister of a deceased proprietor is, according to Mahometan law, one of his heirs, and in the category of his residuaries.

A widow who is not entitled to more than her legal share in her husband's estate has no right to the exclusive possession of the entire estate, unless it be found that she was put in possession of the entire estate either by her husband or by the consent of the other heir or heirs in lieu of dower. *Mussamut Ameerun* v. *Mussamut Ruheemun*, 3 Agra Rep., 162.

According to the law of the Shea sect, a childless widow is not entitled to share in the immoveable property left by her husband, but only in the value of the materials of the houses and buildings upon the land. *Mussamut Toonanjan* v. *Mussamut Mehudee Begum*, 4 Agra Rep., A. C., 13.

Held that, as under the Mahometan law a missing person is considered "defunct" as regards other's property, and cannot inherit from others during the period allowed for his re-appearance, the plaintiff, his son, and nearest relative of the widow, was entitled to get the money claimed, it being compensation for land which had been found to belong to her exclusively, and not as having descended from her husband. *Imam Aly Khan and others* v. *Abdool Ali Khan*, 1 Agra Rep., 28.

A mokurrurce lease extended where the grantor was dangerously ill and in contemplation of death, was held to be a death-bed gift, and his natural heirs declared incapable of taking anything under it except their shares of the defendant's property according to Mahometan law. *Mulk Enaet Hossein* v. *Mussamut Kureemoonissa*, 3 W. R., 40.

A widow being entitled, according to the Mahometan law of inheritance, to only one-fourth of the husband's property, is bound if she claims the whole to show how she acquired it. *Sheikh Musseeoollah* v. *Mussamut Bibee Sherifun*, 1 W. R., 123.

The State (and not the mother of an illegitimate Christian child) is entitled to succeed to the property of that child dying intestate after he had attained to man's estate, and having neither wife nor legitimate child. The Mahometan law is not applicable to the illegitimate child of a Mahometan woman brought up and dying a Christian. *Mussamut Nancey* v. *M. A. Burgess*, 1 W. R., 272.

A., a Mahometan, died, being indebted to B. in a sum of money. B. sued the heirs of A. for the amount, and obtained a decree. Before B. obtained his decree the heirs of A. had mortgaged the estate of A. to C. The property was put up to sale in execution of B.'s decree, and B. became the purchaser, and now sued to obtain possession from C.

Held that the mere fact of the property having once belonged to the estate of A. did not entitle B. to follow it in the hands of C., so as to enable him to recover possession without redeeming. The heir of a Mahometan may, as executor, sell a portion of the estate of the deceased if necessary for the payment of debts; and such sale will not be set aside if the purchaser acted *bonâ fide*. *Syed Shah Enayet Hossein* v. *Syed Ram Tan Ali*, 1 B. L. R., A. C., 172; S. C., 10 W. R., 216.

Under the Mahometan law, a widow's title to succeed to her husband's estate is not barred by the fact of her being childless. *Reasunissa Begum* v. *Ranee Kheejoorunissa*, 10 W. R., 462.

Three different kinds of heirs are recognized by Mahometan law,—(1) sharers, (2) residuaries, and (3) distant kindred. Where there are no residuaries the principle of return provides that the surplus of the shares of the sharers shall revert to them in proportion to their shares, except in the cases of husband and wife. Next are the "distant

kindred." *Gujadhur Proshad* v. *Sheikh Abdoola and others*, 11 W. R., 220.

Under Mahometan law, the daughters of a deceased brother of a person who demises cannot take any share of such person's property so long as a brother and sister, or only a brother, survives. *Mussamut Azeemunissa and Mussamut Jan Khatoon* v. *Ruhmanoolah*, 10 W. R., 306.

Where surviving kindred are related in like degree to a deceased party, the males are entitled under Mahometan law to a double share of the inheritance. *Ram Baharee Singh* v. *Sitara Khatoon*, 10 W. R., 315.

Held that, assuming the Mahometan law to provide that the share of a missing person, which has devolved on him during his absence, is to be reserved or held in suspense until the expiration of the term, after which he is to be regarded as dead, the appellant who has no title whatsoever to possession cannot benefit by such provision of Mahometan law in face of the person who would be the legal heir failing the missing person, and the possession of such unlawful holder can be disturbed by such legal heir. *Mussamut Dowlut Khatoon* v. *Khaja Aly Jan*, 1 Agra Rep., 59.

Held that a Hindu family having embraced the Mahometan religion is bound by the laws of that religion as regards succession, and that the appellant, the daughter, was entitled under that law to inherit from her father. *Held*, further, that the Judge's remark as to the appellant's title and possession, without making this point an issue and formally trying it, was not a judicial finding. *Mussamut Sojan* v. *Roop Ram*, 1 Agra Rep., 61.

An adopted son cannot inherit among the Mahometans. *Khaja Oheed Khan* v. *The Collector of Shahabad*, 9 W. R., 502.

According to the Mahometan law, descendants of a paternal grandfather's brother are entitled to rank among residuaries, and as such are preferable heirs to granddaughters. *Syud Showkut Ali* v. *Ahmud Ali and others*, 8 W. R., 39.

Held by the Divisional Bench that the widow of a Mussulman, in possession of her husband's estate under a claim of dower, has a lien upon it, and is entitled to possession as against those entitled as heirs, till her claim is satisfied. Should the widow in such a case be deprived of possession by a decree in favour of heirs who take with notice of her claim to dower, and more particularly where her right to sue has been expressly reserved, the heirs take subject to a lien of which the property is not divested by the decree. If the widow, under such circumstances, sued to establish the lien, her suit would come under Clause 16, Section 1, Act XIV of 1859; if she sued to declare that landed property was subject to the lien her suit would come under Clause 12.

Held by the Appellate Bench that in a case in which a Mahometan widow had, after many years of possession as above, been compelled to make over one-sixth of her estate to her mother-in-law, and then sued her mother-in-law for one-sixth of her dower without interest, she was entitled to recover her claim without reduction on account of wasilat. *Woomatool Fatima Begum* v. *Meerunmunnissa Khanum*, 9 W. R., 318.

If a Mahometan widow, without the consent of the heirs, takes possession of her husband's estate in satisfaction of her dower, and continues to hold it for 40 years, the heirs of her husband cannot intervene; and their claim must be brought within 12 years, unless they prove that the possession of the widow as to their shares was permissive or fiduciary possession. *Mussamut Oomrao Begum and others* v. *Syud Hamid Jan and others*, 4 Agra Rep., 279.

By Mahometan law, *semble*, the dominion of the sovereign is equally absolute and uncontrolled over all his possessions of every kind; but *quære*, whether all his possessions are necessarily subject to the ordinary rules of inheritance and partition among descendants.

A reigning Mahometan prince may possess property held *jure coronæ*, as well as property acquired by some other title. *Gholam Mahomed Naimut Khan* v. *Dale and another*, 1 Mad. Rep., O. C., 281.

A posthumous son has a legal share in his father's property. *Abedoonissa* v. *Ameeroonissa*, 9 W. R., 257.

An acknowledgment made by one party in favour of another, where the nusut of the two parties has not been established, is not to be credited under the Mahometan law when the acknowledger has a known heir. *Sahabzadu Begum* v. *Mirza Himmut Bahadoor*, 12 W. R., 513.

According to Mahometan law, a widow and two daughters are entitled between them to 19-24ths of the property of their deceased husband and father in the proportion of one-eighth and two-thirds. *Mahomed Ruhwan Khan* v. *Mussamut Khajah Buksh*, 5 W. R., 221.

According to Mahometan law, when a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share. *Mahomed Noor Buksh* v. *Mahomed Hameedool Huq*, 5 W. R., 23.

Land granted for the endowment of a khatihi or other religious office cannot be claimed by the right of inheritance. The right to the income of such land is inseparable from the office for the support of which the land was granted. *Ja Afar Mohi-u-din Sahib* v. *Aji Mohi-u-din Sahib and others*, 2 Mad. Rep., 19.

By Mahometan law, descendants in the male line of the paternal great-grandfather of an intestate are within the class of "residuary" heirs, and entitled to take to the exclusion of the children of the intestate's sisters of the whole blood. *Mohdin Amid Khan* v. *Sayud Muhamud*, 1 Mad. Rep., O. C., 92.

Semble,—According to the Mahometan law, want of chastity in a daughter, before or after the death of her father, whether before or after her marriage, is no impediment to her inheritance. *Noronarin Roy* v. *Neemaiechand Neogy and others*, 6 W. R., 303.

A legacy cannot be left to one of a number of heirs without the consent of the rest. *Abeedoonissa* v. *Ameeroonissa*, 9 W. R., 257.

Where it is sought to fix a person under the Mahometan law with liability for the debt of a person deceased, by reason of the receipt of assets, it is incumbent on the creditor to give some evi-

dence of assets having been received. *Fuzeeluloonissa* v. *Hoormutoonissa*, Marsh., 218.

In proving a native pedigree, the oral statements of deceased relatives will be admitted in the absence of any registers of births and deaths.

By Mahometan law, second cousins in the male line are residuaries and exclude sister's children. *Mohedeen Ahm d Khan and others* v. *Syud Mahomed*, 1 Ind. Jur., O. S., 132.

By the custom of the Khoja Mahometans, when a widow dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood-relations, but to the relations of her deceased husband. If no blood-relations of the deceased husband are forthcoming, the property left by the widow belongs to the Jamat.

Quære,—As to the degree of ownership which will entitle members of the deceased's husband's family to succeed. *In the goods of Mulbai*, 2 Bom. Rep., 292.

12.—WILLS.

A Mahometan lady made a will disinheriting her nearest relations and leaving her whole estate to her nephew "Nuslun bad Nuslun battun bad battun" (from generation to generation). *Held* that the devise to the nephew was absolute to him, and did not extend to his sons in case of his death before his aunt. *Oomutoonnissa Beebee* v. *Ooreefoonissa Beebee*, 4 W. R., 66.

Held that the bequest by a married woman of the whole of her estate to her brother, without the assent of her husband, was invalid according to the Mahometan law. *Sheikh Muhammad* v. *Sheikh Imamuddin*, 2 Bom. Rep., 53.

The appointment of an infidel executor does not invalidate a Mahometan's will, and, until he is removed by a Civil Court, all the acts of such an executor are good and valid. *Jehan Khan* v. *C. K. Mandy*, 10 W. R., 185.

A wasee-ut-namah, or will, divesting all the property rom the next heirs, is illegal under Mahometan law. *Sheikh Jumunooddeen Ahmed* v. *Meer Hossein Ali*, 2 W. R., Mis., 49.

According to Mahometan law, the consent of the heirs can validate a testamentary disposition of property in excess of one-third of the property of the testator, if the consent be given after the death of the testator. But if the consent be given during the lifetime of the testator it will not render valid the alienation, for it is an assent given before the establishment of their own rights. *Chiraconvital* v. *Valla Pudlacal*, 2 Mad. Rep., 350.

To establish the consent of a Mahometan heiress to a will, evidence of some act done at the time of its execution, or some act done subsequently, amounting to a ratification of it, is necessary. The Court will not presume the consent of a Mahometan heiress to a will, even although she continues to reside in a dwelling-house assigned to her by the will in question. *Ramcoomer Chunder Roy* v. *Mussamut Faqueeroonissa Begum and others*, 1 Ind. Jur., O. S., 119.

In the will of Khoja, Mahometan, written in the English language and form, a gift of a fund "to be disposed of in charity as my executor shall think right," is a valid charitable bequest, and it will be referred to the proper officer of the Court to settle a scheme for the application of the fund to charitable objects by analogy to Act 43, Eliz., c. 4. Where, however, the will is in the native language, and the word "Dharm" or "daram" is used, the word is held too vague and uncertain for the gift to be carried into effect by the Court, the Court dharm or daram including many objects not comprehended in the word "charity" as understood in English law. *Gangbai* v. *Thavur Moolla*, 1 Bom. Rep., 71.

By Mahometan law the consent given by heirs to a testator's will before his death is no assent at all; to be valid it must be given after the testator's death. *Nusrut Ali* v. *Zeiannissa*, 15 S. W. R., C. R., 146.

A Mahometan testator by will decreed that his moveable estate should not be divided or alienated by any of his heirs, and directed his executor to appropriate the net income, according to a schedule annexed to his will, among certain specified persons divided into two classes, *viz.*, those who took and those who did not take by inheritance. *Held* that the intention of the testator was to endeavour to prevent any partition of the estate, and not to convert his heirs-at-law into mere annuitants taking grants from him. *Rana Khajoorinissa* v. *Mussamut Roheemoonissa*, 17 S. W. R., C. R., 190.

The rule that by Mahometan law a will does not require to be in writing is universal.

The omission to write the wish, where there was ample time for that purpose, may throw doubt on the fact of the words being used as the expression of the testator's last will.

But if the Court finds that the testator expressed his will, and that this was his last will, the omission to render it into writing will not deprive it of legal effect. *Mussamut Tameez Begum* v. *Furhut Hossein*, 2 N. W. R., 55.

Under the Mahometan law a person cannot devise more than one-half of his estate to his daughter. *Mahomed Mudun* v. *Khodejoonnissa*, 2 W. R., 181.

According to Mahometan law, a will is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence. *Khadejah Bibee* v. *Suffur Ali*, 4 W. R., 36.

Case of a death-bed deed of gift by a Mahometan lady, which was ineffectually attempted to be set up as having been executed as a deed of sale in order to defeat the operation of the Mahometan law of wills, by which a testator is precluded from giving more than one-third of his property by will. *Kumeeroonissa Begum* v. *Mirza Syfoollah Khan*, 5 W. R., 198.

Plaintiffs claimed as purchasers from the daughters (as heirs) of a Mahometan. The son, intervening, was made a party to the suit, and set up a will executed by his father under which a large portion of the estate was endowed for charitable purposes, and the rest divided among the heirs. The lower Appellate Court found the will to be *bonâ fide*, and dismissed the suit.

Held that the will having been put in issue, the lower Appellate Court should have found whether the heirs were consenting parties; for the bequest by a Mahometan of more than one-third of his estate without the consent of his heirs is invalid. *Baboojan and others* v. *Mahomed Nurool Huq and others*, 10 W. R., 375.

XX.

LANDED TENURES.

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1.—TENURES.

Where an ancient and permanent tenure is held by several persons in separate shares, and some of the sharers make default in the payment of their quota of the Government assessment, the portion of the tenure held by the sharers who paid their shares of the assessment cannot be resumed or forfeited by the Government. In such a case the *onus* lies on the Government to make out by clear evidence under what special contract, or agreement, or regulation it forfeits the entire tenure. *Brett* v. *Ellaiya*, 12 W. R., P. C., 33.

Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Perpetual Settlement, the tenants (being intermediate between proprietor and ryots) are protected from enhancement, by Section

15, Act X of 1859. *Dhanput Singh* v. *Goomon Singh and others*, 9 W. R., P. C., 3.

The tenure of land in Bombay under the Portuguese was of a feudal character.

Creation and tenure of the ancient manor of Mazagon described.

Doctrine that the fief of the Middle Ages has sprung from the Roman tenure in emphyteusis mentioned.

Ceremonies of enfeoffment and livery of seisin in Bombay.

Distinction taken, with reference to the observations of Lord Kingsdown as to Calcutta in *The Advocate-General* v. *Ranee Surnomoyee Dossee* (9 Moo. Ind. Ap., 425-426,) between Bombay, which was held by the English in full sovereignty, and Calcutta, which was merely held by them as a factory. *Nooraji Beramjee* v. *Rogers*, 4 Bom. Rep., O. C. J., 1.

The holding of an intermediate tenure does not remove the holder from the category of ryots whose lands may be enhanced under Section 17, Act X of 1859; nor does the sub-letting of part of a tenure alter the original character of the ryot's holding. *Uma Churn Dutt and others* v. *Uma Tara Dabee*, 8 W. R., 181.

When the conditions of a tenure have been settled by a compromise between the landlord and tenant, a subsequent mortgagee has no power to change the conditions so as to bind the landlord unless he has power expressly given him in that behalf, and the tenant is estopped from denying the conditions. *Hur Pershad* v. *Oodit Narain and others*, 1 Agra Rep., R. A., 60.

In Mofussil Courts in this country, there is no distinction between legal right and equitable right to property. There is but one kind of proprietary right, not divisible into parts or aspects. *Nawab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

Held that any interference by the Collector to assign of his own authority lands in a bhágdári village to a tenant for cultivation is irregular and unauthorized. *Raye Narottom* v. *Purushottam Girdhoretal*, 2 Bom. Rep., 244.

Bunkur right is the right of cutting wood, and is indicative of a certain dominion over the soil. *Rajah Leelanund Singh* v. *Maharajah Moheshur Singh*, 3 W. R., P. C., 19.

There is no presumption that orchard lands in Behar are held on a bhaolee tenure, there being many instances of orchards there held on a mukdee tenure. The *onus* of proving the special nature of the tenure is on the zemindar suing for the value of trees cut down, and not on the tenant defendant. *Doomun Singh* v. *Sookun Lall*, 2 W. R., 12.

Phulkur, or the right of gathering fruits, is a right indicative of a certain dominion over the soil. *Rajah Leelanund Singh* v. *Maharajah Moheshur Singh*, 3 W. R., P. C., 19.

A shareholder is not precluded from purchasing the whole of a howala sold *bonâ fide* for arrears of rent due from himself and his co-sharer. All ousut howalas created by the co-sharers fall with the sale of a howala, unless specially protected by the howala lease. *Hurree Churn Bose* v. *Meharoonissa Bibee and others*, 7 W. R., 318.

A plaintiff who sues for a kubuleut against a kursa ryot, who is found to hold the tenure as a howlah, an intermediate and higher grade of tenure, must fail unless he can get rid of the incumbrance created by his predecessor. *Doorga Soonduree Debia* v. *Dinobundhoo Kyburto Doss and others*, 8 W. R., 475.

The fixity of a jumma of an ancient tenure is not affected by a different jumma being mentioned in the proclamation of sale of the same tenure. *Maharajah Nilmonee Singh Deo Bahadoor* v. *Majah Ram Misree*, 2 W. R., 9.

Where a jote jumma capable of descending to heirs is taken by inheritance, it is not competent to the ijaradar to make a new settlement in favour of any person to the prejudice of the heirs. *Khemunkhuree Dossee* v. *Gooroo Proshad Mytee and others*, 11 W. R., 379.

A. sued B. for possession, with mesne profits, of a share in certain talooks, alleging that he purchased it in execution of a decree. B. proved that he held the lands under the upanchowki title. The lower Court however awarded to A. mesne profits for six years. *Held* that B. having proved his upanchowki title, A. could only be entitled to a share of the upanchowki jumma, which was not of the nature of mesne profits, but of rent; and therefore a suit to recover that could not be brought in the Civil Court. *Shib Kumar Joti* v. *Kali Prasad Sen*, 1 B. L. R., A. C., 167.

A sursory jote tenure is not exempt from the operation of Sections 3 and 4, Act X of 1859, but is protected from enhancement on proof of twenty years' payment of uniform rent. *Doorga Moyee Dossea* v. *Kassissur Debea Chowdhrain*, 4 W. R., Act X R., 20.

A riparian proprietor may deal with the stream as freely as with any other portion of his land, provided only that he must not by so doing sensibly disturb the natural condition of the stream as it exists within the limits of other proprietors, whether above or below, or on the opposite side. *Sheikh Monohur Hossein* v. *Kanhya Lall*, 3 W. R., 218.

Held that when rights and interests in the talook were sold for arrears of rent under Act VIII of 1835, the purchaser obtained no power to destroy the itmamee tenure. *Soobulchunder Paul* v. *Attur Ally and others*, 11 W. R., 32.

The zemindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. *A. J. Forbes* v. *Protap Singh Doogar and others*, 7 W. R., 409.

Regulation I of 1804, and not Regulation I of 1793, applies to the case of a person claiming as an heir to an invalid jagheerdar. *Mussamut Sanoo* v. *The Government of India*, 6 W. R., 311.

Neither the acceptance of farming leases by the widow *quâ* farmer, subject to the Government proprietary right, nor the sale of that Government right in any way, *ipso facto* extinguishes any talookdaree right existing in the abadkaree talookdar in that capacity, if otherwise valid. *Huro Pershad Bhuttacharjee* v. *Bhyrub Chunder Mojoomdar and others*, 8 W. R., 391.

The Government having once recognized the plaintiff's talook by selling it for arrears of rent to the parties through whom the plaintiff claims, and no disclaimer of his talookdaree right having ever been made by the plaintiff,—*Held* that it was not competent to the Government to deny the title of a tenure which it had by selling once guaranteed to

the purchaser. *Jeebun Singh Burmono* v. *The Collector of Backergunge*, 2 W. R., 77; 2 W. R., 139.

A non-registered holder of a sub-talook cannot stop a sale under a decree if the amount of the decree be not paid. He may stop it by paying the amount of the decree, and then bring a suit against his vendors to establish his right as sub-talookdar; and on doing so he may require the talookdar to register his purchase, and compel him to do so, if necessary. *Nittyanund Paul* v. *Ram Doollub Buttobyal*, 2 W. R., 282.

The alienation of surburakaree tenure in Cuttack is not practicable without consent of zemindar. *Doorjodhun Doss* v. *Chooya Daye*, 1 W. R., 322.

The registration of a talook or of the sunnuds creating it is not absolutely necessary to prove the creation of the talook before the Decennial Settlement. The omission of any mention of such a talook in the Decennial or Quinquennial Settlement and the inclusion of the lands in the Decennial Settlement as part of the zemindary for which the jumma is assessed, does not afford any strong influence against the evidence of the talook being only a shikmee talook paying rent to the zemindar; the talookdars were not required to mention it, nor was it necessary for the zemindar to do so. Discussion of the evidence requisite to establish the existence of an old shikmee talook. *Wise* v. *Bhoobun Moyee Debia*, 3 W. R., P. C., 5.

In cases of recusancy of settlement, the farm made by Government on account of that recusancy will be maintained pending the period and to the extent of the farm, notwithstanding proprietary right may be disputed or decided in the Courts. *Ameeroonissa Khatoon* v. *Abdool Ali*, 2 W. R., 136.

The holder of an hereditary office such as a deshponde waton, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. *Ravji Raghunath and others* v. *Mahadevrav Vishvanath*, 2 Bom. Rep., 237.

The mode of succession in a poliyem is not such as to render the holder responsible for the debts of his predecessor. There is not a continuance of the previous estate in each successive holder, but a fresh estate created by the gift. However, as respects private property left by a deceased poligar, liability to the extent of the assets taken will attach upon the takers, if there was an obligation upon the owner of the property so taken to pay the debt. *K. Subba Chetty* v. *Masti Immadi Rani*, 3 Mad. Rep., A. J., 303.

There is no precedent for ruling that the holder of the survey field is incompetent to resign it without the consent of his heirs. A point of limitation must be decided, though raised at any stage of the case. *Davalatabin Bhujanja* v. *Beru Bin Yadoji et al.*, 4 Bom. Rep., A. C. J., 197.

The assent of the anandravans is necessary to a sale of tarawad land by a karanavan.

The chief andravan's signature to the instrument of sale is sufficient, but not indispensable evidence of such assent. *Kapreta Ramen* v. *Makkhayit Mutoren and others*, 1 Mad. Rep., 359.

When the úrálans of a devasvam are four tarawads, a sale of the urayama right by one tarawad without the consent of the others is altogether invalid. *Ukanda Varriyar* v. *Ramen Nambudiri*, 1 Mad. Rep., 262.

For upwards of a century the holders of an inam had paid an annual allowance to the parties represented by the appellants, plaintiffs below.

Held (Tucker, J., *dissentiente*) that the recipients had acquired a good title to the allowance by prescription, and that an original grant for a sufficient consideration must be presumed. *Bhowanee and others* v. *Hussun Mirza*, 1 Bom. Rep., 45.

Regulation XXV of 1802 strictly restrains the alienations of proprietary rights except in manner therein provided, and invalidates a disposal or transfer of such rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer.

Semble,—Such alienation would be valid against the proprietor himself. A permanent lease is as much within the operation of Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale. *Subbarayubi Nayak* v. *Rama Reddi*, 1 Mad. Rep., 141.

Section 25 of Regulation IV of 1793 is applicable to landed proprietors. *Roghoobur Dutt* v. *The Government*, 6 W. R., Mis., 50.

The rules laid down by Regulation X of 1802 were intended to take effect only within the tract of country described in Section 2, within which the administration of civil and criminal justice, &c., was, by Section 3, declared to be vested in an officer to be denominated the Civil Commissioner of the north-eastern parts of Rungpore. The proviso in Section 8 was not intended to give substantive powers to the Governor-General in Council in respect of other tracts of the country, and Clause 2 of the same section did not intend to take away the power of any Civil Court except within that tract.

The proviso contained in Section 8 does not authorize Government to separate any part of the Garrow country beyond that described in Section 2 from the district and from the general Regulations, but merely directs the separation of such tracts from the estates of the neighbouring zemindars, and the discontinuance of the collection of cesses by the zemindars from the Garrows. By Clause 2, Section 8, the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description, done under the authority of the Government; but that does not take away the right of a zemindar to contest a survey award drawing a line which deprives him of part of his zemindary and his permanently-settled estate.

Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line, and it was the unanimous opinion of all the revenue authorities that the forests were within his permanently-settled estate, the assumption by them and Government of such line as the boundary of the Rajah's estate, throwing upon him the *onus* of proving his claim to any portion north of that line, was held to be arbitrary and anomalous. If such proceedings were adopted under Clause 12, Section 5, Regulation IX of 1825, they were wholly irregular, and the irregularity can be no ground for excluding the Court from examining them.

When a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts

cannot be treated as the encroachments of a wrongdoer.

Held (by Phear, J.) that where Government wrongfully draws a boundary line cutting off a portion of an estate settled with a zemindar's ancestors, and forbids his enjoyment of zemindary rights beyond such line, a cause of action is constituted upon which the zemindar can sue for a declaration of right under Section 15, Act VIII of 1859.

Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable, it can be rightly attributed to proprietorship of the tract upon which they were exercised. *The Government* v. *Rajah Rajkishen Singh*, 9 W. R., 426.

Where a copy of a decree for possession is sent to a Collector in pursuance of Clause 2, Section 24, Regulation XLVIII of 1793, he must decide whether the mutation of names ought to take place. But where the Civil Court issues a precept he is bound to obey. *Naunhee Koonwar* v. *Kustooree Koonwar*, 13 S. W. R., C. R., 141.

In a suit for confirmation of possession and declaration of lakheraj right against purchasers at a sale for arrears of Government revenue, it is necessary for the plaintiff to prove affirmatively that the land has been held rent-free from the time of the Permanent Settlement. *Ram Churn Lall* v. *Huta Mahtoon*, 13 S. W. R., C. R., 247.

If a tenure is transferred from one collectorate to another, and the holder of the tenure after receiving notice of the transfer continues to pay his revenue into the former collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. *Thakur Chunder Roy* v. *Collector of Twenty-four Pergunnahs*, 13 S. W. R., C. R., 336.

In a suit for enhancement of rent, *held* that in order to bring a talook within the scope of Section 51, Regulation VIII of 1793, it was sufficient to show that the tenure existed, and was capable of being registered at the time of the Decennial Settlement, the fact of actual registration not being an essential element in the formation of a talook.

Held further, that the effect of proof of the existence of a talook at the time of the Decennial Settlement is sufficient to throw the *onus* on the plaintiff to prove that it was held at a variable rent. Decision of the Courts below reversed. *Radhika Chowdrain* v. *Bamasunduri Dasi*, 4 B. L. R., P. C., 8; 13 S. W. R., P. C., 11.

A zemindar in the district of Cuttack granted the following lease: "In the Chawd-nak 1236 Amli, 17th day of the month of Brisa, Sri Hari Chuckerbutty grants to Nared Manti this istemrari (permanent) potta. For that I execute istemrari potta of my Khardigi Ayma in Mauza Bhimpur. Jote land, measuring four bigas, being previously to this in our occupation, you will cultivate and cause to be cultivated hereafter. Mokurrari (fixed) rent at Rs. 8-12 sicca you will pay from year to year. In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. To this Hari Chuckerbutty assents." A subsequent purchaser of the zemindari right obtained a fresh settlement of the zemindari under Government. The son and grandson of the grantee held successively under the lease.

In a suit by the zemindar against the holder for enhancement of rent, *held* that the pottah was a hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor. *Karunakur Mahati* v. *Niladhro Chowdry*, 5 B. L. R., 652; 14 S. W. R., C. R., 107.

Payment of rent marfatwaree confers no ryotee title on the marfatwar. *Khooderam Chatterjee* v. *Rookhinee Boistobee*, 15 S. W. R., C. R., 197.

According to Regulation XLVIII of 1793, Section 14, no counterpart quinquennial registers in the native language are considered authentic unless attested by the Zillah Judge. *Gobind Chunder Shaha* v. *Puddo Monee Dassee*, 17 S. W. R., C. R., 400.

The judgment in the case of Ven Kataramanier *v.* Ananda Chetty (V. M. H. C., 122) has gone too far in laying down the rule as to a pottahdar's right of occupation. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*, 6 Mad. Rep., 164.

Held that whatever may be the right of the Government as to the collection of todá garás from villagers, where it does collect todá garás it is bound to pay over the amount so collected to the original garáshiá, or his representatives, if the hák is a perpetual one. Where Government has paid a todá garás hák to a garáshiá for a long and uninterrupted period of time, the *onus* of proving that the hák is not perpetual lies upon Government. *Umed Sangi* v. *The Collector of Sarat*, 7 Bom. Rep., A. C., 50.

A difference in assessment should be made between zerayet and bhowlie lands, a deduction being allowed as to the former on account of expenses of cultivation. *Mussamut Rookumee Kooer* v. *Ram Tahul Roy*, 17 S. W. R., C. R., 156.

Where land has been held as a bagh, and no other right or interest therein is shown, it becomes ordinarily on removal of the trees a portion of the malgoozaree land of the village, and the occupant who brings it under cultivation is liable to the payment of rent. If the landowner and himself cannot by agreement fix the rent, a suit for the determination of the rate is maintainable under Clause 1, Section 23, of Act X of 1859. But where the occupant who brings the bagh under cultivation sets up a right inconsistent with the existence of the relation of landlord and tenant, and there is a contest between the parties as to their respective rights and positions, the clause is inapplicable. *Sheepal Singh* v. *Rai Sataram*, 3 N. W. R., 18.

The mere entry of the revenue records of land as sur will not make it sur land. Sur land is land which at some time or other has been cultivated by the zemindar himself, and which, although he may from time to time, for a season, demise to shikmas, he designs to retain as resumable for cultivation by himself or his family whenever his requirements or convenience may induce him to resume it. A zemindár cannot demise to a tenant as an ordinary cultivator, and, by an entry to which such cultivator is not a party, effect a material alteration in the *status* of the cultivator. *Budley* v. *Bukhtoo*, 3 N. W. R., 203.

Mandeedaree tenure is the tenure of a tenant with rights of occupancy who is entitled to hold at rates varying with the revenue, and he possesses privileges superior to those of an ordinary ryot. His rates of rent are not liable to enhancement.

Ranee Bunkut Nurseya v. *Gouree Singh*, 2 N. W. R., 369.

Where by an old pottah lands forming part of a zemindaree had been leased at a specified rent, there being no words in the pottah importing the hereditary and istimrari character of the tenure, the absence of such words may be supplied by evidence of long uninterrupted enjoyment, and of the descent of the tenure from father to son, whence the hereditary and istemrari character may be presumed. To rebut the evidence afforded by long uninterrupted enjoyment, and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will to prove such assertion. *Deen Dyal Singh* v. *Heera Singh*, 2 N. W. R., 338.

Section 5, Regulation XXVII of 1793, has no application to bazars which did not exist in 1793. *Moonshee Aftabooden Ahmed* v. *Mohinee Mohun Dass*, 15 S. W. R., C. R., 48.

A mourussee jotedar with a right of occupancy has a right to lands which accrete to his jote, and the zemindar cannot take them away and settle them with other parties. *Attimoollah* v. *Shaikh Saheboolah*, 15 S. W. R., C. R., 149.

The proprietorship of a dakhilee village may remain in the hands of one or more parties, but that of an uslee village in those of proprietors with separate rights and interests. *Syud Abdool Ali* v. *Mullick Sudderoodeen Ahmed*, 14 S. W. R., C. R., 493.

A tullubee brihmottur tenure is not a lakheraj tenure, and it is not necessary for a landlord to bring a suit for its resumption before he can sue for enhancement of its rent. *Rajah Nilmonee Singh* v. *Chunder Kant Banerjee*, 14 S. W. R., C. R., 251.

2.—Lakheraj Tenures.

A claim to lakheraj should not be thrown out merely because the lakheraj taidad contains no boundaries. *Kottyani Debea* v. *Soonduree Debea*, 2 W. R., Act X R., 60.

A landlord is not bound to sue for resumption before bringing a suit for a kubuleut in respect of lands which the defendant claims to hold as lakheraj. *Mussamut Bibee Fuzlon and others* v. *Sheikh Abdoollah and others*, 7 W. R., 169.

The holder of resumed invalid lakheraj land, within a Government khas mehal, is bound to pay rent according to the settlement of the revenue authorities under Regulation VII of 1822, until he sues in the Civil Court to set aside that settlement, or sues under Act X of 1859 for a mitigation or resettlement of rent. *Hurro Pershad Chowdhry and others* v. *Shama Pershad Roy Chowdhry and others*, 6 W. R., Act X R., 107.

In a suit for possession and assessment of an alleged invalid lakheraj tenure, in which the defendant relies on possession under a series of documents showing the existence of a lakheraj title previously to 1790, the validity of the grant is not open to the Judge's consideration. The Judge has merely to determine whether the tenure was in existence before 1790; and if so to apply the Law of Limitation. *Sheikh Saheb Ali* v. *Lalla Bissessur Lall*, 1 W. R., 110.

A "subsisting lakheraj tenure" means one which existed before December 1st, 1790. *Maharanee Indurjeet Koonwar* v. *Ramnath Singh*, 3 W. R., 207.

In a suit to recover the possession of land from which the plaintiff, claiming to be a lakherajdar, has been forcibly evicted by the landholder, the plaintiff is not entitled to a decree for possession unless he can show a *primâ-facie* case of lakheraj tenure.

Semble,—If he show such *primâ-facie* case the Court will give a decree for possession, and leave the zemindar to dispute the existence or validity of the alleged lakheraj tenure in a resumption suit. *Sreenath Lall* v. *Jumvey Sey Mullick*, Marsh., 550.

If it is established, in a suit under Section 28, Act X of 1859, that the defendant's lakheraj tenure was created prior to 1790, it is immaterial whether it is within plaintiff's talook or not. Therefore the finding upon the question of parcel or no parcel by a Deputy Collector in such a suit will not be binding on the Civil Court in any suit which may thereafter be brought to resume the land as invalid lakheraj created prior to 1790, or in any other suit. *Ramneedhy Boyde* v. *Sheikh Neamut*, Marsh., 355.

In order to entitle a landowner to recover in a suit for the possession of lands in the actual possession of the defendants, who claims a lakheraj tenure, on the ground that such land is not lakheraj, but belongs to a rent-paying village, it is incumbent on the plaintiff to show that rent has been paid in respect of the land since the Decennial Settlement. *Tarriney Pershad Ghose* v. *Kalleechurn Ghose*, Marsh., 215.

The production of a lakheraj sunnud is not necessary to prove that land is held rent-free. The fact may be legally established by long and uninterrupted possession, without payment of rent, raising the presumption that the land had been held rent-free from the Decennial Settlement. *Dhunput Singh* v. *Russomoy Chowdhrain and others*, 10 W. R., 461.

Held that a question as to whether certain land claimed as lakheraj lay within defendant's share or not, did not come under Regulation XXXIX of 1793, and registration was not necessary to make the alleged lakheraj title a valid one. Where possession under such a title is shown the question is rather whether the *onus* should not fall on the party claiming it as mâl. *Chadee Singh and others* v. *Beharee Tewaree*, 10 W. R., 91.

The Full Bench decision ruling that before a plaintiff can resume lakheraj lands he must first prove that he has collected mâl rents, and defendant need not first prove his lakheraj title, not applicable to the present case, in which it was proved the plaintiff collected mâl rents from the time the land was capable of bearing any. *Ramsoondur Chuckerbutty and others* v. *Ramessur Acharjee and others*, 8 W. R., 454.

Where certain land apparently lakheraj was represented in village papers as part of mâl land, and included within the boundary of the revenue-paying mehal,—*Held*, on zemindar's suit for assessment of the land, that the *onus* of showing that the case is within Section 10, Regulation XLI of 1795 lies on the zemindar. The inclusion of the land in the boundary is not conclusive evidence, nor is it binding when the boundary has not been made judicially.

The landlord proving it to be so, the plaintiff

claiming rent-free possession would be required to prove his rent-free possession (peaceably and not tainted with fraud) for sixty years before he can get a decree. *Mahabeer Pershad* v. *Oomrao Singh*, 1 Agra Rep., A. C., 167.

Where a lakherajdar, ousted by a pottahdar, sued to recover possession,—*Held* that the lower Court should not have tried the validity of the plaintiff's lakheraj title; but that if it found that the lakherajdar was in possession until ousted it should have restored him to possession, leaving the zemindar to sue to resume and assess the land on proof that it had paid mâl rents, and that he (the zemindar) was not barred by limitation. *Sheikh Goburdhun and others* v. *Sheikh Tofail and others*, 6 W. R., 190.

Where plaintiff purchased a certain quantity of land from a rent-free holder of the mouzah,—*Held* that, under the circumstances, plaintiff could not be treated as a mere cultivator, and liable to pay either rent or revenue. *Sheikh Ahmed* v. *Gunnesh Pershad and others*, 1 Agra Rep., A. C., 9.

After resumption and settlement a lakheraj estate becomes, to all intents and purposes, a separate zemindary held from Government in perpetuity, the proprietors of which are, in accordance with the Full Bench ruling of the 14th December, 1867. (9 W. R., 1,) capable of granting portions rent free; the grantor taking such land, with the risk of losing it again in the event of the whole estate being sold for default on the part of the zemindar. *Dabee Pershad* v. *Joy Lall Chowdhry*, 12 W. R., 361.

Where there is a *prima-facie* rent-free holding it must be set aside in some other suit before rent or a kubuleut can be obtained under the provisions of Act X of 1859. *Nund Kishore Lall* v. *Kureem Buksh Khan*, 5 W. R., Act X R., 62.

The mere fact of a long prior possession of a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed. *Chunder Nath Roy* v. *Bheem Sirdar*, W. R., 1864, Act X R., 37.

Under Section 10, Regulation XIX of 1793, grants of land made by zemindars free of rent are void. But where a grant binds the grantee to dig a tank and distribute water, such service is in the nature of rent to the zemindar. *Peezeeroodeen* v. *Modhoosooddun Paul Chowdhry*, 2 W. R., 15.

A suit for arrears of rent cannot be maintained in respect to rent-free land until the land has been assessed and the rent rate determined. *Noor Ali and others* v. *Imteajooddeen Khan*, 4 Agra Rep., R. A., 2.

A suit instituted by a zemindar in 1857, for the recovery of rent, for six years and nine months preceding its commencement, of land held rent free since 1796, under a grant alleged to be null and void under Section 10 of Regulation XIX of 1793, was held barred by sixty years' peaceable and uninterrupted possession of the grantee and his representatives according to the provisions of Regulation II of 1805. *Held* also that a suit to eject would be similarly barred. *Mussamut Chundra Ballee Mittra* v. *Luckhee Debia Chowdhrain*, 1 Ind. Jur., N. S., 25.

Held that the principle of the Full Bench decision in the case decided on the 19th March, 1868, (10 W. R., F. B., 14,) applies as much to cases in which defendant has held under an invalid lakheraj as to ryots whose rents are to be enhanced. *Imdad Hossein* v. *R. F. Stack*, 12 W. R., 454.

In order to lands being released from the assessment of Government revenue, they must be shown to be lakheraj lands which were in existence at the time of the Perpetual Settlement; it is not sufficient to prove lakheraj possession for 12 years. *Eshan Chunder Shaha* v. *Hatimoozzumali Khurdkur*, 13 S. W. R., C. R., 334.

In a case of a sale under Regulation VIII of 1819, where the putnee was a small piece of land, upon which there was no town or village or cutchery of any kind, and the peon stuck up the notice in the Collector's office and also at the sudder cutchery of the zemindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice. *Hurry Kisto Roy* v. *Motee Lall Nunda*, 14 S. W. R., C. R., 36.

Whatever might have been his position under former Governments, a lakherajdar in Assam is entitled to manage his lands in any manner he pleases consistently with existing regulations, and, as holder of a resumed grant which has been settled with him, to eject a tenant who has no right of occupancy or lease of any kind. *Jullar Surma Patwaree* v. *Madhub Ram Atoi Boorha Bhukut*, 16 S. W. R., C. R., 202.

Suit for ejectment and khas possession by an auction-purchaser under Act XI of 1859. The defendant's case was that after resumption of their lakheraj tenure a settlement had been made under Regulation VII of 1822 with the principal proprietor; and by that settlement it was arranged that the Government revenue payable by all the proprietors, the defendants among them, was to be paid through the principal proprietor, and that the defendants were to hold perpetual possession as shikmeedars, and that their rights should be reserved intact.

Held that the possession of the defendants as lakherajdars could not be disturbed as long as they paid the revenue assessed upon them under the settlement.

Held (Markby, J. *dissentiente*) that Clause 8, Section 10, Regulation VII of 1822, applies only to cases referred to in Clause 7, that is, of cultivating proprietors on putteedaree or byhacharee tenure, or the like, and not to a case of this kind. *Ram Gobind Roy* v. *Syud Kushuffudoza*, 14 S. W. R., C. R., 1.

Lakherajdars whose lands have been resumed have the right, under Section 15, Regulation VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the revenue authorities, but against all who have claims. *Bishroop Hajree* v. *Dumonata Debia*, 15 S. W. R., C. R., 537.

A resumption decree does not destroy the proprietary right of the lakherajdars, which continues unless and until they are dispossessed in due course of law. By obtaining a permanent settlement they acquire no new right; a cause of action accruing to them if ousted before settlement. *Thakoor Dass Roy Chowdhry* v. *Nubun Kishen Ghose*, 15 S. W. R., C. R., 552.

Unless the holder of a resumption-decree takes steps under Regulation XIX of 1793 to have the revenue fixed by the Collector, and the defendant consents to pay the revenue required of him, he has no *locus standi* on holding the lands to bring suits for rent.

The rule to be followed in determining in what manner and under what Regulation the assessment of resumed lakheraj land should be conducted is, first to ascertain whether the existence of the lakheraj prior to 1791 has been decided by the decree for resumption.

It cannot be presumed that every case instituted under Section 30, Regulation II of 1819, dealt with an estate which was held lakheraj prior to 1791. *Pogose* v. *Syed Ekram Hossein*, 15 S. W. R., C. R., 483.

Where grants for holding lands exempt from payment of revenue have been made since 1st December, 1790, and the person who succeeds to the proprietary right in the estate takes possession under Section 10, Regulation XIX of 1793, and dispossesses the grantee of his proprietary right, he is authorized and required to collect the rents from such lands at the rates of the pergunnah. A decree, therefore, declaring the zemindar's right to assess rent on lands held under such grants, establishes, as between him and the person in possession, the relation of landlord and tenant. *Ranee Shama Soonduree Debia* v. *Seetal Khan*, 15 S. W. R., C. R., 474.

In mâl cases of title the question of possession is dependent on the question of title; whereas in lakheraj cases the title may fail, and yet if possession as lakherajdars, that is to say, possession without paying rent, is proved, it may be sufficient to give a lakheraj title. *Radhagobind Dass* v. *Prokash Chunder Dass*, 14 S. W. R., C. R., 108.

3.—Mokurruree Tenures.

A "mokurruree istemraree" holding is a perpetual holding at a fixed jumma. *Munrunjan Singh* v. *Rajah Lelanund Singh*, 3 W. R., 84.

The words "mokurruree istemraree" contained in a pottah must be taken in themselves to convey an hereditary right in perpetuity. *Mussamut Lakhu Cowar* v. *Roy Hari Krishna Singh*, 3 B. L. R., A. C., 226.

A mokurruree ryot may build a wall on his land, or do anything that does not so entirely destroy the land as to endanger the zemindar's ground-rent. *Dheput Singh* v. *Halal Khoory Chowdhry*, W. R., 1864, 279.

The plaintiff sued for rent claimed to be due under a kubuleut. It appeared that no such kubuleut had ever been executed, and that the document relied upon by the plaintiff was a forgery, but it also appeared that the defendant held land of the plaintiff under mokurruree jummas. *Held* that the plaintiff could not in this suit recover rent in respect of the occupation under the mokurruree jummas. *Simroo Kareegur* v. *Anund Chunder Roy*, Marsh., 57.

When a ryot alleges a mokurruree right by purchase the nature of his vendor's title ought to be enquired into, and whether it was or was not transferable. *Gobind Chunder Mozoomdar* v. *Bissumbhur Dossee*, 2 W. R., Act X R., 4; *Banee Madhub Banerjee* v. *Joy Kishen Mookerjee*, 4 W. R., Act X R., 17.

A mokurruree holding cannot be extinguished by a subsequent farming lease. *Dhurm Roy* v. *Muddoosoodun Prosad Chowdhry*, W. R., 1864, Act X R., 117.

When a mokurrureedar resigns his tenure the dur-mokurrurees created by him come to an end, but the position of ryots holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures. *Koylas Chundra Biswas and another* v. *Bissesuree Dossee*, 10 W. R., 408.

A mokurruree pottah granted by a Rajah of Tipperah to a member of his family is, by recognized custom, resumable on the death of the grantor; and a female member does not cease to be a member by marrying into another race. *Roop Moonjuree Kooeree* v. *Beer Chunder Joobraj*, 9 W. R., 308.

A mokurruree title judicially established cannot be disturbed by a decree for arrears of rent at different rates passed subsequently without reference to such title. *Raj Roop Roy* v. *Chowdhry Ooganarain Singh*, W. R., 1864, Act X R., 85.

Section 11, Regulation XXVIII of 1828, requiring successions to mokurruree tenures to be reported to the Collector within six months, refers only to the security of the revenue, and not to private interests. Omission to pay rent may be a good ground for a suit for arrears of rent or for ejectment, but not for the cancelment of a pottah not otherwise impugned.

The acceptance of rent for forty years ratifies the original grant of a mokurruree pottah granted prior to Regulation V of 1812. *Umritanath Chowdhry* v. *Koonj Behary Singh*, W. R., F. B., 34.

A ryot having a right of occupancy can create a mokurruree lease; but the terms of a lease granted by him to a third party can only be binding as between them both. If the landlord dispossesses the sub-lessee without the sanction of law he is guilty of trespass. *Dumree Shaikh* v. *Bissessur Lall*, 13 S. W. R., C. R., 291.

In a suit to redeem a mortgage and to obtain possession,—*Held* that plaintiff had no right to redeem as being a mere mokurrureedar or a person holding under the mortgagor, and because the mortgage was at an end before the institution of the suit; and that he was not entitled to possession at once and he never got possession, and certain statements made by the zemindar in petitions filed in Court are not admissions under Act XIV of 1859 to take a case out of the ordinary rules of limitation. *Lalla Doorga Pershad* v. *Lalla Luchmun Saha*, 17 S. W. R., C. R., 272.

A permanent lease of a village in a muttah by the muttahdur is not invalidated by Section 8, Regulation XXV of 1802, although the lease has not been registered as required by that section. *Subroyalee Naick* v. *Ruma Reddy*, 1 Madras High Court Reports, overruled. *Kurdappa Naik* v. *Annamalay Chetty*, 4 Mad. Rep., 396.

Though the lease in this case contained no words importing an hereditary character, yet it was held to have the effect of being hereditary on the ground that the period of its continuance was not dependent

on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure. *Lekraj Roy* v. *Kunhya Singh*, 17 S. W. R., C. R., 485.

A perpetual lease of a distinct portion of a zemindary is not a transfer within the meaning of Section 8, Regulation XXV of 1802, Madras Code. *Vencataswara Naicker* v. *Alagoomoohoo Servacaren*, 4 W. R., P. C., 73.

It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. The grant of a mokurruree lease is beyond the scope of a naib's general authority. To enable him to give such a lease his principal's special consent or approval is necessary. *Unoda Persaud Banerjee* v. *Chunder Seker Deb*, 7 W. R., 394.

A., the registered holder of a dur-mokurruree lease which he took without notice of an agreement previously made by his lessor to grant a lease of the same property to B., was held to have a perfectly good title as against B.

Semble, per Norman, J.,—A person who has authority to conduct the negotiation respecting a lease is such an agent that a notice to him may be notice to his principal. *Nuddear Chand Sein* v. *Kishoree Lal Chuckerbutty and others*, 7 W. R., 463.

Where a manager or trustee has conveyed certain property to himself by a pretended deed of gift, and under such pretended title granted a dur-mokurruree lease, and his title is set aside by a decree of Court, the lessees cannot be allowed to maintain possession, especially if the lease itself was brought to question in the suit and set aside in the decree. *Sheo Shunkur Lall* v. *Dhurm Joy Pooree and others*, 8 W. R., 360.

Perpetual leases for building are only protected as held at a fixed rate, when the rent is fixed by the original leases. *Surbomungula Dossee* v. *Maharajah Sustesh Chunder Roy*, 2 W. R., 231.

A Government farmer of a village (the farm being for his life) sub-leased it, and the sub-lessee, in consideration of a certain sum, made a perpetual lease in favour of the special appellant at a certain annual quit-rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of farm) was made with the sub-lessee, whose proprietary rights having been sold at auction were purchased by the plaintiff, who sued to set aside the lease. *Held*, on the construction of the lease, that the proprietor professed it to be a perpetual lease, without reference to its determination on the expiry of sub-lease, and that the auction-purchaser having the *locum tenens* of the person whose rights he purchased was estopped, as would have been the latter, from questioning the validity of the lease in favour of special appellant. *Kurn Chowbey* v. *Jankee Pershad*, 1 Agra Rep., A. C., 164.

Where the purchaser of the rights of a mokurrureedar at a sale in execution sued to eject the parties in possession, who pleaded that they were under-tenants under leases from the last lessee, or even from dates prior to his mokurrureedar,—*Held* that defendants were not to be summarily turned out of their lands because they failed to show that the commencement of their holding was antecedent to the creation of the mokurruree which the plaintiff had purchased. If they were under-tenants *bonâ fide* holding and cultivating land within this mokurruree, they would be entitled to obtain possession until their holding was properly determined in due course of law. *Pureeag Singh and others* v. *Pertap Narain Singh*, 11 W. R., 253.

4.—Service Tenures.

Where the custom of the country was found to be that on the death of a service tenure holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognized. *Rajah Ramessurnath Singh* v. *Huro Lall Singh and others*, 6 W. R., 87.

In a suit to obtain khas possession of lands which were found to have been held of plaintiff and his ancestors by defendants and their ancestors upon a service tenure, but which the grantees alienated to strangers, without any acquiescence on the part of the grantor, and then ceased to perform the services, it was held that the defendants had forfeited their right to hold the land at all. *Ramgopal Chuckerbutty and another* v. *Chundernath Sein and others*, 10 W. R., 289.

A grant to a man and his heirs on condition of performing service, does not in general mean that the service is to be personally performed by the grantee or his heirs, but that the grantee is to be responsible for its performance. *Shib Lall Singh* v. *Moorad Khan*, 9 W. R., 126.

As an ordinary rule, if land is given on a quit-rent, or no rent at all, in consideration of service to be performed, the tenure would lapse when those services ceased.

Quære,—When no service has been required or performed for a long series of years, and the tenure has been allowed to be held at a quit-rent, or no rent at all, whether there has not been such a waiver of service as puts it out of the power of the grantor to resume the tenure, simply on the ground that he has now no need of the service for which the tenure was originally created?

Quære,—Whether when land is given at a quit-rent, on condition that the grantee shall aid the grantor in repelling the attacks of his enemies or for any other particular purpose, while the grantee is willing to render those services, the grantor can put an end to the contract by saying that he has no enemies to repel, and therefore no need of the grantee's further services? *Maharajah Nilmonee Singh Deo* v. *Sheo Tewaree*, W. R., 1864, 324.

A., the holder of a service tenure subject to a quit-rent to the zemindar, died, leaving his rent for the last three years unpaid. B., his son, succeeded him in the tenure. *Held* that the zemindar could not sue B. as A.'s successor in the tenure for A.'s arrears of rent. *Rajah Nilmonee Singh* v. *Madhub Singh*, 1 B. L. R., A. C., 195; 10 W. R., 255.

Bhoomears are bound to render certain customary services, but their lands are not resumable. *Gopalnath Tewaree* v. *Bhooyah Oranoo and another*, 6 W. R., 137.

5.—Chakeran Land.

When a party seeking a declaration of title to certain lands as chakeran rested his claim on the

register of chakeran lands prepared in 1836,—*Held* that it was incumbent on him to show how the lands in question were omitted from the earlier registers of 1810 and 1813. *The Collector of East Burdwan* v. *Ram Nidhee Koberaj*, W. R., 1864, 353.

The registers of chakeran lands are public records supposed to contain a correct list of the chakeran lands in existence at the time of the Decennial Settlement. *The Collector of East Burdwan* v. *Sheikh Imdad Ali*, W. R., 1864, 358.

Suit for the resumption of certain chakeran lands on the appellant's talook, Government considered that the lands were appropriated to the maintenance of a chowkeedar, and that the holder of these lands was liable to the performance of none but police or chowkeedary duties. The talookdar (appellant) contended that the lands were gram surinjamee lands not liable to the performance of any but personal services to him, and not legally appropriated for the performance of these services, but resumable by him.

Held by the Privy Council that the lands in question were to be considered as appropriated to the maintenance of a chowkeedar in the talook; that the right of appointing such officer belonged to the talookdar; and that such officer was liable to the performance of such services to the talookdar as, by usage in the zemindary, chowkeedars were accustomed to render to the zemindar. *Joykishen Mookerjee* v. *The Collector of East Burdwan*, 1 W. R., P. C., 26.

6.—Ghatwali Tenures.

A suit will lie to assess lands occupied by ghatwals in excess of the area recorded in their isumnovisse. *Rajah Jugo Jewan Lal* v. *Raghoonath Kopat and others*, 6 W. R., 197.

When ghatwals hold land, not under a sunnud conveying a hereditary indefeasible right, but on payment of a quit-rent, with enjoyment of the profits of the land in lieu of wages, such possession, however long, would not entitle them to hold the land at a fixed jumma, or to retain a portion of the land after they have ceased to perform the duties for which the land was assigned to them. *Rajah Leelanund Singh and others* v. *Nusseeb Singh and others*, 6 W. R., 80.

Long possession (presumably from the Decennial Settlement) and gradual cultivation by a ghatwal on payment of a quit-rent (and not merely possession without cultivation) are evidence of an implied grant which protects the ghatwal from enhancement or assessment on the land so cultivated.

An adjudication by a competent Court made sixty years ago dismissing the landlord's claim to rent from the ghatwal is evidence of the highest order as to the right of the ghatwal in the suit now brought by the landlord for a declaration of right to take rent in future. *James Erskine* v. *Manick Singh Ghatwal and others*, 6 W. R., 10.

In the Kurruckpore ghatwali mehals the profits of the lands *minus* the quit-rent paid to the zemindar, were the remuneration given to the ghatwals for police services. Government illegally resumed those lands, dispensing with the services of the ghatwals, and settled the tenures with the ghatwals at half the rent current in that part of the country. The resumption proceedings having been set aside, it remained to determine to whom and in what proportions Government should refund the half jumma taken by it as rent from it by the ghatwals during the period of settlement. *Held* that, inasmuch as the ghatwals rendered no service during the period of settlement, the moiety of the jumma retained by them was ample compensation for any loss they might have sustained, and the zemindar was entitled to receive the whole of the moiety taken by Government, partly as quit-rent due to him, and partly as compensation for loss of the ghatwals' services during the continuance of the settlement. *Rajah Leelanund Singh Bahadoor* v. *The Government and Thakoor Mano Rungan Singh and Tekait Loknath Singh*, 2 B. L. R., A. C., 115.

The lands of the ghatwals of Khurruckpore are not capable of alienation by private sale or otherwise, nor liable to sale in execution of decrees, except with the consent of the zemindar and his approval of the purchaser as a substitute for the out-going ghatwal. *Rajah Leelanund Singh* v. *Doorgabutty*, W. R., 1864, 249.

Held that a right to reinstate a ghatwal in possession of lands cannot exist in the Government or in any person or body whatsoever. *Annund Coomaree and others* v. *The Government*, 11 W. R., 180.

A ghatwal of Beerhboom granted a lease to A. After A. and his heirs had been in possession of the lands under the lease for sixty years a surburakar appointed by the Court of Wards for the estate of the heir of A.'s lessor, then a minor, entered upon the lands, and ejected the person then in possession under the lease. *Held* that notwithstanding the ghatwals of Beerbhoom (independently of the recent Statute) had not the power of alienation, still having an estate in perpetuity so long as the services are performed and the rent paid, the lease could not be regarded as a nullity, and the surburakar was not justified in ejecting the tenant without legal process. *Rungolall Deo and others* v. *The Deputy Commissioner of Beerbhoom and others, and three other cases*, Marsh., 117; S. C., W. R., F. B., 34.

Permanent leases granted by the ghatwals of Beerbhoom prior to the Decennial Settlement, for the due performance of the police duties for which the lands were originally granted to the ghatwals, and have been held from generation to generation, cannot be set aside at the instance of the present sirdar ghatwals. The creation of such under-tenures is not beyond the powers of the ghatwals. *Mukurbhanoo Deo* v. *Kostoora Koonwaree*, 5 W. R., 215.

In the absence of express words to the contrary, ghatwali lands held under a lease which neither confirms nor recognizes the pre-existing *status* of the ghatwals, nor confers on them any right other than that of holding the lands at a fixed rate as long as ghatwal service is required from them, are resumable by the zemindar when that service is no longer required. *Rajah Leelanund Singh* v. *Sarwan Singh*, 5 W. R., 292.

A Commissioner of Revenue is not warranted by law, on the demise of a ghatwal, to consider the eligibility of rival claimants to the tenure (a perpetual and descendible one), and to reject the claims of the natural heir on considerations purely moral, *e.g.*, having evinced a want of filial respect and

dutiful feeling to his father. *Lal Dharee Roy* v. *Brojo Lall Singh and others*, 10 W. R., 401.

The ghatwals of Kurruckpore hold a perpetual hereditary tenure at a fixed jumma payable in money and service, and cannot be evicted by the zemindar except for misconduct. *Munrunjun Singh* v. *Rajah Lelanund Singh*, 3 W. R., 84.

The Civil Courts cannot interfere to reinstate a ghatwal who has been dismissed by the police authorities in the land which he formerly held as ghatwal. The right to possess the land depends on the tenure of the office. *Debee Narain Singh, ghatwal* v. *Shree Kishen Sein*, 1 W. R., 321.

In the absence of long usage a ghatwali grant confers a mere chakeran holding or interest. Refusal to review decision of Division Bench. 6th June, 1866, 9 Sevestre, 311. *Sarwan Singh, petitioner*, 2 Ind. Jur., N. S., 149.

Succession to ghatwalis is regulated solely by the nature of the ghatwali tenure, which descends undivided to the party who succeeds to and holds the tenure as ghatwal.

A woman is not incapable of holding a ghatwali tenure. *Mussamut Kustoora Koomaree* v. *Monohur Deo; The Government* v. *Monohur Deo*, W. R., 1864, 39.

The proprietor (K.) of a ghatwali talook in Bhaugulpore sold one mouzah out of it to defendant (L). Some time afterwards K.'s right was sold in execution of a decree, and purchased by plaintiff (C), who obtained a sunnud from the zemindar as ghatwal. Subsequently the zemindar having compounded with Government for a money payment in lieu of ghatwali services, gave G. a mokurruree pottah of the ghatwali estate. G. then sued L. for possession of the mouzah purchased by the latter.

Held that K. had no power to sell the whole of the ghatwali estate to L. without the consent of the zemindar; and that, when he sold a part the interest which he conveyed could not be higher than what he himself had; accordingly when his entire rights and interests were sold those of G. ceased.

Held that the zemindar, by granting a fresh ghatwali sunnud, appointed the grantee to the office of ghatwal, and disallowed the sale made by K. to G. *Lalla Gooman Singh* v. *Hugh Grant*, 11 W. R., 292.

Ghatwali tenures are perpetual holdings subject to condition of service. *Rajah Leelanund Singh* v. *Thakoor Monorunjan Singh*, 5 W. R., 101.

Suit for resumption of a ghatwali tenure. *Held* that the sunnud in this case was personal to the grantee, and that it did not confer on his descendants or representatives a hereditary transferable and permanent tenure at a fixed rate. *Held* also that the clearest and most precise definition, such as *istemraree* and *mourosee*, with the addition of *nuslun ba nuslun* (from generation to generation) would be necessary to support the appeal. *Mussamut Sona* v. *Rajah Leelanund Singh*, 5 W. R., 290.

The ghatwali lands in the zemindary of Kurruckpore are not liable to resumption and re-assessment under Clause 4, Section 8, Regulation I of 1793, relating to thannah or police establishments. The Government having persisted in their claim, after several decisions against them by their own officers acting as Judges, were adjudged liable to pay all the costs of the case. *Rajah Leelanund Singh* v. *The Government of Bengal*, 4 W. R., P. C., 77.

A suit for khas possession by Government will not lie in respect of ghatwali lands admittedly included in a decennially-settled estate. *Gadhadhur Banerjee and others* v. *The Government*, 6 W. R., 326.

Suit to recover possession of certain lands upon the ground that they were subject to a tenure for private service to be rendered to the zemindar, which tenure had been forfeited by defendant not having rendered such service. Plaintiff having failed to prove that the services were private, and that the tenure was forfeited on account of defendant's refusal to perform them, the decree of the lower Appellate Court in favour of defendant was affirmed in special appeal. *Raja Nilmoney Singh* v. *The Government and others*, 6 W. R., 121.

The rents of a ghatwali tenure are not liable for the debts of the former deceased holder of the tenure. *Binode Ram Sein* v. *The Deputy Commissioner of the Sonthal Pergunnahs*, 6 W. R., 129; 7 W. R., 178.

Although in custom the ghatwali tenure descended from father to son, no succession was legal or valid till confirmed by the zemindar, and reported by him to the Government authorities. Where Government has dispensed with the services of the ghatwals, the zemindar is under no obligation to continue to appoint, and may on a vacancy occurring settle the tenure as he pleases. Parties are required to have with them in Court, at the first hearing of the suit, all their documentary evidence, but need not file it then, unless it is called for. *Mahbut Hossein* v. *Patasee Kumari*, 1 B. L. R., A. C., 120; 10 W. R., 179.

Ghatwali tenures are not liable either to sale or attachment in execution of decrees. The surplus proceeds of such a tenure collected during the lifetime of the judgment-debtor are liable to be taken in execution as being personal property, but profits accumulated after the death of the judgment-debtor are not so liable. *Kustoora Koomaree* v. *Binoderam Sein*, 4 W. R., Mis., 4.

Where a ghatwali tenure was granted under a valid sunnud from a person representing the then Government in that behalf more than one hundred years ago, and had been allowed to change hands by descent or purchase without question, the zemindar was held incompetent of his mere motion without the assent and against the will of the Government, to put an end to the ghatwali, to deprive the ghatwals, and to treat them as common trespassers. *Kooldeep Narain Singh* v. *Mahadeo Singh and others*, 6 W. R., Cr., 199.

A ghatwali tenure was resumed by the Government under Regulation II of 1819. After the resumption, H. N., the former holder of the tenure, claimed settlement as proprietor. The Government denied his title, but offered him a lease on his giving security. On his failure to find security, the Government in 1841 made a temporary settlement with J. S., who entered into possession of the land. No malikana was reserved to or ever paid to H. N. In 1862 the Government settled the land permanently with J. S. The heir of H. N. then brought a suit in the Civil Court, praying that this settlement should be set aside, and for a declaration of his right to have a settlement concluded with him.

Held that, supposing H. N. ever to have had any legal right to a settlement as proprietor, the suit to

enforce such right was barred by limitation, he having been effectually dispossessed, and the cause of action, if any, having accrued in 1841.

Note.—The Court appeared to consider that in fact H. N. never had any right to maintain an action in the Civil Court to compel the Government to make a settlement with him. *Maharajah Joy Mungul Singh* v. *Tekait Pockharun Singh*, 7 W. R., 465.

Where it was admitted that the ghatwal defendant's tenure dated from a time anterior to the Decennial Settlement, and before the creation of the zemindary, the defendant is protected, whether under Section 3, or under Section 15, Act X of 1859, from any fresh assessment. *James Erskine* v. *The Government and Dwarkanath Singh and others*, 8 W. R., 232.

When a ghatwal becomes a defaulter, it is in the power of the authorities, according to Regulation XXIX of 1814, to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person. *Chitto Narain Singh Tekait* v. *Assistant Commissioner of Sonthal Pergunnah*, 14 S. W. R., C. R., 203.

A ghatwal in the district of Beerbhoom is not competent to grant a lease of the whole or a portion of his ghatwali tenure in perpetuity. Ghatwali tenures in Beerbhoom are grants of land by the Government to individuals for the performance of certain police duties. These tenures are heritable, but the incomes arising from them cannot be charged or encumbered by the ghatwal in possession so as to bind his successor. *Grant, G.* v. *Bangsi Deo*, 6 B. L. R., 652; and 15 S. W. R., C. R., 38.

As to the nature of ghatwali tenures and the rulings of the High Court which should govern such cases. *Rajah Leelanund Singh* v. *Kunbya Lall*, 17 S. W. R., C. R., 315.

7.—Khoti Tenure.

In a suit brought by a khot in 1862 to recover an hereditary share in a khoti village, which had been mortgaged by her husband in 1845, and taken directly under Government management by the Sub-Collector of Kulaba on failure by the mortgagee to pass the customary agreement (kubuleut) for the security of the revenue for the year 1851-52, the Court of first instance decreed the restoration of the khoti estate on payment by the plaintiff of any loss which may have been sustained by Government during its entire management, but the District Judge in appeal modified that decree by annexing a condition that the plaintiff was to observe the engagements which had been entered into between Government and the sub-tenants of the estate through the revenue survey which had been introduced during the direct management of the village by Government, whether as regards the rates of assessment or the right of tenancy.

Held, by Arnould and Newton, JJ. (Tucker, J., *dissentiente*), that plaintiff had no right to object to the condition subject to which the District Judge had allowed her claim to resume the khotship. *Tajubeei* v. *The Sub-Collector of Kulaba*, 3 Bom. Rep., A. C. J., 132.

Held that a khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 1867, Schedule B, Art. 11, note (a), Sp. Rule 1 for the Bombay Presidency. *Vithal* v. *Gopal Ganesh Binelkar*, 4 Bom. Rep., A. C. J., 148.

Held that a khot is liable to be assessed for khoti profits in respect of land in his private occupation during the time that the khoti village is under attachment by Government.

Quære,—Whether a khot in respect of such lands is a tenant within the meaning of Section 11, Clause 1, of Bombay Act I of 1865, and whether the powers in Section 38 of that Act apply to such lands. *Rámchandra Narsinha Mahupa* v. *The Collector of Ratnágiri*, 7 Bom. Rep., A. C., 41.

Where the plaintiffs sued for the partition of a khoti estate, alleging that they and the defendants were joint proprietors thereof, and where the defendants admitted that the estate was originally joint, but set up that a partition had taken place more than a hundred and fifty years ago,—*Held* that the burden of proving that a partition had been made lay on the defendants, and that the mere distribution of land and tenants, such as is usual in the South Konkan, while a khoti estate continues to be held in co-parcenary, in no way established a formal partition. *Bábáshet bin Govindshet et al.* v. *Jirshet bin Yesshet et al.*, 5 Bom. Rep., A. C., 71.

8.—Zur-i-peshgee Tenure.

By a zur-i-peshgee lease granted upon the advance of Rs. 5,517, the lessee was to hold possession of certain villages for the term of five years, and to pay himself out of the proceeds of the villages interest on the loan; and the lessor undertook not to mortgage or alienate the property during the term, and not to oust the lessee, or, if he did that, he would pay him Rs. 1,000. Before the expiration of the term the villages were taken in execution, and sold under a decree at the suit of a third party, and the lessee turned out of possession. *Held* that the lessee had no claim against the villages for the principal money, and that the Rs. 1,000 were forfeited. *Nundolall* v. *Mussamut Kullianeebuttee*, Marsh., 209.

A mortgagor, one who has granted a zur-i-peshgee lease, can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage debt has been satisfied by the mortgagee's receipts while in possession.

In the case of a mortgage by a zur-i-peshgee lease, the mortgagor is entitled to an account from the mortgagee, notwithstanding an express stipulation in the lease that the latter shall not be liable to account. *Punjum Singh* v. *Mussamu. Ameena Khatoom*, 6 W. R., 6.

A zur-i-peshgeedar is entitled as against purchasers from the grantor of his zur-i peshgee lease to hold possession of any village covered by his lease until his lien on it is satisfied. *Chutter Singh and others* v. *Gobind Doss and others*, 6 W. R., 122.

Where a decree-holder, finding a zur-i-peshgeedar in possession, paid the debt due by his judgment-debtor to the zur-i-peshgeedar, and entering on possession himself realized the rents, it was held that he could not demand wasilat from the judgment-debtor for the same period. *Mussamut Sham*

Soonder Kooer v. *Rajendar Misser*, 10 W. R., 390.

A zur-i-peshgeedar cannot compel his lessees to pay rent when both he and they are evicted by the zemindar. *Bishen Dyal Singh* v. *Probhoo Dass*, 1 W. R., 1.

Plaintiff, having given a lease on a zur-i-peshgee advance to the defendant, was declared entitled to sue for the balance of rents after giving the defendant credit for the amount of his advance.

The decretal order in such a case, after pronouncing the tenure liable on cancelment, should go on to say, according to Section 78, Act X of 1859, that it will be cancelled if the arrear be not paid within fifteen days. *Giree Dharee Sahoo* v. *Mussamut Buksun*, 1 W. R., 361.

A zur-i-peshgee lease being nothing but a simple mortgage, though it may in form be for a term of years, yet it may be cancelled on proof of discharge of advance with interest from the usufruct, or on payment of the money in cash. The purchaser of the proprietary rights in a zur-i-peshgee is not barred from suing to redeem, because he or those through whom he claims did not sue for an account within twelve years from expiry of term, or from discharge of the debt by the usufruct. *Pultun Singh* v. *Reshal Singh*, 1 W. R., 7.

A zur-i-peshgee lease (which does not provide for its cancelment in the event of a breach of any of its conditions, but provides for the cancelment of all sub-leases) cannot be set aside, because of the act of the zur-i-peshgeedar granting a kutkeena. The kutkeena may be set aside, and the zur-i-peshgeedar be liable in damages for any injury which may have accrued to the zemindar. Section 25, Act X of 1859, is not applicable to such a case, but only to cases when the period of the lease has expired. But as a zur-i-peshgee lease has always been treated as a mortgage, a suit to set it aside cannot be brought in the Collector's Court unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. *Mahomed Ali* v. *Batook Dao Narain Singh*, 1 W. R., 52.

When a sub-lessee (kutkinadar holding from a zur-i-peshgeedar) pays the Government revenue on the default of the malik, who sells the estate to escape liability, the obligation to repay the same is a personal liability on the part of the malik, and cannot be enforced against the estate. *Jhoo Bhugguth* v. *Syed Tara Hoom Hossein*, W. R., 1864, 132.

A zur-i-peshgee lease is nothing but a simple mortgage, and may at any time be cancelled on the advance being proved to have been discharged with interest from the usufruct, or otherwise liquidated by the mortgagor, notwithstanding the non-expiry of the term mentioned in the deed. *Nund Lall Doss* v. *Baluk*, 2 Agra Rep., A. C., 122.

A zur-i-peshgeedar is entitled to retain the whole property pledged to him until the whole debt has been paid to him. It is optional with him to relinquish any portion either on receiving a proportionate amount of what is due to him or otherwise. *Hureehur Singh* v. *Dabee Sahoy*, W. R., 1864, 260.

In a suit between Mahometans by the heirs of zur-i-peshgee mortgagee to recover the amount advanced, all the heirs of the mortgagee must be represented either as plaintiffs or defendants, or those who sue must claim in proportion to what they are entitled to under the Mahometan law. *Mussamut Mujeedoonissa* v. *Syud Dilder Hossein*, 14 S. W. R., C. R., 216.

Where a zur-i-peshgeedar abandons his right to possession under his lease, and sues to recover the money advanced, and obtains a decree which gives him no specific remedy against the property leased to him, his lease must be held to have terminated. *Gouree Singh* v. *Fuzl Hossein*, 15 S. W. R., C. R., 313.

The words in a zur-i-peshgee lease, "after the expiry of the term it will be competent to me (the mortgagor) in the month of Jeit of any year I can to pay the zur-i-peshgee and cancel the lease," were held to do no more than bar mortgagors re-entering in the middle of any year, in the event of the mortgagee's occupation continuing after the expiry of the lease, owing to mortgagor's default to pay off the loan, and that it contained no undertaking by the mortgagee to hold on until it suited the mortgagor to pay him off. *Raj Goura Sunkur* v. *Baboo Bhola Pershad*, 17 S. W. R., C. R., 211.

9.—Permanent Settlement.

The date of the Permanent Settlement is March 22nd, 1793. *Rajessuree Debia* v. *Shibnath Chatterjea*, 4 W. R., Act X R., 42; *Dhunput Singh* v. *Gooman Singh*, W. R., 1864, Act X R., 61.

"The time of the Permanent Settlement" mentioned in Sections 3 and 4, Act X of 1859, was held to be the date of the Permanent Settlement of the Provinces of Bengal, Behar, and Orissa referred to in Regulation I of 1793, and not the date of the actual settlement of a particular zemindary with the owner thereof. *Mussamut Poran Bibee* v. *Sedee Nazir Ally Khan*, W. R., 1864, Act X R., 71.

A suit for enhancement before Act X of 1859 against a dependent talookdar. *Held* in special appeal that, independently of the question whether by proving a holding for twelve years before the Permanent Settlement the defendant can put the plaintiff out of Court, the defendant is also entitled to a separate finding on the question whether by a holding from the time of the Settlement he is entitled to the protection given by Section 51, Regulation VIII of 1793. *Muthooranath Roy* v. *J. Panioty*, 1 W. R., 37.

Suit to contest enhancement. The plaintiff's admission that he had held since 1244 deprives him of the benefit of the presumption of having held at fixed rates from the time of the Permanent Settlement. But as the liability of the tenure to enhancement was decided against the zemindar in a former suit, that finding it was held must be treated as *res adjudicata*. *Sreedhessary Chowdhry* v. *Muddun Koowar Jha*, 1 W. R., 128.

A tenant is entitled, under Section 4, Act X of 1859, to the presumption of having held since the Permanent Settlement on proof of uniform payment of rent for 20 years. *Shib Narain Ghose* v. *Kashee Pershad Mookerjee*, 1 W. R., 326.

The date of the Permanent Settlement for the district of Jessore was April 11th, 1790. *Huro Nath Roy* v. *Ameer Biswas*, 1 W. R., 231.

A clear finding is necessary that the defendant has paid a uniform jumma for the land in dispute before he can have the benefit of the presumption of occupancy from the time of the Permanent

Settlement. *Ormon Khatoon* v. *Robert Savi*, 1 W. R., 243.

Where a ryot has held the land at a uniform rate for a longer period than twenty years the presumption which would arise under Act X of 1859, Section 4, that it has been so held from the time of the Permanent Settlement, is rebutted if it appear that at a period subsequent to the Permanent Settlement a pottah was granted, showing that the title under which the ryot holds then commenced. *Ramlall Ghose* v. *Lallu Picumlull Doss*, Marsh., 403.

In a suit for resumption, where the defendant pleads a lakheraj tenure before 1790, the validity of the grant is not open to the Judge's consideration, but only whether the tenure was in existence before 1790, and if so to apply the Law of Limitation. *Sagore Monee Dossee* v. *Bipro Doss Dey*, 1 W. R., 249.

Even when the validity of a lakheraj may be questionable, the lakherajdar can plead limitation on proof of his ancestors having been in possession before 1790. *Munneah Lall Baboo* v. *Mulkessur Banerjee*, 1 W. R., 297.

The words "Permanent Settlement" in Act X of 1859 refer to the Permanent Settlement of 1793, and not to Permanent Settlements subsequently made. *Sheoburn Lall* v. *Ram Purtab Singh*, 3 W. R., Act X R., 20.

Where shikmee talooks at the time of the Permanent Settlement were comprised within the zemindar's estate, the talookdars will be subordinate to the zemindar. *Chunder Kant Chuckerbutty* v. *Mupanny Dukhinea Odea*, 1 Ind. Jur., N. S., 6.

The lower Appellate Court's order upon remand that plaintiff be declared entitled to the permanent settlement of the land in dispute instead of the defendants, and that she be substituted for the defendants as proprietor and declared liable to pay the rent of the estate instead of the defendants, was confirmed in special appeal subject to the proviso that the declaration of the plaintiff's rights now made will not entitle her to dispossess the defendants if they be in possession of the land as putneedars. *R. Watson and Co.* v. *Ranee Brojo Soonduree Debia*, 17 S. W. R., C. R., 376.

10.—SETTLEMENT.

A Government settlement, whether permanent or farming, so far from destroying the rights of a talookdar, always preserves them if there be really a dependent tenure. *Hurropershad Bhuttacharjee* v. *Bhyrub Chunder Mojoomdar*, 8 W. R., 391.

Where, owing to the refusal of the original possessor of a resumed maâfee land to fulfil the revenue engagements, the settlement was made with a stranger,—*Held* that such settlement could not confer upon him any right adverse to the original possessor after the expiration of that settlement, when the original possessor is entitled to claim settlement. *Mahomed Ata-ool-lah* v. *Mahomed Mohi-ool-lah and others*, 1 Agra Rep., A. C., 231.

Held, on the construction of the settlement proceeding, that the arrangement under that proceeding was to continue for the period of settlement, and no longer, and that the respondents have acquired hereditary transferable interest as cultivators in the land by the zemindar's acquiescence in the action of the settlement officer. *Ikramaly Khan and others* v. *Ludwa and others*, 2 Agra Rep., A. C., 113.

Where a claim to the proprietary rights was preferred by the plaintiffs at the time of settlement, and the settlement officer, on the objection of the defendants, ordered the plaintiffs to be recorded as hereditary cultivators, and referred them to the Civil Court to establish their right,—*Held* that the present suit brought to establish that right not having been instituted within three years from the date of the award of the settlement officer, was barred by limitation. *Surdar Khan* v. *Chundoo and others*, 1 Agra Rep., A. C., 228.

In the settlement of a talook, after resumption by Government with thirteen persons, it is not to be presumed that all thirteen persons had equal rights, simply because the settlement was made with all of them jointly, particularly where the settlement proceedings show that the question of the extent of the shares was in dispute, and that the settlement was made jointly with the whole without prejudice to title. The *onus* of proving the extent of the plaintiff's vendor's title is on the plaintiff. *Gooroo Churn Poddar and others* v. *Hafeeza Bibee*, 7 W. R., 366.

When a temporary settlement expires, whether the holder thereof had been the proprietor of the land within the meaning of the old Regulations, or a stranger, the proprietor is entitled to come forward and to claim as of right from the Government a permanent settlement of the land, unless he has by his own conduct forfeited that right. *Watson and Co.* v. *Brojo Soondery Dabee*, 10 W. R., 395.

Long possession itself does not give a title to settlement if the parties asking for the settlement do not comply with the requirements of the law. *Goluck Chundra Chowdhry and others* v. *Ali Mollah and others*, 11 W. R., 378.

A settlement of a resumed lakheraj estate being made by the Collector with the plaintiff "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at any time. *Harlal Tewari* v. *The Collector of Bhaugulpore*, 3 B. L. R., Ap., 82.

The mere fact of a lessee having received a malikana allowance from the Collector during the period of his temporary lease will not bar the right to a permanent settlement of any party who, under the law of alluvion, is entitled to settlement. *Cally Chunder Chowdhry* v. *Manikurnika Chowdhrain*, W. R., 1864, 149.

A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal if the land has not actually been resumed. *Abboo Bibee* v. *The Collector of Backergunge*, 1 W. R., 255.

A settlement dol includes all that ordinarily passes as assets of the settlement, but not what is exclusively reserved as the right of the state, *e.g.*, the right to the julkur of large navigable rivers, which, according to Clause 2, Section 4, Regulation XI of 1825, never passes to private individuals with whom Government makes settlements. *The Collector of Jessore* v. *J. Beckwith*, 5 W. R., 175.

Held that the mention of a cess in the wajib-oolurz and settlement proceeding was not equivalent to a judgment on a question raised so as to pre-

clude adjudication on merits. *Ram Chund and another* v. *Zahoor Ali Khan*, 1 Agra Rep., A. C., 135.

A landlord cannot maintain a suit for arrears of rent where a claim to hold the land rent free by some title of exemption is set up, and the question for enquiry in such a suit is not whether the land is or is not subject to assessment, but whether, referring to the circumstances under which rent has been withheld, the land can be regarded as rent-paying land.

The mere fact of the land being entered in the settlement papers as assessed, or that the annual papers contain entries, is not sufficient to justify a decree for arrears of rent. *Chooneelall* v. *Mussamut Chitowla and others*, 2 Agra Rep., A. C., 137.

The late Maharajah Mitterjeet Singh was entitled to the levy of a tax upon pilgrims resorting to the temple at Gya. On the abolition of the tax by the Government a compensation was awarded to the Maharajah in lieu of it in the shape of a perpetual annual payment, which sum, it was settled by an agreement and a decree of a Sudder Court during the Maharajah's lifetime, was on his death to be divided in certain proportions between his two sons through whom the present appellant and respondents claim as their heirs respectively. *Held* that in whatever mode the Government might think proper to deal with this sum, with reference to the jumma, the rights of the parties could not be affected thereby without their consent, but would continue to be adjusted according to the proportions originally established. *Maharanee Inderjeet Kooar* v. *Ismadh Kooar*, 5 W. R., P. C., 14.

Where, upon a talookdar's refusal at the end of the period of his settlement to re-settle with Government at an increased rate, the jumma was put up to auction, after which the Government did re-settle with the talookdar upon the former conditions and the former description of the nature of the talook, it was held that Government renewed the contract, and placed the talookdar in exactly the position in which he would have stood had he never refused to pay the increased rent. *Ognee Coomar Roy* v. *Kumola Kunt Roy and others*, 11 W. R., 38.

Settlement papers prepared at the beginning of each year, and signed by the ryots, setting forth the quantity of nugdee lands to be held and the amount of rent to be paid by each tenant during the year, are admissible in evidence, and do not require registration, the amount of rent therein agreed to be paid being under Rs. 100, and the term being for only one year. *Mussamut Nusrun* v. *Ram Debul Singh*, 17 S. W. R., C. R., 273.

Held that a settlement with Government for revenue did not establish proprietary right in the land; that the settlement and possession under it being evidence of a right to possession were also so far evidence of proprietary right, but did not necessarily constitute it, much less could they divest and destroy trusts to which the settlor was subject; and that antecedent trusts had been impressed by judicial decisions on estates acquired even under revenue sales, notwithstanding that such sales had the effect of clearing away preceding titles. *Jugutmohinee Dossee* v. *Sookheemony Dassee*, 17 S. W. R., C. R., 41.

Assessment of revenue by Government upon invalid lakheraj land after resumption does not confer a new estate on the lakherajdar, and does not cancel or extinguish a mokurruree lease granted by the lakherajdar previous to the settlement, and during the time he was in possession of the land as lakheraj. *Pratap Narayan Mookerjee* v. *Madhu Sudan Mookerjee*, 8 B. L. R., 197, and 16 S. W. R., C. R., 35.

The powers given by Section 8 of Act XIV of 1863 to a settlement officer, for the decision of suits of the nature mentioned in Section 23 of Act X of 1859, or in Act XIV of 1863, do not give him power to try a right to resume and assess. *Chowdree Jeychund* v. *Kadhoree*, 2 N. W. R., 244.

The powers which the Government is authorized by Act XIV of 1863 to confer on settlement officers are limited to powers for the decision of suits of the nature mentioned in Section 23 of Act X of 1859, or in Act XIV of 1863, and there is no authority given to Government to invest settlement officers with any other of the powers which are vested in a Collector by Act X of 1859, consequently an application under Section 28 of that Act cannot be entertained by a settlement officer. *Thakooree* v. *Dhuleep Singh*, 2 N. W. R., 261.

With reference to lands settled by it, Government has nothing more than a right of action by virtue of its being proprietor, and not the right of action of an auction-purchaser; and only the former right passes by the settlement. *Rughoonauth Surmah* v. *Gobind Chunder Roy*, 14 S. W. R., C. R., 170.

II.—GRANTS.

In construing grants by former Governments the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India.

Where a sanad contained only the words "the village of Mánávali has been conferred on you as inám, to be enjoyed by you, your son, and grandson. The Government dues of the village, *viz.*, the Koolbale Koolkunoo (*i.e.*, all taxes and assessments) present taxes and future taxes, together with the house tax, but exclusive of háks due to hákdars, shall continue to be debited from year to year, from the year next succeeding,"—

It was held that the plaintiff's sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right for the timber growing upon the soil.

The owner of such a sanad, having only a right in the revenues and none in the soil of a village, cannot by thirty years' user become the proprietor of the timber. *Váman Janárdan Johi* v. *The Collector of Thánd and the Conservator of Forests*, 6 Bom. Rep., A. C. J., 191.

A suit for "arrears of rent" is not maintainable in order to raise the question as to the validity of an alleged rent-free grant. The question should be raised by a suit to assess the holding. *Huree Chund* v. *Brij Coomar Singh*, 1 Agra Rep., R. A., 35.

The grant of a village in enam by the Government cannot deprive the meymoodars of their hereditary rights. To entitle the person in possession to the enjoyment of the office and receipt of the dues from the village it is not essential that the duties of the office should have been actually performed, if the party was prepared to discharge them

when required. Claims to recover arrears of such dues are limited by Section 4, Regulation V of 1827 of the Bombay Code to 12 years. *Beemá Shunkur and others* v. *Jamasjee Shaporjee*, 5 W. R., P. C., 121.

Grants which are hereditary "nuslan bad nuslan butnun bad butnun" are declared transferable by gift, sale, or otherwise, under the terms of Section 15, Regulation XIII of 1795, and Section 15, Regulation XXXVII of 1793. *Held* that the grant in this case was not for the benefit of the family, but was confirmed to the grantee's son only. The family could have no other claim upon him than a natural obligation to help them, and their title to succeed to the grant could only accrue in regular succession.

Held also that the plaintiff's claim was not barred by general limitation, as the defendants were not found to be in possession for more than twelve years, nor was it barred by special limitation under Clause 3, Section 1, Act XIV of 1859, inasmuch as the plaintiff, having purchased the rights and interests of the first auction-purchaser, was not required to sue to set aside the sale. *Bithul Bhut* v. *Lalla Raj Kishore and others*, 2 Agra Rep., A. C., 284.

An amaram grant is resumable at the pleasure of the zemindar. The grantees of such a grant, when resumed, if they remain in possession without payment of the assessment which they are lawfully bound to discharge, are liable to be sued for such arrears of assessment. *Unidi Rajaha Raji Venkataperumal Rauze Bahadoor* v. *Pemmasamy Venkatadry Naidoo*, 4 W. R., P. C., 121.

A suit to enhance is not maintainable against the descendant of the grantee of a hereditary conditional jagheer. The zemindar must first sue to resume on the ground that the jagheer has been determined by breach of the condition through neglect of the service. *Nilmoney Singh Deo* v. *Ramgopaul Singh Chowdhry*, Marsh., 518.

Land granted for the endowment of a Khatitu, or other religious office, cannot be claimed by right of inheritance. The right to the income of such land is inseparable from the office for the support of which the land was granted. *Jáfar Mohi-u-Din Sahib* v. *Aji Mohi-u-Din Sahib and others*, 2 Mad. Rep., 19.

Held, in the absence of proof on the part of Government to the contrary, that there is nothing in the nature of a *tora garas* payment which makes it incapable of alienation; and that without such proof Government receiving such sums cannot withhold payment of them from the alienee of the person to whom, but for the alienation, they would be paid.

Held also that *tora garas hak* does not come within the meaning of the word "lands" as defined by Section 32 of Bombay Act VII of 1863, and that a suit having reference to the recovery of sums due out of such hak is not affected by Section 27 of that Act. *The Collector of Surat* v. *The Heiress of Kuvarbia*, 2 Bom. Rep., 253.

Where by a sanad a grant was made of certain mauzas, specified as containing an estimated number of bigas, a recognition by the revenue authorities and Civil Courts of the grantee being entitled to forest land as part of that grant, although much exceeding the estimated area, was held to be binding on Government, and not to be an error within the meaning of Regulation VII of 1822, Section 6, Clause 3. *Sheikh Zahuruddin* v. *Collector of Goruckpore*, 4 B. L. R., P. C., 36; 13 S. W. R., P. C., 31.

In 1775 a rent-free sanad was granted to M. for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men, and take care of the ryots. M. died, and a fresh sanad was in 1786 granted to R. and R., they being thought to be his heirs; but in 1107, M.'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to R. and R., reciting the circumstances; both these sanads were to cultivate, keep up a body of men, keep off elephants, and attend to the safety of the ryots. *Held* that this was not a service tenure that could be resumed, and the subject of service tenures was explained. The zemindari in which these lands were situated was settled in 1802, and was in 1850 sold for arrears of Government revenue; the appellant claimed to set aside the sanad of 1807, on the ground that Government had no right to give such a sanad, but he contended that if it had it could be set aside by a purchaser at a Government sale. *Held* that the sanad was not a new grant, but a confirmation of the one made before the Decennial Settlement, and that Government was competent to give such confirmation. An admission by a jaghirdar in a suit brought by Government to assess the lands, that the lands were comprised in a zemindari, is evidence of that fact in a suit by the zemindar to resume those lands. *Forbes, A. J.* v. *Mir Mahomed Jaki*, 5 B. L. R., 529; 14 S. W. R., P. C., 28.

Regulation IV of 1831, Madras Code, which must be strictly construed, applies only to suits brought to try the validity of grants emanating from, or confirmed or affected by, the direct act and order of the Governor in Council. A written order under that law is not necessary in a suit brought by a person who claims to hold under an ancient and permanent tenure in existence before the Dewanny. *Brett* v. *Ellaiya*, 12 W. R., P. C. 33.

12.—INAMDARS.

A grant in inaâm-i-altamghá to N. and his children, "and their descendants in lineal succession, for generation after generation, in perpetuity and for ever," which was unburdened with any condition as to prospective service, and free from any religious, charitable, or other trust, held to confer an alienable estate.

Grants of land revenue for religious and charitable purposes, or for the future condition of civil or military service of the estate considered and to some extent classified; and the enactments and authorities, historical and legal, relating to the question of their alienability, mentioned. *Krishnarav Ganesh* v. *Rangráv*, 4 Bom. Rep., A. C. J., 1.

An inamdar having granted several mortgages upon his inam lands died. The right to hold the lands rent-free was ruled by Government to have ceased upon the death, but the inam was continued to his representatives subject to the payment of assessment, under the Government Circular of 1854.

Held that the original estate in the lands was not destroyed; that no new title in the inamdar's

representatives was created; and that the lands continued chargeable in their hands with any valid specific liens created upon them by the inamdar. *Vishnoo Trimbuck* v. *Tattiaoorf Wassoodeu Punt*, 1 Bom. Rep., 22.

An inamdar to whom a village has been granted by Government, though bound to respect all existing tenant-rights, is under no obligation to grant unoccupied lands in "suti" or other permanent tenure, or to re-grant on the same tenure lapsed suti lands; nor does the mere taking up of lands in such a village constitute the occupiers suti tenants.

An inamdar's agent cannot, without express authority from his principal, grant lands on suti or other permanent tenure. *Nasarvanji Hormasji et al.* v. *Narayan Trimback Patil et al.*, 4 Bom. Rep., A. C. J., 125.

Where a family of kulkarnis in the Konkan was proved to have been in actual occupation of land under an inamdar, for ninety years, at a uniform rent,—*Held*, in the absence of proof of any lease for a more limited term as alleged by the plaintiff, that the occupants were entitled to hold as long as they paid the usual rent. *Annaji Appaji* v. *Kasi Atmaji and others*, 3 Bom. Rep., A. C. J., 124.

Civil Courts have jurisdiction to enquire the title of lands enfranchised, and the sunnud granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam.

In a suit by the adopted son of the late possessor of an inam to recover it,—*Held* that the plaintiff might recover, notwithstanding the production by the defendant of title-deeds showing that the land had been granted to the defendant by the Inam Commissioner. *Cherukuri Venkanna* v. *Mantravathi Luksmi Narayan Sastralu*, 2 Mad. Rep., 323.

Held that it was competent for an inamdar to alienate a third share of whatever interest he himself had in a family inam, in consideration of services rendered in recovering the inam itself; and that the grantee had a right to have the award made by the decree in the terms of the grant, which purported to bestow the third share in perpetuity. *Sulbaiji T. P. Iriaah* v. *Rughuhulty Rellarthe*, 2 Bom. Rep., 48.

An inamdar, though he cannot eject his tenants who have been in possession before the grant of the inam as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey. *Hari bin Joti* v. *Narayan Acharjan*, 6 Bom. Rep., A. C. J., 23.

The plaintiff brought a suit in 1860 against the defendants to recover his share in the joint family property. The present claim, which was for a share in the rents of certain inam lands, also joint family property, was not included in the suit of 1860. At the date of the former suit the land in respect to which the present suit was brought was subject to the provisions of Regulation IV of 1831, and the Civil Courts had no jurisdiction to try the suit in respect to such land without the permission of the Government. It did not appear that the plaintiff had applied to the Government for permission to sue. *Held* that the plaintiff was not precluded by Section 7 of the Civil Procedure Code from maintaining the present suit. Meaning of the words cause of action discussed. *Pattaravy Mudali* v. *Andimula Mudali and others*, 5 Mad. Rep., 419.

Regulation VI of 1831 prohibits the Civil Courts from taking cognizance of a suit brought to recover the value of three years' produce of certain land (held by the plaintiff on service inam tenure), on the ground that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease, and continued to hold the land and to deprive the plaintiff of the possession and enjoyment thereof. *Basappa* v. *Yenkatappa*, 4 Mad. Rep., 70.

13.—Waste Lands.

Waste common land in which all the co-sharers have a joint ownership cannot be withdrawn from the common stock and permanently appropriated to the separate use of one, without the consent of all. *Deig Paul Rai* v. *Bhando Rai and others*, 3 Agra Rep., 341.

Held that the proprietors may, in consequence of their own acts, be entitled to separate possession of waste land newly brought into cultivation, although there may have been no regular Government partition. *Uhlukh Rai* v. *Sheo Nundun Singh*, 4 Agra Rep., 80.

Waste lands may be in the possession of some one. When limitation is pleaded, the plaintiff's cause of action must be deemed to commence from the date when adverse possession was taken. *Eshan Chunder Rai* v. *Kali Coomar Rai*, 2 W. R., 135.

An individual sharer cannot, without the consent, express or implied, of other co-sharers, make use of waste lands common to the whole village in such a way as to exclude permanently other co-sharers from all use or enjoyment of it. The law of joint property entitles another co-sharer to interfere and obtain restoration of the land to its former condition. *Doulat Ram* v. *Tara*, 1 Agra Rep., A. C., 12.

The fact of land lying waste does not of itself show that no one is in possession. *Mahomed Ali* v. *Shurum Ali*, 8 W. R., 422.

Non-mirasi land left waste by a pottahdar may be granted by the Collector, without reference to the claim of the former occupant. *Gengu Reddi* v. *Assal Reddi*, 1 Mad. Rep., 12.

Lands held on the terms of an ordinary ryotwary settlement, with annual pottah, and left waste by the pottadar, may be legally granted by the revenue authorities.

The ryot has an indefeasible right of occupation only so long as he pays the Government assessment. *Kumara Daba Mudali and another* v. *Nillatambi Reddi and others*, 1 Mad. Rep., 407.

14.—Accretions.

Nadi bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the resumption authorities. *Hari Kishor Dutt* v. *The Collector of Dacca*, 3 B. L. R., Ap., 116.

Gradual accretion may be claimed by a lakhirajdar as his property. *Puthuram Chowdry* v. *Kuthenarain Chowdry*, 1 W. R., 124.

Accretion on one side of a river is not claimable

as belonging to an estate on the opposite bank., *Punchanun Mullick* v. *Heera Lall Seal*, 1 W. R. 173.

In case of an accretion to land by alluvion, the ryot is not entitled to a pottah from the zemindar in respect of the accretion in a case where he pays him no rent. *Campbell* v. *Kishen Dhun Audhicaree*, Marsh., 67.

Land forming the dry bed of a canal belongs to the estate in which the canal itself was included. *Mirza Syfoollah* v. *Bhutton and others*, 10 W. R., 68.

Land which accretes to an estate from the bed of an adjoining khal, not being a canal but a river, belongs by law to the owner of the estate. *Dataram Nath and others* v. *Eshan Chunder Law and others*, 11 W. R., 116.

A chur, B., formed by gradual accretion to an estate (Mouzah B.,) was resumed by Government, who successively made temporary settlements for it with the putneedar of Mouzah B., and finally with the zemindar. While the second settlement was in force, another chur formed, and a dispute arose between the putneedar of B. and the putneedar of an adjoining Mouzah, D., as to its ownership. Three suits were brought by the latter, claiming the second chur as an accretion to his estate, in all which suits he was successful, and in one of which Government was a party. Government then sued to set aside the decrees in the two suits in which it was not a party, and for possession of the land in dispute, and it was found in that suit that the land was continuous to chur B., and not to Mouzah D. *Held* that Government, having a right to revenue, but not to actual possession, could have no *locus standi* as plaintiff in such a suit. *Mooktokeshee Debia* v. *The Collector of Burdwan*, 12 W. R., 204.

Land cannot be legally proved to be an accretion to a talook, or a re-formation of diluviated land of that talook on its original site, where the stream between the land in question and the talook is found to be an unfordable stream, nor can possession under such circumstances give a plaintiff a right to a declaration of his title. *Nobin Kishore Roy* v. *Jogesh Prokash Gangooly*, 10 W. R., 272.

Where a permanent zimma tenure has been held at one rate of rent for more than twenty years, the terms of Section 15, Act X of 1859, as well as the provisions of Section 51, Regulation VIII of 1793, preclude the zemindar from assessing accretions to the parent talook. *Juggut Chunder Dutt and others* v. *Despino Panioty and others*, 8 W. R., 427.

The drying of the river or its becoming fordable between a re-formed chur and A.'s estate, does not divest the property from B., on whose estate it formerly formed, and give it to A. *The Collector of Tipperah* v. *Doorga Persad Paray*, W. R., 1864, 302.

Land gained by the gradual accession of a river, and added by the operation of nature to A.'s tenure, must be held to be A.'s property, although it be also established by evidence that this land has re-formed on a site which was formerly part of B.'s property. If it should be proved that the river flowed over the original site, and, receding, left the new formation and a fordable channel between it and B.'s property, B. would be entitled to retake possession of the newly-formed land on the old site, and he would not be deprived of it because the river was either fordable on A.'s side, or had wholly dried up. *Henry Maseyk* v. *J. F. Hedger*, W. R., 1864, 306.

Where an island was formed in a river, the lands adjacent to the banks of which were part of a zemindary,—*Held* that the island was not the waste land of any village or a portion of the holding of any ryots in the zemindary, but that the zemindar possessed in it all the incidents of ownership, including the power of making leases. *Aubbaya and others* v. *Yarlagadda Suminida*, 1 Mad. Rep., 225.

As long as any portion of an estate is in existence the zemindar is entitled to claim the land accreting to it as forming by law part of that estate. *Bhoobunmohun Sircar* v. *R. Watson and Co.*, W. R., 1864, 64.

If a river merely changes its course, the old dry course of the river must be taken to have become private property; and as incident to and part of the same, the owner of the soil is entitled to all bheels or ponds, gulfs or damoores, in which water remains, but which do not communicate with the river except in the time of floods, and he can claim a settlement with the Government in respect of any julkur in the same. *J. J. Gray* v. *Anundmohun Moitro*, W. R., 1864, 108.

Case remanded for decision as to the extent of the applicability of the custom of Dhardhoora in regard to alluvial land. *Naseer-ood-deen Ahmed and others* v. *Massamut Oomeedee and others*, 3 Agra Rep., A. C., 1.

A joteedar under Government is not entitled to a pottah from the zemindar in respect of an accretion by alluvion to a jote, the rent of which is payable to Government. *Kishen Dhun Audhikaree* v. *Campbell*, W. R., F. B., 22.

Re-formed lands belong to the estate to which they accrete, even though separated from it by a shallow fordable stream. *Kalee Monee Debia* v. *The Collector of Mymen Singh*, 5 W. R., 55.

Prior occupation of alluvial land does not warrant the presumption of ownership of the diluviated land which was on the same site. *Nobokissen Roy* v. *Juggobundhoo Bose*, 2 W. R., 284.

The party to whose lands new formations accrete is entitled to them, though the accretion may have been caused by the washing away of the lands of another person. *Adoomean* v. *Shibo Soondooree*, 2 W. R., 295.

Alluvial lands claimed under grants from zemindar decreed to claimant, whose title was supported by zemindar. *Mem Rakhan Roy* v. *Ram Dhyan Misser*, 2 W. R., 324.

An accretion to a chur belongs to the owner of the chur, whether the channel between the main land and the chur is fordable or not. *Kally Nath Roy Chowdhry* v. *J. Lawrie and Government*, 3 W. R., 122.

A strip of land which in the dry season only is left dry between the permanent bank and the river cannot be private property until it rises beyond high-water mark, so as to become fit for cultivation; and when it does so rise the public will be entitled to the same access to the river as before. *Maharanee Odhiranee Narain Koomaree* v. *The Nawab Nazim of Bengal*, 4 W. R., 41.

The plaintiff sued for possession of a chur which he alleged had accreted to the remnant of the plaintiff's original estate, which had been left when all

the rest of his estate was washed away. *Held* that the Court must decide what particular parcel (if any) was the remnant of the original estate, and must also decide whether the chur claimed was formed by accretion to that remnant. *Rashmonee Dossee* v. *Bhubonath Bhuttacharjee*, 12 W. R., 252.

In a suit for enhancement in respect of an accretion the plaintiff is not bound to show any established talookdary rates, but, if entitled to enhance, ought to obtain a decree for enhancement at a rate proportionate to that paid for the parent tenure.

In the case of accretions to recently-created tenures the question of enhancement will mainly depend on the engagements of the parties. *Baboo Gopal Lall Thakoor* v. *Kumur Ali*, 6 W. R., Act X R., 85.

There is no right of property in a mere site. Proof of mere identity of site is not sufficient to defeat the right of an owner to whose land an accretion or formation may be an increment. *Narainee Burmonee* v. *Tarinee Churn Singh*, 6 W. R., 40.

In a suit for possession of a chur, the plaintiff having obtained a decree for possession, he was declared entitled to mesne profits from date of institution of the suit.

As to mesne profits before institution of suit, the application by the Judge of the principle laid down in S. D. A. Rep., 1858, p. 513, affirmed. *Jankee Bullub Sen* v. *Mohima Runjun Roy*, 6 W. R., 76.

An ijaradar may be entitled to take possession of lands accreting to his ijara lands after he obtained the ijara, but he is not entitled to accretion of an older date than his own farm. *Jam Ali Chowdry* v. *Prankisto Rai*, 4 W. R., 65.

When land is gradually re-formed on two old sites identity of site can give no title to the former owners of the two old sites to the land re-formed in such old sites respectively; nor can identity of site give any title to land gradually re-formed, when it is formed by gradual accession partly to one estate and partly to another. *Muthooranath Muzoomdar and others* v. *Tarinee Churn Singh*, 8 W. R., 164.

The order of a Collector rejecting a claim to alluvial lands, on the ground that a settlement of them had already been concluded, is not an award within the meaning of Section 3, Act XIII of 1848. *Shurut Soondery Dabee* v. *The Government and others*, 7 W. R., 42.

Where land came up originally from the river as a small island, and gradually joined on to the plaintiff's estate after having been taken possession of by the defendant,—*Held* by Trevor, J., that the Government alone was entitled to the land, and not the plaintiff, to whose estate the land had joined.

Held contra by Glover, J., that as the land was an accretion to the plaintiff's estate he was entitled to take possession of it under Regulation XI of 1825, the defendant's possession notwithstanding. *Mohineemohun Doss* v. *Juggobundoo Bose and others*, 7 W. R., 103.

Limitation or adverse possession as to chur land may commence directly the land is in existence, and not from the time at which it becomes culturable. Any proof of ownership would be sufficient to show possession. *Luckhee Dabia Chowdhrain and others* v. *The Collector of Mymensing and others*, 7 W. R., 231.

The owner of land before it is inundated remains the owner of it when it is covered with water and after it becomes dry. *Mussamat Imam Bandi and Wajid Ally Khan* v. *Hur Gobind Ghose*, 7 W. R., P. C., 67.

Under the law of accretions no decree can be given merely on the ground of re-formations on old sites; but the party to whose land the new accretions are attached is entitled to them. *Kazee Toraboodeen and others* v. *Sham Kant Banerjee and others*, 6 W. R., 249.

The re-formation of land in the bed of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate, nor is the land which has been removed from an estate by sudden avulsion reclaimable, unless the circumstances supply evidences of identity. A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the chur, but there must be proof of the nucleus of accretion. The land gained will follow the title of the particular land forming the nucleus.

The cultivation of chur lands, like that of waste or jungle lands, carries no *primâ facie* character of usurpation or wrong; and the claimant against the purchaser *bonâ fide* and without notice in possession must strictly prove his title. *Ekowri Singh and others* v. *Hiralall Seal and others*, 2 B. L. R., P. C., 5; S. C., 11 W. R., P. C., 2.

A suit for the assessment of lands accreted to a zimma tenure must be tried upon Section 51, Regulation VIII of 1793, the burden being on the plaintiff to prove that the tenure is liable to the assessment sought; and the provisions of that law are not affected by Regulation XI of 1825, as regards the mode in which, the conditions on which, and the burden of proof with which, the zemindar may proceed to assess. *M. E. O. Panioty* v. *Juggut Chunder Dutt*, 9 W. R., 379.

The question for consideration in a suit for possession of alluvial lands, is not when the land reformed and who took possession of it, but who was the owner of the kismust. *Tarenee Pershad Chowdhry* v. *Sumboo Chunder Chowdhry*, 2 W. R., 10.

Where plaintiff alleges that his and the defendant's villages were washed away, and have reformed on the same site, and no third party claims the new formation as an increment to his estate, the question of title will have to be determined by Clause 5, Section 4 of Act XI of 1825. *Jannobee Chowdhrain* v. *The Collector of Mymensingh and others*, 8 W. R., 287.

When a deluvion takes place, a right of suit to obtain an abatement of jumma accrues from the time when the plaintiff is compelled to pay the rent named in his pottah, without the allowance of the abatement claimed by him. *G. R. Barry* v. *Abdool Ali*, W. R., 1864, Act X R., 64.

Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate, No. 3,148. During the currency of this settlement the owner sold his rights and interests in 667 to the plaintiff, and in 3,148 to the defendants. On the expiry of the temporary settlement the plaintiff, as owner of the parent estate, sued to establish his right to the permanent settlement of 3,148.

Held that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3,148. *Khub Lall* v. *Ghina Hazari*, 2 B. L. R., A. C., 339.

A question as to the right to the possession of

land either gained by gradual accession or re-formation or thrown up in a river or the sea, must be determined by an enquiry into the condition of the land, when it was originally gained by alluvion or thrown up and became the subject of property and capable of cultivation or occupation as such. If it becomes the subject of property as an island or navigable river, the fact that the channel between it and the main land dries up subsequently cannot destroy rights of property or possession which any person may have acquired in it while it continued to be an island. His possession is good and constitutes a right as against all persons except the Government. *Kalee Pershad Mojoomdar* v. *Collector of Mymensing*, 13 S. W. R., C. R., 366.

In a dispute as to the position of chur lands, where the change of the course of the river threw doubt upon their position, the judgment of the Court of first instance, given after local investigation, was upheld against the decision of the High Court, founded on inspection of the maps and on the arguments adduced before it. *Rani Sarat Sundari Debi* v. *Prosanno Kumar Tagore*, 6 B. L. R., 677 ; and 15 S. W. R., P. C., 20.

According to Clause 1, Section 4, Regulation XI of 1825, all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed, without regard to the site of the increment. Mere proof of identity of site (without proof of ownership) is not sufficient to defeat the right by accretion which the law gives to an adjacent owner. *Katumonee Dossee* v. *Ranee Monmohinee Dabee*, 3 W. R., 51.

Where property is wholly submerged by a river, land forming afterwards on the site will, when the ownership of that site is proved to exist in the former owner, remain in him, and the accretion will not belong to the adjacent proprietor. The decision in *Kuttemonee Dossee* v. *Ranee Menmohinee Dabee* is erroneous in not regarding the site of the increment. *Lopez, F.* v. *Maddan Thakoor*, 5 B. L. R., 521 ; 14 S. W. R., P. C., 11.

Where a chur or island is thrown up in a large navigable river, originally surrounded by deep, unfordable water, but between which and the estate of the zemindar a fordable channel has since been created, the criterion for deciding whether the Government has the right of disposing of that island, or whether the owner of the land to which it is most contiguous has that right, is to consider the state of circumstances at the time of the formation of the island, that is, at the time when it was thrown up, and not the state of things at any subsequent or fluctuating period, such as the subsequent silting up of the bed of the river between the island and the contiguous estate so as to form a fordable passage.

Act IX of 1847 does not alter the state of the law under Regulation XI of 1825, but merely lays down a procedure.

There is nothing in Act IX of 1847 to prevent the Government from taking possession of a chur after it has silted up, if the chur be one that the Government would be entitled to under Regulation XI of 1825. *Mussamut Budrunissa Chowdrain* v. *Prosunno Kumar Bose*, 6 B. L. R., 255; and 14 S. W. R., F. B., 25.

The evidence of Government having sent its officers to measure the land, and to surround it with pillars, is the very best evidence of possession of a lately formed chur. *Collector of Furreedpoore* v. *Kalee Dass Hazrah*, 17 S. W. R., C. R., 195.

Land reforming on a site of which the ownership is known becomes the property of the original owner, and is not to be regarded as subject to the provisions of the Regulations touching land gained by gradual accretion. *Paragdutt Raoot* v. *Luchmun Pershad*, 3 N. W. R., 111.

The custom of Dhardhoora is, when applied to lands gained otherwise than by gradual accretion, opposed to equity; and such a custom must be proved, not by the vague assertions of witnesses, but by a sufficient enumeration of instances.

Semble,—That the general law of alluvion in India, as well as in Europe, does not entitle a landholder to land which is annexed to his estates by a sudden change in the course of a river, and is still capable of being identified as part of the estate of another. *Isree Singh* v. *Mirza Shurfoodeen*, 1, 8 N. W. R., 142.

Ownership in soil is not lost because the subject of it becomes submerged; the owner of the site or sub-soil remains owner of the surface, and on reformation of the surface soil takes whatever falls within his known boundaries. Ordinarily there can be no right of accretion when the new formation is on the site of what was formerly held by an individual as his private property. *Dwarkanath Roy* v. *Dinobundhoo Singh*, 15 S. W. R., C. R., 461.

15.—Rulings under Regulation XI of 1825.

The words "a large navigable river" in Clause 3, Section 4, Reg. 11 of 1825, are not applicable to the Goomta, but to such rivers as the Ganges and the Megna, upon which navigation can always be carried on. *Mohinee Mohun Doss* v. *Khajah Assanoollah*, 17 S. W. R., G. R., 73.

In Clause 4, Section 4, Regulation XI of 1825, the words "subject to the provisions stated in the first clause of the present section" do not apply to the formation and position of the newly accreted land, but to the owner's rights in them in relation to the Government. *Mirza Syfoollah* v. *Bhutton*, alias *Bhuttessur and others*, 10 W. R., 68.

Clause 1, Section 4, Regulation XI of 1825, refers only to under-tenants intermediate between the zemindar and the ryot, and to khoodkasht or other ryots who possess some permanent interest in their lands, and not to tenants from year to year. *Zeheeroodeen Paikar* v. *J. D. Campbell*, 4 W. R., 57.

Act IX of 1847 does not interfere with the rights of Government in its capacity of zemindar to take possession of and assess all accretions to its own estates under Regulation XI of 1825. *Obhoy Churn Chowdhry* v. *The Collector of Dacca*, 4 W. R., 59.

The words "at the disposal of the Government" in Clause 3, Section 4, Regulation XI of 1825, mean that the property in, and absolute right of disposal of, the land is vested in the Government, and not that the Government has merely a right to the revenue. *Khellut Chunder Ghose* v. *The Collector of Bhaugulpore*, W. R., 1864, 73.

Regulation XI of 1825 regards accreted land as the right of that party to whose estate the land is an accretion, and does not divide the accreted land according to the extent of each party's loss by dilu-

vion. *Cally Chunder Chowdhry* v. *Monikurnika Chowdhrain*, W. R., 1864, 149.

In a suit for possession of alluvial land which plaintiffs claimed by right of accretion under the provisions of Regulation XI of 1825, and in which the question of accretion was put in issue, the lower Court's judgment was held not to be good in law, because it contained no clear finding as to whether the lands in dispute had re-formed on the original site of diluviated lands of plaintiff's estate, or whether they were accretions to that estate by recession of the river. *J. P. Wise* v. *Juggobundoo Bose*, 12 W. R., 229.

A river that can be crossed from one side zigzag in the dry season only, when the water is breast-high, and the main stream of which is indubitably on the other side, is not a "fordable" stream within the meaning of Clause 3, Section 4, Regulation XI of 1825. *Issurchunder Sein* v. *Kalee Doss Hajrah*, 3 W. R., 95.

A decree (*ex-parte*) becomes inoperative if not executed within the time allowed by law, and a party who obtains such a decree, having accepted his *status* at variance with that assigned to him under the decree for a term beyond limitation, cannot, at any subsequent period, rely upon that decree as proof of his title, nor can it be accepted as such by the Courts.—*Held* further that Clause 1, Section 4, Regulation XI of 1825, applies only to lands gained by alluvion either gradually or suddenly, and not to lands existing as waste land subject to inundation and in one year rendered culturable by a deposit of earth by the action of the river. *Ramjeeawa Rai and others* v. *Deep Narain Rai and others*, 1 Agra Rep., F. B., 78.

When a party has proved that land which formed part of his estate has, by a sudden change in the course of the river, been separated, he is entitled to recover such land under Clause 2, Section 4, Regulation XI of 1825.

When a party claims such land upon the ground of immemorial custom he must prove such custom.

The canoongo papers are not sufficient evidence to prove immemorial custom.

The proceedings showing that such custom obtains on the banks of one river will be no evidence to prove that it obtains on the banks of another. *Rai Manik Chand* v. *Madhuram*, 3 B. L. R., P. C., 5.

A tenant-at-will is entitled to occupy an accretion to his holding so long as he retains possession of his original holding. *Bhugabut Prasad Singh* v. *Durg Bijai Singh*, 8 B. L. R., 73; 16 S. W. R., C. R., 95.

Under Clause 3, Section 4, Regulation XI of 1825, Government has no right to land thrown up as an island in the bed of a navigable river, when such island is formed on the site of land which had been washed away. *Mani Lal Sahu* v. *The Collector of Sarun*, 6 B. L. R., Ap., 93, and 14 S. W. R., C. R., 424.

Under Clause 3, Section 4, Regulation XI of 1825, a riparian proprietor has no right to an island thrown up in a large navigable river, when the channel which intervenes between his land and the island is, under ordinary circumstances, and at the most favourable seasons, unfordable for sixteen out of twenty-four hours. *Nabin Kishor Roy* v. *Jages Prasad Gangopadhya*, 6 B. L. R., 343, and 14 S. W. R., C. R., 352.

In a suit for possession when certain lands were decreed to plaintiff on the ground that having formed opposite to his villages, they subsequently became contiguous thereto by the gradual silting up of the bed of the river which had previously flowed between,—

Held that the decision was not in conformity with Clause 1 or Clause 3, Section 4, Regulation XI of 1825, and that it was necessary to determine how the land formed, whether it was thrown up as an island in the bed of the river, or was formed by gradual accretion to an estate; and, if by gradual accretion, to what lands it so accreted. *Unnopoorna Debia* v. *Sreemutty Dassee*, 14 S. W. R., C. R., 254.

Where lands become annexed to a jote by gradual accretion within the meaning of Section 4, Regulation XI of 1825, the jotedar is entitled to hold them on the same principle and under the same legal conditions as he holds the parent estate. *Gobind Monee Debia* v. *Dino Bundhoo Shaha*, 15 S. W. R., C. R., 87.

Before Clause 4, Section 1, Regulation XI of 1825 can have the effect of depriving a party of the title given by Clause 1, the opposite party must prove that the land in question was the bed of a small and shallow river which, with the julkur right of fishing over it, was recognized as the property of such opposite party. *Ram Shurn Shahu* v. *Bhote Kinkur*, 14 S. W. R., C. R., 268.

Under Regulation XI of 1825 a right of property in land gained by alluvion from a river (the bed of which is not the property of an individual) is acquired in two modes: first, where the land is gained by gradual accession by the recess of the river, in which case it becomes the property of the person in possession of the estate to which the land is an increment; and, secondly, when a chur or island is thrown up on a large navigable river, and the channel between such chur or island is fordable at any season of the year, the accession is an accession to the land or tenure most contiguous.

The ownership of the old site does not give a title to re-formation. *Mohini Mohun Doss* v. *Juggobundoo Bose*, 9 W. R., 312.

Lands washed away and afterwards re-formed upon the old site, which can be clearly recognized, are not lands "gained" within the meaning of Section 4, Regulation XI of 1825; they do not become the property of the adjoining owner, but remain the property of the original owner. *Romanath Thakoor and others* v. *Chundernarain Chowdry and others*, Marsh., 136, and W. R., F. B., 45.

Held that under Section 4, Clause 1, Regulation XI of 1825, tenants have a right to the land accreted to their holding; and if the tenant has acquired a right of occupancy in his original holding he would enjoy a similar right in the alluvial land, although he may not establish that he has held such alluvial land for twelve years. *Oodit Rai* v. *Ramgobindo Singh and others*, 2 Agra Rep., 206.

According to Clause 4, Section 4, Regulation XI of 1825, churs thrown up in small and shallow rivers, the beds of which are private property, belong to the proprietor of the bed of the river; but by Clause 1 of the same section, churs thrown up in rivers not small and shallow, the ownership of beds of which remains in the public, are an increment to the tenure of the riparian owner to whose

land or estate it is annexed. *Chundermonee Chowdhrain* v. *Sreemuttee Chowdhrain*, 4 W. R., 54.

If alluvial land be surrounded by water fordable at any point, the owner of the land to which the chur adjoins has a *primâ facie* title to it under Clause 3, Section 4, Regulation XI of 1825. The *status* of the land at survey, not on first formation, is to be looked to under Act IX of 1847. *J. P. Wise* v. *Ameerunnissa Khatoon*, 2 W. R., 34; and *J. P. Wise* v. *Moulvie Abdool Ali*, 2 W. R., 127.

Claims to alluvial lands under Clause 2, Section 4, Regulation XI of 1825 (*i.e.*, to lands as *re-formed lands*), are not superior to claims under Clauses 1 and 3 of Section 4, or under Section 5 of that Regulation, *i.e.*, to lands as newly alluviated. *J. P. Wise* v. *Ameerunnissa Khatoon*, 2 W. R., 132.

When the Government sues for alluvial land as an ordinary riparian zemindar it is bound to prove, under the latter part of Clause 3, Section 3, Regulation XI of 1825, that the stream between the chur and the main land is fordable at some time of the year, and that it was fordable when the alluvium formed. *Mussamut Tabira and others* v. *The Government*, 6 W. R., 123.

The Government, when it claims land as a riparian proprietor, must prove its title like any other private proprietor. When a riparian proprietor claims land which has formed in front of his estate, from which it is separated by a running stream, he must, under Clause 3, Section 3, Regulation XI of 1825, prove that the channel between his property and the land claimed is fordable at some time of the year. *The Government* v. *Mussamut Tabira and another*, 7 W. R., 514.

Clause 1, Section 4, Regulation XI of 1825, prescribes that the right to the occupancy of accreted land is with the owner of the parent mehal or subordinate tenure, as the case may be. But so far from saying that it is revenue or rent free, or that the original revenue or rent assessment covers the demand both for the original estate or original subordinate tenure and for the accreted land, the very reverse is contemplated by the section, which provides for payment of revenue or rent, if payable under law or usage.

Accreted lands, when liable to enhancement at the ordinary neighbouring rates, are entitled to a deduction of 10 per cent. for collection charges, and 10 per cent. for talookdary profits. *Juggut Chunder Dutt and others* v. *Panioty and others*, 6 W. R., Act X R., 48.

Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI of 1825. Re-formations are governed by Clauses 1 and 3, Section 4, Regulation XI of 1825. A claim to hold the land under Clause 2 can only be maintained by the old proprietor when the land has not been diluviated, but cut off by a change of the stream. *T. Kenney* v. *Beebee Someeroonissa*, 3 W. R., 68.

Where alluvial land has been formed in front of and contiguous to an old maâfee which had been resumed and settled with the maâfeedars,—*Held* that in the absence of any custom to the contrary the 1st Clause of Section 4, Regulation XI of 1825, applies, and the portion so thrown up in front of the maâfee becomes an increment to the holding of ex-maâfeedars. *Fuzi-ood-deen and others* v. *Mussamut Imteeaz-oon-Nissa*, 3 Agra Rep., 152.

Held that Clause 3, Section 4, Regulation XI of 1825 is applicable when the chur land is thrown up for the first time, and is not capable of being identified; but where the land thrown up forms a portion of the old mouzah, and can be identified, Clause 5, Section 4 of the said enactment would be applicable; and in the absence of any particular local custom the claim in respect of such land must be decided according to the principles of equity. *Todee Singh and others* v. *J. S. Gardner*, 2 Agra Rep., 342.

Quære,—To whom lands diluviated and afterwards re-formed belong. *Kirtee Narain Chowdhry* v. *Protab Chunder Boorooah*, W. R., F. B., 129.

The land "most contiguous" to a chur, as that phrase is used in Regulation XI of 1825, Section 4, Clause 3, is intended only to comprise the estate or estates with which the chur comes into contact along the length of the fordable part of a channel; and the whole chur becomes an accession to the land and part of the tenure of the party to whom such estate belongs, and no portion of it will cease to belong to him merely by reason of the deep water between it and the estate of another becoming shallow and fordable.

Held also, that after the chur had, by the first occurrence of the fordable channel, become part of A.'s property, all further accretions to it, if gained by "gradual accession," would also belong to A., even though the result would, in the aggregate, be a prolongation of the chur in front of estates on the river bank not belonging to him. *Golam Ali Chowdhry and others* v. *Gopal Lall Tagore and others*, 9 W. R., 401.

In a suit for alluvial lands, if the defendant pleads, and can establish his plea, that the lands in question were gradual accessions to his estate, neither the ground of re-formation on the old site, nor that of prior possession for a short period, can avail the plaintiff. If, however, the plea be found against the defendant, the matter must be disposed of according to Clause 5, Section 5, Regulation XI of 1825. *Gobind Nauth Sandyal* v. *Nobocoomar Banerjee and others*, 8 W. R., 206.

Held (in accordance with a ruling of the Full Bench) that, in the case of alluvial formations, mere identity of site is not sufficient to over-ride the positive title acquired by gradual accretion under the provisions of Clause 1, Section 4, Regulation XI of 1825. *Lyon* v. *Gray and others*, 11 W. R., 189.

Under Regulation XI, 1825, chur land belongs to the proprietor of the estate to which it accretes, provided it is not separated from such estate by an unfordable stream. *Shibchunder Ghuttuck* v. *The Collector of Tipperah*, 5 W. R., 139.

Clause 2, Section 4, Regulation XI of 1825, does not apply to the case of an estate entirely lost by diluvion. *Keshublall Chowdhry* v. *R. Watson and Co.*, W. R., 1864, 64.

Land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of occupancy. *Nasavanji Pestoinji* v. *Nasarvanji Darasha*, 3 Bom. Rep., 360.

Act IX of 1847 refers to re-surveys of zemindary lands which the Government as such may cause to be made at certain intervals, and to assessment consequent on the changes ascertained by such re-surveys; but does not interfere with the

rights of the Government, in its capacity of zemindar, to take possession of and assess all accretions to its own estates under Regulation XI of 1825. *Obhoy Churn Chowdhry* v. *The Collector of Dacca*, 4 W. R., 59.

16.—Khas Mehals.

The purchaser of a Government khas mehal is not bound by the transfer of the rights of any of the original tenants, which have never been registered or recognized by himself or by Government; but can sue the original tenants for their arrears of rent. *Huro Mohun Mookerjee* v. *Ram Coomar Mitter*, 1 W. R., 225.

There is no relation of landlord and tenant between the Government and the owner of khas mehals in the 24-Pergunnahs. The latter is the landlord of the ryots, and is not himself a ryot. The right and title of the Government are to the rent, but do not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership, and the *onus* is on the Government to prove its claim to the possession of the lands.

A dispute between two private owners, whether as to boundaries or lands, cannot divest the title of either to possession in favour of the Government, if the Government have merely a rent or jumma. The title to sue for dispossession of the lands belongs in such a case to the owner whose property is encroached upon. If he suffers his right to be barred by limitation the practical effect is the extinction of his title in favour of the party in possession, but his cause of action cannot be kept alive longer than the legal period of limitation of twelve years by the expedient of inducing the Collector to make common cause with him. *Gunga Gobind Mundal and others* v. *The Collector of the 24-Pergunnahs, Prince Golam Mahomed and others*, 1 W. R., P. C., 21.

17.—Julkur Tenures.

When a julkur dries up the dried land does not, as a matter of course, become the right of the holder of the julkur. *Bissen Lall Doss* v. *Ranee Khyrunissa Begum*, 1 W. R., 79.

The gradual flooding of a talook may destroy the talookdar's right of ownership in that portion of it which is so covered with water, and vest the rights of fishery therein in the owner of the adjoining julkur. But if by a sudden irruption of the river a definite and ascertainable area is submerged at once, that area does not become lost to the talookdar, nor does the owner of the adjoining julkur become entitled to extend his fishery rights over it. *Moharanee Sibessuree Dabee* v. *Lukhee Dabee*, 1 W. R., 88.

Regulation II of 1819 is not the Regulation under which Government should proceed when claiming julkurs of navigable rivers not forming portions of settled estates. All such cases are cognizable only in the ordinary Court (1), because of the total absence of the word "julkurs" in any of the resumption regulations, either before or after Regulation II of 1819; and (2) by reason of the difference in the nature of the claims between one to take possession of julkurs and one to resume lands. *The Collector of Maldah* v. *Syud Suddrooddeen*, 1 W. R., 116.

When it is found as a fact that both water and land are the property of the zemindar as such, the two rights are not to be separated. *Chunder Coomar Roy* v. *Rajah Buroda Kant Roy*, W. R., 1864, 63.

When the exclusive julkur right in a navigable river is set up against the ordinary rights of the state and the community it must be established by clear and strong proof. *J. G. Bagram* v. *The Collector of Bhullooa; The Collector of Rungpore* v. *Ramjadub Sein*, W. R., 1864, 43.

A proprietor of the entire julkur rights of a pergunnah is entitled to fish in any natural watercourse, or any jheel or pond not made by human agency. *Khooroonamoye Chowdrain* v. *Joy Sunker Chowdhry*, W. R., 1864, 267.

A. has no right to erect a bund on his own land, so as to intercept the passage of fish in a natural stream, and thereby render B.'s right of fishery less profitable. But if the bund has existed for many years without complaint, B.'s right of fishery must be deemed subject to A.'s right to keep up the bund. *Ram Dass Surmah* v. *Sonatun Goohoo*, W. R., 1864, 275.

The provision in a fishery pottah that the lessee cannot sue for recovery if, through his own neglect or otherwise, he fail to catch fish, was held to be no bar to the lessee's claim to a refund of rent from the time that possession of the subject of the lease was taken away, by order of a competent Court, from his lessor, and consequently from him. *Ram Gopal Sein* v. *Abum Mullick and others*, 7 W. R., 405.

The sharer of an ijmalee julkur is not debarred from collecting his separate julkur jumma if he legally can do so, simply because it suits the purpose of another sharer to receive, in lieu of such a jumma, a consolidated chittee jumma. *Kashee Nath Dhur* v. *Gudadhur Paul and others*, 11 W. R., 374.

By pottah certain land was leased, and a right of julkur or fishery in a bheel or lake was granted, on payment of certain jumma. The bheel became permanently dried up. *Held* that the grant being merely of the fishery, the lessee acquired no interest in the soil, and the lessor was entitled to re-enter on the land formerly covered with the water of the bheel. *Suroop Chunder Mozoomdar* v. *Jardine, Skinner, and Co.*, Marsh., 334.

It matters not whence the water in which A. has a right of fishery comes. A.'s right is not lessened, nor B.'s increased, because a portion of the water formerly flowing in A.'s channel has been diverted from it, and because the water of B.'s river now flows through it. *Nobin Chunder Roy Chowdhry* v. *Radho Pearee Debia and others*, 6 W. R., 17.

A co-proprietor cannot be sued for trespass for fishing in a julkur in which he and the other proprietors were entitled to fish, merely because the julkur, by a change in the course of the river, ran over the land which was allotted to the plaintiff under a butwarra. In such a suit the plaintiff cannot obtain a share of the fish on the ground that he had a share in the julkur. *Gobind Chunder Shaha* v. *Khaja Abdool Gunny and others*, 6 W. R., 41.

The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river. *Chunder Jaleah* v. *Ramchurn Mookerjee*, 15 S. W. R., C. R., 212.

18.—Ferries.

The mere fact of being the owner of both banks of a river does not give the right of ferry. *Sofir Merdha* v. *Nobo Kishore Mohunt*, 2 W. R., 286.

A plaintiff may recover possession of a ferry, of which he has been dispossessed by the defendant, though the form of his action may have been for obtaining possession of a ghaut. The right to ply the ferry may include also a right at certain seasons of the year to land upon or start from a part of the river bank not included in the land taken for the ferry. *Brojo Kishoree Chowdhrain* v. *Bilash Monee Chowdhrain*, 5 W. R., 195.

When a ferry, previously held under private management, has been declared to be a public ferry by the Government under Section 3, Regulation VI of 1819, an individual claiming compensation for the loss alleged to have been sustained by him in consequence of the extension of the authority of the Government cannot maintain an action in the Civil Courts to enforce his claims. *The Collector of Patna* v. *Romanath Tagore and others*, 7 W. R., 191.

A suit for tolls for the use of a ferry belonging to the plaintiff is not maintainable under Act X of 1859, Section 23, Clause 4. *Furlong, manager for the Rajah of Durbungah* v. *Treelochun Singh*, Marsh., 504.

Clause 2, Section 13, Regulation VI of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept, and is in a dangerous condition, he should proceed under Section 4. *Queen* v. *Deeyanutoollah*, 7 W. R., Cr., 32.

A conviction by a full-power Magistrate under Section 9 of the Bombay Ferries' Act annulled for want of jurisdiction, as the Magistrate of the zillah alone was empowered by Section 16 summarily to hear and determine all offences against the Act. *Reg.* v. *Prabhakar N. Soman*, 3 Bom. Rep., Cr., 11.

On a reference by a Sessions Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries' Act for conveying passengers for hire from Uran to Bombay was reversed, as the act charged did not constitute an offence under any section of the Act. *Reg.* v. *Malhari Bin Shivje*, 3 Bom. Rep., Cr., 41.

An appeal lies from the summary determination of the Magistrate of a zillah, under Section 16 of Act XXXV of 1850 (an Act for regulating the Bombay Ferries) to the Sessions Judge. Such appeal need not be preferred within eight days, under Section 14 of Regulation XIX of 1827. *Reg.* v. *Malhâri Lavji et al.*, 6 Bom. Rep., Cr. Ca., 45.

There are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom by running a boat, if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as if it were on the same line. Preventing parties from crossing in a person's ferry and driving his men away amount to dispossession. *Kishore Lall Roy* v. *Gokose Monee Chowdrain*, 16 S. W. R., C. R., 281.

A suit to re-open a ferry which had been included in a settlement of an estate obtained by plaintiff from Government, but which had been closed by orders of the Assistant Magistrate, was held not to be maintainable, the ghât where plaintiff wished to re-open it being within two miles of the place at which a public ferry was established. *Dewan Ram Jewan Singh* v. *The Collector and Magistrate of Shahabad*, 15 S. W. R., C. R., 132.

19.—Tolls.

A suit to recover rent on lease of toll arising from a canal or river navigation is not cognizable under Clause 4, Section 23, Act X of 1859. *H. W. Garland* v. *Rai Mohun Huzrah*, 1 W. R., 15.

To justify a conviction under Section 6, Act VIII of 1851, for illegal collection of a toll on a public road the road must be a public road within the meaning of Section 2 of the Act. *Narendronarain Singh and another, petitioners*, 6 W. R., C. R., 48.

A., the lessee of a toll, was in arrear to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A.) for the offence of not paying the sum of Rs. 262 for arrears of rent, and A. was summoned to appear before the Magistrate to answer the charge. A. did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day the Magistrate passed the following order: Whereas the debtor, defendant, has not appeared in person, the summons has not been obeyed; therefore it is ordered that a warrant be issued for the arrest of the defendant. Proceedings were afterwards taken upon the warrant. *Held* that all the proceedings taken by the Magistrate were irregular, and must be set aside. *In the matter of Banka Behary Ghosh*, 2 B. L. R., A. C., 17; and 11 W. R., p. 26.

Held that however analogous the positions of a farmer of tolls and a farmer of a ferry may be, the law which is applicable to the latter (Regulation VI of 1819) does not extend to the former. *Bunkoo Behary Ghose*, 11 W. R., 26.

20.—Timber.

Where tainzas or revenue certificates have been granted by the Conservator of Forests to the owners of timber, such timber cannot be parted with to third parties, except on the understanding that it is burthened with that lien, even although the tainzas are unendorsed. *Ko Kywetnee* v. *Ko Koeng Bane*, 5 W. R., 189.

Where one acquires, by license, an exclusive right to cut and to authorize others to cut timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others. *Richard Snadden* v. *Mahwine and Aga Syud Abdul Hossein*, 2 B. L. R., A. C., 292.

The occupier of land who does not come under Section 40 of the Bombay Survey and Settlement Act, 1865, has not, in the absence of agreement, any proprietary right to the trees growing on his land. *Govind Purshotum Kelatkar* v. *The Sub-Collector and Deputy-Conservator of Forests of Calcutta*, 6 Bom. Rep., A. C. J., 188.

According to the timber trade in Burmah, the holding of what are called tainzahs does not give possession of the timber; and where the parties in a contract use the word "received" and do not think fit to use the word "entered," they must be taken to have intended the word "received" to have the meaning of having obtained possession of the goods and not merely of having entered and got tainzahs for them. *The Burmah Company, limited* v. *R. Snadden*, 17 S. W. R., C. R., 120.

21.—ZEMINDAR.

A suit is brought to recover possession of a piece of ground. Plaintiff had granted a putnee of certain lands, including the piece in question, and the putnee was ultimately sold for arrears of rent, when it was bought in by plaintiff. On taking khas possession plaintiff discovered that the plot in suit had been encroached upon and appropriated by defendant, who is admitted to have been in wrongful possession for more than twelve years before the institution of this suit.

Quære,—Is plaintiff's suit barred by lapse of time or not? In other words, when did plaintiff's cause of action arise?

Held per Phear, J., that on the completion of the auction sale the putnee merged in the superior title of the zemindar vendee, who thus became entitled, by virtue of his original rights as zemindar, to possession of the entire lands. The withholding possession constituted a new cause of action, independently of the fact of its being a persistence in that which was before a violation of the putneedar's right of possession. The decision of the lower Appellate Court is right.

Held per Bayley, J. (*contra*, decreeing the appeal), that the adverse possession by the third party is of the lands the proprietary right of which remained with the zemindar, and was not affected by the intermediate putnee right to collect rents, &c. On that proprietary right being interfered with the cause of action arose, *i.e.*, whenever the adverse possession commenced. The zemindar could have sued whether there was a putnee or not; as he did not, limitation bars the suit. *Rajnarain Roy and others* v. *Woomesh Chunder Goopto and others*, 8 W. R., 444.

A certain quantity of seer land was given by a Mahometan zemindar to his daughter, on the occasion of her marriage, to be held by her as seer, that is to say, free from payment of rent, but not free from payment of revenue. *Held* that a zemindar was competent to make such grant, and his act is binding on the auction-purchaser, whose right is only to receive the revenue-rate from the grantee. *Ahmud Oollah* v. *Mithoo Lall and others*, 3 Agra Rep., 186.

Grants for tanks are invalid and resumable by the zemindar. *Hureenarain Gossain* v. *Shumbhoo Nath Mundul*, 1 W. R., 6.

A zemindar is not bound to accept and register any subdivision of a tenure previously registered as undivided. *R. Watson and Co.* v. *Ram Soondur Pandey*, 3 W. R., Act X R., 165.

The unregistered transferee of a transferable tenure cannot be treated by the zemindar as a trespasser, but, as against the zemindar who has evicted him, has a right to be restored to possession. *Nobin Kishen Mookerjee* v. *Shib Pershad Pattuck*, 8 W. R., 96.

When the zemindary rights in a property have been purchased by Government at a sale for arrears of revenue, and Government guarantees the rights and position of certain talookdars therein, and then sells its zemindary rights, the second purchaser is bound by the acts of the Government, and the talookdars, if dispossessed, may recover possession under Clause 6, Section 23, Act X of 1859. *Mussamut Burnee Khanum* v. *Modhoosoodun Doss*, 3 W. R., Act X R., 127.

An under-tenant may sue to recover his under-tenure sold by his zemindar for arrears of rent, although his name does not appear in the zemindar's register.

He may also prefer his claim in the Civil Court although he did not previously intervene in the Collector's Court under Section 106, Act X of 1859. *Mooktokashee Dossia* v. *Brojunder Coomar Roy*, 3 W. R., Act X R., 156.

A zemindar who receives his rents in full is not entitled to participate in compensation received by his putneedar for loss suffered by the latter in consequence of works being erected on land included in the putnee. *The Maharajah of Burdwan* v. *Wooma Soonduree Dossee*, 10 W. R., 12.

The mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant, is not sufficient notice to the zemindar of such purchase; nor is the mere acceptance by the zemindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer had not been registered. *Mirtyun Jeya Sircar* v. *Gopal Chundra Sircar and others*, 2 B. L. R., A. C., 131; 10 W. R., 466.

A., a zemindar, granted lands on kaul to B., B. assigned to C., but the lands being mostly in the hands of cultivators, C. only occupied those that had been in B.'s possession. The kist fell into arrear, and A. attached property of C.'s. Notice of the attachment was given before, but the property was not seized till after the whole of the arrears claimed had become due. C. resisted A.'s claim on the ground, substantially, that the sum demanded included arrears which had accrued on the lands not occupied by him. *Held* that as to the lands of which C. had obtained the actual possession there was such a privity between A. and C. as gave A. a right to realize the amount of kist outstanding in respect of those lands.

Held also that this right was not affected by failure to prove the execution of a muchalka by C. to A., or by the omission to furnish C. with a list of the property attached.

Held also that the attachment was not vitiated by the circumstance that notice of the attachment was given before a portion of the arrears claimed had become due. *Kamala Mayar* v. *Ranga Rau*, 1 Mad. Rep., 24.

A zemindar's estate is analogous to an estate-tail as it originally stood upon the Statute *de donis*.

The zemindar is the owner of the zemindary, but can neither encumber nor alienate beyond the period of his own life. *Chintalapati Chinna Simhadriraj* v. *The Zemindar of Vizianagram and others*, 2 Mad. Rep., 128.

A zemindary was attached in 1827, and the Collector, without authority from the Board of Revenue or the Government, remitted a portion of the tirvai, and continued such remission until 1842, when the zemindary was restored. The then zemindar and his successors continued the remissions, always, however, entering the faisal rates in the pottahs, and setting down the remissions as munasib.

In 1861 the plaintiff became lessee of the zemindary, and in 1862, pursuant to notice, he tendered pottahs for Fasli 1272 to the defendant and the ryots at the faisal rates.

Held, first, that the plaintiff was not precluded from raising the rents to the amount of the faisal assessment; secondly, that the Act of Limitations did not apply; and, thirdly, that the plaintiff might sue in a Court of Small Causes for the rent for Fasli 1272. *Adimulam Pillai* v. *Kovil Chinna Pillai*, 2 Mad. Rep., 22.

Where a zemindar alienated a part of the zemindari, and the terms of the Regulation XXV of 1802, Section 8, were complied with,—*Held* (Holloway, J., *dissentiente*) that the alienation was invalid against the plaintiff, the grandson of the zemindar.

Held also by the whole Court that the defendant and his father having held the land for a lengthened period on a claim of right, the plaintiff's suit was barred by the Statute of Limitations. *Syed Ali Saib* v. *Sri Raja Janyasiroy Peddabahyara Simhulu Bahadar*, 3 Mad. Rep., A. J., 5.

The appellant, a zemindar, sued to recover a portion of the zemindary granted by his grandfather upwards of 40 years ago, upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802; and that in the absence of the observance of the formalities prescribed the grant was void. *Held* that more than 12 years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. *Sri Raja Setaram Kristna* v. *Stri Jagunti Sitayamma Garu*, 3 Mad. Rep., A. J., 67.

A deed of gift of land forming part of a zemindary, executed by the zemindar in favour of his daughter five years subsequent to her marriage, is not valid. *Sivanaranja Perumal Sethurayar* v. *Muttu Ramalinga Silhurayar*, 3 Mad. Rep., A. J., 75.

In a suit to recover with mesne profits and other incidents a jirayati village alleged by the plaintiff to form part of his zemindary and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Circars passed in 1854, the defendant pleaded that he held on a permanent lease, subject to a fixed quit-rent; that he and his ancestors had held on that tenure since and previously to the Permanent Settlement; and that the quit-rent had been received from him by the plaintiff. The agent dismissed the suit, on the ground that the matter had been *res-judicata* against the plaintiff by a former decree in 1807.

Held that the matter of the present claim was not *res-judicata*, because the question of the existence and validity of the alleged grant, on which the defendant relied, was not determined in the former decree.

Held also that as the defendant stated that the plaintiff had received kuttubandi from him since 1857, the plaintiff's claim to eject could not be disposed of absolutely, on the ground that it was barred by the Limitation Act.

Held also that as the plaint praying for the recovery of possession proceeded on the ground, amongst others, of the validity of the grant relied on by the defendant, the question as to the validity of the permanent kuttubandi tenure claimed by the defendant was properly open for determination in the present suit. *Vairicharla Surya Narayana* v. *Nadiminti Bhagavat Patanjali*, 3 Mad. Rep., A. J., 120.

A meeras pottah granted by a person holding only a temporary lease is not valid against the right of the zemindar to take possession of the land on the expiration of the grantor's lease. *Chundee Chunder Mitter* v. *J. Beckwith*, W. R., 1864, 116.

Held that the defendant having failed to prove his right of possession to the house of an absconding ryot, either by sale or mortgage, was an intruder upon the holding of such ryot, and did not, by making additions or alterations, acquire any right against the zemindar who is not shown to have assented to such additions or alterations. *Kundhyee and others* v. *Saheb Zuman Khan*, 1 Agra Rep., A. C., 9.

In a suit brought by a zemindar to recover either assessment at the rate of Rs. 5,000 per annum or a pergunnah, part of the plaintiff's zemindary, the defendant pleaded that he had held the pergunnah as his own before and ever since the Permanent Settlement, and that the claim was barred by both the old and new Statutes of Limitation. The lower Court overruled both pleas: the first, because it held that, under Regulation XXV of 1802, the zemindar's title could not be questioned; the second, because it considered that the decision in suit No. 6 of 1821 prevented the application of the Statute, on the ground of subsequent hostile possession, and that the plaintiff had had twelve years from the time he came into possession in which to bring the suit. *Held*, first, there is nothing in the Regulations relating to the Permanent Settlement showing an intention to affect rights of property in existence at the period of their being passed; secondly, that the decision in No. 6 of 1821 will not be followed, at all events in a case in which the present claimant is the grandson of him against whom, as to property of a normal character, the Statute would have begun to run. *Srikrisna Devu Garu* v. *Sri Raja Ramachundra*, 3 Mad. Rep., A. C., 153.

In 1856 the plaintiff, the zemindar of Tarla (who had attained his majority in 1853), instituted suits for the recovery of the two villages claimed in the present suit, on the ground that the villages were jirayati, and had been temporarily alienated, and he claimed a right of resumption. It was decided that the villages had formed a mokhasa jagheer from a date prior to that of the Permanent Settlement; and that as they did not constitute a portion of the assets of the zemindary at the date of the settlement, there was no right of resumption. Pending those suits, an order was issued by Government which plaintiff construed as a transfer to him of the Government right in the villages, and he founded the present suit on the lapse of the mokhasa to Government, and the order transferring the right to him. *Held* that the present suit is not *res-judicata*. *Sri Sri Sri Ramachundra Suya Archandrana* v. *Dorvada Ramamia Chandiri*, 3 Mad. Rep., A. J., 207.

Where it was sought to charge a zemindary with debts contracted by persons who were at the time usurpers in wrongful possession of the zemindary, solely on the ground that the documents evidencing the loans recited that they were for the purpose of discharging the kists due to Government,—*Held* that, in absence of any evidence on behalf of the creditor as to the circumstances in which the transactions were had with the usurping zemindar in possession, and the failure to connect the loans with the debts contracted by the former and lawful zemindars, the suit was rightly dismissed.

The case reported at 6 Moore's Ind. Ap., 393, distinguished. *Chidambara* v. *Srimatu Muttuyvijeya and others*, 3 Mad. Rep., A. J., 260.

Even if a zemindar thinks a ryot has absconded, he has no right to enter on the land without the assistance of the law. *Jumeer Ghazee* v. *Goneye Mundul*, 12 W. R., 110.

Regulation V of 1862 applies only to land subject to a permanent assessment, and held from Government by a zemindar under a permanent sunnud, or by a temporary occupant. *Enamandaram Venkayya* v. *Venkatarayyan Reddi and others*, 1 Mad. Rep., A. C., 75.

Where an island was formed in a river, the lands adjacent to the banks of which were part of a zemindary,—*Held* that the island was not the waste land of any village, or a portion of the holdings of any ryots in the zemindary, but that the zemindar possessed in it all the incidents of ownership, including the power of making leases. *Sabbaya and others* v. *Yarlagadda Ankinudu*, 1 Mad. Rep., A. C., 255.

An alienation of a portion of a zemindary by the zemindar in favour of his sister cannot operate independently of her claim to maintenance, so as to bind his successor, though the alienation may be binding as against the grantor during his life. *Malavaraya Nayanar* v. *Oppaya Ammal*, 1 Mad. Rep., A. C., 349.

A zemindar has no more power to charge a perpetual annuity in favour of a stranger on the income of the zemindary than he has to alienate the *corpus*. *Narayanga Debee* v. *Harischandana Deva*, 1 Mad. Rep., A. C., 455.

A zemindar granted part of his zemindary absolutely and died. His grantee was then dispossessed by a purchaser from his successor. *Held* that, as the conditions specified in Regulation XXV of 1802, Section 8, had not been observed by the former zemindar, the grant was voidable on the determination of his interest, and that consequently the disposition was legal. *Pitchakattichetti* v. *Ponama Nitcayar*, 1 Mad. Rep., 148.

Where a village, part of a zemindary, has been entered as a jagheer in the accounts of the Permanent Settlement, the zemindar cannot resume the village, and is entitled in respect thereof only to the usual kuttubandi. *Harischandana Deva* v. *Ramanachandri and others*, 1 Mad. Rep., 355.

Held that mere relationship does not constitute a class of cultivators, and a zemindar who allowed some of his kindred to hold at favourable rates, cannot be compelled to show similar favour to other cultivators who may be equally near in relationship to him. *Dabee Singh* v. *Punchum Singh*, 3 Agra Rep., 203.

Where the sale was in execution of decree, and it was proved by custom that the zemindar's right extended to one-fourth of the sale proceeds in cases of involuntary sale,—*Held* that the zemindar has a right to recover the fourth share of the proceeds of sale from the judgment-creditor who in truth reserved the sale price. The zemindar's right attaches to sale proceeds, and is a prior charge upon the proceeds. *Byj Nath Pershad and others* v. *Mahomed Fuzl Hossein and others*, 3 Agra Rep., 204.

A zemindar has a right in the trees grown on the land by the tenant; and although the tenant has a right to enjoy all the benefits of the growing timber during his occupancy, he has no power to cut the trees down, and convert the timber to his own use. The zemindar may sue to have his title in the growing trees declared. *Sheikh Abdool Rohoman* v. *Dataram Bashee*, W. R., 1864, 367.

A zemindar had no power before the Permanent Settlement to grant a rent-free tenure, or a tenure at a less rent than the share of the produce payable to Government for revenue; nor had he power to grant jagheers. *Rajah Nilmoney Singh* v. *The Government and others*, 6 W. R., 121.

A zemindar is quite competent to grant a tenancy to one person over the head of another, provided he does not thereby interfere with the previously acquired legal rights of that other. *Mohun Chunder Dutt* v. *Fukeer Chand Deb and others*, 6 W. R., 122.

When money was borrowed to pay the revenue due from a zemindary, and paid to the Government on that account, the bond given by the vakeels and managers of the zemindary to the trustee for the lenders in the English form, for the purpose of enabling them to enforce the personal engagements of the vakeels and managers in the Supreme Court, was held not to deprive the lenders of their right, under the law prevailing among the natives in matters of contract, to sue the zemindar in the Courts of the mofussil.

Held also that the laws of 1781 and 1787 were repealed by the laws of 1796 when this action was brought, and there was nothing in those two former Regulations which made it illegal for the zemindar to contract a debt, or for any other native to take an obligation from a zemindar, without the consent of the officers of revenue; but that such an obligation, if founded on a valuable consideration, would be equally binding upon the conscience of the zemindar, and the demand and the payment would be equally legal as if such consent had been obtained and registered, though no Court of Justice might have jurisdiction to enforce the right. *Gopee Mohun Thakoor* v. *Rajah Radhanath*, 5 W. R., P. C., 72.

The office of a bulahar is an office held only during the zemindar's pleasure, and the person holding such an office is removable by the zemindar. *Sunnoo Khan* v. *Oodea*, 2 Agra Rep., A. C., 140.

A zemindar can only sue the holder of resumed lakhiraj land in possession for rent, but not oust him as a trespasser. *Bhoopal Chunder Biswas* v. *Khan Mahomed Mollah*, 6 W. R., 286.

A zemindar's estate is analogous to an estate tail, as it originally stood upon the statute *de donis*. *Chintalapati China Shimbadriraj* v. *The Zemindar of Vizianagram*, 2 Mad. Rep., 128.

The mere fact of a former putneedar allowing a former suit to go by default cannot prejudice the

rights of the zemindar now in possession. *Punchanun Mullick* v. *Hera Lull Seal*, 1 W. R., 173.

When a zemindar dispossessed the purchaser of a jungleboory tenure, the title of whose vendor was acquired from the zemindar's naib, who had no power to grant such a pottah,—*Held* that the receipt of rent by the zemindar from the plaintiff and his vendor did not amount to a ratification of the plaintiff's right to hold under the pottah transferred to him by the vendor. A zemindar is not bound to recognize tenures not created by himself, or by any authorized agent on his part. *Bissumbhur Poorkaet* v. *Bhuggobutty Churn Poorkaet*, W. R., 1864, 292.

There is no restriction upon zemindars in respect of their power to grant pottahs and leases on any terms they please. *Kalla Chand Talee* v. *Shamasoonderree Dabee Chowdhrain*, W. R., 1864, Act X R., 130.

Semble,—Where a zemindar lets his estate in farm for a term of years, and so delegates the whole of his rights, privileges, and immunities to another person, he becomes himself bound by an adverse decision under Act IV of 1840, to which the farmer was a party. *Lekhraj Roy* v. *The Court of Wards*, 14 S. W. R., C. R., 395.

The zemindar or owner is bound by the dispossession suffered by his izardar. *Brindabun Chunder Sircar Chowdry* v. *Bhoopal Chunder Biswas*, 17 S. W. R., C. R., 377.

The illegitimate son of a zemindar of the Sudra caste is entitled to maintenance, and the maintenance is a charge upon the revenues of the zemindary. *Coomara Vettapa Náikar, by his guardian, Moottoosawmy Naikar* v. *Venkatismara Vettia*, 5 Mad. Rep., 405.

A suit was brought for maintenance by the stepmother and step-sister of a zemindar to be paid out of the income of the zemindary. The defendant contended that a partition having taken place of all the partible property of the family, and shares having been allotted to the defendant's stepbrothers, the sons and brothers of the plaintiffs, the plaintiffs' claim to maintenance was limited to the property of the defendant's brothers, and the plaintiffs had no claim to maintenance against the defendant. *Held* that the defendant was liable to pay and contribute to the maintenance of the plaintiffs, not only out of the partible property which he had obtained upon the partition, but also out of the income of the zemindary. *Sivananauja Perumal Sethuroyer, zemindar of Oorcand and another* v. *Meenakshi Ammal and others*, 5 Mad. Rep., 377.

The rule of impartibility applicable to zemindaries does not extend to personal property of a zemindar left at his death, and such property is divisible amongst his sons after his death.

Clause 13, Section 1 of the Limitation Act considered. *Sri Sri Sri Rajah Rajeswara Gujapatty Naraina Deo Maharajulungaree* v. *Sri Sri Sri Virapratapah Rudragujaputty Naraina Deo Maharajalungaree*, 5 Mad. Rep., 31.

It is contrary to the usage of the country for a putneedar to pay his rents by monthly kists, without a special agreement for that purpose. *Jaykissen Mookerjee* v. *Janka Nauth Mookerjee*, 17 S. W. R., C. R., 471.

A zemindar and putneedars being bound together by the terms of a written contract, the zemindar can only sue for rent on the terms of that contract, but not for rent for the use and occupation of his land. *R. Watson and Co.* v. *Tarinee Churn Gangooley*, 17 S. W. R., C. R., 494.

22.—Putnee Tenures.

Held by Kemp, J., that where, as in this case, four suits are brought with the common object of setting aside the sale of a putnee talook by four joint tenants, two of whom are not estopped under Section 7, Act VIII of 1859, this Court cannot in equity declare the sale to be good or bad in part, but must decide as to whether the sale is to stand or fall for the whole talook.

Per Ainslie, J.—But if one of the joint tenants in a former suit claimed a 2-anna instead of a 4-anna share, she cannot now be allowed to supplement her claim or take interests in the putnee which she could not have enforced independently of the sale.

Per Kemp, J.—On the death of a registered putneedar, a zemindar is not bound to recognize any one as his tenant without registration in his sheristah; nor is he prevented from putting in a sezawal to collect the rents until a declaration of the rights of the deceased putneedar's heirs.

A tender to stay a sale under Regulation VIII, 1819, must be of the whole of the zemindar's demand and without any condition as to its being kept in deposit by the Collector.

Per Ainslie, J.—It can only be on the ground that a sale is carried out in respect of arrears not really due that fraud and collusion can be imputed. *Ram Churn Bundopadhya* v. *Sri Dropo Moyee Dassee*, 17 S. W. R., C. R., 123.

A putneedar is not bound to split up a tenure and to record separately the jumma payable by the holder of a share. Instead, also, of the latter bringing a suit in the first instance to compel the putneedar to register his share he should have made an application for registration to the putneedar under Section 27, Act X of 1859. *Bhooputta Roy* v. *Umbica Churn Banerjee*, 17 S. W. R., C. R., 169.

The "defendant talookdars" mentioned in Regulation VIII of 1793 are actual proprietors, not merely talookdars whose talooks are held under documents granted by proprietors which do not transfer property in the soil. *Rajah Suttyanund Ghosaul* v. *Huro Kishore Dutt*, 15 S. W. R., C. R., 474.

A putneedar deriving his title from and claiming under the zemindar, whose right to resume is lost, cannot, by reason of his being an auction-purchaser, revive a right which the zemindar is no longer himself entitled to exercise. *Niranjun Acharjee* v. *Kuralee Churn Banerjee*, 1 W. R., 197.

The holders of a talookee pottah from the zemindar are not bound to give kubuleuts to the putneedar. *Munsoor Ahmed* v. *Azizooddeen*, W. R., 1864, Act X R., 129.

The defendants, after making over by written agreement a share of an estate to A., forcibly retained possession of it. *Held* that A., though he never had possession of the property, might have sued to obtain possession of it, and that the plaintiff, as putneedar of A.'s son, can now sue to recover it. *Brojo Lall Singh* v. *Bullubh Singh*, 1 W. R., 216.

A putneedar is presumably entitled to exercise all the rights of ownership with respect to the land which the zemindar himself might, but for the

putnee, have exercised. *Uyaram Mundul* v. *Gyaram Naik*, Marsh., 28.

The provision in a pottah that if any item is laid upon the zemindar over and above the sudder jumma, the putneedar shall bear a rateable proportion of it, held not to include the charges connected with the zemindaree dâk. *Rohinee Kant Roy* v. *Tripoora Soondery Dossia*, 8 W. R., 45.

A putneedar cannot question a transfer made and recognized by the zemindar before the creation of his putnee. *Chunder Coomar Roy and another* v. *Pearee Lall Banerjee and another*, 6 W. R., 190.

A putneedar is not liable to make good the dur-putneedar's payments to the zemindar, insufficient as they were to stop the sale of the putnee. Such payments must be made in Court. *Mirza Mahomed Hossein Ali* v. *Sheikh Bukaoollah and others*, 6 W. R., 84.

Where the terms of a putnee lease did not make the putneedar liable for the maintenance of the zemindary dâks, it was *held* that the putneedar was not liable for a tax which was imposed on the zemindar by Act VIII of 1862 (B. C.). *Rakhal Doss Mookerjee* v. *Ranee Surno Moyee*, 6 W. R., 100.

A putnee talook cannot be divided except by an act of the zemindar, or by an act recognized by him. A putneedar may generally transfer his tenure without the consent of his zemindar, but he can only do so *in solido*, and the transfer of a portion in no way affects the existence of the putnee in its entirety or the rights of the zemindar. *Jadu Nath Sahawa* v. *Jadub Chunder Thakoor*, 11 W. R., 294.

The payment of revenue into the Collectorate by a putneedar to save the estate from sale is equivalent to payment of the putnee rents to the zemindar. The fact that the zemindar had himself paid money into the Collectorate which he intended as revenue, but which by mistake was credited to a deposit account, and for which he took a receipt showing that the money was received as a deposit, and not as a payment of revenue, does not render the putneedar liable. *Jotender Mohun Tagore* v. *Mussamut Kishen Monee Dabee*, W. R., 1864, Act X R., 11.

A purchaser at a sale in execution of a decree of one of several estates let in one putnee is not bound by any agreement between the putneedar and other zemindars regarding their shares of the entire putnee rent. Nor can he claim from the putneedar as his own share of the putnee rent a sum bearing the same proportion to the whole putnee rent as the sudder jumma bears to the sudder jumma of all the estates let out in putnee. In order to obtain redress in such a case, either the putneedar or one or all of the zemindars may have their fixed putnee rent properly apportioned among the several zemindars by a civil suit in which all the zemindars should be parties. *Poresh Nath Roy* v. *Bishroop Dutt*, W. R., 1864, Act X R., 16.

One proprietor having paid his own and his defaulting co-proprietor's share of the Government revenue to save the estate from sale,—*Held* that the former could recover from the latter his share of the Government revenue, but that he could not recover it from the latter's putneedar, who was entitled to all the profits of the putnee after payment of rent to his lessor; and that even if the putneedar had not paid rent to the lessor, that was a question between him and his lessor only. *Bykant Nath Acharjee* v. *Gooroo Churn Bose and others*, 7 W. R., 427.

By permitting a putneedar to take a quantity of land in addition to what is already held by him in putnee, and by receiving rents from him for such additional land for a series of years, a proprietor cannot, in the absence of any kubulcut from the putneedar or verbal agreement giving him the extra land in perpetual lease, be held to be debarred from resuming possession. *Chunder Madhub Ghose* v. *Womesh Chunder Banerjee*, 12 W. R., 188.

The Government purchased the zemindaree rights in a pergunnah, under Regulation XXI of 1822, at a sale for arrears of Government revenue, and re-settled one of the talooks in the pergunnah, which talook had been created subsequent to the Decennial Settlement, with the plaintiffs as talookdars. Subsequently and after the expiration of the terms for which they had re-settled with the plaintiffs the Government sold their zemindaree rights to the defendant, who ejected the plaintiff. Plaintiff thereupon sued the defendant in the Collector's Court under Clause 6, Section 23, Act X of 1859.

Held that the suit was properly brought under Act X of 1859. *Held*, further, that it was the intention of Government to retain talookdars in possession of their lands during the subsistence of their tenures subject to the condition of having their rents enhanced according to the pergunnah rates; and as in this case the proceedings which were taken by the Government showed that they did not cancel the plaintiff's tenure, the defendant who purchased from the Government could not eject the plaintiffs who were entitled to retain possession subject to a liability to enhancement. Under the Sale Law as it existed before 1822 a talookdar could not be dispossessed at the will of the purchaser; he was at most liable to pay the full pergunnah rate, and could only be ejected after refusal to pay the enhanced rate; but under Regulation 11 of 1822 dependent talooks created subsequent to the Decennial Settlement were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of Government revenue, unless they fell within the class contemplated by the 32nd Section of that Regulation. Where an auction-purchaser, under Regulation XI of 1822, intends to cancel a talookdaree tenure (a power which he might or might not exercise) he must take some clear step to declare the avoidance or cancellation of the tenure. *Khajah Assanoollah* v. *Obhoy Churn Roy*, 13 S. W. R., P. C., 24.

A zemindar who gives his estate in putnee lease has still such an interest in the property as entitles him to challenge the right of another who asserts that he holds it adversely to the zemindar on a lakheraj title. *Okhoy Ram Janah* v. *Syud Mahomed Hossein*, W. R., 1864, 213.

When consideration-money has been paid for a putnee lease, with a view to khas possession, and such possession is not obtained, the proper course is to repudiate the lease and bring an action immediately. *Mokoond Chunder Roy* v. *Prankissen Paul Chowdhry*, W. R., 1864, 287.

If a party leases an estate in putnee, reserving to himself the right of re-entry on condition of

his wishing to hold the property khas, he cannot sue to recover possession for the purpose of leasing it to a third party. *Rughoonath Coondoo* v. *Hurish Chunder Roy*, W. R., 1864, 326.

Where the purchaser of a putnee talook sues to obtain registry of his name in the zemindar's books, a third party who claims to derive his title from the purchaser's vendor has no right on the ground of such failure to treat the purchaser as his tenant. *Ram Narain Doss* v. *James Tweedie*, 12 W. R., 161.

Examination of the evidence in a suit brought to recover a putnee talook as having been purchased benamee for the appellant's late husband. *Cripamoyee Debi* v. *Romanath Chowdhry*, 2 W. R., P. C., 1.

A putnee sale under Regulation VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale. *Shuroop Chundra Bhoomeek and others* v. *Rajah Pertaub Chundra Singh and others*, 7 W. R., 218.

It is doubtful whether it is competent to the manager of endowed property to grant a putnee thereof. *Motee Doss* v. *Modhoosoodun Chowdhry*, 1 W. R., 4.

The sale of a putnee dissolves the relationship of landlord and tenant between the zemindar and the putneedar. *Broonath Singh Roy* v. *Sreemutty Bhugobutty Dassee*, 1 W. R., 133.

A putnee may be set aside as invalid, and made in fraud of creditors, notwithstanding the acquiescence of subsequent mortgagees. *Jotendro Mohun Tagore* v. *Brojo Soondery Debee*, 1 W. R., 362.

When a bonus is paid for a putnee talook not in existence there is an entire failure of consideration, and the person paying the bonus is entitled to a refund of it. The principle of *caveat emptor* does not apply to such a case. *Kristo Lall Moitro* v. *Nobbo Coomar Roy*, 5 W. R., 232.

A putnee had been sold for arrears of rent, and purchased in the name of C. D. Afterwards A. B., the zemindar, treated C. D. as his tenant, and petitioned, under Regulation VIII of 1819, to sell the putnee for arrears of rent which had become due after the sale which he alleged to be due to him from C. D. The rent was paid, and the putnee was not sold. A. B. then sued C. D., E. F. and his wife, G. H., jointly in the Collector's Court for subsequent arrears, alleging that the estate was purchased by E. F. and G. H. in the name of C. D. benamee for them.

Held that the mere fact of A. B. having treated C. D. as his tenant when he petitioned under Regulation VIII of 1819 did not estop him from now proceeding against E. F. and G. H.

Held also by the majority of the Court that the Collector had not jurisdiction to try the question whether E. F. alone was interested in the putnee, or how otherwise. (*Per* Kemp and Macpherson, JJ.—The question did not arise in the case.) *Prosunno Coomar Paul Chowdhry and others* v. *Koylas Chunder Paul Chowdhry*, 2 Ind. Jur., N. S., 327; 8 W. R., 428.

A present proprietor is not bound by a former proprietor's arrangement to allow the putneedar to pay his putnee rent direct to the Collector. *Muddun Mohun Shaha* v. *Sookomoyee Chowdhrain*, W. R., 1864, Act X R., 109.

Where a putnee tenure is sold under a decree against the tenant he is not liable for any rent which may accrue afterwards, notwithstanding the transfer may not be registered. *Gopeekisto Gosamee and others* v. *Ram Comol Misry*, Marsh., 212.

Where a tenant held lands in six villages under a putneedar at an admitted rent, and the putneedar subsequently granted durputnees to two different parties of two and four of the said villages respectively; the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages,—*Held*, the durputneedar of the other four villages could sue the tenant for the rent payable in respect of the lands situated in the four villages comprised in his durputnee, without joining as co-plaintiff in the action the durputneedar of the two villages, and the rent payable to the durputneedar of the four villages was properly estimated as the difference between the admitted rent of the land in all six villages and the admitted rent of the land situated in the two villages. *Bruja Lal Roy* v. *Sayamu Churan Bhutt*, 6 B. L. R., 523.

23.—DUR-PUTNEEDAR.

The dur-putneedar leased the land in dispute to a tenant, who sub-let it to another, who again sub-let it. Each of these tenants reserved to himself the right of receiving rent from his own tenant, and of paying rent to his lessor. The dur-putneedar was cognizant of the several transfers, and continued to receive rent from her original tenant. She could not therefore plead that the transfers were made without her sanction, and that the lease to her tenant and the subordinate leases were cancelled. The last of the sub-lessees deserted the land. *Held* that his desertion could not deprive the other sub-lessees of their rights, or entitle the dur-putneedar to re-enter into possession of the land. *Greesh Chunder Lahoory* v. *Ram Golam Roy*, 12 W. R., 175.

A registered dur-putneedar is liable for the rent to the putneedar, though the former has sold his tenure to another person not acknowledged by the latter. A payment made by the vendee of the dur-putneedar (who has not obtained registration) to save the putnee from sale is a voluntary payment, and the registered dur-putneedar cannot seek to deduct the amount from the rent due by him. *Lukheenarain Mitter* v. *Seetanath Ghose and others*, 1 Ind. Jur., N. S., 317; 6 W. R., Act X R., 8.

Mesne profits cannot be decreed against a dur-putneedar, nor can rent be decreed in a suit for ejectment. *Digbioy Chunder Neogey* v. *Jadub Churn Thakoor*, 8 W. R., 181.

A dur-putneedar cannot be ousted so long as he pays his dur-putnee rents, except by regular course of law. *Jadubchurn Thakoor* v. *Bholanath Singh Roy*, 5 W. R., Mis., 51.

A dur-putnee lease granted upon the payment of a bonus contained a condition that if the annual rent remained for a longer period than one month in arrear, the lessor should have a right of re-entry. The lessor upon default in payment of rent, without availing himself of the forfeiture, instituted a summary suit for the arrears of rent; and upon an award therein the lands were sold for such arrears. *Held* that the purchaser, who bought the putnee

tenure, without notice of the condition for forfeiture, was not subject to that condition. *Deendyal Paramanick* v. *Juggeshur Roy and another*, Marsh., 252.

Where a putnee is found to be benamee, a *bonâ fide* dur-putnee does not necessarily lapse. *Dwarkanath Misser* v. *Sree Gopal Paul Chowdhry*, 5 W. R., 240.

A putnee estate was the inheritance of five brothers, two of whom appropriated the whole of it. *Held* that the holder under a *kaimi* pottah from the dur-putneedar of the three ousted brothers could sue to obtain possession of his share of the estate. *Tara Soondery Debia* v. *Shama Soondery Debia*, 4 W. R., 58.

The status of a dur-putneedar does not depend upon registration or the consent of the zemindar. *Khetter Paul Singh* v. *Luckee Narain Mitter*, 15 S. W. R., C. R., 125.

24.—BHAGDAR.

In a suit brought by a bhagdari, or shareholder in a bhagdar village, to recover possession of a gabhan, or building-site, and a vada, or homestead, appurtenant to his bhag, from a stranger who had purchased at an auction sale a building created on the gabhan by a third person with the bhagdan's consent,—*Held* (reversing the decision of the District Court) that the purchaser of the building had only acquired a right to remove the building materials, and that he had no right, by reason of his having purchased the building, to continue, without the bhagdar's consent, in possession of the gabhan and vada, which by the Bhagdari Act could not be alienated apart or separately from the bhag, or some recognized subdivision thereof. *Pranjivan Gavan* v. *Jaiskankar Bhagvan*, 4 Bom. Rep., A. C., 46.

The custom in the Broach District of male first cousins succeeding to property held on the bhagdari tenure in preference to daughters or sisters, upheld in a case in which the bhagdars were Mahometans. *Bai Khedu* v. *Dásu Lall et al.*, 5 Bom. Rep., A. C., 123.

25.—MIRASIDAR.

Plaintiff, claiming as sole mírásídar of a village, sued the defendants as sukavasi tenants of cultivated land within the village for arrears of rent from 1856. Defendants denied plaintiff's title. The Civil Judge (reversing the decree of the Moonsiff) dismissed the suit on the ground that the plaintiff had not proved the collection of the perquisites claimed within twelve years before the institution of the suit.

Held (reversing the decree of the Civil Judge) that if the defendants were sukavasi ryots and the plaintiff was sole mirasidar, and in that right entitled to certain annual dues for all lands cultivated by such ryots immediately on their being brought under cultivation, plaintiff's suit was not barred, except as to rent payable more than three years before suit. *Kristama Chárvar* v. *Toppai Gaundan*, 3 Mad. Rep., A. J., 381.

The mirasidar is the real proprietor of mirasi land, but ryots may be entitled to the perpetual occupancy of mirasi land, subject to the payment of the mirasidar's share. Such tenure, however, generally depends on long-established usage, and must be proved by satisfactory evidence. *Alaiya Tirochittamballa* v. *Saminada Pillai and others*, 1 Mad. Rep., 264.

Regulation V of 1822 is inapplicable to land held under a mirasidar or any ordinary proprietor. It applies only to land subject to a permanent assessment and held from Government by a zemindar under a permanent sunnud or by a temporary occupant. *Enamandoram Venkayya* v. *Venkatanarayana Reddi and others*, 1 Mad. Rep., 75.

A custom that some only of the mirasidars of a village should bind the co-owners of the village lands is valid. *Anandayyan and others* v. *Devarájayyan and others*, 2 Mad. Rep., 17.

The plaintiffs, mirasidars of a village, held on pungavaly tenure, sued their co-mirasidars, the owners of the remaining shares and others, occupants of land in the village, for a partition of the common lands of the village and an allotment to the plaintiffs of specific parts thereof proportionate to the shares which they represent.

In a former suit, to which all the present mirasidars were parties, either actually or as privies to those through whom they claim, it was decided that no right existed in any individual shareholder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares. *Held* that the former decree declaring the impartibility of the common land of the village was conclusive in the present suit between the present shareholders upon the same question of right.

Semble,—The right to enforce a partition or allotment of the common lands of mirasi villages held in pungavaly tenure probably does exist. *Sitaramaiyar* v. *Alagiry Jyer and* 370 *others*, 4 Mad. Rep., 285.

The plaintiffs sued, as the mirasidars of a village, to establish their right to the grant of a pottah of certain waste land of the village, which had been granted to some of the defendants. The Collector, who was made a defendant, stated that the Hookumnamah Rules of the district directed that land should be given to mirasidars on their tendering sufficient security, and that the plaintiffs on previous occasions had received lands for which offers had been made by others in consideration of the plaintiffs' preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements. *Held* that the plaintiffs were entitled to the relief sought for. *Collector of Madras* v. *Ramanuga Chariyar; Kullappa Naik* v. *Ramanuga Chariyar*, 4 Mad. Rep., 429.

Where a mirasidar left his miras in 1850 without executing a razinamah resigning it, and the miras lay waste until 1855, when the defendant took it up and cultivated it, it was held that the cause of action of the mirasidar arose in 1855, when the miras was taken up by the defendant. *Lakshuman Ramji* v. *Ramlal Valad Mahipata*, 6 Bom. Rep., A. C. J., 66.

Plaintiff brought a suit to recover land which had been engaged by her husband, the kurnum of a village, but which on his death had been given to the defendant, with the office of kurnum. The land had been originally attached to the office, but the plaintiff's husband for a long time before his death was enjoying the land as his private property.

Held that the miras of the land continued to be attached to the office, notwithstanding that it may have been for some time enjoyed as private property; that the property, being annexed to the office, was indivisible, and as the Collector, in ejecting the plaintiff, appropriated the land to the office by putting it in the possession of the kurnum whom he appointed in place of the plaintiff's husband, the plaintiff had no right to recover. *Seshaiya* v. *Garuamma*, 4 Mad. Rep., 336.

Where a written instrument purported to create the relation of landlord and tenant for five years, the plaintiff's (lessor's) tenure being that of a mirasidar, that is, an hereditary tenancy under Government determinable on default in payment of the proportion of the Mothee Faisal assessment, payable for the land,—*Held* that the instrument did operate to create the relation of landlord and tenant, notwithstanding that the assessment was not permanently fixed. *Held*, also, that the written instrument was a lease, and was not liable to be stamped, by virtue of the exemption of Article 42, Schedule A, of Act X of 1862. *Saminathaiyan* v. *Saminathaiyan*, 4 Mad. Rep., 153.

26.—MAAFEEDAR.

An ex-maâfeedar, with whom a sub-settlement has been made of the resumed maâfee, is presumably not a hereditary cultivator, but his position is that of a proprietor subject to payment of Government revenue. *Kumeed-ool-lah Khan* v. *Pran Sookh and others*, 3 Agra Rep., 280.

A plot of maâfee land being resumed was settled with the ex-maâfeedar who engaged for the Government revenue for the term of settlement. The settlement with the ex-maâfeedars was made under Section 5, Regulation XIII of 1825; but under paragraph 161, Circular Order, Sudder Board of Revenue, under the rule laid down, Section 5, Regulation XXXI of 1803, which recognized them to be in possession as owners. *Held* that the mere fact of the last settlement having expired would not deprive them of the right of their being assessed with revenue as proprietors of maâfee land; but where there has been a grant of soil, and possession taken and long continued thereunder, the ownership thereof vests in the grantee, although the grant as to exemption from payment of revenue may be invalid and subject to assessment. *Toolsee Ram and others* v. *Narain Singh and others*, 3 Agra Rep., 265.

Held that the plaintiffs, being mere maâfeedars of a moiety of the right of Government, had no right to plant trees themselves or to prevent the zemindars from planting the trees, as they had no right to the land. *Azhuroodeen and others* v. *Mohur Singh and others*, 2 Agra Rep., A. C., 165.

Where a mortgagee of a maâfee land was no party to resumption proceedings under Act X of 1859, Section 28, and the land was resumed with the mortgagor's consent,—*Held* the mortgagee or transferee from him is entitled to question the *bonâfide* character of the resumption proceedings. *Sheikh Toobur* v. *Ooman Shunker*, 2 Agra Rep., A. C., 117.

Held that an ex-maâfeedar, the land after resumption being settled with him as proprietor on payment of the fixed Government demand through the lumberdar, cannot be treated as an ordinary cultivator, and served with notice of enhancement by the latter, who was only to get a certain percentage for collection, and not more. *Syud Wazeer Ali* v. *Patrick Dunne*, 1 Agra Rep., R. A., 15.

A partition was made by the zemindars of their respective holdings and of their joint liability for the Government revenue, and though this partition was not carried out by the Revenue Court, but was acted upon by the zemindars, and the assignee of Government revenue also consented to such partition by accepting revenue from individual zemindars, and by holding them to be individually responsible for the amount due in respect of their several holdings,—*Held* that there was nothing to prevent the maâfeedar, who is the assignee of Government revenue, from assenting to any arrangement which the zemindars may make for the conversion of their joint into separate liability. *Ranee Sarnomoy* v. *Ramchurn Singh and others*, 3 Agra Rep., 251.

27.—PUTTEEDARS AND LUMBERDARS.

Held that a suit to recover lumberdaree right, or 10 per cent. allowance provided for in the administration paper, being other than a commission on actual collection, is not cognizable by the Revenue Court, under Act XIV of 1863, but by the Civil Court. *Khoobee* v. *Akbar and others*, 3 Agra Rep., 322.

Ordinarily a lumberdar in these provinces would collect the rent in putteedaree estates, but Section 7, Act XIV of 1863, recognizes a different state of things, where collections are made, not by the lumberdar, but by the several putteedars, who collect severally their several shares of rent. *Bholonath* v. *Bisheshur Tewaree*, 3 Agra Rep., 165.

Where profits received by a lumberdar are not taken by him as lumberdar, but in his individual character under a supposed mortgage title, such profits are not recoverable by a suit for profits in the Revenue Court. *Khoob Singh* v. *Bulwant Singh and others*, 3 Agra Rep., 302.

Held that a lumberdar is not liable for the rent which he without any wilful default on his part has never received, if he shows that he has done his duty in endeavouring to collect the same. *Enayet Hossein and others* v. *Gholam Ally*, 2 Agra Rep., A. C., 276.

Held that a lumberdar is ordinarily bound to account for rents not collected if he does not exercise his power of such distraint with due diligence. *Sees Ram* v. *Chait Ram*, 2 Agra Rep., A. C., 266.

Where a resumed maâfee estate comprising three puttees in an adaee mehal was assessed with a lump sum of Government revenue payable through the lumberdars of the adaee mehal, who were empowered to proceed summarily against the sharers of the puttees in case of default, and to bring the share of the defaulter to public sale, and were held liable to Government for payment of the revenue assessed on the three puttees, and in case of default their rights in the mehal, not of the sharers of the defaulting puttees, were liable to sale for satisfaction of Government demand on those puttees,—*Held* that the estate was not a putteedaree estate as con-

templated by Section 2, Act I of 1841, and the right of pre-emption given to co-sharers of the puttee by that enactment could not attach to it. To constitute a putteedaree estate as contemplated by the 2nd Section of the Act it is necessary not only that it should come within the express terms of that section, but also that it should be liable to the same incidents which attach to the estates described in the section by the other provisions of the same Act. *Salig Ram* v. *Pursidh Ram*, 1 Agra Rep., A. C., 186.

Where a maâfee land is, after resumption and assessment, left in the possession of the ex-maâfeedars, the persons entitled to collection or profits are, in the absence of any stipulation to the contrary, the ex-maâfeedars, and not the lumberdar of the village. *Dal Chund* v. *Mussamut Seeta Koonwar and others*, 2 Agra Rep., A. C., 152.

A lumberdar is not chargeable in the Revenue Court in respect of profits payable at a time prior to his appointment, although he succeeded his father in the office. His liability in such a case, if any exists, arises not by reason of his official character, but as one of his father's heirs and representing his estate, and the suit must be brought in the Civil and not in the Revenue Court. *Mata Deen* v. *Chunder Deen*, 2 N. W. R., 54.

Construction of Clause 2, Section 1, of Act XIV of 1863.

Suits by co-sharers against co-sharers, who are not lumberdars, for a share of the profits, are cognizable in the Revenue Courts.

Such suits may also be brought against co-sharers who, without authority, have made collections in excess of their proper shares.

Suits for the profits of a maâfee, as well as of a khalsa estate, are so cognizable.

A lumberdar can maintain a suit in the Revenue Courts for his lumberdaree allowance, as well as for his ordinary profits as a co-sharer. *Hur Narain* v. *Shiam Soonder*, 1 N. W. R., Par. 13, p. 211.

The putteedars of a ryotwari village have not such a common interest, as putteedars, in all their holdings that they can jointly sue for the recovery of them. If in any case such a right exist, it must be established by evidence. *Mayandy Tévan* v. *Nárá-naiyan*, 4 Mad. Rep., 108.

28.—Malikana.

The right to malikana is a proprietary right constituting an interest in land, and not the same as rents; and the Law of Limitation applying to it is Clause 12, Section 1, Act XIV of 1859. *Heranund Shoo* v. *Mussamut Ozeerun and others*, 9 W. R., 102.

Old maliks, when allowed to receive malikana, instead of a settlement being made with them, are not entitled to retain possession. *Sheikh Zahoor Huq* v. *Sheikh Morad Ali*, 1 W. R., 82.

Held (by Glover, J.) that malikana is rent under Regulation VIII of 1793; that a cause of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as has not been barred by the Statute—Clause 16, Section 1, Act XIV of 1859—that is, for a period of six years. *Held* (by Kemp, J.) that the suit was barred, as no malikana had been paid for more than twelve years. *Bhuli Singh* v. *Mussamut Nehum Bhu*, 3 B. L. R., Ap., 102; S. C., 12 W. R., 498.

A suit for a malikana allowance concerns the proprietary right in land. A dispute concerning it may be regarded in the same light for the purposes of jurisdiction as a dispute concerning the proprietary right itself. A suit of this special description is not one for a Small Cause Court. *Mahomed Karamu-koollah* v. *Abdool Majeed*, 1 N. W. R., Par. 12, p. 205.

29.—Under-Tenures.

Under-tenures fall with the original tenure of the defaulter, and are liable to enhancement by the purchaser of the tenure sold for arrears of rent. *Tarucknath Poramanick* v. *R. McAllister*, 6 W. R., Act X R., 34.

Where a party purchases another's zemindary rights in an estate in which that other had created an under-tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zemindary was in the hands of the former proprietor does not affect the rights of his successor, or the fixity of the rent. *Gudadhur Lall* v. *Ram Jhan Gundaree*, 10 W. R., 212.

Shareholders with a tenant are primarily liable with him to the zemindar for the rent of the tenure, unless the zemindar comes to a separate agreement with them for the payment of their share. Where parties hold under or through the tenant the zemindar is not bound to recognize their holding as a separate holding; and his taking the rent of the whole tenure or a part of it from their hands, does not of itself amount to such a recognition as is contemplated in Section 16, Act VIII of 1865 of the Bengal Code. *Sree Nath Chuckerbutty* v. *Sreemonto Lusker and others*, 10 W. R., 467.

A co-sharer in an under-tenure cannot claim separate payment of his share of the rent without the written consent of the zemindar; and if the zemindar refuses to make a division of the property application should be made to the Collector under Section 27, Act X of 1859. *Issur Chunder Ghosal* v. *Mooktoram Panda*, 9 W. R., 606.

Under Section 105, Act X of 1859, an under-tenure is liable to sale in execution of a decree for arrears of rent for eleven years. Any party wishing to stay the sale, on the ground of his being the proprietor of the under-tenure, must comply with the provisions of Section 106. *Doorga Pershad Bose* v. *Sreekisto Moonshee*, W. R., 1864, Act X R., 48.

Under Section 105, Act X of 1859, an under-tenure may be sold in execution of a decree, provided there be an arrear of rent adjudged. *Maharajah Suttees Chunder Roy Bahadoor* v. *Modhoosoodun Paul Chowdhry*, W. R., 1864, Act X R., 91.

Sales of under-tenures under Act VIII of 1835, for arrears of rent, are not required to be according to the procedure laid down in Regulation VII of 1799, but according to the procedure prescribed by Section 2 of Act VIII of 1835. *Mussamut Monoshee* v. *Abdool Hossein and others*, 7 W. R., 297.

The law gives an increment to a tenant or under-tenant in possession, without reference to the nature

of his title. *Narain Doss Bepary* v. *Soobul Bepary*, 1 W. R., 113.

The purchaser of a transferable under-tenure, in execution of a decree for rent, may void any lease or holding within the tenure not specially protected by law, and consequently may sue for a kubuleut at rates paid for similar lands in the neighbourhood. *Srishteedhur Mundul* v. *Gobind Surnokar*, 6 W. R., Act X R., 15.

Act X of 1858 gave Government the power as to landed property acquired by confiscation thereunder (if it thought fit to exercise it) of ejecting ryots. As to under-tenures the words are of still stronger import. But it must be held rather to confer a power to cancel than absolutely and without act done to annul the tenures. *Doorga Pershad* v. *Zorawur*, 2 N. W. R., 75.

The Legislature did not intend to include in the term "under-tenures," in Section 7 of Act X of 1858, the holdings of ryots, but employed that term in the sense in which it is commonly used in this part of India, as applying to tenures of a proprietary character inferior to the zemindary, but superior to the khast karee tenure. Consequently such holdings were by that Act made voidable but not absolutely void. The power of avoiding such holdings expired with the Act. *Syud Basit Ali* v. *Man Singh*, 2 N. W. R., 140.

30.—Transferable Tenures.

According to the custom of the Hooghly district, a tenure granted for building purposes is transferable. *Baneymadhub Banerjee* v. *Joy Kissen Mookerjee*, 12 W. R., 496.

It is necessary that a tenure should be mokurruree in order to be transferable. *Huromohun Mookerjee* v. *Ranee Lalunmonee Dassee*, 1 W. R., 5.

The transferable nature of a tenure is a question to be decided in each case by reference to local custom only, and not by the evidence of a few antagonistic witnesses. *Joykishen Mookerjee* v. *Rajkissen Mookerjee*, 1 W. R., 153.

A voluntary abandonment of a permanent and transferable tenure for a long period, without any inevitable force, merger, or other cause beyond the power of the holder, is tantamount to an express relinquishment. If a man so abandon his holding for years, neither he, nor any one under him, can reclaim it. *Chundermonee Nya Bhoosun* v. *Sumbhoo Chunder Chuckerbutty*, W. R., 1864, 70.

There is nothing unreasonable in the custom by which the tenure of a khoodkasht ryot, who has built a pucca house on his land, and has acquired a right of occupancy under Section 6, Act X of 1859, is transferable. *Chunder Coomar Roy* v. *Kadermonee Dossee and another*, 7 W. R., 247.

A custom as to the transferableness of khoodkasht jotes need not be absolutely invariable. *Chunder Coomar Roy and others* v. *Peareelal Banerjee and another*, 6 W. R., 190.

A yearly tenancy cannot be transferred without the lessor's consent, and the fact that the lessee has had enjoyment under the pottah for a very long series of years does not alter the character of the interest originally created by the pottah. *Lalljee Sahoo and others* v. *Bhugwan Doss*, 8 W. R., 337.

Where a tenure is transferred by a ryot without sanction of his landlord, and the latter nevertheless receives rent from the transferree, and gives him dakhilahs for the year in which he is in possession, the landlord cannot oust him afterwards under a decree for the rent of previous years. *Abdool Kureem* v. *Munsoor Ali and others*, 12 W. R., 396.

The transfer of a tenure not transferable by the custom of the country gives the zemindar no right to take actual possession so long as the rent is paid by the recorded tenant or his heirs, and not by a stranger. *Joy Kishen Mookerjee* v. *Raj Kishen Mookerjee*, 5 W. R., 147.

The transfer of an ordinary ryot's holding need not be registered on the books of the zemindar. *Joykissen Mookerjee* v. *Doorga Naran Nag and others*, 11 W. R., 348.

A zemindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant, while he is yet unregistered. *Nobeen Kishore Mookerjee* v. *Shib Pershad Pattuck*, 9 W. R., 161.

If a ryot not having a transferable tenure quits possession, makes over his interests, and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land. When a purchaser takes possession of a non-transferable tenure, and interposes himself between the zemindar and the ryots on the land, he thereby commits a wrong, and the zemindar may sue to declare that no interest is vested in such purchaser, or to restrain him from interfering with the collection of rent. *Hurree Hur Mookerjee* v. *Jadunath Ghosh*, 7 W. R., 114.

When a tenure is not transferable, and no transfer has been consented to or adopted by the zemindar, the zemindar is entitled to treat the incoming ryot as a trespasser, and to evict him even in the middle of the year. But when a tenure is transferable the mere absence of registration, or of acknowledgment of the zemindar's right by the ryot, will not make the ryot such a trespasser as to justify the zemindar in evicting him in the middle of the year. *Hurro Mohun Mookerjee* v. *Chintamonee Roy*, 2 W. R., Act X R., 19.

Quære,—Whether a transfer of a ryotwaree tenure can be effected without the consent of the zemindar or talookdar, as the case might be, the immediate successor in estate. *Maharanee Shibessuree Dabee* v. *Mothoor Nauth Acharjee*, 13 S. W. R., P. C., 18.

B. and C. and their father held lands for upwards of thirty-five years, and built houses on the same. B. and C. sold their tenures to D. and E. A., the zemindar, who had not objected to the building, now sued to eject D. and E. as trespassers. Evidence was given that the tenures were, by the custom of the country, transferable. *Held* A could not eject D. and E.

Per Peacock, C. J.—If one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of evidence to the contrary, is assignable. *Beni Madhab Banerjee* v. *Jai Krishna Mookerjee*, 7 B. L. R., 152.

Although it is the general rule in these provinces that a tenant's holding is not transferable without the zemindar's consent, yet the exceptions are so far from rare that it is necessary in each case to come to a distinct finding on this point, and decree accordingly. *Meer Hadayet Aly* v. *Baboo Lall Singh*, 1 N. W. R., Par. 2, p. 38.

The right of transfer of mourousee rights, al-

though by no means commonly enjoyed by tenants in these provinces, is nevertheless in some places sanctioned by local usage.

Where a person has made such a transfer without authority, it should nevertheless be enquired into, whether or not the landlord has sanctioned such transfer by accepting the assignee as tenant, and receipt of rent. *Musumat Kooerya* v. *Doorga Pershad*, 2 N. W. R., 139.

The purchaser of a ryotee tenure is bound to communicate with the zemindar and obtain his consent to the transfer of the tenure; without this being done, a gomashta's receipts of rent are not binding on the zemindar. *Bhojohuree Bunick* v. *Aku Golam Ali*, 16 S. W. R., C. R., 97.

Where rent is recovered without objection by successive landlords from the transferee of an intermediate tenure from the date of transfer, such receipt acts as a full and complete acknowledgment by the proprietor that he accepts the new tenant in the place of the old one. *W. O. Allender* v. *Dwarkanauth Roy*, 15 S. W. R., C. R., 320.

Where a ryot makes a transfer of a tenure which is not transferable, the landlord is entitled to look to him as the party liable for the rent, but is not entitled to khas possession. *Suddye Purira* v. *Boistub Purira*, 15 S. W. R., C. R., 261.

The person into whose hands a transferable tenure comes is bound to pay rent to the landlord, unless kept out of possession and enjoyment by the fault of the landlord, and the landlord's right to claim rent from his tenant does not depend upon the fact of possession by the tenant. *Gobind Chunder Chunder* v. *Krist Kant Dutt*, 14 S. W. R., C. R., 273.

31.—Registration of Tenures.

Registration in the Collector's books is not of itself a proof of title. *Gobind Nath Sein and others* v. *Gobind Chundra Sein*, 10 W. R., 393.

The registration of a transferable tenure in a Government khas khureedah mehal is as necessary as in the estate of any other zemindar; but where a tenure is transferable the mere absence of registration or of acknowledgment of the zemindar's right by the ryot will not make the ryot such a trespasser as to justify the zemindar in evicting him in the middle of the year. *Hurromohun Mookerjee* v. *Chintamonee Roy*, 3 W. R., Act X R., 19.

The registration of a talook, or of the sunnuds creating it, is not absolutely necessary to prove the creation of the talook before the Decennial Settlement. *Wise and others* v. *Bhoobun Moyee Debia*, 3 W. R., P. C., 5.

The order of a Deputy Collector, under Section 27, Act X of 1859, requiring the zemindar to register the transfer of a tenure, though not appealed from to the Judge, is nullified by the order of the Judge in the zemindar's suit for rent, in which the Judge held that the tenure was not transferable according to the custom of the country. *Huro Mohun Mookerjee* v. *Ranee Lalun Monee*, 5 W. R., Act X R., 42.

Held that the tenure being a ryotee tenure, registration in the talookdar's sherista was not necessary under Section 27, Act X of 1859, which applies to tenures intermediate between the zemindar and the Collector. *Wooma Churn Sett* v. *Hurree Persad Misser and others*, 10 W. R., 101.

Section 4, Act VI of 1862 (B. C.), applies only to under-tenants and ryots of whose possession there can be no doubt. The transferee of a tenure not in possession, instead of depositing the rents in Court under this section, should take steps, under Section 27, Act X of 1859, to register his transfer in the sherista of the zemindar, and to apply to the Collector in case of the refusal of the zemindar to do so. *Dulli Chand and others* v. *Meher Chand Sahoo and others*, 8 W. R., 138.

The zemindar is not bound to register the transfer of right of occupancy under Section 27 of Act X of 1859. *Mussamut Taramonee Dossee* v. *Birressur Moozoomdar*, 1 W. R., 86.

Mere cognizance or supposed cognizance by the zemindar of the fact of a party having purchased a tenure is not sufficient to cure the defect of non-registration of such tenure in the zemindar's sherista. *J. C. Sarkies* v. *Kali Coomar Roy*, W. R., 1864, Act X R., 98.

No action will lie against a vendor alone to compel him to procure the transfer by the revenue authorities to the name of the vendee of the registration of the property sold. The Collector (the registering officer) must be made a party to the suit. *Mamgamma* v. *Timmapayo*, 3 Mad. Rep., A. J., 134.

A non-registered holder of a sub-talook cannot stop a sale under a decree if the amount of decree be not paid. He may stop the sale by paying the amount of the decree, and then bring a suit against his vendors to establish his right as sub-talookdar; and on doing so he may require the talookdar to register his purchase, and, if necessary, compel him to do so. *Bitiyanund Paul* v. *Ram Doollub Buttobyal*, 2 W. R., 282.

Non-registration in the zemindar's sherista does not invalidate the sale of a tenure. *Bharut Roy* v. *Ganganarain Mohaputter*, 14 S. W. R., C. R., 211.

The separate registry of the names of shares in the zemindar's sherista is not proof of separation of their shares. *Gureeboollah Khan* v. *Kebull Lall Mitter*, 13 S. W. R., C. R., 124.

A Collector in Chota Nagpore cannot be compelled to register the name of any one as proprietor of an estate. *Lalla Bissen Pershad* v. *Collector of Hazareebaug*, 13 S. W. R., C. R., 397.

A zemindar is bound to look only to his registered tenant; the equivalent of registration being presumed where he receives rents from his tenant in recognition of his tenancy. *Dhunput Sing Roy* v. *Vellayet Ali*, 15 S. W. R., C. R., 211.

Where an arrear of putnee rent is due, the zemindar in applying to the Collector to bring the property to sale need not recognize any one except the registered putneedar. *Raghub Chunder Banerjee* v. *Brojonauth Koondoo Chowdry*, 14 S. W. R., C. R., 489.

When arrears of rent become due a zemindar is not bound to look beyond his book for the party liable, except when he has recognized other persons as his tenants either by receipt of rent or in other ways. Where neither the Hindu widow who has succeeded by inheritance nor the reversioner chooses to pay the arrears of rent which have fallen due upon a tenure, it must, if sold for such arrears, pass to the purchaser by the sale. *Anund Moyee Dassee* v. *Mohindro Narain Dass*, 15 S. W. R., C. R., 264.

32.—Boundaries.

An adjudication of the boundaries by the revenue authorities under Act I of 1847 is not final and conclusive, but is, like any other judicial award made under Regulation VII of 1822, open to question by regular suit in the Civil Court within three years (Clause 6, Section 1, Act XIV of 1859). *Sheikh Sujjad* v. *Syad Sahit Ali*, 3 Agra Rep., 140.

Boundary disputes are not cognizable in a Revenue Court. *Rughoonath Sahoy* v. *Boondir Mundir*, 1 W. R., 36.

A decision in a boundary suit decides only the question of right to possession of the land, irrespective of the right to assess. *Mahomed Ali Khan Chowdhry* v. *Jadub Chunder Chuckerbutty*, W. R., 1864, 60.

In a boundary dispute, oral evidence is quite insufficient to establish either the fact of possession or of title. *Goluck Chunder Bose* v. *Rajah Sreemurd Rajeshurree Biddiadhur Soondeah Nurrendur Bahadoor*, W. R., 1864, 135.

Zemindars have no authority, without the sanction of Government, to alter the boundaries of their permanently-settled estates, and to transfer villages from one zemindary to another. Such an arrangement is of no binding effect, except between the parties who have made it. *Ramchunder Banerjee* v. *Muddunmohun Tewaree*, W. R., 1864, 355.

If the defendants in a boundary suit accepted in a former suit a particular map as correct, their acceptance is legal, though not conclusive, evidence against them in the boundary suit, and is tantamount to an admission, and stands upon a very different footing from the decree in the first suit. *Gordon, Stuart, and Co.* v. *Beejoy Gobind Chowdhry*, 8 W. R., 291.

Section 13, Regulation III of 1828, was intended to make provision for the immediate settlement of the limits of the Sunderbuns; hence it fixed peremptorily a period after which the demarcation of those limits, made by the Special Commissioner to that end appointed, should be final. No person can come in after that period (namely, three months from the dates of the Commissioner's proceeding fixing the boundary) pleading infancy or other ground for re-opening the question of boundary, since the geographical boundary line was necessarily to be one and the same for all the world. Even within the period of limitation allowed, no one could be heard to object to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line. After the line had once become final, no party could be heard to say that even cultivated lands within it were part of his settled zemindary. *Rajah Baradakont Roy* v. *The Commissioner of the Sunderbuns*, 2 B. L. R., P. C., 33.

In a case where boundaries of land are disputed, an appeal from the mamlatdar lies to the Collector. A District Judge has no power to entertain such an appeal. Appeal referred to the Collector under Act XVI of 1838. *Narayan Vayankatesh* v. *Dhundu Damodharetal*, 4 Bom. Rep., A. C., 167.

Held that the mere fact that the river forms the constant boundary between two districts cannot in the absence of any dhardhara custom affect the rights of riparian proprietors. *Dhoolhin Hurpaul Koonweree* v. *Ubsuck Singh and others*, 3 Agra Rep., A. C., 18.

The custom of dhardhara applies to lands thrown up or formed by fluvial action either in one year or in the course of a number of years. Whether it is equally applicable to chuckee formations or tracts of land severed by a sudden change in the course of a river, and yet preserving their identity of site and surface after the severance, must be determined by proof of the extent of the custom. *Mussamut Ranee Katiyanee* v. *Sheikh Mahomed Shurf-ood-deen*, 3 Agra Rep., 189.

In equity, if through the default of a tenant or a copy-holder, who is under an implied obligation to preserve the boundaries of separate estates which he holds, there arises a confusion of boundaries, the Court will interfere as against such tenant or copy-holder to ascertain and fix them.

In a case in which the boundaries of three talooks had been found to be unascertainable, it was decreed that they should be defined and fixed in such a manner that the produce of the total land in each talook should bear the same proportion to the jumma payable by such talook as the produce of the whole of the said lands bears to the total of the jummas payable on account of the three talooks. *Khemamoyee, alias Khemessuree* v. *Shoshee Bhoosun Gangooly and another*, 9 W. R., 95.

The mere fact of the revenue authorities defining and declaring the local boundaries of a district does not necessarily change the rights of property in land in that or any other district; nor does the right of property in land necessarily change with every alteration in a river or other natural feature of a locality. *Hurendur Lall Shahoo* v. *Maharajah Rajender Purtab Sahee*, 1 W. R., 260.

Suit concerning the boundary line between contiguous mehals. The land in dispute (which, with the mehals adjacent, originally formed part of a permanently-settled zemindary, consisted of revenue-paying mehals, and of mehals alleged to be lakheraj, all belonging to one proprietor) was so situated that it necessarily belonged either to Havelee, one of the latter, or to the contiguous rent-paying mehals. The Permanent Settlement did not define the boundary, nor was it fixed in subsequent resumption proceedings against Havelee, which ended in a temporary settlement of that mehal for twenty years. The ownership of Havelee having become severed from the ownership of the other mehals, the question of boundary arose, not as a question of revenue between the Government and a zemindar, but as one of title to land between the zemindars and proprietors of two contiguous and separate estates.

The appellant having failed to prove that no part of the disputed land was included in the respondent's settlement (some portion at least being shown to belong to Havelee), and also having failed to prove by independent evidence his own right to recover the land specified in the plaint,—*Held* that the suit should not have been determined upon that mere failure on his part to support the burden of proof cast upon him, because the judgment would be as final and conclusive between the parties as an adjudication on the merits would be, and its effect would be to give something to the respondent which

on the evidence belonged to the appellant's mehals. The rights of bunkur (a right of cutting wood), phulkur (a right of gathering fruits), are rights indicative of a certain dominion over the soil. *Rajah Leelanund Singh* v. *Maharajah Moheshur Singh*, 3 W. R., P. C., 19.

Held that to make the acts of the head-men of a village in boundary disputes and other matters binding on the co-sharers it is not necessary that there should be specific authority by power of attorney or otherwise, or subsequent express or implicit assent or sanction in absence thereof. Requisite authority may be inferred from the facts of each case by showing that the head-men of the village have usually in similar disputes been permitted to act and represent for the other sharers.

Held also that agency in every case can only be created by the will of the principal, and his will may be manifested in writing or orally, or simply by placing another in a position so as to be understood according to ordinary rules and usages to represent and act for one who has placed him. *Gungapershad and others* v. *Rampershad and others*, 1 Agra Rep., F. B., 31.

The finding of the Subordinate Judge that the plaintiff had been more than twelve years in possession as lakherajdar was held sufficient to dispose of the question of boundaries and sufficient to establish a *primâ-facie* title at any rate for the plaintiff, whilst, on the other hand, the defendant had failed to make out any other title either by showing a grant or that he had been in possession. *Mohabeer Inswar* v. *Dowlut Sonar*, 17 S. W. R., C. R., 385.

Where the plaintiff sued to recover a quantity of land by rectification of certain survey awards, which he averred demarcated erroneously the boundary between his zemindary and the zemindaries of the defendants, it was held, on a consideration of the evidence, that his suit was rightly dismissed because he failed to prove the position or existence of a stream which he stated was the true boundary between the zemindaries. *Rajah Leelanund Singh* v. *Rajah Mohindro Narain Singh*, 13 S. W. R., P. C., 7.

Unless there be very good grounds for dissenting and differing from the reports made by the Deputy Collectors upon local investigations, the Courts even in India, and *à fortiori* the Courts in England, in dealing with boundary questions ought to give great weight to them and to be guided by them. *Ram Gopal Roy* v. *Gordon, Stuart, and Co.*, 17 S. W. R., C. R., 285.

The appellant having obtained a decree in 1854 declaring him to erect boundary pillars according to a certain khusrah,—*Held* that it was now a work of great difficulty to ascertain and define the boundaries, and that the Court in executing that decree was not precluded from taking into consideration other decrees between the same parties, not as contradicting or altering that khusrah, but as explaining and supporting the views taken by the Court of what the boundaries really were according to the khusrah. *Maharajah Rajendro Kishore Singh* v. *Hyabul Singh*, 17 S. W. R., C. R., 379.

Where boundaries are removed or destroyed and when new ones are to be fixed, or where a question arises where boundaries run, the case falls under Section 3 of Bombay Act XI of 1866; but where the question between the parties is whether there has been an encroachment by the defendant on the lands of the plaintiff the Civil Courts have jurisdiction. *Bápuji Balvant* v. *Raghunath Vithal*, 6 Bom. Rep., A. C. J., 72.

An award of the Collector under Act I of 1847 in respect of boundaries is not final, even though undisturbed on appeal; nor is he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields. *Ram Jewan Singh* v. *Radha Pershad Singh*, 16 S. W. R., C. R., 109.

In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zemindar, where a survey had taken place at a time when both mouzahs to which respectively the land was claimed as belonging were in his possession, and when neither of the leases were in existence,—*Held* that the suit involved simply a question of boundary, and what was to be ascertained was to which mouzah the land in dispute was found to belong at the time of the survey. *Ameeree Begum* v. *Gobind Pandery*, 15 S. W. R., C. R., 35.

In order to ascertain what land is actually leased it is necessary to look to the boundaries mentioned in the lease, and not to the estimated area. *Kaza Abdool Mannah* v. *Baroda Kant Banerjee*, 15 S. W. R., C. R., 394.

In a suit for possession where it was found that a rivulet had come in from a river and formed a disjunction between the disputed land and plaintiff's property, but that the rivulet was closed up and the river had returned to its proper channel, and on the surface of the disputed land there still remained marks of its having belonged to the plaintiff,—*Held* that the finding sufficiently identified the land in suit as the property of the plaintiff, within the meaning of the Full Bench Ruling (3 W. R., p. 61).

Held that as the last person found to have had land in occupation was the plaintiff, and as his possession had never been disturbed (the lands having ever since been submerged) there was a sufficient finding of possession to entitle plaintiff to a decree in confirmation of title. *Maharanee Indurjeet Kooer* v. *Mohunt Jumna Doss*, 14 S. W. R., C. R., 164.

33.—Survey Proceedings.

A co-proprietor of a joint undivided estate is bound by a survey award and compromise to which the other joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. *Huro Lall Roy* v. *Sooruj Narain Roy*, 3 W. R., 7.

A purchaser is bound by a survey award passed against the persons from whom he derived his title. *Allyat Chinaman* v. *Juggut Chunder Roy*, 5 W. R., 242.

A lessee under the Court of Wards is competent, under Section 9, Act VI of 1862 (B. C.), to make a general survey of the lands comprised in his lease. *R. Watson and Co.* v. *Bhoonya Koonwar Narain Singh*, W. R., 1864, Act X R., 105.

To make a survey demarcation effective it is not absolutely necessary that there should be any more special sanction by the Collector than a general acceptance of the survey proceedings as correct.

Hunooman Chobay v. *Bindhoo Toraba*, 10 W. R., 336.

The demarcation of a Survey Court cannot override the decree of a competent Court as to right and title of land. *Huro Nath Roy* v. *Anund Chunder Roy*, 1 W. R., 329.

An official opinion of the superintendent of survey regarding the trustworthiness of the survey proceedings is not legal evidence. The survey proceedings are not conclusive as to title. *Lulut Narain Singh* v. *Narain Singh*, 1 W. R., 333.

An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit. *Koylas Chunder Ghose* v. *Raj Chunder Banerjee*, 12 W. R., 180.

In a case for setting aside a survey award which declared the plaintiff and the opposite party entitled to certain chur lands to the extent they had respectively lost by diluvion, and the residue to be held jointly according to their shares,—*Held* that the opposite party had no right to sue for rents on the plea of joint possession, for he must first have fixed what lands are to be appropriated by him, and what by the intervenor separately, for the loss suffered by each party by diluvion; and after that how much, and what, of the remainder is entitled to be held jointly. *Tarinycant Lahoory* v. *Ranee Mundul and others*, 7 W. R., 203.

To constitute a survey award there must be a decision on a *bonâ-fide* contention between the parties after a proper investigation into the points of issue between them.

A plaintiff suing for confirmation of possession must first prove that he is in actual *bonâ-fide* possession of the land over which he wishes to have his title confirmed. *Nobo Kishen Roy and others* v. *Gobind Chunder Sein and others*, 6 W. R., 317.

Section 42 of (Bombay) Act I of 1865 (which prohibits an occupant from relinquishing his holding, unless he gives a written notice to the Collector on or before the 31st of March in each year) is not applicable only to the holders of land under a survey settlement, but by implication imposes on the revenue officers the obligation of giving the holder notice when an increased assessment is about to be demanded from him, within a reasonable time before the latest date on which he can exercise his right of relinquishing his lands. *Govind Vinâyak Gadre* v. *The Collector of Ratnâgiri*, 6 Bom. Rep., A. C. J., 101.

The lower Appellate Court was of opinion that, as plaintiffs alleged that the disputed lands were fraudulently caused to be demarcated with defendant's zemindaree at the time of the survey, and as plaintiffs were not parties to the survey proceedings, the present suit was barred by limitation under the decision in 10 W. R., 15. *Held* that in order to bring a suit within the purview of that decision it was not enough for plaintiffs to say that this fraud was committed against them by the saheb defendants, and that these defendants were still in possession of the lands as belonging to them and other neighbouring proprietors; but that it was necessary for them to show that they themselves were in possession of the disputed lands at the time when they granted the putnee to the saheb defendants, and that they made over that possession to those defendants at that time. *Gopal Kishen Sircar* v. *Ram Narain Koondro*, 17 S. W. R., C. R., 175.

34.—MEASUREMENT.

A proprietor of land need only show that he is in undoubted possession of the property to entitle him to ask the assistance of the Court to enable him to measure his land. *Raj Chunder Roy* v. *Kishen Chunder*, 4 W. R., Act X R., 16.

The abandonment to a grantee of all rights of measurement as against the ryots, with a view to resumption of lands within the talook, does not apply to a measurement of the talook itself as against the grantee, and does not amount to a restraint of the right of measurement under Act VI of 1862, (B. C.) *Kebul Kishen Doss* v. *Jaminee*, 5 W. R., Act X R., 47.

The Judge's dictum that even if proof of a double standard of measurement were shown, such a double standard could not be recognized by the Courts, is wrong in law. Different and double standards of weights and measurements do exist all over the country. In determining all such customs the existence or otherwise of the particular custom in the particular locality or thing which is the subject of dispute must be looked to. *Bhuggobutty Churn Mookerjee* v. *Panaoollah Moonshee*, 1 W. R., 224.

A zemindar is not entitled to measure the lands of a lakherajdar holding a rent-free tenure within the limits of his estate. *Ranglal Sahu* v. *Siali Dhar Das*, 3 B. L. R., Ap., 27; S. C., 11 W. R. 293.

A ryot having under the provisions of Act VI (B. C.) of 1862, deposited with the Collector a sum of money alleged to be due as rent, the zemindar refused to receive it on the ground that the rent due was less than the amount deposited.

Held that it was beyond the competency of the Collector to go into an enquiry as to the quantity of land held by the ryot and the circumstances under which he had been ejected. *Bacharam Paul* v. *Asghur Fakeer and others*, 10 W. R., 423.

Act VI of 1862 (B. C.) applies to cases where the amount which the ryot thinks due is deposited by him, and the landlord may either accept it or sue for whatever he himself may deem due to him for the same period for which the deposit is made; but not to suits for rent for the year preceding that for which the deposit is made. *Sheikh Mahomed Shuruoolah Chowdhry* v. *Musst. Rumya Bibee and others*, 7 W. R., 487.

Act VI of 1862 does not forbid the Court to advert or give effect to a tender not followed by a deposit or payment into Court of the money, nor does it alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears. *Bissonath Dey* v. *Hurro Pershad Chowdhry*, 2 W. R., Act X R., 88.

Any suit instituted under Act VI (B. C.) of 1862 may be considered as instituted under Act X of 1859, even though it be a suit for measurement of land; and an intervenor in such suit, who claims the right to receive the rent, is entitled to have his claim determined under the express terms of Section 77, Act X of 1859. *Jonaye Sirdar* v. *Dwarkanath Roy*, 12 W. R., 322.

In a suit to recover possession of land which plaintiff had purchased from the tenant defendant, and which (while in plaintiff's possession) the talookdar defendant, in collusion with the tenant defendant had caused to be sold by auction in exe-

cution of a decree obtained for arrears of rent, notwithstanding plaintiff had tendered the rent, and deposited it with the Collector,—

Held that the tender, followed by a deposit under Act VI (B. C.) of 1862, was legal and sufficient. *Wooma Churn Sett* v. *Hury Persad Misser*, 10 W. R., 101.

Where a person sues to have the assistance of the Collector to measure lands, of which he alleges himself to be the proprietor by purchase, he is not entitled to have such assistance if his title is disputed, and if he is found not to have been in possession or in the receipt of rents from the date of his purchase. *Durga Churan Mazumdar* v. *Mahomed Abbas Bhaya*, 6 B. L. R., 361, and 14 S. W. R., C. R., 399.

On an application to measure the lands of a particular estate, the Collector is not empowered by Act VI (B. C.) of 1862 to determine summarily the character of every holding upon that estate, but only to enquire how and by whom every portion of land therein is held, and what rent is payable in respect of such land. In the event of a Collector recording that particular tenants claimed to hold as mokurrureedar, a Civil Court would have jurisdiction to determine a title on which a cloud had been cast by his proceedings. *Wise, J. P.* v. *Lakhoo Khan*, 16 S. W. R., C. R., 50.

A party is not entitled to benefit from a deposit under Act VI (B. C.) of 1862, if it was paid in without a tender to and refusal by the opposite party. *Kristo Protibar* v. *Alladinee Dassee*, 15 S. W. R., C. R., 4.

The fact of a party's land having been measured under the provisions of the above section cannot take away his right to intervene under Section 77, Act X of 1859. *Wise, J. P.* v. *Bansee Saha*, 16 S. W. R., C. R., 51.

Where a measurement, under Act VI (B. C.) of 1862, was completed without any objections having been made to it by the ryots while in progress, it was held that it was not competent for the Judge in appeal to set aside the proceedings on objections made subsequently. *Goluck Kishore Acharjee* v. *Kesha Maja*, 15 S. W. R., C. R., 23.

The award of additional damages under Section 2, Act VI of 1862 (B. C.), is discretionary, and not imperative. Before awarding such damages the Court in the exercise of its discretion must look to the condition of the parties and the particular hardships inflicted on the landlord by the omission of the under-tenant to pay his rents. *Baboo Rambuddun Singh* v. *Ranee Sree Koonwar*, W. R., 1864, Act X R., 22.

Under Section 2 it is discretionary in the Judge to award damages. *Gopal Lall Thakoor* v. *Mahomed Kadir*, W. R., Act X R., 75; *Bolyechund Dutt* v. *Punchanun Chobay*, W. R., 1864, Act X R., 84.

Before awarding damages for arrears of rent under Section 2, Act VI of 1862 (B. C.), the Court should find whether, when the rent was demanded, it was withheld without just reason or not. *Mohanund Chowdhry* v. *H. A. Eglinton*, 1 W. R., 343.

Retrospective effect is not to be given to the penal provision of Section 2, Act VI of 1862 (B. C.). *Nobokanath Dey* v. *Rajah Boradakunth Roy Bahadoor*, 1 W. R., 100.

Damages are not awardable under Section 2, Act VI of 1862 (B. C.), in a suit for rent in which the plaintiff's allegations as to the rate of rent have been disbelieved and a decree given him at the rates admitted by the defendant. *J. Beckwith* v. *Moulvie Noorjumma*, 2 W. R., Act X R., 11.

In a suit for rent, where defendant claimed credit for a sum which he had deposited under the provisions of Section 4, Act VI (B. C.) of 1862, in the Deputy Collectorate of the subdivision within which plaintiff's mâl-cutcherry was situated, giving notice to plaintiff under Section 5,—*Held* that defendant was entitled to a set-off. *Grish Chundra Sen* v. *The Eastern Bengal Jute Manufacturing Company*, 10 W. R., 492.

Section 6, Act VI (B. C.) of 1862, refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under Section 5 may be brought, not to suits for rent at an enhanced rate after notice. *Sheikh Ahmed Hossein* v. *Sheikh Keramut*, 8 W. R., 354.

Under Section 10, Act VI of 1862 (B. C.), an appeal lies to the High Court in cases above Rs. 5,000 in value, relating to the measurement of land. Under Section 9 of the same Act a zemindar can measure all the lands of his zemindary whenever he pleases, unless he is restrained by any express engagements. *Khaja Abdool Gunnee* v. *Rajah Suth Churn Ghossal*, 2 W. R., Act X R., 86.

Under Section 9, Act VI of 1862 (B. C.), only a proprietor who is in receipt of the rents of an estate or tenure has a right to make a general survey and measurement of the land comprised in such estate or tenure. *J. P. Wise* v. *Ram Chundra Bysak and others*, 7 W. R., 415.

Held by the majority of the Court (Seton-Karr, J., *dubitante*) that a proprietor of an estate is entitled, under Section 9, Act VI of 1862 (B. C.), to measure the lands of any subordinate tenure within the limits of his estates, whatever the character or size of the tenure or the amount of rent paid in respect of it. *Baboo Run Bahadoor Singh* v. *Munuram Tewaree*, 8 W. R., 149.

There must be some express restriction before a zemindar can be precluded from the benefit given him by Section 9, Act VI of 1862 (B. C.), of measuring the lands in the possession of his ryots. *Ooma Churn Biswas* v. *Shibnath Bagchee and others*, 8 W. R., 14.

A Judge, on appeal, has power under Section 9, Act VI of 1862 (B. C.), to declare by what standard measurements are to be made. *J. B. Mackintosh* v. *Koylas Chunder Chatterjee*, W. R., 1864, Act X R., 59.

The Collector has no jurisdiction in an application by the zemindar, under Section 9, Act VI of 1862 (B. C.), for assistance to measure the holding of his ryot, to fix the standard of the pole with which the land is to be measured.

An appeal from the decision of a Deputy Collector in a suit under Section 9, Act VI (B. C.) of 1862, lies not to the Collector, but to the Zillah Judge. *J. Erskine and Co.* v. *Gholam Khezur*, 9 W. R., 520.

Plaintiff applied for measurement under Section 9 of Act VI of 1862 (B. C.), alleging that he held certain kamar lands of the zemindar under an ikrar from that person.

A putneedar with a putnee lease from the zemindar intervened and claimed the lands as part of his putnee. *Held*, reversing the decision of the Judge

on appeal from the Deputy Collector, that this was a case cognizable by the revenue and not the Civil Courts. *Haradhun Dutt and others* v. *Hadjee Mahomed and others*, 1 Ind. Jur., N. S. 301; 6 W. R., Act X R., 14.

Section 9, Act VI of 1862, gives no authority to proprietors to survey or measure lakheraj land. *Golam Khejur and another* v. *Messrs. Erskine and Co.*, 11 W. R., 445.

The purchaser of a subordinate tenure who did not enter his name in the talookdar's sherista, and whose tenure therefore was not wholly disconnected from the estate to which it had been joined, is liable to have his lands measured under Section 9, Act VI of 1862 (B. C.). *J. Tweedie* v. *Ram Narain Doss*, 9 W. R., 151.

In an application for assistance to measure the land of a ryot, under Section 9, Act VI of 1862 (B. C.), the Collector has no power under Section 11 to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings, when any action is taken upon the result of such measurement. *Ramanath Rakhit* v. *Muchiram Paramanik*, 3 B. L. R., Ap., 63; S. C., 11 W. R., 510.

Section 9, Act VI of 1862 (B. C.), gives a proprietor the right of making a general survey or measurement of lands comprised within his estate or tenure, not of lakheraj lands held under an independent title, for these, until resumed and assessed, form a distinct and separate estate. *Prosunnomoyee Debia* v. *Chundernath Chowdhry and others*, 10 W. R., 361; 2 B. L. R., S. N., 5.

Under Section 9, Act VI of 1862 (B. C.), the proprietor who can claim to measure must be a proprietor in possession, and not a proprietor out of possession, although he may be able to prove his title. The only question which the Collector has to try under that section is, which person is in possession, and his decision is final only as to possession and not as to title. The unsuccessful party has a right to sue in the Civil Court for a declaration of his right. *Kalee Dass Nundee and others* v. *Ramguttee Dutt and others*, 6 W. R., Act X R., 10.

A single suit simply to measure lands may be brought under Section 9, Act VI of 1862 (B. C.), against several defendants, although their rights and tenures are different. *Shushee Bhoosun Banerjee and others* v. *Nubocoomar Chatterjee*, 8 W. R., 94.

Per Kemp, Phear, Mitter, and Hobhouse, JJ.—When the right of a proprietor to make, under Section 9, Act VI of 1862 (B. C.), a measurement of a tenure is disputed solely on the ground that the pole with which the measurement is attempted to be made is not the standard pole of measurement of the pergunnah, as provided in Section 11, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to enquire into and decide as to the true length of the standard pole.

Couch, C. J., and Bayley, and Jackson, JJ., *contra*.

Per Bayley, Kemp, Phear, Mitter, and Hobhouse, JJ.—If the Collector has jurisdiction his order is appealable. *Srimati Manmohini Chowdrain* v. *Premchaund Roy*, 6 B. L. R., 1; 14 S. W. R., F. B., 5.

An appeal from an order of a lower Appellate Court on an application under Section 9, Act VI (B. C.) of 1862, not being otherwise provided for by the Court Fees' Act, may be admitted on a 6-annas stamp. *Puriav Bhuggut* v. *Donzelle, W. M.*, 14 S. W. R., C. R., 21.

Held (upholding the judgment of Glover, J., in 14 W. R., p. 121) that a person who alleges himself to be the proprietor of an estate, but who is not in receipt of the rent, is not entitled, under Section 9, Act VI (B. C.) of 1862, to ask for the assistance of the Collector in measuring his lands. That section is intended to provide for cases, when a proprietor, or other person in possession of an estate, is opposed in making measurement by the occupants of the land, and not for cases where the title of the person claiming the right to measure is a matter in contest. *Doorga Churn Doss* v. *Mahomed Abbas Bhooyan*, 14 S. W. R., C. R., 399.

In a suit under Section 9, Act VI (B. C.) of 1862, for aid to measure his ryots' land, plaintiff claimed the proprietorship, as purchaser from the owner, while defendants denied the proprietary right of either plaintiff or his vendor. The Deputy-Collector finding that plaintiff's vendor had been proprietor, and had received rent up to the date of sale, gave plaintiff a decree, which was reversed by the Judge in appeal as made without jurisdiction. *Held* (Mitter, J., *dissentiente*) that the Judge was right, and that it was not enough for plaintiff to be able to prove his title, he having been bound to show that he was a proprietor in possession in some way or other.

Held (Mitter, J., *dubitante*) that as the Deputy-Collector's decision proceeded on a ground common to all the defendants, the Judge had jurisdiction under Section 337 of the Code of Civil Procedure to reverse the decree on the appeal of only one of the defendants. *Doorga Chunder Dass* v. *Mahomed Abbas Bhooyan*, 14 S. W. R., C. R., p. 121.

A Collector's jurisdiction to allow a measurement where the proprietary right to the land is contested is not barred by Sections 9 and 10, Act VI of 1862 (B. C.), if he is satisfied that the party seeking his assistance to measure is in receipt of the rents. If the Collector disallows the measurement on the ground that the applicant is not in receipt of the rents, the party aggrieved may appeal to the Civil Court. *J. Smith* v. *Baboo Nundun Lall*, 6 W. R., Act X R., 13.

Sections 9 and 10 of Act VI do not embrace the case of a neighbouring zemindar alleging to be wronged by the act of the Collector or the measuring zemindar. His remedy is in a separate civil action. *Baboo Permessaree Pershad Narain Singh* v. *Sheikh Nubee Buksh*, 2 W. R., Act X R., 101.

On application to the Collector for an order for the measurement of certain lands under Section 10, Act VI of 1862 (B. C.), a third party intervened, but the Collector passed an order in favour of the applicant, which the Judge reversed in appeal, on the ground that the law gave the Collector no jurisdiction to determine the right to make a measurement where the proprietary right to the land was contested. In special appeal the High Court simply reversed the Judge's order withour any direction for the trial of the appeal by him *de novo*. On review of judgment the order of the High Court was amended, and the case remanded to the Judge to determine, according to Sections 9 and 10 of the

above Act, which party was in receipt of the rents, and under which of these sections the application for measurement had been made, and to decide accordingly. *Baboo Nundun Lall* v. *J. S. Smith*, 7 W. R., 188.

Semble,—If the application had been under Section 10 of the Act the Collector would have had jurisdiction to declare the length of the standard pole. *Braja Kishor Sen* v. *Kasim Ali*, 3 B. L. R., Ap., 78; S. C., 11 W. R., 562.

In a suit for rent on the basis of a jummabundee made under the provisions of Section 10, Act VI (B. C.) of 1862, it was held, with reference to the terms of Section 20, read with Section 19, that the duty of ordering the preparation of the jummabundee and adjudicating and deciding the suit belonged to the subdivisional Revenue Court. When a subdivision has been placed under the jurisdiction of a Deputy Collector, all proceedings under Section 10 must be taken in the Revenue Office of the subdivision. *Nesoo Sirvar* v. *C. J. Phippe*, 10 W. R., 454.

Section 10, Act VI of 1862 (B. C.), merely empowers revenue officers to decide what rate of rent the tenant of a particular parcel of land has been paying, and does not empower them to declare that rent at a certain rate shall be paid simply because rent at that rate has been paid by the tenants of neighbouring lands. *Amut Manjhee* v. *Joy Chunder Chowdhry*, 12 W. R., 371.

Section 10, Act VI of 1862 (B. C.), contemplates possession by the receipts of rents for those lands of which the measurement is required. *Pareejan Khatoon and others* v. *Bycuntchunder Chuckerbutty and others*, 7 W. R., 96.

Section 10, Act VI of 1862 (B. C.), contemplates the case of a proprietor of an estate who, by reason of inability to ascertain who are the persons liable to pay rent to him, is unable to measure his estate; but not that of a putneedar who knows who is liable to pay rent to him, and whose attempt to get the Collector's assistance in a minute measurement of the lands held by each of the ryots is simply with a view to harass and oppress them. *Dwarkanath Chuckerbutty and others* v. *Bhowanee Kishore Chuckerbutty and others*, 8 W. R., 12.

Where ryots combine to withhold from the landlord information requisite to enable him to collect his due rents, one suit may be brought against a number of them, under Section 10, Act VI of 1862 (B. C.), for measurement and ascertainment by the Collector of the details of the tenures of each ryot. *R. Solano* v. *Soobron Roy and others*, 6 W. R., Act X R., 4.

Where the progress of a measurement under Section 10, Act VI (B. C.) of 1862 is interfered with by a third party claiming the land, the proper course for the Collector is to hold his hand, leaving it to the parties to seek their remedy in the Civil Court. *J. P. Wise* v. *Bansee Shaha*, 16 S. W. R., C. R., 51.

Proceedings under Section 10, Act VI (B. C.) of 1862, cannot be taken on the application of one shareholder in a joint undivided estate; the word "proprietor" implying the sole proprietor or whole body of proprietors of the land for the measurement of which application is made. *Moolook Chaund Mundle* v. *Modhoosoodun Bachusputty*, 16 S. W. R., C. R., 126.

A party applying under Section 10, Act VI (B.C.) of 1862, is entitled to measure only such lands as are comprised in his estate, and for which he is entitled to receive rent; he is not entitled under cover of that section to measure lands not comprised in the estate which he has purchased. *Khugendronath Mullick* v. *Kantee Ram Paul*, 14 S. W. R., C. R., 318.

A Collector proceeding under Section 10, Act VI (B.C.) of 1862, to measure lands in respect of which rent has not hitherto been paid, is not entitled to assess or ascertain the rents which ought to be paid, or which are fair and reasonable. *Sree Misser* v. *Crowdy*, 15 S. W. R., C. R., 243.

An applicant under Section 10, Act VI (B. C.) of 1862, must first prove what steps he has taken to obtain the knowledge of the tenures in his estate, and that he is unable to measure because he is unable to ascertain them. If his averments are objected to, and the Collector proceeds without enquiry, the proceedings are invalid and without jurisdiction.

An applicant under the above section must be the proprietor of the estate, and not a shareholder only in the proprietary body. *Mahomed Bahadoor Mojoundur* v. *Rajah Raj Kissen Sing*, 15 S. W. R., C. R., 522.

An Ameen deputed to make a measurement under the provisions of Section 10, Act VI (B. C.) of 1862, is bound to record the state of things as actually existing, and has no business to record what he thinks ought to be the rates. If, however, the Ameen, or the collector superintending his proceedings, does any act not in conformity with this section, the remedy for any party dissatisfied is to appeal to the Civil Court within the time and in the manner prescribed by Act X of 1859. *Bala Thakoor* v. *Meghlum Singh*, 14 S. W. R., C. R., 269.

Under Section 11 of Act VI of 1862 (B. C.), the standard pole of the pergunnah is the standard to be used in the measurement of lands, and ought to be assessed either under kubuleut or otherwise. *J. P. Mackintosh* v. *R. Watson and Co.*, 3 W. R., Act X R., 123.

Section 11, Act VI of 1862 (B. C.), does not preclude the use of the standard measuring-rod of a tuppah. *Surbanund Pandey* v. *Ruchia Pandey*, 4 W. R., Act X R., 32.

The decision of a Collector, under Section 11, Act VI of 1862 (B. C.), is not appealable. The Collector is the depository of the standard pole of each pergunnah; and it is exclusively within his province to declare what the standard of such pole is. *Tarucknath Mookerjee* v. *Meydee Biswas*, 5 W. R., Act X R., 11.

Under Section 13, Act VI of 1862 (B. C.), the determination of a Deputy Collector admitting the rehearing of a case decided *ex-parte* is final, and no appeal lies to the Judge. *Kunuck Monee Debia* v. *Gunga Ram Doss*, 3 W. R., Act X R., 135.

The order of a Deputy Collector admitting a revival under Section 58, Act X of 1859, is final under Section 13, Act VI of 1862 (B. C.). The Collector has no jurisdiction to hear an appeal from and reverse that order; nor the Zillah Judge to reverse the order of the Collector. *Kistonath Biswas* v. *Brojender Nauth Bhadoory*, W. R., 1864, Act X R., 15.

In this case the Deputy Collector refused plaintiff's

application to set aside a rent decree as passed against him upon a confession of judgment fraudulently filed by other parties. The value of the suit being beneath R's. 100, he ought to have appealed to the Collector under Section 14, Act VI of 1862, (B. C.). Having failed to do so, he was held to have no right to bring a suit for the purpose in the Civil Court. *Raj Kishen Mookerjee* v. *Madhoo Soodun Mundle*, 17 S. W. R., C. R., 413.

Under Section 19, Act VI of 1862 (B. C.), one Deputy Collector may hear an appeal (if referred to him by the Collector) from the order of another Deputy Collector. *Josin Kagzee* v. *Kylashnath Haldar*, 2 W. R., Act X R., 10.

A Deputy Collector cannot, under Section 19, Act VI of 1862 (B. C.), hear appeals upon reference by a Collector. *Kally Narain Roy Chowdhry* v. *Sadoorunissa Beebee*, 6 W. R., Act X R., 65.

The Deputy Collector has no power under Section 19 of the Bengal Act VI of 1862 to hear an appeal from another Deputy Collector.

Semble,—The object of this section was to give to Deputy Collectors, specially entrusted with those particular powers, all the powers which were conferred on Deputy Collectors upon reference by the Collector, or Deputy Collectors placed in charge of subdivisions without such reference. *Kally Narain Roy Chowdhry* v. *Mussamut Sadoorunissa Khatoon*, 2 Ind. Jur., N. S., 3.

Section 20, Act VI (B. C.) of 1862, refers to a suit (not to execution proceedings) and to a suit as yet untried. It does not empower a Collector to withdraw a suit already under trial before a Deputy Collector for the purpose of being tried elsewhere. *Annund Mohun Surmah* v. *Grija Kant Lahoorey*, 13 S. W. R., C. R., 222.

The Collector's jurisdiction obtains where no subdivisional officer exists, the terms of Section 20, Act VI of 1862 being inapplicable where there are no presiding officers. *Rakhul Chunder Roy* v. *Guggun Chunder Dutt*, 15 S. W. R., C. R., 498.

35.—Sale Laws.

(*a*) *Jurisdiction and Procedure of the Courts.*

Where a gatkuli tenant omitted to pay the assessment on his gatkuli land, and the defendant obtained possession of it, the lower Court decided that the gatkuli tenant, having omitted to pay his assessment, had lost all title to his land.

On special appeal the High Court remanded the case for the lower Court to enquire whether the Government had taken action in the matter by putting the defendant in possession; as if not he would be merely a trespasser, and the gatkuli tenant would be entitled to recover. *Malhari Valad Rughoji* v. *Inkaram Valad Darkoji*, 6 Bom. Rep., A. C. J., 86.

A suit for rent having been brought in the Beerbhoom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdiction the property lay. The tenure was sold by the Deputy Collector of the latter district and purchased by the decree-holder. Appeals were made to the Collector and the Commissioner by the judgment-debtor, and were rejected by both officers. The judgment-debtor then brought a suit for possession in the Civil Court, and obtained a decree reversing the sale on the ground that the decree for rent had been made by a Collector who had not jurisdiction.

Held, that after all that had passed, it was too late to raise the question of jurisdiction. *Ooma Soonduree Dossee* v. *Bipen Beharee Roy*, 13 S. W. R., C. R., 292.

Application having been made to a Deputy-Collector to execute a decree for rent, the judgment-debtor in order to save his tenure from sale brought the money into Court, and it was taken by the decree-holder. This was done while the question was being litigated in the Civil Courts whether the decree was not barred by limitation. The result was that the decree was declared barred.

Held that the judgment-debtor's only remedy was by a suit in the Civil Court to get back the money. *Ghannoo Sing* v. *Ram Gobind Sing*, 13 S. W. R., C. R., 231.

If the purchase-money of a putnee is in deposit in the Collectorate, and the zemindar, judgment-debtor, fails to assist the judgment-creditor in recovering his dues, he is liable for interest in the entire sum. *Preolall Gossain* v. *Gyan Turungi-nee Dossia*, 13 S. W. R., C. R., 161.

A sale in the Revenue Court upon a decree for rent obtained at the instance of the izaradar and *locum tenens* not of the sale owner or the whole body of owners, but of the owner of a fractional share of the estate, being according to Act X of 1859, Sections 108 to 110, a sale not of the tenure but of the rights and interests of the holder of it, as in an ordinary Civil Court execution, cannot prevail against a prior sale in execution of a Civil Court decree.

Quære,—Whether a sale in the Revenue Court which passed the whole tenure can prevail against a prior sale by the Civil Court. *Koolada Pershad Misree* v. *Goureechund Misree*, 17 S. W. R., C. R., 352.

Where a tenure is duly sold for arrears of rent under Act X of 1859 and Act VIII (B. C.) of 1865, the absence of a shareholder's name from the proceedings does not as a matter of law invalidate the sale as against him. *Doorbijoy Mahtoon* v. *Prithee Narain Singh*, 14 S. W. R., C. R., 30.

A sale having been effected by order of a Deputy-Collector, an appeal was made to the Collector, who set aside the sale. The Commissioner, however, considering that the Collector had no jurisdiction, and that no injury had been made out, reversed the order of the Collector. *Held* that the sale did not become confirmed or otherwise final and conclusive before the date of the Commissioner's order. *Prannath Roy* v. *Troyluckonauth Roy*, 14 S. W. R., C. R., 284.

A landlord who purchased a tenure which has been sold in satisfaction of his own decree for rent, having objected to the attempted possession of a mortgagee who was executing a decree for foreclosure, a suit was framed under Section 239, Code of Civil Procedure, which having come up in appeal to the High Court was remanded for the purpose of determining whether the lease on which the lands had been held contained any stipulation reserving a right of sale for arrears of rent. It having been found that there was no such reservation, the tenure was held to have been sold subject to incumbrances, and the purchaser to have been bound

by the decree of foreclosure passed against the former holder. *Mohesh Chunder Banerjee* v. *Chunder Monee Dabee*, 15 S. W. R., C. R., 237.

The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of rent. *Nugendro Chunder Ghose* v. *Musruff Bibee*, 15 S. W. R., C. R., 17.

Appellant brought a suit under Act X of 1859, for rent due by a deceased person against his widow as widow and guardian of her infant son, but obtained a decree against the widow only as sole heiress and representative, on the ground that the son having been adopted into another family was not the heir of his father. Difficulties having been interposed in the way of executing that decree, he brought a suit in the Civil Court and obtained a decree, affirmed by the High Court, the result of which was to affirm that the son was the heir of his natural father. In execution of the Collector's decree the estate of the deceased was sold under Act XI of 1859, the certificate of sale making a distinct reference to the Civil Court's decree. *Held* that the estate of the deceased was sold in execution for his debts, and that the interests of his widow, the registered proprietor and ostensible owner of the estate, as well as of his son, if he had any interest, was bound by that decree; that the decree obtained by the appellant in the Civil Court was a mere decree *inter partes* and not a decree *in rem*, and that as between appellant and respondent (who had obtained a decree in the Civil Court against the deceased in his lifetime, but now only sought to enforce it against the widow and the infant son, and to impeach the sale in execution of appellant's decree), the appellant was entitled to and could not be deprived of the benefit which had resulted to him from his greater diligence in enforcing his demand. *The General Manager of the Raj Durbungah under the Court of Wards* v. *Maharajah Coomer Ramaput Singh*, 17 S. W. R., C. R., 459.

The sale by a Collector of a whole talook in one lot for arrears of revenue, without specific authority previously conferred by the Board of Revenue, was held to be an act unauthorized by the general rules and principles of the Regulations, and not rendered valid by the subsequent authorized confirmation of it by the Board, and by the appropriation of the surplus proceeds of the money by the defaulting proprietor. The proprietor's acquiescence in a sale made, as he believed, by the authority of the Board of Revenue did not give legal efficacy to a sale altogether void for the want of such authority, or bar his claim to annul the sale on that ground.

The Courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate, assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate. The Privy Council, however, saw no ground for such an assumption, and directed that an account should be taken of the principal and interest due to the purchaser in respect of the purchase-money paid by him, and also of the net profits made by him out of the estate during his occupation; and that on payment to him of whatever may appear due to him on taking such account, possession of the talook should be delivered to the proprietor.

The Privy Council further, acquitting the purchaser of all blame in the transaction, reversed so much of the decrees of the Courts below as condemned him in costs, and ordered each party to bear his own costs in all the Courts. *Maharajah Mitterjeet Singh Bahadoor* v. *The Heirs of the late Ranee, widow of the late Rajah Juswant Singh, deceased*, 6 W. R., P. C., 15.

The decree of a Court reversing a putnee sale on the ground of non-service of due legal notice should make allusion to the return of the purchase-money, and also decide whether the purchaser is entitled to obtain further damages and costs from the zemindar who had caused the sale. *Sheikh Abdoollah* v. *Oomed Ali and others*, 6 W. R., 321.

The sale of an estate in execution of a decree under Regulation XX of 1795 is not impeachable on the ground that the Court, in ordering the sale, dealt directly with the Collector of the Zillah, instead of with the Board of Revenue, the principal object of that Regulation having been the security of the public revenue. *Rajah Mohesh Narain Singh* v. *Kishnamund Misser*, 5 W. R., P. C., 7.

The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain jumma sold in execution of a Small Cause Court decree. Subsequently the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*Held* that when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. *Samiraddi Khalifa* v. *Haris Chandra*, 3 B. L. R., A. C., 49.

Regulation XX of 1795 directed that when any Court of Civil Judicature should have occasion to sell lands in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable dispatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the Regulation; but no sale was then affected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party, upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders.

Held that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the properties to be sold or the sums to be recovered were different: and the principal

object of the Regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it.

Several years after the purchase by the defendant of immoveable property at a sale in execution of a decree, the judgment-debtor sued this purchaser for the lands, on the ground, amongst others, that the notices required by Regulation XX of 1795, Section 12, had not been affixed previous to the sale. *Held* that the *onus* of proving the default in affixing the notices lay upon the plaintiff, the judgment-debtor. Three attempts to sell land taken in execution under a decree had been rendered abortive by the acts of the judgment-debtor, and a delay of seven years occasioned, during which by his conduct he defeated the execution of the decree. When the property was put up for sale for the fourth time, the Collector rejected the two highest bids, on the ground that neither of the bidders could produce a mookhtearnamah from the persons for whom respectively they professed to act as agents, nor produce the required deposit, and he declared the third highest bidder the purchaser of the land. *Held* that under the circumstances the conduct of the Collector was justifiable, and the sale valid. *Rajah Mohes Narain Singh* v. *Kishnanund Misser and others*, Marsh., 592.

Where a tenure was brought to sale by a landlord in execution of a decree by a Revenue Court, and purchased by him, though no arrears of rent were due, the lower Civil Courts were held to have been justified in concluding that the sale was fraudulent, and in setting it aside as illegal. *Brojendro Coomar Chowdry* v. *Ram Coomar Holdar*, 13 S. W. R., C. R., 32.

Where the shares of a zemindary hypothecated by the lessee are to be sold to recover arrears of rent due to the Court of Wards, no attachment is necessary, and the Collector has no power to attach the property previous to sale. *Fogessur Sahoy* v. *Gopal Lall*, 13 S. W. R., C. R., 173.

(*b*) *Sale of Waste Lands.*

The Court cannot extend the period of thirty days allowed by Section 5, Act XXIII of 1863, for preferring a suit to contest an award by the Board of Revenue.

The filing of a vakalutnamah is not an institution of such a suit. *Taranath Dutt* v. *The Collector of Sylhet*, 5 W. R., Waste Land Court Ref., 1.

In a suit under Section 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objection to the sale or other disposition of such land, the plaint must be on a stamp of Rs. 100. *Greesh Chundra Roy and others* v. *The Collector of Sylhet on the part of Government*, 7 W. R., 349.

A purchaser of land sold as waste land under Act XXIII of 1863 cannot be compelled to grant a pottah to a person alleging himself to have been in occupation of the land before the sale. If the claimant has omitted to come in due time to stay the sale, and the land has actually been sold, his only remedy is by a suit under Section 18 for compensation, making the Collector a defendant. *Magun Pollan* v. *Lieutenant-Colonel E. Money*, 7 W. R., 474.

(*c*) *Sales for Arrears of Revenue.*

A purchaser at an auction sale for arrears of revenue is to be bound not by what is represented to him by private parties (*i.e.*, the serishtadar and other officers, as in this case), but by the conditions which, previous to the sale, are published by a notification in the official gazette. *Pirthee Ram Chowdry Roy Bahadoor* v. *The Collector of Goalparah*, 17 S. W. R., C. R., 531.

A purchase by a managing member of a joint Hindu family, in his own name, at a revenue sale held under Act I of 1845, is not affected by Section 21 of the Act. A suit by one of the members for recovery of possession of his share of the property purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and therefore not affected by Section 21, Act I of 1845. *Tundan Singh* v. *Pukh Narayan Singh*, 5 B. L. R., 546; 13 S. W. R., C. R., 347.

The object of Section 5, Regulation XLIV of 1793, taken together with Section 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue. It only empowers the purchaser at such sale to avoid the subsisting engagements as to rent, and to enhance the rent to that amount at which, according to the established uses and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed.

Quære,—Whether such a power is given only to the purchaser or to him and his heirs, or whether it is a power attaching to the zemindary and passing to subsequent purchasers. *Ranee Surnomoyee* v. *Maharajah Suttees Chunder Roy Bahadoor*, 2 W. R. P. C., 14.

By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser. *Dol Gobindmonee Debia* v. *Sheikh Imdad Ali*, 5 W. R., 170.

Suit brought in 1821 to annul the sale of a zemindary in Allahabad which took place in 1802 for arrears of revenue. The Privy Council concurred in the conclusion come to by the Mofussil and Sudder Commissions constituted by Regulation I of 1821, that the sale ought, notwithstanding the great lapse of time, to be set aside; but, considering the *bonâ-fide* character of the sale, awarded compensation to the purchaser. *Deep Narain Singh* v. *Lall Chutterput Singh*, 6 W. R., P. C., 27.

Where, by an old pottah, lands forming part of a zemindary had been leased at a specified rent, but there were no words in the pottah importing the hereditary and istemraree character of the tenure,—*Held* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemraree character might be legally presumed.

The zemindary was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held* that they had no

right to enhance. The rights of the purchaser were defined by Sections 30-33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd Sections, was again repealed by Act I of 1845. Neither of the two last-mentioned Statutes contains any saving of rights acquired under the Statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure.

Semble,—Section 5, Regulation XLIV of 1793, is now of no force for any purpose but that of declaring the general principles upon which all the subsequent legislation has proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the Decennial Settlement, the only right which the zemindar could exercise over it was that conferred by Section 51 of Regulation VIII of 1793. *Rajah Satya Sarun Ghosal* v. *Mohes Chunder Mitter*, 2 B. L. R., P. C., 23; 11 W. R., P. C., 10.

Subordinate under-tenures not created in good faith are not protected when the tenure itself is sold for arrears of revenue. *Doorga Churn Kur Sircar* v. *Anundmoyee Debia*, 3 W. R., 127.

A sale of a tenure under Act VIII of 1835 for arrears of current revenue conveys the whole tenure free from all encumbrances. *Dwarkanath Doss* v. *Manick Chunder Doss*, 3 W. R., 197.

By Regulations XIV of 1793 and VII of 1799 the Governor-General in Council may order a sale for arrears of a monthly instalment of revenue before the close of the year; but in order to warrant that act there must be an arrear of a previous year or of a monthly instalment. *Kirt Chunder Roy* v. *The Government*, 5 W. R., P. C., 41.

An estate having been sold for arrears of revenue under Regulation XI of 1822, it was purchased by Government, and the Government, as landlord, raised the rents throughout the property. *Held* that the revenue sale cancelled all former arrangements entered into intermediately by the former proprietors, and that the fresh settlement made by Government with the present proprietors will not restore former arrangements and rates because they happen to be the heirs of the former proprietors. *Gungamonee* v. *Mussamut Luteefoonissa Chowdhrain and others*, 7 W. R., 196.

At a sale for default of payment of Government revenue the Collector is bound to sell to the highest bidder, even though (as in this case) that bidder be the husband of the person in arrear. *Cornell* v. *Mussamut Oodoy Tara Chowdhrain and others*, 8 W. R., 372.

The sale of an estate for arrears of revenue where no such arrears exist is null and void, even though it is regularly conducted, and the purchase is made *bonâ fide*. *Sreemunt Lall Ghose* v. *Shama Soondery Dossee*, 12 W. R., 276.

Semble,—A tuppa right is annihilated by a sale held under Act VIII of 1835, and Clause 7, Section 15, Regulation VII of 1799. *Mussamut Zeenut Bebee* v. *Mussamut Rahatoonissa and another*, 7 W. R., 243.

In a suit to recover possession by the ostensible purchaser of an estate sold for arrears of revenue under Act I of 1845, where it was found that plaintiff had stood by ever since his purchase and had for 11 years allowed defendants to remain in possession and enjoy the usufruct as proprietors,—*Held* that the burden of proof was rightly thrown on the plaintiff. *Shaikh Johur Ali* v. *Brindabun Chunder*, 14 S. W. R., C. R., 10.

(*d*) *Sales for Arrears of Rent.*

The surplus proceeds of a sale made for default of payment of putnee rent, though under attachment by a Civil Court in the hands of the Collector, continues to be the property of the putneedar until ordered to be paid away by an order from such Court. *Saefoollah Khan* v. *Luchmeeput Sing Doogur*, 13 S. W. R., C. R., 58.

According to Regulation VIII of 1819, the sale of a putnee tenure for arrears of rent must take place on a day in the Bengalee month of Jeyt. *Beeharam Mookerjee* v. *Issur Chunder Mookerjee*, W. R., 1864, 4.

The purchaser of the rights and interests of a putneedar in a putnee talook sold for arrears of rent purchases the talook subject to whatever claims the zemindar has against it for rent, and has no claim against the surety of the putneedar by reason of the name of the latter appearing as the owner of the talook in the zemindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account. *Obhoy Chunder Bundopadhya* v. *Nilambur Mookerjee*, W. R., 1864, 73.

A sale of a tenure for its own arrears passes the tenure free from all incumbrances. *Sheikh Allee Buksh* v. *Rubjee Mundul*, 4 W. R., Act X R, 32.

When a putnee is sold for default on the part of the putneedar in paying his rents, a dur-putneedar who has paid his rent to the putneedar for the the period to which the default relates may sue for damages, although himself a defaulter for a later period. *Madhub Anund Moitro* v. *Mussamut Joy Koomaree Bibee*, 5 W. R., 201.

A *bonâ-fide* purchaser at a sale for arrears of rent has a preferential title over a purchaser at a prior sale in execution of a decree of the Civil Court; but damages may be recovered by the latter from the zemindar and the defaulting tenant on proof of collusion and fraud. *Gopal Mundul* v. *Soobhudra Boistobee*, 5 W. R., 205.

Suit to set aside a sale of a moiety of a putnee tenure by a widow, and a subsequent and alleged collusive sale for arrears of rent under Regulation VIII of 1819. *Held* that if the defendant was in possession under a title from the widow, his subsequent purchase at the auction-sale, six years before the death of the widow, did not give him a new title against those claiming through the widow, especially when the plaintiff alleged that the defendant had allowed the putnee to fall into arrears, and then purchased it himself. *Woomesh Chunder Mookerjee* v. *Bissessuree Debee and others*, 6 W. R., 8.

The purchaser of a tenure sold for arrears of rent acquires the tenure free from all encumbrances

and under-tenures created by the defaulter. *Jan Ali* v. *Sufeena Bibee*, 6 W. R., Act X R., 36.

A tenure purchased in execution of a decree for current rent cannot be re-sold for the arrears of former years, which must be recovered from the former proprietor. *Mussamut Luteefun and another* v. *Sheikh Mean Jan*, 6 W. R., 112.

A sale of an under-tenure for arrears of rent (not affected by Act VIII of 1865, B. C.) does not extinguish encumbrances created by the defaulter before the sale, unless there is a written stipulation providing for the sale of the tenure for its arrears. *Mohima Chundra Day* v. *Gooroo Doss Sein*, 7 W. R., 285.

Where a decree was for arrears of rent due upon a tenure, it was held that, though the sale proceedings specified that the rights and interests of certain parties were sold, yet the tenure itself was sold, and all the co-sharers were jointly liable. *Alimooddeen* v. *Sabir Khan and others*, 8 W. R., 60.

A ryot's tenure having been sold for arrears of rent under an Act X decree, the purchaser is entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the ryot have been occupying huts on the land for more than twenty years. The circumstance that the purchaser happens to be the superior landlord does not diminish his right. *Teelottuma Debee and others* v. *Brojo Lall Shamunt and others*, 8 W. R., 478.

Where a tenure is sold in execution of a decree for arrears of rent, and a certificate of sale is granted by the Collector, it must be presumed that all the ordinary proceedings relating to the payment of the purchase-money have been fulfilled. *Fyazooddeen Bhooya* v. *Shumsoonnissa Bibee*, 12 W. R., 508.

No sales for arrears of rent, not even sales under Regulation VIII of 1819, have *ipso facto* the effect of cancelling tenures created by defaulting owners; they merely give to a purchaser power to cancel such tenures if he thinks proper. *Modhoosoodun Koondoo* v. *Ramdhone Gangooly*, 12 W. R., 383.

A purchaser under a sale for arrears of rent is not entitled to have the purchase set aside on the ground merely of an irregularity in sticking up the preliminary advertisement, unless he can show that he has been prejudiced thereby. *Joynub Bebee* v. *Mirza Ahmed Jan*, Marsh., 31.

Where a tenure inherited by a Hindu widow from her deceased husband is sold for arrears of rent under Act VIII of 1835, the purchaser does not acquire merely her personal rights, nor do the rights acquired by him cease at her death. *Chowdry Zahooral Huq* v. *Gooroo Churn Roy*, 15 S. W. R., C. R., 329.

(*e*) *Irregularities.*

Where a tenant commits default, and purchases the tenure when it is sold in execution of a decree against himself, he cannot claim the benefit of the law relating to auction-purchasers under Section 105 of Act X of 1859 and Section 11, Regulation VIII of 1819, and ask the Court to set aside the title of a third party which had been created by himself. Where he himself has sold to a third party he is bound to recognize that party's purchase, and also all *bonâ-fide* leases under that party.

Where the lease by which a howala tenure is created does not expressly reserve it for sale for non-payment of rent, the rights of an auction-purchaser cannot arise under Regulation VIII of 1819. *Meheroonissa Bibee* v. *Hur Churn Bose*, 10 W. R., 220.

Not merely recorded shareholders, but all actua defaulters (such as joint putneedars), are prohibited from being purchasers of putnee. *Gouree Komal Bhuttacharjee* v. *Raj Kishen Nath*, 5 W. R., 106.

Act XIX of 1843 gives the preference, generally speaking, to a subsequent kobala which is registered over a prior one unregistered. To avoid its operation a plaintiff must show that the vendor not only sold and parted with his rights in the property, but actually made over possession to him.

If, however, the second sale was illusory, proving fraud on the part of the vendor, it would not stand in the way of plaintiff's right. *Mussamut Butoolun* v. *Mussamut Ozeerun*, 8 W. R., 300.

A putneedar who had obtained two decrees, one for back and current rents, and another for back rent, first sold the tenure in execution of the decree for back rent, and within three days after its sale caused it to be sold again in execution of the decree for back and current rents. *Held* that as the case of the purchaser at the first sale was not that of a defaulting tenant, the arrears not having accrued during his incumbency, he was not barred from instituting a suit in the Civil Court to set aside the second sale. *Sowdaminee Dossee* v. *Bholanath Shaha*, 9 W. R., 363.

In a suit to set aside a sale in execution of a decree for arrears of rent due up to Aghran, 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds :—

He was not a registered tenant at the time of the sale, but as a sezawal was legally in possession.

The plaintiff never tendered the arrears for which the sale was made.

Under Act VIII of 1835 no separate attachment of a mehal or notification of sale in the mofussil is necessary in order to render the sale valid.

The change of date of sale from a holiday to the next advertised public sale day is not in this case such a postponement of the sale as to require any new distinct notification.

A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of the year for such arrears as may then be existing.

No fraud or collusion was proved to justify the sale being set aside.

In this case, not the rights and interests of the defaulter, but the tenure itself passed for the arrears due upon it.

Attachment by the appointment of a sezawal is no bar to a sale for arrears due before such attachment. *A. J. Forbes* v. *Protap Singh Doogar and others*, 7 W. R., 409.

To sell an estate for arrears under Act XI of 1859, after lulling the proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale, is of itself a very material injury irrespective of the amount of purchase-money realized, and one amply

sufficient to warrant a Court in annulling the sale under Section 33. *Mohabeer Pershad Singh* v. *The Collector of Tirhoot*, 15 S. W. R., C. R., 137.

(f) *Effect of Sales.*

A. purchased a share of B.'s talook at an auction sale, in execution of an *ex-parte* decree obtained against B., under Section 105 of Act X of 1859. B. obtained leave under Section 58 of Act X of 1859 to revive the suit, and succeeded in getting it dismissed. He now sued to set aside the sale to A. *Held* that the sale to A. was binding against B., notwithstanding that the decree in execution of which it had taken place had been set aside in review, provided the sale was *bonâ fide*. *Jan Ali* v. *Jan Ali Chowdhry*, 1 B. L. R., A. C., 56; S. C., 10 W. R., 154.

The sale by a Civil Court of a judgment-debtor's rights and interests in a tenure in execution of a money-decree is, if not obtained by fraud, a good sale for what it is worth, and the same property cannot be re-sold in execution of a decree for arrears of rent against the former tenant. *Tirathanund Thakoor* v. *Paresman Jha*, 13 S. W. R., C. R., 449.

A sale of land for arrears of Income Tax under Act XXXII of 1860 does not render a mokurruree title to the land void, with reference to Act XI of 1859, which has no relation whatever to such a sale. *Sheopersaud Singh* v. *Muthoorapershad and others*, 10 W. R., 31.

Under Rule 4, Section 97 of the Income Tax Act (XXXII of 1860), a return made to the Income Tax Officer is not conclusive evidence against the party making it upon the point of perpetuity of tenure. *Jowahir Lall and another* v. *Tekeit Pookurum Singh*, 6 W. R., 252.

(g) *Payments to avoid Sales.*

Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of 1865 must, under Section 6, be considered as a loan made to the proprietor of the tenure, which becomes security to the depositor, who is entitled, on applying, to obtain immediate possession in order to recover the amount from any profits belonging to the tenure. *Kartick Surmah and another* v. *Bydonath Sacconee and others*, 10 W. R., 205.

A shikmeedar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. *Poorno Chunder Doss Chowdhry* v. *Sreenath Goopto*, 6 W. R., 173.

By Act II of 1845, Section 9, it is enacted, with reference to sales for arrears of revenue, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit, from any party not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate; and if the party depositing, whose money shall have been so credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the estate. *Held* that the person so depositing money for arrears does not thereby acquire any lien on the estate. *Fagun* v. *Sreemotee Dossee and others*, Marsh., 226.

Instalments of Government revenue, paid by a mokurrureedar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859.

Payments on account of Government revenue in excess of lease are not recoverable. *Bunwaree Kishore* v. *Joy Chunder Gossain*, 2 W. R., 262.

In a suit for contribution of Government revenue, when the defendants plead that the plaintiff was in exclusive possession of the entire property as manager, and had paid the revenue out of it before accounting to them for the surplus profits, the Court should not proceed simply on the fact of payment by the plaintiff, but should also consider whose money was paid. *Sham Lall Seth* v. *Hurro Soondery Goopta*, 5 W. R., 29.

Suit for Government revenue paid by mortgagee in possession of property mortgaged for a debt secured by an instalment-bond executed in his favour by the mortgagor through a mookhtear. Although the plaintiff could not prove the execution by the defendant of the power of attorney in the name of the person alleged to have signed the bond for the defendant, yet as the plaintiff had paid the arrears of revenue due of the mortgaged property in the *bonâ-fide* belief that he had a rightful interest in it, and would thereby save the property from sale, and be entitled to recover the money so paid, such payment was held to be not officious, and the suit was decreed. *Badaum Koowar* v. *Lalla Seetul Pershad*, 5 W. R., 126.

A putnee tenure which had been attached by G., in execution of a decree against D., was claimed by S., whose claim was allowed. Upon this G. instituted a suit against S. and others, to have the putnee declared to be the property of D., and being successful, had the putnee sold in execution of his decree against D., became the purchaser, and got possession. After this he saved the estate from being sold for arrears of rent which had accrued prior to his purchase, by paying up the amount due. He subsequently sued D. and S. to recover the amount so paid. S., who had meantime appealed to the Privy Council, succeeded in obtaining a reversal of the decree under which G. had sold the putnee; but this reversal did not take place before G. had instituted the suit for recovering the arrears he had liquidated.

Held that G. was entitled to recover from S. the amount which had been paid by him to save the putnee from being sold. *Gopal Chundra Chuckerbutty* v. *Oodoy Lall Dey*, 10 W. R., 115.

A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay when in occupation of the mortgaged property, is in the Mofussil an obligation in equity to repay, and is not cognizable by a Court of Small Causes. *Vithobá Keshaashet* v. *Shábájiráv*, 5 Bom. Rep., A. C., 122.

A dur-putneedar paying money as rent to save the putnee from sale is entitled to a refund, even though his name has not been registered in the office of the superior holder. *Khetter Paul Singh* v. *Luckhee Narain Mitter*, 15 S. W. R., C. R., 125.

Where a tenant is left in that condition in which

he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority to make the payment, *e.g.*, the payment of Government revenue to save the estate from sale. *Hills, J.* v. *Wooma Moyee Burmonee*, 15 S. W. R., C. R., 545.

(*h*) *Rights of Purchaser.*

Where a ryot's tenure is sold in execution of a decree under Act X obtained by the zemindar, the purchaser is not the ryot's vendee, nor bound by any decision to which the ryot was a party, or by an allegation or admission of that party. *Shumbhoo Chunder Singh* v. *Ram Narain Doss*, 9 W. R., 217.

The principle under which purchasers of estates at revenue sales acquire such estates in the condition they were in at the Permanent Settlement, is equally recognized by the last Sale Law (Act XI of 1859) as by the laws previous to it, and applies as much to actual encroachments on the talook or estates by neighbours as to incumbrances or under-tenures created on it by the old proprietor or by his laches. *Goluck Monee Dossee* v. *Huro Chunder Ghose*, 8 W. R., 62.

A purchaser at a sale for arrears of Government revenue, suing to establish his right to chur lands which had accredited to the purchased estate, is not bound by an agreement entered into by the prior owner with the owners of the adjoining estate to divide the chur equally; such an agreement is an alienation of or encumbrance on the purchased estate, and therefore, under Section 26 of Act I of 1845, void as against the purchaser (*dissentiente* Campbell, J.).

But, *per* Norman, J., and Campbell, J., it would seem that purchasers under any of the Sale Laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner. *Boykuntnath Chatterjee* v. *Ameeroonissa Khatoon*, 2 W. R., 191.

The purchaser of a zemindary sold in execution of a decree is entitled to all the rents accruing due from the date of his purchase; and if the tenants or ryots, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner. *The Collector of Rajshahye* v. *Hursoondery Debia*, W. R., 1864, Act X R., 6.

A purchaser of a putnee sold in execution buys it with all its liabilities, including instalments due to the zemindar. *Sheikh Khoda Buksh* v. *Degumburee Dossee*, W. R., 1864, 207.

A decree against a vendor obtained before a Collector cancelling a pottah of a jote which has been sold, is not binding on the purchaser of the jote if the purchase was made before the transfer of the tenure to him took place. The purchaser having entered into possession became a "ryot holding under a pottah, the term of which had not expired," within Section 21, Act X of 1859, and therefore could not be rejected otherwise than in execution of a decree made in a suit against himself. *Lalljee Sahoo and others* v. *Bhugwan Doss*, 8 W. R., 337.

Where by custom the zemindar is entitled to a quarter share of the sale proceeds as his huq zemindary, he is entitled to recover it on the occasion of sales, either absolute or originally conditional, but subsequently becoming absolute by foreclosure from the vendor and the purchaser, and the latter cannot be discharged from his liability by proving that he has paid all, including zemindar's dues to the former, it being incumbent on him to see that the zemindar is satisfied in respect of his dues.

Held further that, under the circumstances, the plaintiffs, the zemindars, were entitled to one-fourth from Rs. 450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. *Heera Ram* v. *Honourable Sir Rajah Deo Narain Singh and others*, 1 Agra Rep., F. B., 63.

Held by the majority of the Court (*dissentiente* Kemp, J.) that the Government, as auction-purchaser of the zemindary rights of a pergunnah, having waived all right to cancel the tenures of the dependent talookdars, and having admitted them to settlement and otherwise recognized their rights, the zemindar, as purchaser of those rights from the Government, could not put in force against the talookdars any rights which his vendor had waived. The vendee of zemindary rights cannot enforce against under-tenants any rights waived by the vendor. *Joogul Kishore Roy* v. *Khaja Ahsanoollah*, 4 W. R., Act X R., 6.

The Government, as auction-purchaser of the zemindary right of a pergunnah, having waived all right to cancel the tenures of the talookdars, and having admitted them to settlement and otherwise recognized their rights, it was held that the defendant, a purchaser, could not put in force against the talookdars any rights which his vendor had waived. *Obhoy Churn Roy* v. *Rajah Asanoollah*, 2 W. R., Act X R., 81.

The purchaser of a zemindary, with notice of an alleged mokurruree tenure, is entitled to enquire into the validity of such mokurruree, and to enhance the rents if the mokurruree is found really not to exist. *Modhoosoodun Sircar* v. *Umurnath Ghose*, 5 W. R., Act X R., 38.

The purchaser of an ijara, who has been formally put into possession after a contest, is liable to the zemindar for the rents of the ijara, whether he collects rents from the ryots or not. *Rajah Indoo Bhossun Deb Roy* v. *Chunder Coomar Roy*, 5 W. R., Act X R., 58.

A zemindar, in execution of a decree, sold the rights and interests of his tenant. He subsequently ejected the purchaser at that sale under a decree (dating prior to the above sale) for arrears of rent and ejectment under Section 78, Act X, which latter decree became complete on the expiry of fifteen days without deposit of the arrears due.

Held that until the purchaser adopted means to have his name registered in the zemindar's sherista, the latter was not bound to give him notice to pay the arrears due on the tenure which he purchased before proceeding to give effect to the decree. *Bhubo Tarinee Dossia* v. *Prosonomoye Dossia*, 10 W. R., 304.

In the sale of a putnee tenure for arrears of rent, effected under Section 108, Act X of 1859, the

tenure would pass, free of incumbrances, if the sale took place in accordance with the provisions of Regulation VIII of 1819; *i.e.*, if the right of bringing to sale for an arrear of rent had been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. *Brindabun Chunder Chowdhry and others* v. *Brindabun Chunder Sircar Chowdhry and others*, 8 W. R., 507.

The power of a purchaser at a revenue sale to annul all incumbrances is limited to purchasers of entire estates. *Kalidass Ghose* v. *Chandra Mohini Dasi*, 8 W. R., 68.

It cannot be maintained that the purchaser of property sold under a decree in favour of a mortgagee takes the property free from such lease or farm as the owner might have found to be expedient or convenient, provided the value of the property was not impaired and the operation of the mortgagee's lien not impeded. *Banee Pershad* v. *Reet Bhunjun Singh and others*, 10 W. R., 325.

The object of Section 54, Act XI of 1859, is to protect only *bonâ-fide* incumbrances executed in contemplation of an impending sale, or in fraud of a possible purchaser. *Monohur Mookerjee* v. *Joykishen Mookerjee*, 5 W. R., 1.

In a suit by a dur-mokurrureedar against ryots for a portion of rent for one year (1273) and the whole rent of the next (1274), the defendants contested the latter claim on the ground that the rights of the mokurrureedar having been sold in execution under Act VIII of 1865 (B. C.), the right of the dur-mokurrureedar had been extinguished by the operation of Section 16, and that they had paid the rent for that year to one D., who intervened and was made a party.

Quære,—Could the purchaser determine for himself whether he acquired the tenure free of all incumbrances, or whether the incumbrances were of the kind excepted in Section 16, Act VIII (B. C.) of 1865, which would survive? *Woomasoonduree Dossee* v. *Beerbul Mundul and others*, 11 W. R., 563.

A., a zemindar, sold the rights of B., his putneedar, for arrears of rent under Regulation VIII of 1819. This sale was subsequently set aside at the suit of B. for irregularity. A. then sued B. for the arrears under Act X of 1859, and B. pleaded limitation. *Held* that A. was not guilty of a trespass in bringing the property to sale under a defective notice, and A. could not have sued for arrears pending the proceedings to set aside the sale. *Rani Shurnomoye* v. *Shoshee Mookhee Barmani*, 2 B. L. R., P. C., 1.

An auction-purchaser under Act I of 1845 is not entitled to sue to enhance the rent of a tenant, not being a ryot or cultivator, without his consent.

Quære,—Whether the auction-purchaser is entitled to take free of all incumbrances created by the defaulting proprietor. *Joggodeshurry Dossia* v. *Umachurn Roy*, 7 W. R., 237.

Act I of 1845 was not intended to afford statutable protection to a purchaser at a sale brought about by fraudulent default on a preconcerted arrangement, for the purposes of title. *Nawab Ayed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

Section 21, Act I of 1845, does not apply to a suit brought to oust the certified purchaser on the ground that the purchase was made on behalf of another person, but to make void a pottah granted by his mother. *Bissonath Surma Bhuttacharjee* v. *Moran*, W. R., 1864, 353.

The rights of an auction-purchaser under Act I of 1845 are modified by Section 1 of Act X of 1859. *Rajmonee and others* v. *Goluck Chunder Sircar and others*, 6 W. R., Act X R., 102.

An auction-purchaser is no exception to the rule by which every landlord is bound to ascertain the nature, extent, and conditions of his ryot's holding before he serves him with a notice of enhancement. The necessary information may always be obtained by the landlord proceeding under Act VI (B. C.) of 1862. *Lalla Singh* v. *Mussamut Bibee Reazoonissa*, 8 W. R., 271.

An auction-purchaser is not bound to wait for his rent until he can clear away all fraudulent incumbrances created by his predecessor. *Jotendro Mohun Tagore* v. *Kinkuree Debee*, W. R. (1864), Act X R., 57.

An auction-purchaser cannot eject a ryot having a right of occupancy, or enhance his rent, except in the manner prescribed by law. *Dabee Bhuggut* v. *Beechun Raoot*, W. R., 1864, Act X R., 111.

Right of auction-purchaser to evict under Clause 3, Section 26, Act I of 1845, barred by possession as a khoodkasht kudeemee ryot having a right of occupancy. *Syud Lotf Ali Khan* v. *Kashee Dyal*, 1 W. R., 6.

The talook in this case having come into the possession of Government by resumption in 1841,—*Held* that the auction-purchaser could have no better title, and could be in no better position than the Government at the time of resumption. *Moonshee Buzlool Rahman* v. *Prandhun Dutt*, 8 W. R., 222.

An auction-purchaser under Act VIII of 1865 is not at liberty, without notice of his intention to cancel a pre-existing under-tenure, or other act on his part, to avoid any encumbrance. *Gobind Chunder Bose and another* v. *Alimoodeen and others*, 11 W. R., 160.

The title of a purchaser at a sale for arrears of Government revenue, to void an under-tenure and eject the tenant, will depend upon whether the tenure is protected under any of the clauses of Section 37 of Act XI of 1859, and whether the tenant has a right of occupancy. If the tenant can prove such a right he cannot be ejected under Section 37. *Sheo Purshun Singh* v. *Maharajah Rajendro Kishore Singh and others*, 12 W. R., 123.

An auction-purchaser of the rights and interest of one of several zemindars who at the time of the purchase held only certain nankar land in lieu of their zemindaree right during the continuancy of the maâfee grant by Government to another party, stands in the place of the zemindar, not in respect of the nankar land only, but in respect of all the right to settlement as zemindar after the maâfee grant comes to an end. *Gokul Pershad* v. *Rughonath and others*, 3 Agra Rep., 245.

The plaintiff held certain lands in talook Q, under a howladari patta; Q was sold for arrears of rent, under Act VIII of 1835, and purchased by the defendant. After purchase the defendant dispossessed the plaintiff from his lands, on the ground that he had purchased the talook free from all incumbrances created by the late defaulting talookdar. The plaintiff brought this suit to recover

possession of his lands from the defendant. *Held* that a purchaser of a tenure, under Act VIII of 1835, does not necessarily acquire it free from all incumbrances. Case remanded for trial of the genuineness of the plaintiff's patta. *Mir Jasimuddin* v. *Sheikh Mansur Ali*, 6 B. L. R., Ap., 149, and 15 S. W. R., C. R., 11.

When the former proprietor had a right to bring a suit to resume and assess lakheraj land, the auction-purchaser of his rights and interests acquired the same right under Section 54, Act XI of 1859. *Dabee Munnee Chowdhrain* v. *Faqueer Chunder Shaha*, W. R., 1864, 293.

The title of an auction-purchaser at a sale for arrears of revenue accrues not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under Section 20, Act I of 1845. *Dheput Singh* v. *Moothooranath Jah*, W. R., 1864, 278.

When a putnee granted by a Hindu widow, though in appearance a duly registered tenure falling within the 3rd Exception of Section 37, Act XI of 1859, was in reality a fraud which the owner or reversioner might have avoided,—*Held* that a revenue sale passes the right of avoiding it to the auction-purchaser. *Ram Chunder Chuckerbutty* v. *Kashinath Moetro*, W. R., 1864, 66.

The purchaser of an estate sold for arrears of revenue on the 29th Pous, the latest date of payment of the revenue due for the three months previous to Pous, is not entitled to recover from the defaulter the amount of revenue which he was subsequently obliged to pay for the month of Pous. *Khema Soondery Dossia* v. *Nundcoomar Goopto*, 4 W. R., 75.

The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. *Joy Dutt Jha and others* v. *Bayee Ram Singh*, 7 W. R., 40.

Where an auction-purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor,—*Held* that it was not open to any person now holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. *Tara Chand Dutt* v. *Mussamut Wakenooissa and others*, 7 W. R., 91.

An auction-purchaser of the rights of Government in a talook sold for arrears of revenue is not privy in estate to the defaulting proprietor. He does not derive his title from him, and is bound neither by his acts nor by his laches. The purchaser moreover is bound by no limitation which would not bind or affect the Government. *Buxlool Rohoman* v. *Pran Dhun Dutt*, 8 W. R., 222.

When a putneedar's rights and interests in a putnee are sold during the pendency of a suit brought by him against his tenants, the purchaser acquires the putneedar's privilege to carry on the suit. *Wilson* v. *The Government and others*, 12 W. R., 122.

Semble,—The purchaser of a holding in a khas mehal sold under Act VIII of 1835 cannot claim the position or privileges accorded by Sections 37 and 52 of Act XI of 1859 to purchasers of permanently-settled estates, or of estates sold in districts not permanently settled, sold for arrears of revenue. *Kylashchundra Shaha* v. *Ranee Shurnomoyee Dossee*, 7 W. R., 318.

The auction-purchaser of a talook seeking to obtain possession against the former proprietors, many of whom are cultivators holding separate possession of specific portions and having their houses on the land, must sue them specially for those portions to which they lay claim. He cannot sue the whole community in the aggregate for all the lands of the village. *Ramchunder Paul* v. *Omora Churn Deb*, 16 S. W. R., C. R., 155.

When an auction-purchaser at a sale for arrears of revenue creates a putnee he cannot sue to annul an under-tenure within that putnee, as his whole power under Act XI of 1859 passes to the putneedar, who alone can institute such a suit. In such a case the putneedar's competency to sue is not affected by the fact of his being a tenant of only a portion of the estate, provided that portion contains the tenure which is sought to be resumed. A putneedar, under such circumstances, though he may recover rent, is not entitled to eject an under-tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of 30 years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease. *Sreemunt Ram Dey* v. *Kookoor Chaund*, 15 S. W. R., C. R., 411.

When a sale takes place under the provisions of Act VIII (B. C.) of 1865 the whole tenure is sold, the purchaser acquiring it free of all incumbrances created by any holder. *Sadhun Chunder Bose* v. *Gooroo Churn Bose*, 15 S. W. R., C. R., 99.

(*j*) *Rulings under Regulation VIII of* 1819.

Clause 1, Section 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a putnee, but only a party having a recognized interest in such putnee. *Kristo Jeebun Bukshee* v. *A. B. Mackintosh*, W. R., 1864, 53.

On the sale of a talook under the provisions of Regulation VIII of 1819, all subordinate tenures, such as ousut talooks, howalahs, neem howalahs, do not necessarily lapse: it would depend very much upon the terms of the pottah or grant under which the original talook was created. *Dwarkanath Doss Biswas* v. *Manick Chunder Doss*, 9 W. R., 200.

A mere application by a putneedar to have his title registered is not sufficient. Section 6, Regulation VIII of 1819 prescribes the legal course if registration is refused. *Kristo Jeebun Bukshee* v. *A. B. Mackintosh*, W. R., 1864, 53.

By the words "residing in the neighbourhood," the Regulation does not make it imperative that the attesting witnesses shall be residents of the village, but may be taken to include men living within a short distance of the cutcherry. *Mohinee Dossee* v. *Juggodumba Dossee*, W. R., 1864, 382.

A sale under Regulation VIII of 1819 does not *ipso facto* annul all tenures created by the defaulting putneedar, but the purchaser, if he thinks proper, can avoid them. *Modhoosoodun Kandu* v. *Ramdhun Gangooly*, 3 B. L. R., A. C., 431; 12 W. R., 383.

Plaintiff claimed an eight-annas share of a putnee as purchased by the official assignee of an insolvent, Dad Aly, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the putnee of which

defendant's ancestor, Govind Ram, having deposited arrears of rent, was in possession as gireesdar under the provisions of Regulation VIII of 1819.

Held that Govind Ram was substantially in the same position as a mortgagee in possession under an usufructuary mortgage; and that plaintiff, as a purchaser from such a mortgagor, would have no cause of action until the debt was paid off. *Boistub Churn Bhadro and others* v. *Tara Chand Banerjee*, 11 W. R., 357.

A dur-putneedar who has paid a deposit in order to stay the sale of the superior tenure under Clause 4, Section 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it, is bound to give notice of his title to the ryots. In the absence of such notice he cannot recover from them rents already paid by them to the putneedar. *Nilmonee Roy* v. *J. Hills*, 4 W. R., Act X R., 38.

Looking to the terms of Section 8, Regulation VIII of 1819, it was an object of the Legislature to provide a sufficient notice to a defaulter before sale of his tenure, fifteen days' time (but not less) being considered sufficient; and without such notice no sale can be a sale duly held under that law. *Huronath Goopto* v. *Juggun Nath Roy Chowdhry and another*, 11 W. R., 87.

Where a Court finds that the notice prescribed in Clause 2, Section 8, Regulation VIII of 1819 has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with those directions does not vitiate a sale under the Regulation, provided notice is duly served. *Sona Beebee* v. *Lall Chund Chowdhry*, 9 W. R., 242.

With reference to the provision in Clause 2, Section 8, Regulation VIII of 1819, that the service of notice of sale of a putnee talook shall be attested by three *substantial* persons,—*Held* that the word "substantial" must be understood in its ordinary sense, and not be taken to mean simply men who can readily be found. *Gopal Kishore Shoor* v. *Mudun Mohun Haldar*, 2 W. R., 188; *Mohinee Dossee* v. *Juggodumba Dossee*, W. R., 1864, 382.

A defaulter cannot, under Regulation VIII of 1819, purchase a putnee sold on account of his default to pay the putnee rent, either in his own name, or in that of any other person. *Mirza Mohamed Nusseer* v. *Kishen Mohun Gayee*, W. R., F. B., 92.

Non-payment of the arrears of rent decreed in a summary suit gives the cause of action to a regular suit, under Section 18, Regulation VIII of 1819. *Nubokishen Mookerjee* v. *Mudhoo Soodun Gangooly*, 4 W. R., 99.

The plaintiff's former suit for rent upon a kubuleut dated in 1258 having been dismissed, and the kubuleut pronounced spurious,—*Held* that he was not estopped from now suing to set aside a pottah of 1244 under which the same defendant claimed, the validity of the pottah not being in issue in the former suit. Under Clause 2, Section 11, Regulation VIII of 1819, all leases originating with the late defaulting holder of a putnee talook, creating a middle interest between him and the actual cultivators, held to be cancelled on sale of the talook.

Costs awarded are for Rs. 5,000, as defendant, by not objecting to the valuation of the suit, forced the plaintiff to appeal to the High Court instead of the Zillah Court; an appeal lying to the latter within that amount. *Oomanath Roy Chowdhry* v. *Raghoonath Mitter*, W. R., F. B., 10.

Personal service of notice of sale on a defaulting putneedar is not a sufficient service under Regulation VIII of 1819, Section 8, Clause 2. The notice should be stuck up in the cutcherry of the Collector, and a copy or extract of the notice published at the cutcherry or principal town or village upon the land of the defaulter. *Bykunt Nath Singh* v. *Maharajah Dheraj Mahtab Chund Bahadoor*, 17 S. W. R., C. R., 447.

There is nothing in Regulation VIII of 1819 which will allow a putnee to be sold in separate lots, even though the whole putnee be sold by separate lots on the same day. *H. Cowell* v. *Mohadeb Mundle*, 17 S. W. R., C. R., 182.

A zemindar cannot bring a suit in the Civil Court to compel the purchaser of a putnee in his estate sold by auction for arrears of rent to furnish security for the amount of half the yearly jumma. If the purchaser of the putnee is not willing to give security for the payment of his rent, the zemindar's remedy is, under Regulation VIII of 1819, Sections 5 and 7, to appoint his own sezawal, or collector, and deduct his own rents from the collections before handing over the surplus to the putneedar, who moreover is declared by Section 7 to take all the risk of the attachment.

This remedy of the zemindar is not affected by the grant by him of a dur-putnee to a third party. *Jay Kissen Mookerjee* v. *Jankunath Mookerjee*, 17 S. W. R., C. R., 470.

One of several grantors of a putnee pottah cannot get rid of the putnee as to a share in the putnee by a suit as ijaradar of that share for rent against the ryots. The putnee must be upheld until set aside by a regular suit. *Raj Chunder Roy Chowdry* v. *Unnoda Pershad Mookerjee*, 17 S. W. R., C. R., 221.

Upon the sale of a putnee talook for arrears of the landlord's rent, the purchaser acquires it free of all incumbrances created by the outgoing putneedar; and, according to Act XIV of 1859, Section 7, the purchaser's cause of action arises from the date of sale.

Semble,—The purchaser cannot recover possession with damages without previous notice or demand of possession. *Brojo Soondur Mitter* v. *Futick Chunder Roy*, 17 S. W. R., C. R., 407.

Where the sale of a putnee for default was reversed on the ground of notice not having been served as required by law, the purchaser was held entitled to a refund and to his costs from zemindar. *Bykunt Nath Singh* v. *Maharajah Dheraj Mahtab Chund Bahadoor*, 17 S. W. R., C. R., 447.

In a suit by a purchaser of a putnee at a sale for arrears of rent to enhance the rent of the ghatwal, under Regulation VIII of 1819,—*Held* that ismnawisi papers for 1811-1813, stating that the amount held by the ghatwal was 100 beegahs, did not entitle the plaintiff to enhance the rent of the surplus over that 100 beegahs in the face of satisfactory oral evidence of long uninterrupted possession. *W. Farquharson* v. *Dwarkanauth Singh*, 8 B. L. R., 504, and 16 S. W. R., P. C., 29.

An estate was sold under Clause 2 of Section 8, Regulation VIII of 1819, for arrears of rent due by

a putneedar to the zemindar. Prior to the date of sale, the amount due was paid by the putneedar to an accountant in the Collector's office, as in satisfaction of arrears, but no notice was given to the zemindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. *Held, per* Norman and Macpherson, JJ., that the suit could not be maintained. *Per* Mitter, J., if the custom of the Collectorate was, as alleged by the plaintiff, for payments in satisfaction so to be made to the Collector's accountant, the sale ought to be set aside. *Krishna Mohan Shaka* v. *Munshi Aftaheddeen Mahomed*, 8 B. L. R., 134, and 15 S. W. R., C. R., 560.

Where a putneedar's possession is disturbed by the zemindar, and he is prevented from collecting the rents of certain kists, he is not liable for those kists.

Where a talook is sold for arrears, the putneedar who is sold out is not liable for the rent of the month in which the zemindar presented the petition enjoined by Clause 3, Section 8, Regulation VIII of 1819. *Darimba Debia* v. *Nilmoney Singh Deo*, 15 S. W. R., C. R., 180.

A putnee lease containing words to the effect that the putneedar could give no dur-putnee or mokurruree lease at a jumma less than the jumma of the putnee, was held to confer no such power as that described in Clause 1, Section 11, Regulation VIII of 1819.

A portion of a putnee tenure cannot be sold under the provisions of Regulation VIII of 1819; and if an auction-purchaser acquires any of the rights of the putneedar he is bound by the acts of the latter as regards the grant of leases. *Mohadeb Mundle* v. *Mr. H. Cowell*, 15 S. W. R., C. R., 445.

An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. *Ambika Debi* v. *Pranhari Das*, 4 B. L. R., F. B. R., 77; 13 S. W. R., F. B. R., 1.

The purchaser of a putnee talook, under Regulation VIII of 1819, sued for a kubuleut at an enhanced rent. The former putneedar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement. *Held* that the purchaser was bound by that decree. *Taraprasad Mittra* v. *Ram Nursing Mittra*, 6 B. L. R., Ap., 5, and 14 S. W. R., C. R., 283.

An issue on a fact is open to determination as between plaintiff and defendant, although a finding on that fact has been arrived at between those parties in a former suit in which they were both defendants.

Held, by Jackson J. (Mookerjee, J., *dubitante*), that a zemindar who puts up for sale a putnee under Regulation VIII of 1819, guarantees to the purchaser that there are some lands appertaining to the putnee, and if it turns out that there are no such lands (that there is in fact no such putnee), the purchaser will be entitled to recover his purchase-money. *Khelut Chunder Ghose* v. *Kishen Gobind Deb*, 16 S. W. R., C. R., 128.

The object of a notice of sale for arrears of rent is to give information not merely to parties wishing to purchase, but to the defaulter; and if the notice is not stuck up in the manner prescribed by law (Clause 2, Section 8, Regulation VIII of 1819), it is open to the defaulter to plead that he has been undamaged, and the sale becomes illegal. *Rughub Chunder Banerjee* v. *Brojonauth Koondoo Chowdry*, 14 S. W. R., C. R., 489.

In a suit to set aside the sale of a putnee tenure, where a purchaser is made a co-defendant under Section 14, Regulation VIII of 1819, and it is decreed that the purchaser may recover the purchase-money from the zemindar defendant,—*Held* that the purchaser may proceed in execution without a fresh suit. *Preolall Gossain* v. *Gyan Tarunginee Dassee*, 13 S. W. R., C. R., 161.

(*k*) *Rulings under Act XI of* 1859.

The object of the Sale Law (XI of 1859) is to give a title to the purchaser which shall not be open to challenge by anybody; and the only ground on which a revenue sale can be set aside is (Section 25) that of irregularity in conducting the sale, in which case the Commissioner can set it aside on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under Section 26, may set aside the sale. *Woomesh Chunder Chatterjee* v. *Collector of the 24-Pergunnahs*, 8 W. R., 439.

A sharer of a joint talook, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under Section 11, Act XI of 1859. Common registry of the talook as a shikmee talook under that Act will not preclude any person, thinking himself wronged by such registry, from suing for the cancelment of the same. *Gour Chunder Goopto* v. *Tara Konee and others*, 6 W. R., 217.

Held that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate. *Mussamut Neynum* v. *Muzuffer Wahid*, 11 W. R., 265.

An auction-purchaser under Act XI of 1859 has no right to question the act of a single co-sharer in respect of a lease granted by him of land separately enjoyed by him under an arrangement made by the several co-parceners by which such a lease by one of them was to be looked upon as the act of all. *Monohur Mookerjee* v. *Joy Kissen Mookerjee*, 6 W. R., 315.

Where there has been a sale under Act XI of 1859 for arrears of revenue, but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act. *Maugeni Rahim* v. *Collector of Jessore*, 3 B. L. R., Ap., 144.

A mortgagee who obtained a decree for possession with mesne profits on 11th May, 1864, sued the mortgagor under Section 9, Act XI of 1859, to recover a sum alleged to have been paid by plaintiff on account of Government revenue for

the quarterly kist falling due on the 25th June following.

Held that as at the time the deposit was made plaintiff was the proprietor of the estate in arrears, he was not a party contemplated in Section 9, and the suit did not lie. *Jussoda Dassee* v. *Matunginee Dassee*, 12 W. R., 249.

The proprietors of a certain lot having obtained a separation of their shares under Section 11, Act XI of 1859, there remained one share (comprising one village and one-third of three other villages), which was sold for arrears of revenue and purchased by W. Of this share W. sold one village to P., who agreed to pay a certain sum as his share of the Government jumma, and applied to the Collector to open a separate account at the rate which had been agreed upon. The shareholders having objected, the Collector referred the parties to the Civil Court under Section 12. P. then brought a civil suit for a separate account. *Held* that there was no legal objection to the plaintiff's having his separate share opened at the rate he mentioned, even if the jumma on the share which remained in W.'s possession was excessive; for if the whole estate were put up to sale for arrears on account of that share, the other shareholders could always protect themselves by paying the sum due. *Poornochunder Banerjee* v. *Ram Kanye Ghose*, 12 W. R., 242.

A sharer of a joint talook, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under Section 11, Act XI of 1859. Common registry of the talook as a shikmee talook under that Act will not preclude any person thinking himself wronged by such registry from suing for the cancelment of the same. *Gour Chunder Goopto* v. *Tara Konie and others*, 6 W. R., 217.

A. in exchange for his lakheraj land obtained in 1761 from his zemindar 441 beegahs of mâl land which the zemindar thereupon created rent-free. The zemindar fell into arrears, and the zemindary was sold. Subsequently three persons, who had become owners of the zemindary, applied to the Collector, under Section 11, Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share which included the 441 beegahs was sold under Section 13, and purchased by the plaintiff, who now sued the descendants of A. to recover possession.

Held that a sale of a share of a zemindary, under Section 13, Act XI of 1859, does not convey to the purchaser the share free from all encumbrances created by the former zemindar, but he acquires the share, as laid down in Section 54, subject to all incumbrances.

Held that under Section 3, Regulation II of 1805, possession of land for a period upwards of sixty years since the passing of Regulation XIX of 1793, without payment of rent, bars the remedy of the zemindar to dispossess the holder or to resume the land as mâl. *Kasinath Koowur* v. *Bankobehari Chowdhry*, 3 B. L. R., A. C., 446.

Section 13, Act XI of 1859, does not say that when an application has been made for a separate account, but when a Collector shall have ordered a separate account, that he is to put up to sale only the share in respect of which an arrear of revenue may be due. *Maharajah Rajender Kishore Narain Singh* v. *Mussamut Doorga Koonwar*, 7 W. R., 154.

Where certain howla and neem-howla tenures were never set aside by the Revenue Settlement or Revenue Commissioner's orders, from the time they were recorded as existing rightful hereditary tenures of those classes at the first settlement,—*Held* that the purchaser of the ousut talook cannot eject the holders of those tenures under Section 32, Act XI of 1859, so long as they pay their jumma according to the settlement jumma-bundee. *Burd Kant Laha and others* v. *Gobind Chunder Gooho*, 7 W. R., 50.

Section 33, Act XI of 1859, contemplates an action against the individual wrong-doer, irrespective of Government and co-parceners. *Gunga Narain Bose* v. *Mr. William Cornell*, 10 W. R., 442.

An appeal against the sale of an estate for arrears of Government revenue must be made to the Revenue Commissioner, otherwise the Civil Court is not competent, under Section 33, Act XI of 1859, to entertain a suit for the annulment of the sale. *Mohun Lall Tagore* v. *The Collector of Tirhoot*, 1 W. R., 356.

A lease of a share is protected under Section 54, Act XI of 1859. *Kally Puddo Ghose* v. *Monohur Mookerjee*, 7 W. R., 295.

A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of Section 36, Act XI of 1859, unless he has acknowledged himself to be a benameedar. *Jadub Ram Deb* v. *Ramlochun Muduck*, 5 W. R., 56.

A sale by order of a Revenue Court can be set aside by a decree of the Civil Court, even if held directly under Act XI of 1859. *Joydoorga Dabia* v. *Gopal Chunder Banerjee*, 9 W. R., 538.

A purchaser at a sale for arrears of revenue, with a paramount title under Section 37, Act XI of 1859, acquires the estate free from any incumbrance which accrued thereupon from the laches of former proprietors, in the same way as he would have acquired it free from any incumbrance created by sale, lease, or mortgage.

In the absence of any proof to the contrary such purchaser must be assumed to be the owner. *Thakoor Dass Roy Chowdry* v. *Nubeen Kishen Ghore*, 15 S. W. R., C. R., 552.

In a suit to recover possession of a share of an estate on the ground of purchase at a sale in execution, which share was alleged to have been knocked down by the Collector to another party in an execution sale under Act XI of 1859, where it was found that the plaintiff's purchase had not been *bonâ fide*, the right, title, and interest of the decree-holder having been previously purchased benamee by the judgment-debtor himself,—

Held that the real purchaser was the judgment-debtor, and that the holder of the rent-decree could properly sell either the estate or the said right, title, and interest. *Lalla Juggessur Sahoy* v. *Gopal Lall*, 15 S. W. R., C. R., 54.

Under Section 53 of Act XI of 1859 a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the in-

cumbrances created by the defaulting proprietor. *Mahomed Gazi Chowdry* v. *J. G. Leicester*, 7 B. L. R., Ap., 52, and 16 S. W. R., C. R., 136.

The plaintiff and A. and B. were joint owners of an estate paying revenue to Government. The names of A. and B. were alone recorded in the rent-roll of the Collector. A. and B. alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under Section 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation, on the ground that the lands had never been divided, but always held ijmali, and that A. and B. claimed a larger share than they owned; but his objection was rejected by the Collector, on the ground that he was not a recorded proprietor, and the application of A. and B. was granted. The plaintiff now sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside. *Held* that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party. *Hargobind Das* v. *Baroda Prasad Das*, 6 B. L. R., 614; and 15 S. W. R., C. R., 112.

A suit will lie in the Civil Court in respect of an act done by a Collector under Section 11 and the following Sections of Act XI of 1859, although he is not made a party.

Where an application is made to a Collector by a registered proprietor for a separate account, and the application is objected to within the meaning of Section 12, or the Collector considers that an objection is regularly taken, he has no jurisdiction to dispose of the matter, but should refer the parties to the Civil Court. *Poorno Chunder Gangooley* v. *Mudden Mohun Mojoomdar*, 13 S. W. R., C. R., 67.

In order to come under the protection of the third clause of Section 5, Act XI of 1859, it is not necessary that an estate under attachment by order of a judicial authority must also be managed by some revenue authority; all estates under attachment, whether managed by the Collector or not, being entitled to the benefit of the special notice described in that section.

How the term "estate" in the description attached to Section 5, Act XI of 1859, should not be restricted to its *primâ-facie* meaning of an whole estate, but must be extended somewhat beyond, as intended to apply to such shares as are referred to in the first portion of that section. *Mohabeer Persaud Singh* v. *Collector of Tirhoot*, 13 S. W. R., C. R., 423.

Whatever is sold under Act XI of 1859 can only be sold for arrears of Government revenue, and unless such arrears can be shown to have been due, any sale under that law will be void, inoperative, and without legal effect, and the title supposed to be given by the sale certificate will be subject to such defect. *Ram Gobind Roy* v. *Syud Kushuffudossee*, 15 S. W. R., C. R., 141.

5 W. R., Civil, 56, and 11 W. R., Full Bench, 16, the former on Section 36, Act XI of 1859, and the latter on Section 260, Act VIII of 1859, considered and applied to a case under Section 21, Act I of 1845. *Shaikh Johur Ali* v. *Brindabun Chunder*, 14 S. W. R., C. R., 10.

An estate does not cease to be under attachment merely by the appointment of a manager under Section 243, Act VIII of 1859.

A suit to set aside a sale under Act XI of 1859, on the ground that no arrear of revenue was due, may be brought in the Civil Court without previous appeal to the Commissioner. *Thakur Churn Roy* v. *The Collector of 24-Pergunnahs*, 13 S. W. R., C. R., 336.

Under Section 3, Act XI of 1859, a Court may in its discretion, if the property be small, or for any other sufficient reason, allow any relative of a minor to sue on his behalf, without a certificate of administration. *Surendur Lall Sahoo* v. *Maharajah Rajendur Purtap Sahee*, 1 W. R., 260.

A notification issued under Section 5, Act XI of 1859, is simply a public call on the debtor to pay his debt by a fixed date; it does not operate as an attachment by the Civil Court. *Nurkoo Ram and another* v. *Ramjoorawan Singh and others*, 9 W. R., 481.

Held (by Dwarkanath Mitter, J.) that Section 21 of Act I of 1865, and Section 36, Act XI of 1859, do not apply to a purchase under Act XII of 1841. *Booa Russoolee and others* v. *The Nawab Nazim of Bengal*, 11 W. R., 382.

(*l*) *Rulings under Act VIII of* 1865.

At a sale held under Act VIII of 1865, the defendant purchased a shikmee tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakheraj tenure created by the Rajah of Tipperah, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmeedar, and not the Rajah, had granted the lands in dispute as bramatar, but not in favour of the person through whom the plaintiff claimed. It however passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed.

Held that the plaintiff having failed to prove the case as set up by him, and upon which he claimed, cannot be entitled to a decree upon grounds other than those stated in the plaint.

Held that under Section 16, Act VII of 1865, the incumbrances created by the former holder were voidable by the auction-purchaser, and that the plaintiff should show that the former holder could create such right. *Iswar Chundra Chuckerbutty* v. *Bistu Chundra Chuckerbutty*, 3 B. L. R., Ap., 97.

The relation between landlord and tenant is that of parties to a contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the tenant, in the absence of any consent by the zemindar, the only mode in which effect can be given to the alienation is to treat the purchaser as holding a rent-free tenure subordinate to that of the original tenant.

A brick-built house is not an "incumbrance" or a tenure within the meaning of that word in Section 16 of Act VIII of 1865 (B. C.), which a purchaser at a sale for arrears of rent can remove.

In this country the ownership and right of possession in the soil does not necessarily carry with

it a right to the possession of buildings erected thereon.

A tenant who held a piece of land on a lease erected a brick house upon the land without the permission of, but without any objection by, his landlord. In execution of a decree of the Civil Court against the tenant in January, 1865, the materials of the house and the site on which the house was built were sold separately to two individuals from whom the defendant purchased both. On the 31st July, 1866, the tenure itself was sold for arrears of rent to one N., from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrance by the removal of the house. The Court refused to give the plaintiff a decree for possession. *Shibdas Bandapadhya* v. *Bamandas Mukhapadhya*, 8 B. L. R., 237, and 15 S. W. R., C. R., 360.

A purchaser at a sale in execution of a decree held under Act VIII of 1865 (B. C.), cannot be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. *Damadar Roy* v. *Nimanund Chuckerbutty*, 7 B. L. R., Ap., 1; and 15 S. W. R., C. R., 365.

A purchaser of a tenure sold under Act VIII of 1865 (B. C.), for arrears of rent, cannot, under Section 16, eject a ryot who has acquired a right of occupancy under Section 6, Act X of 1859, under the former tenant. *Nilmadhab Karmokur* v. *Shibu Pal*, 5 B. L. R., Ap., 18; 13 S. W. R., C. R., 410.

Section 16 of Act VIII of 1865 (B. C.), does not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure. *Harasoondari Dasi* v. *Kistu Mani Chowdrain*, 5 B. L. R., Ap., 37; 13 S. W. R., C. R., 257.

The object of Section 16, Act VIII (B. C.), 1865, is to protect, not merely any one class of tenants, but the leaseholder of the particular land leased: the expression "khod-khast ryots" as used there meaning "resident and hereditary cultivators." *Koontee Debee* v. *Hirdoy Nath Durreepa*, 16 S. W. R., C. R., 206.

The purchaser of a partnership in a tenure, in other words, of a shareholder's rights, acquires no right to retain possession against a person who buys the tenure itself when sold for arrears under Act VIII (B. C.) of 1865. *Huro Narain Giree* v. *Doorga Churn Giree*, 15 S. W. R., C. R., 319.

Where the rights and interests of a judgment-debtor are sold in execution under Act VIII (B. C.) of 1865, the tenure itself does not pass, much less does it pass free from all incumbrances; and the purchaser is not entitled to eject tenants who have been occupying and cultivating the land for more than twelve years. *Raj Kishen Mookerjee* v. *Dusruth Soothrodhur and others*, 15 S. W. R., C. R., 234.

When a tenure is sold in execution of a decree for arrears of rent under Act VIII (B. C.) of 1865, the tenure itself passes, and not merely the right, title, and interest of the tenant whose name is registered in the zemindar's book. *Fatima Khatoon* v. *The Collector of Tipperah*, 13 S. W. R., C. R., 433.

As a general rule when a tenure is sold in execution of a decree, under the provisions of Act VIII of 1865 (B. C.), the whole tenure passes, unless there is some reservation made at the time of the sale, *Huro Gobind Biswas* v. *Domonter Dabee*, 13 S. W. R., C. R., 304.

Act VII of 1868.

In sales held by the Collector for the realization of Government demands realizable as arrears of revenue, the procedure laid down in Act VII of 1868 (B. C.) is to be followed. Therefore where a fine has been imposed for non-attendance of proprietors before a Deputy-Collector for the purpose of a partition under Regulation XIX of 1814, and the amount had been ordered to be paid on a given day but was not so paid, but tendered subsequently, —*Held* that the Collector ought not to have sold the property of the defaulters. He was bound to receive the amount tendered. *Mohan Ram Jha* v. *Baboo Shib Dutt Sing*, 8 B. L. R., 230; 17 S. W. R., C. R., 21.

XXI.

LANDLORD AND TENANT.

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1.—MISCELLANEOUS.

The plaintiff occupied as kashtkar a piece of land in a mouzah which was subsequently leased in farm. The farmer granted a pottah of a portion of the mouzah, including the plaintiff's holding, to Sheodeen, to whom, instead of the farmer, the plaintiff subsequently paid rent. In the absence of any evidence as to the nature of the pottah granted to Sheodeen, and of any consent on the part of the plaintiff to change his *status*, he did not lose his *status* of kashtkar, and was not liable to ejectment by reason of the ejectment of Sheodeen. *Mataputut Singh* v. *Mata Dyal*, 4 Agra Rep., 275.

Regulation XXVII of 1793 applies only to hauts and bazars which were in existence when it was enacted, not to those of a later date. *Chunder Nath Roy* v. *Moonshee Zemadar*, 16 S. W. R., C R., 268.

Where a summary suit for rent was pending under Regulation VII of 1799, when Act X of 1859 came into force, though judgment was given after it came into force, the right to bring a regular suit under Regulation VIII of 1831 was not affected by Act X of 1859. *Govind Chunder Mookerjee* v. *Calla Gazee and others*, 2 Ind. Jur., N. S., 119; 7 W. R., 185.

Regulation XIX of 1793 refers to grants to hold land free of revenue, not to grants made by a private individual free of rent. A party holding under a joutuck grant from a zemindar containing no reservation of rent, is entitled to hold rent-free. *Kamesuree Dassee* v. *The Court of Wards*, 12 W. R., 251.

A suit brought under Section 30, Regulation II of 1819, must be assumed to relate only to lakheraj created prior to 1st December, 1790, and is therefore not exempt from limitation under Section 10, Regulation XIX of 1793.

The plaintiff was allowed to amend his plaint by stating when his cause of action accrued, and if it accrued beyond the period ordinarily allowed for commencing such suit, by stating the ground on which he claimed exemption. *Hera Monee Dabee* v. *Koonj Behary Haldar*, 2 W. R., 207.

Held by Peacock, C. J., and Jackson and Macpherson, JJ., that the grant by a zemindar for valuable consideration of a piece of land to be held without payment of rent is valid as against the heir of the grantor, or a purchaser from him by private sale of the zemindary; and that, under Section 10, Regulation XIX of 1793, such heir or purchaser is not entitled to resume the land.

Held by Bayley, Norman, and Seton-Karr, JJ., *contra.*

Held, nem. con., that the opinions (reduced to writing) of Judges who heard the case, but who had ceased to be Judges of the High Court before judgment was pronounced, could not be treated as judgments in the case, but must be regarded as mere minutes or memoranda. *Mutty Lall Sein* v. *Gyal Deshkur Roy*, 9 W. R., 1.

The rate given in the butwarra papers is necessarily not the fair rate for lands; for under Section 19, Regulation XIX of 1793, the gross produce of each village is calculated with the proportion of the public jumma assessed thereon. *Luleet Narain Singh* v. *Gopal Singh and others*, 9 W. R., 145.

A zemindar by a sunnud dated in 1830 (after reciting that there was no water in talook A., and that the river being at a distance great inconvenience was felt for want of water, in consequence of which desertion took place in the village), granted to B. 22 beegahs of land rent-free, stipulating that B. should dig a tank on the land, and continue to distribute water. In a suit to annul the grant, on the ground that it was void under Section 10, Regulation XIX of 1793,—*Held* by the majority of the Court (*dissentiente* Levinge, J.) that grants of land made by zemindars free of rent are void under the provisions of that enactment.

But further held by the majority of the Court (*dissentientibus* Trevor, J., and Loch, J.) that the grant in question was valid, the reservation of a right to the use of the water by the tenants of the zemindary being a benefit or service in the nature of rent reserved to the zemindar, and that the grant was therefore either not one of those intended to be dealt with by Section 10, Regulation XIX of 1793, or was one which the zemindar was empowered to make by Regulation XLIV of 1793. *Peezrooddeen* v. *Modosooddun Paul Chowdhry*, 2 W. R., 15.

Suit for khas possession of land made over to plaintiff on a butwarra. The defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent, as the lands were occupied by gardens made by his ancestor.

Held that Section 9, Regulation XIX of 1814, does not apply to the lands made over to the plaintiff under the butwarra; that section referring to the dwelling-houses of co-sharers and to offices, buildings, and ground immediately attached to those dwelling-houses, which the lands in suit were not proved to be. *Lulit Narain* v. *Gopal Singh*, 9 W. R., 145.

The defendant had been declared entitled, under Section 9, Regulation XIX of 1814, to hold certain lands as attached to his dwelling-house, at an equitable rent payable to the landlord. The landlord subsequently sued in the Revenue Court for enhancement of rent of these lands. *Held* that a suit for the rent of such lands could not be maintained in the Revenue Court. *Held* also, *per* Glover, J., that the rent so fixed on that land must be considered the fixed rent of the homestead of the house and ground, and not therefore capable of enhancement. *Shaw Khairuddin Ahmed* v. *Sheikh Abdul Baki*, 3 B. L. R., A. C., 65; 11 W. R., 410.

Held that Section 20, Regulation XIX of 1814, had no reference to a case where no partition had been made, and plaintiff was not a co-sharer. *Foolbashee Kowar and others* v. *Urzun Sahoo*, 12 W. R., 134.

Where a suit had been struck off the file on default under the old law, Regulation XXVI of 1814 ("kharij" being the word used), it was held that there was no "decision" such as is contemplated by Section 148 of the present Procedure Code. *Gunga Ram and others* v. *Khem Narain Poorea*, 11 W. R., 250.

2.—Landlords.

Where a kubuleut stipulates that A., the tenant, shall not on the expiry of his lease be liable to pay a rent higher than that reserved in the lease, and that the landlord shall not then let the land to any other tenant, but that A. shall not be entitled to erect any permanent building, or to excavate a tank, it was held that under these stipulations the landlord was not bound to re-let the land to A. at the close of the term of the lease. *Held* also that the fact of his allowing the tenant to hold over did not affect the landlord's right to resume possession after due notice. *Fukeeroonissa Begum* v. *Chunder Monee Dossee and others*, 12 W. R., 538.

Where a landlord stands by and allows his tenants, without any objection whatever, to erect pucka buildings upon his land, notwithstanding a stipulation in the kubuleut restraining them from so doing, he is precluded by his conduct from turning them out of possession. *Baneymadhub Banerjee* v. *Joykissen Mookerjee*, 12 W. R., 495.

The plaintiff hired a thatched bungalow of the defendant, entered into possession, and after living in the house some time lit a fire in the fireplace in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that the chimney had been thatched over, of which fact he had been all along ignorant.

Held that the landlord, defendant, was liable in damages for the loss sustained by him.

Per Kemp, J.—The landlord should have given the defendant notice of the defective construction of the chimney. The defendant had a right to assume that it was properly built. *Radha Krishna* v. *W. C. O'Flaherty*, 3 B. L. R., A. C., 277.

A., a Hindu, died, leaving his widow, B., and his mother, C. B. adopted D. C. granted a patni-patta to E. of certain property belonging to the estate of A. During the minority of D., B. received the rent from E., and afterwards D., on attaining majority, realized rent from E. by suits under Act X of 1859. Twelve years after attaining majority, D. sued for cancellation of the patni lease and for obtaining khas possession of the property. *Held* that the suit was not barred. The receipt of rent was no confirmation of the patni lease; it only created the relation of landlord and tenant. *Held*, also, that the plaintiff was not entitled to khas possession before the relationship of landlord and tenant was legally determined by a reasonable notice.

Semble,—Such notice should expire at the end of the year. *Bunwari Lal Roy* v. *Mohima Chundra Kunwar*, 4 B. L. R., Ap., 86; 13 S. W. R., C. R., 267.

Where tenants after mortgaging their land agree to pay an increased rent to their landlord, who is ignorant of the mortgage, and the property is afterwards sold in satisfaction of the mortgage-debt, the zemindar is entitled to recover the increased rent from the tenants or from the party who has succeeded to their rights and interests. *Lalla Mitterjeet Singh* v. *Raj Chunder Roy*, 15 S. W. R., C. R., 449.

The right of a landlord to receive rent from a farmer depends upon his securing to the latter quiet possession, and giving him proper and lawful means of realizing rents from the tenants. *Kristo Soondur Sandyal* v. *Koomar Chunder Nauth Roy*, 15 S. W. R., C. R., 230.

3. Tenants.

When a tenant holds on after the expiration of a lease, he does so at the same rent, and on the same terms and stipulations as are mentioned in the lease, until the parties come to a fresh settlement. *Sheikh Enayatoollak* v. *Sheikh Elahee Buksh*, W. R., 1864, Act X R., 42.

In a suit to recover a village alleged by the plaintiff to have been let to defendant on service-tenure by ancestor of the plaintiff, and to be resumable at the pleasure of a successor, the only facts proved in evidence were a holding for a long period of years, and a payment of rent to the plaintiff, the zemindar. *Held* that such facts establish merely a tenancy from year to year. *N. S. Vasudeun Patrudu* v. *Sri Rajah Sanyasiraj Peddabaliyara*, 3 Mad. Rep., A. C., 1.

A ryot who holds lands in excess of his tenure is a trespasser, and not a tenant, and cannot be sued for enhancement. The landlord's remedy is to eject him by process of law, or to sue for a kubuleut in respect of the excess lands. *Rajmohun Mitter and others* v. *Gooroo Churn Aych*, 6 W. R., Act X R., 106.

An auction-purchaser of the rights and interest of the zemindar in an orchard cannot be treated by the latter as his ryot, because the area of the orchard is included in the settled area of the village of which he is the proprietor, and a suit by the latter to impose rent on the garden and for delivery of kubuleut is not maintainable. *Mootee and others* v. *Roora and others*, 3 Agra Rep., 159.

Where no pottahs and muchalkas have been exchanged between the parties, occupants of lands cannot be sued for its proceeds, even though they have admitted the plaintiffs to be the proprietors. *Tanuviyán and others* v. *Valanaganda and others*, 1 Mad. Rep., 3.

Buildings and other such improvements made on land in the mofussil do not by the mere accident of their attachment to the soil become the property of the owner of the soil. If he who makes the improvement is not a mere trespasser, but is in possession under any *bonâ-fide* title or claim of title, he is entitled either to remove the materials, or to obtain compensation for the value of the building, at the option of the owner. *Thakoor Chunder Paramanick and others* v. *Ramdhone Bhuttacharjee*, 6 W. R., 228.

Where a tenant holding under a terminable lease which does not provide for re-entry makes no allegation of previous possession, and there is no admission of it on the other side, the tenant is bound to go out at the expiration of his term; and if he claims a right of further occupancy it is for him to prove that right. *Puddomonee Dassia* v. *Jhollab Pally and others*, 7 W. R., 283.

No length of possession will give a tenant a title by prescription to a dam which was erected by the tenant on his landlord's land by permission of the landlord. *Kessava Pillai* v. *Peddu Reddi and others*, 1 Mad. Rep., A. C., 259.

Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant. *Endar Lálla and Dayá Khusál* v. *Lalla Huri et al.*, 7 Bom. Rep., A. C. J., 111.

A person is not entitled to remove additions which he may have made to a building, but is at most entitled only to compensation for present value, or for the expenses incurred in making the additions. *Gopal Mullick* v. *Annund Chunder Chatterjee*, 15 S. W. R., C. R., 363.

A tenant holding over for some time without renewal of his lease is entitled, whether he has any right of occupancy or not, to retain possession of his tenure until either he resigns it or is ejected in due course of law. *Oomee Lochun Mojoomdar* v. *Nittye Chund Poddar*, 14 S. W. R., C. R., 467.

Continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenant held under a maurasi title. *Brojanath Kunde Chowdry* v. *Lakhi Narayan Addi*, 7 B. L. R., 211.

A. brought a suit in the Collector's Court against B., C., D., and E. for arrears of rent in respect of land demised under a pottah to F. He joined G. and H. as defendants. According to the terms of the pottah they were sureties for F. It was admitted that F.'s name was used benami in the pottah, and that he took no interest. A. sued B., C., D., and E. as the parties interested and in possession. C. objected that a new settlement had been made and a new pottah granted; that he held a moiety only of the lands, and was not liable for more; and that D. was his ryot, and ought not therefore to have been made a defendant. D. and E. contended that they were liable in respect of the lot comprised under the pottah, and had already paid rent for it to A.

under a decree, but objected that they ought to have been sued separately from B. and C. B. did not appear. The lower Court held that C. had failed to make out his case, and that D. and E. were liable in this suit, and passed a decree ordering them to pay the amount admitted by them to be due from them, and the other defendants to pay the remainder of the claim. C. appealed. On the appeal, Peacock, C. J. (Mitter, J., *contra*) held that the plaintiff's suit must be dismissed, the lease being to H., and not to the defendants; that the Court below had founded its decision on matters extraneous to the lease, which it had no jurisdiction to enquire into. C. appealed under Section 15 of the Letters Patent.

Held, by Kemp and Jackson, JJ., that the Collector had full jurisdiction to entertain the suit, which was properly brought against those who were in the actual possession of the land, and that these persons were really the tenants; that the form of the decree passed by the Collector was correct, the plaintiff having consented to the decree being given in that form; that the sureties had really made themselves responsible for those who were really interested under the lease, and not for F.

Prasanna Kumur Pal Chowdry *v.* Kailash Chundra Pal Chowdry distinguished. *Held* by Norman, J., (*dissenting*) that the terms of the lease under which F. was alone interested could not be contradicted by oral evidence; that F. alone was bound to the lessor under the lease; that the defendant could not be sued as tenant, unless subsequent to the pottah and kubuleut something had occurred creating the relation of landlord and tenant between them and the lessor; that no such relation or any contract creating such relation between the parties could be implied from the circumstances of the case, and the suit should be dismissed. The Revenue Court had therefore no jurisdiction. But whether in the Revenue or Civil Court, D. and E. could not be sued jointly with B. and C., nor could G. and H. *Bipinbehari Chowdry* v. *Ram Chundra Roy*, 5 B. L. R., 234; 14 S. W. R., C. R. 12.

Plaintiff's ancestor held certain lands from Government under a settlement at a fixed rent of Rs. 10-13 annas, but was subsequently appointed bhoonyee with a remuneration of Rs. 6-8, recoverable by deduction from the rent, leaving only 6 annas and 4 pies payable to Government by way rent. *Held* that the sunnud of appointment to the office of bhoonyee created no jageerdaree right, but that on the contrary the reservation of the rent of 6 annas 4 pies seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant. *Choitah Mohuntee* v. *Bhikaree Mohuntee*, 17 S. W. R., C. R., 410.

No tenant taking land is entitled, without some specific agreement on the subject, to change the nature of that land, or to make any permanent alteration in the state of landlord's property. If a person wishes to lease lands for the purpose of making bricks, that should be the subject of a special agreement between the parties, in the same way as when parties take lands for building purposes. *Anund Coomer Mookerjee* v. *Bissonauth Banerjee*, 17 S. W. R., C. R., 416.

The tenancy of an ordinary puttahdar in this Presidency when properly created entitles the tenant to the right of occupancy for the purpose of cultivation, until default in the payment of the stipulated rent or surrender to the landlord in writing, and the right of the tenant is assignable as a mortgage security. A verbal surrender by the tenant to the landlord after the assignment was known to the landlord cannot be relied on as rendering the assignment void. *Venkaturumuniar* v. *Anunda Chetty*, 5 Mad. Rep., 120.

A tenancy which is to continue year by year is a continuing tenancy so long as the parties are satisfied; and though terminable at the option of either party at the end of any year is not *ipso facto* terminated at the end of every year. *Maloddee Noshyo* v. *Bullubbee Kant Dhur*, 13 S. W. R., C. R., 190.

The repudiation of a tenant's title by his landlord can only form one cause of action, however often that repudiation is repeated. *Nund Kishore Singh* v. *Huree Pershaud Mundle*, 13 S. W. R., C. R., 64.

A tenant who alienates his tenure does not thereby subject it to forfeiture. *Dwarkanauth Misree* v. *Kunye Sirda*, 16 S. W. R., C. R., 111.

A tenant holding over a number of years on sufferance without a pottah is a yearly tenant, and if ousted without notice he may recover possession. But if he holds over under a pottah which has recently expired he is a trespasser, and may be turned out without being entitled to relief. *Sadhoo Jha* v. *Bhupwan Oopadhya*, 5 W. R., Act X R., 17.

A person cannot claim a right of occupancy as heir of a tenant-at-will.

The Civil Court has jurisdiction in the case when the claim is not based upon the allegation that the plaintiff has been illegally ejected by the person entitled to receive rent of the land.

A claim to be maintained in possession is liable to dismissal if the plaintiff be found not to be in possession at the date of suit. *Busheer-ood-deen and others* v. *Dal Chund*, 4 Agra Rep., 236.

4.—RYOTS.

Possession as a khodkast kudeemee ryot having a right of occupancy (but not merely as a khodkast ryot for twelve years), bars an auction-purchaser's right of eviction under Clause 3, Section 26, Act I of 1845. *Syud Loft Ali Khan* v. *Kasee Dyal*, 1 W. R., 6.

The mere division of a ryot's holding among his heirs (each one paying his share of the old rent separately) does not destroy the continuity of the old holding. The default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. *J. Hills* v. *Besharuth Meer*, 1 W. R., 10.

Act X of 1859 does not apply to a dispute between two ryots concerning the same land. *Modhoosoodun Chuckerbutty* v. *Nufur Bowal*, 1 W. R., 196.

A tenant holding a term under a farming lease of land which he might sub-let is not a ryot, and therefore does not by twelve years' occupation acquire a right of occupancy under Act X of 1859, Section 6.

A right of occupancy cannot be acquired by oc-

cupation for twelve years under Section 6, Act X of 1859, when such occupation has been by virtue of a lease granting a term of years, and during the whole or part of such occupation the term had not expired. *Hurris Chunder Khoondoo* v. *Alexander*, Marsh., 479.

Ryots do not lose their rights of occupancy, or their right to hold at fixed rates, merely because they cannot produce a written lease. *Doorga Churn Mullick* v. *Bhcormun Manjhee*, 6 W. R., 195.

Held by a majority of the Court (*dissentiente* Steer, J.) that the farmer of a Government khas mehal, as the party entitled to the rents, can accept a surrender of a tenure, and therefore is competent to assent to the division of a ryotee holding within his farm into several distinct and separate holdings. *Huree Mohun Mookerjee* v. *Gora Chand Mitter*, 2 W. R., Act X R., 25.

Section 13 of Act X of 1859 is applicable not merely to ryots having rights of occupancy, but to all under-tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement. The *onus* of proving the existence of the grounds alleged is upon the landlord. *Bakranauth Mundle* v. *Binodram Sen*, 1 B. L. R., F. B., 25; 10 W. R., F. B., 33.

The sub-letting of a tenure does not necessarily make a ryot a middleman. A ryot who holds land under cultivation by himself, or by others taking under him, is not a middleman. His holding, therefore, is not one the transfer of which requires registration under Section 17, Act X of 1859, and a suit will lie in the Civil Court in such a case to an unsuccessful claimant under Section 106 of that Act. *Karoo Lall Thakoor* v. *Luchmeeput Doogur*, 7 W. R., 15.

Where ryots continue to pay rent to the parties from whom they got their leases of turuf and nowabad lands, the mere fact that Government resumed and separately settled the nowabad lands with the turufdars will not injure the rights of the ryots, nor affect the resumption arising from uniform payment of rent for twenty years. All that the purchaser of the nowabad lands sold for arrears of rent can claim is a kubuleut for the proportion of the rent assessed on the nowabad lands, and hitherto paid to the turufdars. *Huro Doss Raha* v. *Traheeram Paul and others*, 6 W. R., Act X R., 15.

By Act XVI of 1864 no unregistered lease for a term exceeding a year can be received in evidence in any civil proceeding, however small the value of the property leased.

Where proprietors purchased a tenant's rights, and sued to eject one, who alleged that he held the pottah from the tenant, it was held that the tenant, being a simple ryot, without transferable rights, could not give a third party any right of possession as against the proprietors of the estate, and that the holder of the pottah from the tenant was a mere trespasser. *Shaikh Omar* v. *Abdool Guffoor and others*, 9 W. R., 425.

A ryot may not possess the right to alienate his holding, either temporarily or permanently, but, in the absence of any local custom or stipulation that upon alienation the ryot shall be liable to ejectment, it does not follow that, by assumption of such right, he becomes liable to ejectment by process in the Revenue Court under the 5th Clause of Section 23, Act X of 1859. *Nuthoo* v. *Dan Suhai*, 2 Agra Rep., A. C., 279.

Although in a mouzah cultivators may not possess the right of alienating their holdings, yet if, with a knowledge of such an alienation, the zemindar accepts rent from the alienee, he recognizes the alienee's position, and is as much bound as if he had expressly assented to the alienation. *Rommun Singh* v. *Maharajah Eshree Pershad*, 2 Agra Rep., A. C., 144.

Held that a ryot having right of occupancy forfeits his holding and is liable to ejectment therefrom if he plants trees on a portion of his holding without the landlord's consent. *Tez Singh and others* v. *Ram Dass and others*, 1 Agra Rep., F. B., 125.

Where the admitted mileek lands of a ryot were found by survey to be somewhat in excess of the land released to him by resumption proceedings based on a former survey, it was held that the excess could not be assumed as a matter of course to be mâl lands. *Denobundhoo Suhye and others* v. *The Court of Wards*, 11 W. R., 347.

In a suit to recover land out of a parcel alleged to have been granted to plaintiff and defendant jointly, under an amulnamah from the zemindar, defendant pleaded that the amulnamah, although nominally granted to himself and the plaintiff, had been in reality granted for the benefit of them and three other persons, and that all five had occupied the land, at first jointly, and afterwards severally, and that all their names had been recorded in the zemindar's sherista. The zemindar also was made a defendant.

Held that the question in this case was between the several persons claiming to hold the land, and not between them and the zemindar, and that the question of occupation was of the greatest possible consequence. *Gopee Mytee and others* v. *Modhoo Mytee*, 11 W. R., 303.

A ryot does not become a middleman simply because, instead of cultivating the land, he erects shops on it, and receives the profits from the shopkeepers. *Khuggoorunissa Begum* v. *Amed Riza*, 11 W. R., 88.

Occupation as a trespasser, or cultivation by a trespasser, cannot confer a right under Act X of 1859, and cannot be taken into account in considering whether such trespasser has occupied as a ryot for twelve years. *Sheikh Peer Buksh* v. *Sheikh Meahjan*, W. R., F. B., 146.

A ryot is not competent to contest the authority of a jumma-nuvis to grant a hookumnamah when the zemindar (though made a defendant to the suit) does not appear and challenge the authority of the jumma-nuvis. *Hur Gobind Kote* v. *Japra Haree*, W. R., 1864, 276.

A zemindar obtained a decree against a ryot for assessment, on the ground that the ryot held under an invalid lakheraj, but instead of assessing turned the ryot out of possession. *Held* that a suit by the ryot for recovery of the land on the ground of anterior possession is not sustainable, and the ryot must prove his title as against the zemindar; his anterior possession under the invalid lakheraj, the decision as to which he did not sue to set aside within the proper time, being the possession of a mere trespasser, and not that of an occupant ryot.

Sreemutty Wooma Soondery Thakooranee v. *Kishore Mohun Banerjee and others*, 8 W. R., 238.

A suit by a zemindar to eject a ryot who holds on after the period of his lease, is cognizable by the Civil Court, and not under Clause 5, Section 23, Act X of 1859, by the Collector. *Sadut Ali* v *Srimati Sadattoonissa*, 3 B. L. R., Ap., 101; 12 W. R., 37.

An occupant ryot in Assam does not forfeit his right to a pottah from Government by not applying for it so soon as another who was not in possession of the land. *Mora Rabha* v. *Dhur Rabha*, 17 S. W. R., C. R., 158.

A ryot holding a jote, for which he pays a particular rent to a Collector, who holds the land under khas management, is an "under-renter" within the meaning of Section 25, Regulation VII of 1799, and if he default in the payment of rent the proper procedure for the Collector is to sell his land at the end of the year. *Rungo Kopohooa* v. *Dehassur Mussulman*, 13 S. W. R., C. R., 302.

A ryot's tender of payment to be valid must be made at the proper place and to a person authorized to receive the same. *Eshan Chunder Roy* v. *Khajah Assanoollah*, 16 S. W. R., C. R., 79.

5.—Acknowledgment of Tenancy.

In a suit to enhance rent it was held that the payment of rent by defendant to a third party did not prove that the relation of tenant and landlord did not exist between defendant and plaintiff, where such payment had been made to that party, not as landlord, but under a deed of assignment from plaintiff's father. *Kristo Dhun Pundit* v. *Mahomed Nukee Kotwal*, 10 W. R., 495.

By receiving rent the landlord acknowledges an existing tenancy; and he cannot therefore eject the tenant for non-payment of rent due for any period prior to that in respect of which he has received rent. *Sheikh Peer Bux* v. *Mowzah Alli*, Marsh., 25.

The receipt of rent for 1268 by the landlord bars his right to eject the tenant for non-payment of rent due up to the end of 1267, the receipt for rent being an affirming of tenancy for that period. The receipt of rent for 1268 has the same effect as if the landlord had at the commencement of 1268 created a new tenancy. *Sheikh Peer Bux* v. *Mowzah Ally*, W. R., F. B., 10; Ind. Jur., O. S., 7.

It is not absolutely necessary that receipt should exist for twenty consecutive years before the date of suit to entitle the ryot to the benefit of the presumption under Section 4, Act X of 1859. *Mattyani Dabea* v. *Soondury Dabea*, 2 W. R., Act X R., 60.

If a person being aware that another is in possession claiming to hold under a lease accepts rent from him, he thereby ratifies the lease so far as he has the power to do so; and if he wishes to protect himself from the ordinary inference that he recognizes the lease he is bound to give distinct notice to the tenant that he intends to dispute its validity, so as to leave the tenant an opportunity of refusing payment. *Juggeshur Buttolezal* v. *Rajah Roodro Narain Roy*, 12 W. R., 299.

A landowner who, after the expiration of a lease, continues to receive rent for a fresh period, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, and cannot turn out the tenant, or treat him as a trespasser, without giving him a reasonable notice to quit. *Ram Mhelawan Singh* v. *Mussamut Soondra and others*, 7 W. R., 152.

Where a tenant has repeatedly acknowledged that a person in possession of the proprietary right was entitled to receive rent, and has in fact attorned to him, he cannot afterwards be allowed to question the validity of the title of such person on the ground that the instrument by virtue of which possession of the proprietary right had been obtained was unregistered. *Shums Ahmed* v. *Goolam Mohee-ud-deen*, 3 N. W. R., 153.

Where a tenant has been allowed to hold over leases on the expiry of their terms, and has continued in possession under those leases, it must be supposed that there is an implied agreement between him and the landlord, and the tenant under such circumstances is entitled to hold on until served with a legal notice to quit. *Jumant Ali Shah* v. *Chowdra Chutturdharee Sahee*, 16 S. W. R., C. R., 185.

An under-tenant who has dug a tank and been in possession undisturbed by the former proprietor for a long period, such acquiescence being equivalent to a lease, cannot be ejected by the putneedar. *Sreemunt Ram Dey* v. *Kookoor Chund*, 15 S. W. R., C. R., 481.

By accepting rent the zemindar assents to the transfer of a tenure, whether the whole is sold or a part only. *Bharut Roy* v. *Gunganarain Mohaputti*, 14 S. W. R., C. R., 211.

Held that a zemindar, by taking the rent of the plaintiff's purchased lands after the rent was deposited by him in the Collector's treasury, virtually admitted the plaintiff's *status* as purchaser from the former ryots, and that he had attorned to him as landlord; and that as this payment was made long before the zemindar sued the former ryots for enhanced rent under Act X of 1859, the decrees obtained in that suit must have been collusive. *Gudadhur Banerjee* v. *Khettramohun Surmah and others*, 7 W. R., 460.

6.—Determination of Tenancy.

An otti-holder, like a kânámdar, forfeits his right to hold for twelve years by denying the janmi's title. *Kellu Esadi* v. *Puapalli and others*, 2 Mad. Rep., 161.

The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be relieved from the consequence of such forfeiture, in accordance with the practice of Courts of Equity in England and America. *Timmarsa Puranik* v. *Badyi Kuppaganda*, 2 Bom. Rep., 70.

The Court will not relieve against the forfeiture of a lease caused by non-payment of rent, although the lessor on previous occasions has waived the forfeiture. *Cuttenho* v. *Souza*, 1 Mad. Rep., A. C., 15.

It was stipulated in defendant's lease that, on his failing to pay any instalment of the rent, plaintiff might appoint a sezawal to collect direct from the under-tenants.

Held that the appointment of such a sezawal will

not determine defendant's lease, and that he was still liable for any deficiency in the rent after the sezawal's collections were credited. *Fakiruddin Mahomed Ahasan* v. *C. J. Phillips*, 3 B. L. R., Ap., 53; 11 W. R., 468.

Any rule which prohibits a tenant from improving his holding is one which on grounds of public policy Courts are bound to restrain within its strictest limits.

When a zemindar insists on his right to prohibit the construction of kutcha wells, he should be required to prove that the right claimed by him customarily exists in the estate.

Forfeiture is not bound to be deemed the invariable penalty for breach of contract occasioned by the construction of a well.

When such forfeiture is claimed, and the right to claim it is proved, the Court should consider whether an adequate remedy cannot be secured to the landlord without depriving the tenant of his whole interest in the holding, and if it finds that such a remedy can be given, and that the tenant has not deliberately invaded his landlord's rights, but, admitting his own position as tenant, has acted in what he believed to be the exercise of a right, or in the honest belief that his act would not meet with objection on the part of the landlord, it should refuse to oust the tenant, and leave the landlord to seek a remedy which would be more proportionate to the injury he has sustained, and amply relieve him from its effects.

Semble,—If a zemindar has before the construction of a well by a tenant provided sufficient means of irrigation, he will be entitled to receive rent at the rate payable by the cultivators of the same class as his tenant for land with the like facilities for irrigation in places adjacent, and will not be deprived of the right to claim rent at irrigated rates because the cultivator does not choose to avail himself of the irrigation provided for him, or thinks fit to make an outlay on the construction of a well which will not materially increase the productive powers of a holding to a greater extent than they would have been increased had the cultivator availed himself of the means of irrigation placed at his disposal by the zemindar. *Sheo Churn and others* v. *Bussent Singh; Ramguthun Singh* v. *Moonshee Meda*, 3 N W. R., 282.

When there is no custom of the country to the contrary, six months' notice to quit is proper notice. This period must have elapsed before the plaint is filed, and the time occupied in the suit before decree cannot be counted. *Nánábhai Rustamji* v. *Pestanji Jamsetji*, 6 Bom. Rep., A. C. J., 31.

Where a landlord assigns his right to another, his lessee cannot put an end to the obligation to pay rent, if, after becoming aware of the arrangement, he made no objection. If the assignee dispossesses the lessee, he cannot sue the latter for rent. *Gour Dyal Singh* v. *Sheikh Hubeel Hossein*, 14 S. W. R., C. R., 83.

7.—Right of Occupancy.

A ryot with a right of occupancy, though holding under a temporary pottah for a term of years, cannot be ejected by his landlord, unless the latter can prove a stipulation under Section 7, Act X of 1859. *Sheeb Dyal Pauleet* v. *Dwarkanath Sookul*, 2 W. R., Act X R., 54.

A sub-tenant of a cultivating ryot cannot acquire a right of occupancy. *Ketal Gain and others* v. *Nadur Mistree*, 6 W. R., 168.

The mention in a pottah of a certain term for which a rate of rent is fixed, is not of itself evidence that there is no right of occupancy. *Nund Lall Singh and another* v. *Jumun Singh*, 6 W. R., Act X R., 38.

Though a ryot may have asked for a pottah at fixed rates, yet if it be clear from the facts pleaded by him that he never claimed the benefit of Section 3 of Act X of 1859, and pleaded only the facts required by Section 5 of the Act, he is entitled to obtain a pottah at fair and equitable rates for the period specified in the plaint, or, if necessary, to be fixed by the Court, if he can prove his allegation of having held at the same rate for twenty years, and so acquired a right of occupancy. *Shaikh Lotf Ali* v. *Manick Chand Chuckerbutty*, 6 W. R., Act X R., 76.

Mere priority of occupation of a chur by A does not warrant the presumption that the land which before diluviation was on the same site as the chur now is belonged to A's ancestors. *Nobokissen Roy* v. *Juggobundhoo Bose*, 2 W. R., 284.

Ordinarily a holding under a bhagdaree tenure (*i.e.* upon a rent consisting of a portion of the produce) would establish a right of occupancy under Section 6, Act X of 1859. *Hureehur Mookerjee* v. *Biressur Banerjee and others*, 6 W. R., Act X R., 17.

In the absence of proof of any separate class of ryots within the general body of occupancy ryots, the general body of such ryots must be held to be "the same class of ryots" to whose standard a ryot with a right of occupancy may be raised, although some may be more and some less ancient than he. *Ram Coomar Dhara and others* v. *Bhoyrub Chunder Mookerjee*, 6 W. R., Act X R., 33.

Only those tenants who cultivate their lands or sub-let them to actual cultivators of the soil are entitled to rights of occupancy under Section 6, Act X of 1859. *Bindabun Chunder Chowdhry* v. *Issur Chunder Biswas*, W. R., 1864, Act X R., 1.

A sub-lessee from a ryot having a right of occupancy can gain no right of occupancy for himself under Section 6, Act X of 1859. *D. N. Gilmore* v. *Surbessuraee Dossee*, W. R., 1864, Act X R., 72.

A right of occupancy under Section 6, Act X of 1859, cannot be acquired by a ryot holding over for more than twelve years after the expiration of a sub-lease for a term by a ryot having a right of occupancy. *Jummuttunnisa Bebee* v. *Noor Mahomed*, W. R., 1864, Act X R., 77.

A tenant evicted by his landlord from land to the occupation of which he is entitled may maintain a suit under Act X of 1859, Section 23, notwithstanding he has no "right of occupancy" under Section 6 of the Act. *Dhujah Roy* v. *Meer Sukhawut Hossein*, Marsh., 492.

A lessee cannot claim to be considered a tenant by virtue of a right of occupancy if he has never pleaded such a right, and after he has denied the landlord's right altogether. *Jardine, Skinner, and Co.* v. *Ranee Shama Soondery*, 3 W. R., 144.

Neem howalas (even though they may not com-

prise the right of holding at a fixed rent), and all other such rights of occupancy established by the ancient prescription and custom of the country, are transferable tenures. Purchasers from neem howaladars are consequently entitled to rights of occupancy. *Juggut Chunder Roy* v. *Ramnarain Bhuttacharjee*, 1 W. R., 126.

The mere fact of plaintiff suing for enhancement implies the tenant's right of occupancy, for a tenant-at-will may be ejected if he refuses to pay such rent as the landlord demands. A right of occupancy is a transferable tenure; but the zemindar is not bound to register the transfer under Section 27. *Mussamut Taramonee Dossee* v. *Birressur Mozoomdar*, 1 W. R., 86.

A tenant having a right of occupancy cannot create an intermediate tenure between himself and the zemindar. *Hureehur Mookerjee* v. *Jodoo Nath Ghose*, 7 W. R., 114.

A tenant who has a permanent right to the occupancy of land subject to payment of fair and equitable rent has, as a matter of course, a right to sub-let the land to the extent of his own interest therein. *Khoshal Mahomed* v. *Joynooddeen*, 12 W. R., 451.

Where plaintiff had cultivated land, and defendant had taken away the crops produced,—*Held* that plaintiff would have no right to recover the value of the crops, unless he either had good right as against the defendant to occupy and cultivate the land, or had been led by the conduct of the defendant to suppose that he had such right. If he had cultivated with the knowledge of defendant, that would give him a right to the produce, even though not entitled to the occupation. *Obhoy Churn Sein* v. *Ram Hurree Adhikaree*, 10 W. R., 300.

A tenant having a right of occupancy can create a lease, and the lessee from him is entitled to hold the lands under the terms of the lease, the zemindar being entitled to nothing but the rent which the ryot who holds from him immediately has agreed to pay. *Jumeer Gajee* v. *Goneye Mundul*, 12 W. R., 110.

In a suit by a lessee to oust the tenant in possession,—*Held* that the tenancy must be shown to have been legally determined by notice to quit, demand of possession, or otherwise.

Semble,—A right of occupancy can be gained in land let for the purposes of grazing cattle or horses. *W. Fitzpatrick* v. *George Wallace and others*, 2 B. L. R., A. C., 317; 11 W. R., 231.

No right of occupancy is acquired by a tenant's simply occupying and paying rent under a grant for no specified period.

A suit does not necessarily fail because plaintiff fails to prove allegations in his plaint which are not material to the plaint. *Ramdhun Khan* v. *Hurrudhun Poramanick*, 12 W. R., 404.

A. sued for a declaration of right of occupancy founded on a pottah and long possession, and alleged that he had under-let to ryots the land demised by the pottah, but that B. had obtained a decree against them for rent. The lower Court on appeal held that A. had determined his tenancy by quitting the land. *Held* that A. did not, by sub-letting, transfer the right of occupancy. *Hurrun Chunder Pal* v. *Mukta Soondery Chowdhrain*, 1 B. L. R., A. C., 81; 10 W. R., 113.

The rights of a tenant cannot be destroyed by the relinquishment of rights by the purchaser from a putteedar from whom the tenant held by pottah. Before the tenant can be ousted, it must be ascertained whether he holds under a legal title and one which gives him a right of occupancy. *Chutter Dharee Singh* v. *Jutta Singh*, 4 W. R., 76.

A ryot with a right of occupancy does not, by sub-letting his land, lose his right; but the sub-lessee thereby gains no right. *Kalee Kishore Chatterjee* v. *Ram Churn Shah*, 9 W. R., 344.

Holding land as a ryot, if for a sufficient period, gives a right of occupancy, whether the land has been held under renewed leases or on a continuous lease. *Khuggooronissa Begum* v. *Ahmed Reza*, 11 W. R., 88.

The transfer of a right of occupancy does not work as a forfeiture of the rights and interests of occupant ryots themselves in the land. *Gora Chand Moostafee* v. *Buroda Pershad Moostafee and others*, 11 W. R., 94.

Held that land newly broken and brought under cultivation by a ryot cannot be received as zemindar's seer land, nor can the former be held to be a mere shikmee cultivator incapable of acquiring right of occupancy in the land. *Jhugro and others* v. *Lantoo Pandey*, 1 Agra Rep., R. A., 32.

The plaintiff in this case succeeded to his uncle's holding, who had a right of occupancy. The zemindar permitted him for about six years to hold the land without any new arrangement. *Held* that the plaintiff is entitled to recover the land as against the zemindar, his occupation being presumed to have been regarded as a continuation of the right of occupancy already acquired. *Brijhbookun and others* v. *Bhyrow Dutt*, 4 Agra Rep., 240.

In the absence of any evidence of special custom, —*Held* that a nephew could not inherit the tenant-right from his uncle, whose legal heirs were his sons, nor could the latter transfer their right of inheritance to their cousin, or confer on him such a right by consenting to his occupation of the land. *Omrao Singh* v. *Pertar*, 4 Agra Rep., 143.

By Section 21, Act X of 1859, a ryot with a right of occupancy can be ejected in execution of a decree under the Rent Law. *Raj Mohun Neogee and others* v. *Anund Chundra Chowdhry and others*, 10 W. R., 166.

By adverse holding for more than twelve years, a tenant gains a right of occupancy as against his predecessor, even if the latter's absence has been involuntary in consequence of transportation, there being no exception in the Limitation Act with regard to plaintiff's absence from such cause. *Domun and others* v. *Shubul Koolal and others*, 10 W. R., 253.

In a suit to recover possession of land which defendant alleged himself to have held for more than twelve years under a mokurruree lease, where the lower Appellate Court, finding that defendant failed to prove his mokurruree right, declared he had no title to hold as a squatter,—*Held* that the lower Court ought to have found what was the nature of the occupancy, and how long it had subsisted. *Jorwar Singh* v. *Hakeem Khyrut Aly*, 10 W. R., 360.

A transfer of a mere right of occupancy gives no title to the transferee against the zemindar.

Ranee Doorga Soondery v. *Brindabun Chunder Sircar*, 2 B. L. R., Ap., 57; 11 W. R., 162.

Held that plaintiffs, as holders of a lease from the proprietor which gave them the right of cutting grass and other spontaneous produce of the lands, did not, merely by reason of lengthened enjoyment, acquire any right of occupancy in respect to such holding, that the tenure under which they claimed to hold was not a holding of land within the meaning of Section 6, Act X of 1859, and they must, in the absence of an express condition otherwise determining the period of lease, be held to be tenants-at-will holding year by year at the pleasure of the landlord. *Goor Doil and another* v. *Ramdut and another*, 1 Agra Rep., F. B., 15.

The question of a prescriptive right of occupancy cannot arise in a case where a tenant sues to recover possession of land from which he alleges he has been illegally ejected. The tenant might have been in lawful possession only six weeks, and yet his eviction might have been illegal, and he would be entitled to recover. *Shaikh Bahadoor Ally and another* v. *Domun Singh and others*, 7 W. R., 27.

Where the zemindar consents to the transfer of a tenure from one ryot to another, the possession of both must be considered to be continuous, and the right of occupancy to date from the time of the first holder. *Huro Chunder Goho* v. *A. D. Dunn*, 5 W. R., Act X R., 55.

The holder of a ryotee jote is protected by Section 6, Act X of 1859, and has a clear right of occupancy against the purchaser of the putnee talook 14 years after his purchase. 5 W. R., Act X R., 63.

A right of occupancy under Section 6, Act X of 1859, is not affected by a mere change in the farmers. *Sheo Churn Singh* v. *Gora Chand Ghose*, 3 W. R., Act X R., 125.

When possession for twenty years, as on a mourosee lease, is found, the right of occupancy is inherent under the lease and under Section 6, Act X of 1859. *Gowree Kant Banerjee* v. *Goluck Chunder Pakrashee*, 4 W. R., Act X R., 49.

When a zemindar has dealt with a defendant as with a ryot having a right of occupancy, the failure of the ryot in a former suit to establish a higher position may reduce him to, but cannot deprive him of, the *status* attributed to him by the zemindar. *Puddo Lochun Bhadooree* v. *Chundernath Roy*, 5 W. R., Act X R., 51.

The setting up of a hostile title against the zemindar by a tenant under a pottah found to be fraudulent amounts to a disclaimer and forfeiture of all rights of occupancy to which the tenant might have been entitled had he set up his title under Section 6, Act X of 1859. *Mirza Nadir Beg* v. *Mudduram*, 2 W. R., Act X R., 2.

Remote heirs are not allowed to succeed to a right of occupancy. Sons, or immediate heirs residing with the ryot in the village, succeed on his death. *Mussamut Pem Kooer* v. *Upper Balee Sing*, 2 N. W. R., 86.

A zemindar does not, by the mere receipt of a rent from a purchaser from the tenant having a right of occupancy, sanction the sale to the purchaser so as to give him a right of occupancy. *Gaur Lal Sirkar* v. *Rameswar Bhunuk*, 6 B. L. R., Ap., 92.

In order to establish a right of occupancy under Section 6, Act X of 1859, a ryot is not entitled to add to his own possession the possession of his vendor, even with the consent of the zemindar to the transfer to him. *Hyder Buksh* v. *Bhoopendro Deb Koonwar*, 17 S. W. R., C. R., 179.

Proof of defendant's right of occupancy by her possession for more than twelve years, even though she might have failed to prove her pottah was a sufficient answer to plaintiff's claim to khas possession of the land in question, and the Subordinate Judge was held to have gone quite out of his way to declare that the plaintiff could enhance defendant's rent. *Munsoob Bibee* v. *Ali Meah*, 17 S. W. R., C. R., 358.

A. and B. jointly obtained a pottah of a piece of land from the zemindar for a period of five years. Afterwards A. alone obtained a pottah for another period of five years. Upon the expiry of this period, A. held on for two years longer, when he was dispossessed by the zemindar. In a suit by A. for recovery of possession on the ground that he had acquired a right of occupancy,—*Held* that he had not acquired a right of occupancy. *Sheikh Mahomed Chaman* v. *Ramprasad Bhagat and others*, 8 B. L. R., 338.

From 1824 to 1832 the defendant held certain lands as cultivator; from that year to 1839 he obtained a lease from the zemindar of the village in which the lands were situate; from 1839 to 1843 he continued to hold these lands as cultivator; from that time to 1862 he again obtained a lease of the village, retaining these lands in his own cultivation; and after the expiry of the lease he continued to cultivate the lands. In a suit by the zemindar for possession, on the ground that the defendant was holding over after the expiry of his lease,—*Held* that the defendant had acquired a right of occupying under Section 6, Act X of 1859. *Makandi Lal Deebie* v. *L. G. Crowdry*, 8 B. L. R., Ap., 95.

A ryot who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottahs, each for a specific term of years, is entitled to claim a right of occupancy in that land, unless there is in the pottah an express stipulation contrary thereto. *Pandit Sheo Prikash Misser* v. *Ram Sahoy Singh*, 8 B. L. R., 165; and 17 S. W. R., C. R., 62.

A tenant with a right of occupancy does not lose that right merely by making an arrangement to pay a certain rent for his holding for a certain number of years; but if he surrenders his rights and return for an enlarged holding his occupancy right will be destroyed. *Dirgang Singh* v. *Foorseet*, 1, 5 N. W. R., 99.

Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice; and the determination of the tenure of the tenant, whether by forfeiture or relinquishment, will put an end to the tenure of the shikmee holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the underleases he should be held bound by such underleases, although custom may not authorize the tenant to grant leases to inure beyond the duration

of his own interest. *Hoolassa Ram* v. *Pursotun Lal*, 3 N. W. R., 63.

Ordinarily the period during which lands are held under a pottah, or lease, is not to be excluded from the computation of the time necessary to give to the ryot a right of occupancy. *Hooba Khan* v. *Munsur Ali*, 3 N. W. R., 37.

To the land in suit (a tank), producing water-nuts, which do not grow spontaneously, but are the result of sowing or planting, a right of occupancy can be acquired. *Moolchand* v. *Cheetree*, 1, 11 N. W. R., 175.

If a ryot has a right of occupancy, and insists on that right, he impliedly undertakes to give a kubuleut at fair and equitable rates if his landlord requires him to do so. But if the right of occupancy is absent the ryot can only remain on the land by the permission of the landlord, *viz.*, on such terms as may be agreed upon between the landlord and himself. *Rajah Sutto Churn Ghosaul* v. *Gouree Pershad Roy*, 13 S. W. R., C. R., 117.

The mere fact of a landlord permitting a tenant to hold over for a year beyond the term of his lease cannot create any right of occupancy in the tenant's favour. The landlord's cause of action in such a case arises when he is refused the right to re-enter. *Kabeet Shaha* v. *Radha Kissen Moullick*, 16 S. W. R., C. R., 146.

A mere change in the proprietary title of an estate does not entitle a putneedar, who holds from the new proprietor, to eject a tenant who can prove a right of occupancy. *Ram Ghose* v. *Radha Churn Gungooly*, 15 S. W. R., C. R., 416.

A zemindar occupying his own lands as nij-jote cannot, when the zemindaree passes into other hands, lay claim to them on the ground that he is a ryot with rights of occupancy. *A. Reed* v. *Sree Kissen Singh*, 15 S. W. R., C. R., 430.

A bhowlee tenure may be a goozashta tenure; and a ryot who pays rent in kind and is in possession of, or cultivates, land for a period of twelve years, has a right of occupancy in the land so held or cultivated by him so long as he pays the rent in kind for the same. *Jutto Moar* v. *Mussamut Basmuttee Kooer*, 15 S. W. R., C. R., 479.

The right of occupancy stated in Section 6, Act X of 1859, cannot be transferred except as laid down in that Act. When a jote is transferred, even with the consent of the zemindar, the transferree merely acquires a new jote on the terms on which the old tenure was held, but he is not entitled to make up his right of occupancy by adding the time during which his predecessor held it. *Tara Pershad Roy* v. *Soorjee Kant Acharjee Chowdry*, 15 S. W. R., C. R., 152.

A zemindar cannot eject tenants who have been holding or cultivating for a period of more than twelve years, even though they were originally tenants-at-will. *Hyder Buksh* v. *Bhoopendro Deb Coomer*, 15 S. W. R., C. R., 231.

By holding for twelve years a ryot does not acquire a right of occupancy, if the land has been sub-let to him for a term, or year by year, by a ryot having a right of occupancy. *Nil Koomal Sein* v. *Danesh Shaikh*, 15 S. W. R., C. R., 469.

The strict Hindu law of inheritance does not universally apply to the descent of occupancy-rights. Mere title by the law of inheritance is not to be regarded in determining the descent of an occupancy-holding. A remote heir, not in possession, cannot on the death of the ryot claim the holding. *Bodhoo Rae* v. *Mussamut Lal Beebee*, 2 N. W. R., 126.

8.—Relinquishment of Tenancy.

When a cultivating ryot goes away from the land which he has occupied, and neither cultivates nor pays rent for it, he has wholly relinquished the land. The relinquishment need not be in writing. *Muneerudeen* v. *Mahomed Ali and others*, 6 W. R., 67.

Non-payment of rent, coupled with the fact that the plaintiff was for five years out of possession, was held to amount to a relinquishment of land. *Nuddear Chand Poddar and others* v. *Modhoosoodun Dey Poddar*, 7 W. R., 153.

Where land relinquished by the original tenant is settled by the zemindar with other ryots, the former ryot cannot be held liable for rent, even though his relinquishment was not accompanied by a notice given in writing. *Mahomed Gahzree* v. *Shunker Lall and others*, 11 W. R., 53.

9.—Taxes and Cesses.

The nature and results of Governor Aungiers' convention stated; and the origin of "pension and tax" in Bombay traced. *Naoroji Beranjee* v. *Rogers*, 4 Bom. Rep., O. C. J., 1.

A person seeking a refund of income-tax illegally assessed upon him may, under Section 137, Act XXXII of 1860, apply to the Commissioner, *i.e.*, it is "lawful" for him so to apply, but there is no law that he must do so. He may legally sue in a Civil Court to recover the illegal assessment. *The Collector of Fureedpore* v. *Goroo Dass Roy*, 11 W. R., 425.

Held that if the biswadars were not liable to cesses claimed, those holding under them cannot be liable to plaintiff's claim; and that the liability of the defendants, whether they may be lessees or mortgagees under the biswadars, must depend, firstly, on the liability of the biswadars themselves; and secondly, on the terms of the lease or mortgage under which they are found to be in possession. *Dhunee Ram and others* v. *Morlee Dhur*, 3 Agra Rep., 325.

Where the talookdar has engaged to pay certain cesses for roads, schools, &c., he cannot recover them from the biswadars, unless they are bound to pay them by some positive law, or have engaged or have consented to do so; nor is any individual biswadar bound to pay merely because his copartners have agreed to pay or have paid them. *Dhunee Ram* v. *Moorlee Dhur*, 3 Agra Rep., 326.

All cesses being illegal when not specifically included in the contract under which the ryot pays rent, the mere payment of rent, including a cess for three years, cannot legalize an illegal impost. *Dhalu Poramanick* v. *Anund Chunder Tolaputter*, 5 W. R., Act X R., 86.

A Government lessee is not entitled to sue for a declaration of his right to levy a cess upon a jotedar who grazes his cattle on his own jote within the precincts of the lessee's mehal, there being no contract between them whereby defendant is bound to pay such a cess. *Bhugeeruth Shikdar* v. *Ramnarain Mundur*, 9 W. R., 299.

A tenant adjudged to pay a particular cess or

demand in a particular year is not therefore compelled to pay it for ever. *Orjoon Sahoo* v. *Annund Singh and another*, 10 W. R., 257.

Held that a suit substantially brought to prove a right to collect cesses not authorized under the provisions of Clause 1, Section 9, Regulation VII of 1822, being for an illegal object was not maintainable. *Khyrat Ali* v. *Mahomed Yaseen Khan and others*, 1 Agra Rep., A. C., 207.

Where a tenant pays a sum of money for rent in advance he cannot call upon his landlord to refund an amount paid on his account of house and land assessment rate. *Doorgachurn Mullick* v. *Owen Moses, executor of the estate of the late Genthoon Aviet*, 1 Ind. Jur., N. S., 115.

The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant. *Wooma Nundo Roy* v. *Lord H. Ulick Browne*, 6 W. R., 30.

In the absence of a special agreement a claim for an illegal cess cannot be recovered in a Court of law. *Soanum Sookul and others* v. *Sheikh Elahee Buksh and others*, 7 W. R., 453.

Every contract relating to the collection from ryots and payment to the zemindar of an illegal cess is *ab initio* void. *Kamala Kant Ghose* v. *Kalu Mohamed Mandal*, 3 B. L. R., A. C., 44; S. C., 11 W. R., 395.

Abwabs and mahtots being no longer leviable when they form part of rent payable, a zemindar is entitled to have a fair rate fixed. *Herrikosima* v. *W. Stephenson*, 1 W. R., 298.

A sum collected by a tehsildar as purvi-bhika or present for the zemindar on the Unnoprashun ceremony (first eating of rice after birth), considered as an illegal cess. *Nobin Chunder Roy* v. *Goora Gobind Surmah*, 14 S. W. R., C. R., 447.

A suit cannot be maintained for a cess which was not avowed nor sanctioned nor taken into account in fixing the Government revenue at the settlement. *Sheikh Bisharut Aly* v. *Seetul Misser*, 1 N. W. R., Par. 1, p. 40.

A suit may be maintained by a zemindar to establish his right to a cess, and to question the validity of an order of the settlement officer refusing to record the cess. *Mahomed Ali Khan* v. *Oomrao Singh*, 2 N. W. R., 425.

10.—Resumption.

An under-tenure is not destroyed by the resumption of a lakheraj tenure by Government. *Furzul Bunoo* v. *Azeezunnissa Bibee*, 3 W. R., 72.

The manager of a religious endowment cannot sue for resumption of invalid lakheraj land. *Nobin Chunder Roy Chowdhry* v. *Pearee Khanum*, 3 W. R., 143.

A zemindar is entitled to resume lands held under an invalid grant, or no grant at all, in which a tank was allowed to be excavated by the defendant, not for the public benefit, but for a bonus. *Chunder Kant Chuckerbutty* v. *Bunko Beharee Chunder*, 3 W. R., 177.

A zemindar is not precluded from resuming lakheraj land situated in a dependent talook, though such dependent talookdar has no right to resume. *Jugernath Gossain* v. *J. G. N. Pogose*, 4 W. R., 43.

An auction-purchaser was not allowed to resume lands held by the defendants under an alleged lakheraj title, because the defendants showed that an ineffectual attempt to resume the grant had been made in 1793, and that the title had been unchallenged ever since. Possession was thus carried back to a period anterior to 1790. *Nobo Lall Khan* v. *Maharanee Adheeranee Narain Koonwaree*, 5 W. R., 191.

A decree in a suit for resumption must be obtained before rent can be recovered against a tenant holding under a lakheraj tenure. *Hill* v. *Khuvay Sheikh Mundul*, Marsh., 554.

A decree for resumption under Section 50, Regulation II of 1819, does not entitle the proprietor of lakheraj land to bring a suit for a kubuleut in a Revenue Court before the revenue is fixed and he has agreed to pay the same. Until this has been done the relation of landlord and tenant cannot come into existence. *Madhub Chunder Bhadro* v. *Mohima Chunder Mozoomdar*, 12 W. R., 442.

In order to support a suit before the Collector for the resumption of a lakheraj tenure under Act X of 1859, Section 28, it is incumbent on the plaintiff to show that the defendants hold under a lakheraj tenure created since the 1st of December, 1790; and such a suit will not be supported by showing that the defendant's lakheraj tenure is void on other grounds, as on the ground that a lakheraj tenure under which he claimed to hold, although of date prior to 1790, was invalid.

A plaintiff has a right to appeal specially against a decision, if the decree, as explained by the judgment, is erroneous. *Maharanee Indurjeet Koonwar* v. *Choken Sahoo*, Marsh., 301.

A zemindar cannot sue to resume a jagheer on the ground of its alienation by the grantee, so long as there are heirs male of the grantee existent. *Raja Rameswar Nauth Singh* v. *Heeralol Singh*, 1 B. L. R., A. C., 170.

The resumption of lands by Government, and the making a fresh settlement of the resumed lands without any allusion to their being held in trust for charitable purposes prior to the resumption proceedings, are not conclusive proof that there was no such trust. The only question decided by the Government in resuming was that those who claimed the land as lakheraj had not been able to prove that the land was held under any such religious or charitable trust as would debar Government from resuming. *Rajah Leelanund Singh Bahadoor* v. *Ishuree Nundun Duttjha and others*, 8 W. R., 316.

When land is resumed as invalid lakheraj, there is no provision of law which compels Government, under a decree of the Civil Court, to make a settlement with the ex-lakherajdar, if, for some reason of its own, it declines to do so. *Bheekoo Singh and others* v. *The Government and others*, 10 W. R., 296.

The ruling of the late Sudder Court as to the final and conclusive character of a resumption decree was held not to apply to what was subsequently done administratively by a settlement officer, the proper distinction being that the decree of the resumption Court as to the liability of the resumed mehal to be assessed with a Government demand is final; but the subsequent dealing by the settlement officer with alleged proprietary right and claim to land not mentioned in the decree, is open

to the jurisdiction of the Civil Court. *Mahomed Ghazee Chowdhry* v. *Lall Bibee and others*, 10 W. R., 103.

Property which had been unlawfully resumed by Government was, on appeal, released by decree of the Privy Council. *Held* that the owner was entitled to recover mesne profits from the date of the decree. Government may be sued by any person injured by its acts of unlawful resumption.

A claim for mesne profits may be joined in one action with a claim for money had and received. *Ramnarain Mookerjee* v. *Maharajah Mahatab Chund Bahadoor*, 1 Ind. Jur., O. S., 48.

The resumption by Government of a parent estate does not nullify the existing rights of a howaladar within the estate, or deprive him of the benefit of the presumption arising under Section 16, Act X of 1859. *Mathoor Nath Gungopadhaya* v. *Sheeta Monee*, 9 W. R., 354.

A sub-tenure created before and in existence at the time of the Decennial Settlement cannot be invalidated by any subsequent settlement of the mehal in which it is situated. Resumption of lakheraj land under the Revenue Law does not destroy any such sub-tenure in the estate resumed. *Abdool Ali and others* v. *Ramgutty and others*, 2 W. R., 12.

One lakherajdar cannot maintain a suit for resumption against another, and force the defendant to prove his title. *Kaem Khan* v. *Mussamut Bibee Saheba Jan and others*, 7 W. R., 362.

A suit brought under Section 10, Regulation XIX of 1793, to assess or resume invalid lakheraj created subsequent to 1st December 1790, is exempt from limitation.

In such latter suit the *onus* is on the plaintiff to show that the case is one falling within Section 10, Regulation XIX of 1793; or, in other words, that the grant was subsequent to 1st December, 1790. *Sonaton Ghose* v. *Moulvie Abdool Turrub*, 2 W. R., 205.

In a suit by Government under Regulation II of 1819 to resume invalid lakheraj land held by a mohunt, as the interests of the zemindar who claimed a portion of the lands sought to be assessed, as forming part of his permanently-assessed estate, were liable to be affected by the decision of the Collector,—*Held* that he had a right to intervene and become a party to the suit, and to prefer an appeal from the decree. The decree of the Special Commissioners, under Regulation III of 1828, is final, if no appeal or petition of review is presented within a reasonably sufficient period. *Maharajah Moheshur Singh* v. *The Government of India*, 3 W. R., P. C., 45.

The holding of a lakherajdar, after a decree of resumption, is not that of a trespasser, and he is fully entitled to remain in possession of the land without paying rent until the zemindar assesses rent upon him. *Hureebuns Burhul and others* v. *Joykissen Mookerjee*, 6 W. R., 92.

The mere admission by the defendant that the lands in question are within the plaintiff's zemindary is not sufficient to start the plaintiff's case when he sues, as zemindar, to cancel and resume an illegal hereditary jungleboree tenure. *Radha Kishen Singh Durpo Shaha Deb* v. *Bissumbhur Singh Puttur*, 6 W. R., 130.

To bar a zemindar's right to resume, as invalid lakheraj under Section 30, Regulation II of 1809, lands in excess of 100 beegahs, it must be shown that the lands are held under a sunnud in excess of 100 beegahs, or under different sunnuds each in excess of 100 beegahs. *Mahomed Munsoor* v. *Umbica Churn Roy*, W. R., 1864, 132.

When land beyond 100 beegahs in extent is admittedly held by a lakherajdar the presumption is that it is held under one grant, and that it is resumable by Government, and not by the zemindar. To rebut the presumption the zemindar must show that the land, though beyond 100 beegahs in extent, is held under different sunnuds. *Rajah Jogendro Narain Roy* v. *Hurry Doss Roy*, W. R., 1864, 145.

Talookdars have no legal right to sue for resumption of areas containing more than 100 beegahs of land. *Gopal Chunder Roy* v. *Oodhub Chunder Mullick*, W. R., 1864, 156.

A zemindar is not precluded by Regulation XIX of 1793 from suing for the resumption of invalid lakheraj lands exceeding 100 begahs held under several sunnuds, provided none of them singly is a grant for more than 100 beegahs.

The release of lands covered by one such sunnud from the claim of Government to resume, on the ground that they were under 50 beegahs, does not bar the zemindar's right to resume them. *Elias* v. *Moonshee Mahomed Peezeer*, W. R., 1864, 217.

When a zemindar engages to pay a certain amount of revenue on certain lakheraj lands, on condition of Government stopping resumption proceedings in respect to such lands, he has a right under that engagement to resume invalid rent-free tenures below 100 beegahs in extent, whatever had been the nature of agreement with Government in previous years, but he has no right to resume lands of greater extent than 100 beegahs covered by one sunnud. *Beer Chunder Joobraj* v. *Umakant Sein Bahadoor*, W. R., 1864, 232.

Shikmee talookdars under lakherajdars, whose lands have been resumed by Government, cannot sue for a settlement. They can only claim to have their shikmee rights upheld. *Grish Chunder Roy* v. *Boydonath Dey*, W. R., 1864, 262.

If lands adjudged to Government in a resumption suit diluviate and re-form on the same site, Government does not thereby lose its rights to them, nor is it obliged to institute wholly new proceedings. Diluvion does not create any new right.

Resumption proceedings are final and not liable to question by the Civil Courts. But when proceedings take place in the nature of extensive settlements with other parties after intermediate and temporary settlements, and acts are done wholly without jurisdiction, or lands are taken not included in the original decree, there should be a remedy to parties deeming themselves to have been wronged thereby. *The Collector of Dacca* v. *Kishen Kishore Chatterjee*, W. R., 1864, 273.

A zemindar cannot sue a dependent talookdar (the possessor of resumed lakheraj lands) for confirmation of possession, and for an injunction to prevent him from committing waste. The only possession that a zemindar can obtain after a decree for resumption is a constructive one derived from the receipt of rent from the tenant. The digging of a well by the talookdar is not an act of waste requiring a perpetual injunction. *Mugnee Ram Chowdry v. Gunesh Dutt Singh*, W. R., 1864, 275.

In a suit for resumption of lakheraj land, the *onus* of proving the existence of the lakheraj tenure before 1790 is on the defendant.

Registration by the Collector in 1795 as lakheraj affords presumption of the lakheraj having commenced before 1790. *Omesh Chunder Roy* v. *Dukhina Soondery Debia*, W. R., F. B., 95.

When a ryot's house fell down, and he left the site vacant, without rebuilding or asserting his intention to rebuild it for more than a year,—*Held* that by this long inaction the ryot forfeited any right which he possessed to the use of the site of his old house, and that the zemindar was at liberty to resume the land, and use it at his discretion. *Mussamut. Bunnoo* v. *Sheo Buns Kando*, 3 Agra Rep., 9.

A suit for resumption of julkurs of navigable rivers not forming part of settled estates is cognizable only in the ordinary Courts, (1) because of the total absence of the word "julkur" in any of the Resumption Regulations, either before or after Regulation II of 1810; and (2) by reason of the difference in the nature of the claims between one to take possession of julkur and one to resume lands. *The Collector of Maldah* v. *Syed Sudduroodeen*, 1 W. R., 116.

In a suit for resumption of invalid lakheraj the burden lies on the defendant to prove the validity of his title, and if he does not appear, on proof of the notice having been served on him, a decree should pass in favour of the plaintiff. *B. O. Elias* v. *Tithraram Roy*, 1 W. R., 164.

Under Act XIV of 1859 a zemindar cannot resume land whether lakheraj or not, held from before 1790. Even an auction-purchaser is barred by limitation if the ryot can prove that the land was in the possession of those through whom he claims before 1790. *Radha Kisto Mytee* v. *Bhugwan Chunder Bose*, 1 W. R., 248.

The release by Government of land under 50 beegahs in extent as a boon to the cultivator is not *per se* a bar to the zemindar's suit to resume it as invalid lakheraj. *B. O. Elias* v. *Brohmo Moyee Burmonee*, 2 W. R., 43.

Where in a suit for possession of resumed lands the plaintiff contends that the laws under which the lands in dispute were resumed (Regulations II of 1819 and III of 1828) contemplate assessment and not ejectment, the plaintiff must prove that he had formerly applied for and been refused a settlement of the lands. *Khaja Abdool Gunny* v. *The Commissioner of the Sunderbuns*, 2 W. R., 239.

The Government when acting as agent of a zemindar can only sue to resume invalid lakheraj lands under 100 beegahs: the *onus* of proof of its being mâl when so claimed is on the zemindar. *Ram Lochun Sircar* v. *Denonath Paul*, 2 W. R., 279.

A tank granted subsequently to 1790 is liable to resumption in the absence of proof of its having been either the condition of the grant or the intention of the grantor that the tank should be a public benefit. Such a case does not come within the ruling of the Full Bench of January 9th, 1865. *Judoonath Sircar* v. *Bonomalee Mitter*, 2 W. R., 295.

Where the resumption officer, as directed by Section 15, Regulation II of 1819, supplied the defendant in a resumption suit with a copy of his reasons for considering the lands in question liable to resumption, and subsequently, in the absence of the defendant, declared the lands liable to assessment,—*Held* that as defendant failed to appear either in person or by agent it was impossible for the resumption officer to give him the warning mentioned in Section 16 of the same law, and the legality of the proceedings was not affected by the omission. *Buroda Kant Roy* v. *The Commissioner of Soondurbund*, 13 S. W. R., C. R., 180.

Regulation II of 1819, Section 30, does not apply to a suit in a Civil Court for resumption under Section 10 of Regulation XIX of 1793. In such suits the *onus* is upon the plaintiff to prove a *primâ-facie* case. The decisions in *Sonatun Ghose* v. *Moulvi Abdool Furar* and *Hira Mani Debi* v. *Kunj Behari Holdar* upheld. *Harihar Mukhopadhaya* v. *Madab Chandra Babu and another; Naba Krishna Mookerjee* v. *Kailas Chundra Bhuttacharjee and others*, 8 B. L. R., 566.

The payment of a hák in respect of a majumdari watan, though charged on villages, is not "a share of the revenues thereof," within the meaning of Section 32 of (Bombay) Act VII of 1863.

Government has no power to resume majumdari watans where it dispenses with the services in respect of them, if the holders of such watans are ready and willing to perform such services.

The law in the Bombay Presidency recognizes the right of females to hold majumdari watans, males being appointed by them to perform the service. *The Government of Bombay* v. *Damudar Parmamondas*, 5 Bom. Rep., A. C. P., 202.

In a suit for resumption, where plaintiff stated that defendant was holding the land in dispute under a pretended lakheraj title, without specifying whether that title was anterior or posterior to December, 1790, it was found that defendant had not proved that his alleged lakheraj existed prior to that date, and the suit was decreed. *Held* that from the fact of the Court having adopted a procedure which is only sanctioned in the special cases provided for by Section 30, Regulation II of 1819, it was not a necessary inference that the decree was made under that Regulation.

Held that even if made under Section 30, Regulation II of 1819, a resumption decree bearing an earlier date than the Full Bench Ruling of 25th January, 1865 (11 Weekly Reporter, page 91), would not establish that the grant resumed was of earlier date than 1st December, 1790. *Modhoosoodun Sagoory* v. *Nepal Khan*, 15 S. W. R., C. R., 440.

The Government, when it holds a resumed mehal on its rent-roll as its khas property, holds it as and with all the rights and liabilities of a private zemindar, and is therefore entitled, under Regulation XI of 1825, to claim accretions to the khas estate. *The Collector of Pubna* v. *Ranee Surno Moyee*, 17 S. W. R., C. R., 163.

The title of the purchaser of an estate settled by Government after resumption must depend upon the resumption decree.

Thus the opinion of a Deputy-Collector to the resumption and settlement officers that certain lands belonged to an estate settled by Government in 1844, after the resumption, was held to give the purchaser of that estate from Government no right to disturb the uninterrupted possession of defendants at least from 1842, when there was an express

finding by the first Court that the lands in question were not covered by the resumption decree, and it also appeared that the opinion of the Deputy-Collector had notwithstanding become a dead letter. *Shib Ram Doss* v. *Sudanund Surmah*, 17 S. W. R., C. R., 557.

A suit for resumption was instituted against A., B., and C. The summons was not served on A., he being dead at the time it was issued, and, as B. could not be found, the summons was served by being affixed to the sudder gate of A.'s and B.'s house. An *ex-parte* decree was passed as against A. and B., declaring that the tenure was invalid lakheraj, and that the land was the plaintiff's mâl land. *Held* that there was no decree declaring the lakheraj invalid, which was a good and binding decree against C. and those claiming under him; and that, as the summons was not served on A., nor his representatives made parties to the suit, the whole of the proceedings in the suit were utterly infructuous except as concerned B., there having been great irregularity and carelessness on the part of the Court in allowing the suit to proceed at all against A. under such circumstances. *Mohesh Chunder Sein Goopta* v. *Dhun Monee Dassee*, 17 S. W. R., C. R., 357.

Decrees made under Regulation II of 1819 prior to the 25th January, 1865, for the resumption of grants of later date than 1st December, 1790, cannot be held to be void; for error in procedure in a trial does not *per se* render void a decree which on the face of it is one the Court was competent to make. *Madhoo Soodun Sagoory* v. *Nepal Khan*, 15 S. W. R., C. R., 440.

A mokurruree tenure granted in perpetuity cannot be resumed by the grantor, even if the grantee dies without leaving heirs. *Mirza Himmut Bahadoor* v. *Ranee Soonat Kooer*, 15 S. W. R., C. R., 549.

Where land is resumed and assessed by a settlement officer, the tenant is bound to pay rent at the rate assessed by the settlement officer. *Woomanath Roy Chowdry* v. *Debnath Roy Chowdry*, 14 S. W. R., C. R., 471.

11.—Rulings under Sundry Regulations.

Regulation V of 1822 is inapplicable to land held under a miraseedar or any ordinary proprietor. *Yanamdram Venkaya* v. *Shillakaree Venkata Narain Reddy*, 1 Ind. Jur., O. S., 131; 1 Mad. Rep., 75.

Regulation V of 1822 does not apply to disputes respecting irrigation. The disputes mentioned in Section 18 of Regulation V of 1822 are subjected to the procedure provided by Regulation XII of 1816. *Nagendra Rau* v. *Mahomed Kanitaraganar and others*, 1 Mad. Rep., 230.

Section 9, Regulation VII of 1822, relates only to settlement, not to collection of rents, and does not entitle a person claiming from Government as a private zemindar to have enhanced rents without proceeding under the law for the collection of rent, and without giving notice of enhancement under Section 13, Act X of 1859. *The Nawab Nazim of Bengal* v. *Ram Lall Ghose, alias Jogobundhoo Ghose*, 6 W. R., Act X R., 5.

A claim for a cess or collection not avowed and sanctioned at the time of settlement nor taken into account in fixing the Government jumma, is illegal under Clause 1, Section 9, Regulation VII of 1822, and consequently inadmissible. *Hushmut Ali* v. *Seeta Ram*, 3 Agra Rep., 336.

Lands were occupied by the Government for the purpose of making an embankment without the observance of the formality required by Regulation I of 1825. *Held* that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession. *Joynarain Bose* v. *The Collector of twenty-four Pergunnahs*, Marsh., 56.

12.—Kubuleut.

Kubuleuts proved in the ordinary way ought to have due weight given them, even though not filed so early in the litigation as the Judge would have expected. *Kashee Chunder Turkobooshun* v. *Kally Prosunno Chowdhry*, 9 W. R., 452.

A kubuleut is not a "lease" within the meaning of Section 13, Act XVI of 1864. *Amjed Ali* v. *Ala Buksh*, 9 W. R., 537.

In a suit for kubuleut at the rate mentioned on the allegation that that rate was the current rate prevailing in the village, it was held that this assertion may be read as sufficiently indicating that the ground for enhancing the rate was the first ground of Section 17. *Bhama and others* v. *Mohur Singh*, 2 Agra Rep., R. C., 2.

In a suit for a kubuleut the decree of a Civil Court adjudging the land in question to the plaintiff cannot extinguish the right of an intervenor nor a party to the decree found under Section 77, Act X of 1859. *Rajcoomar Chowdhry* v. *Brojokishore Bose, gomastah*, 5 W. R., Act X R., 1.

Until a landlord sues a ryot for a kubuleut he can only recover whatever rent the ryot is willing to pay. But before the zemindar can sue for kubuleut he must tender a pottah to the ryot. *Pertab Chunder Banerjea* v. *C. J. Phillippée*, 2 W. R., Act X R., 56.

Upon the death of a tenant under a jagheerdar his widow passed kubuleut, agreeing to hold the land on the same terms as her late husband; and that in the event of her marrying again she should have no right to the holding; but that if she got her husband to live in her house she might continue to hold the land. She afterwards remarried, and held the land till her death.

In an action brought by the second husband to recover possession of the land, as the heir of his wife,—*Held* (reversing the decrees of both the Courts below) that the plaintiff had no right to recover possession, and his wife had merely a personal interest in the holding, which ceased upon her death. *Kamalooddin Newab Mir* v. *Bhika Manji*, 4 Bom. Rep., A. C. J., 49.

In a suit for declaration of title and confirmation of possession, where plaintiff claimed as having the right, title, and interest of the former zemindar in execution of a decree against him, urging that the lands were part of the khas lands of the estate, and defendants claimed the lands as part of their mourosee tenure obtained from the same zemindar, —*Held* that attested kubuleuts filed by the plaintiff, though good evidence as between plaintiff and the

tenants of the land, could not in regard to a third party be held as evidence in the absence of the tenants themselves, who should have been examined. *Mohima Chunder Chuckerbutty* v. *Poorno Chunder Banerjee and others*, 11 W. R., 165.

In a suit to recover rent at an enhanced rate after notice had been granted, a kubuleut was put in in support of the plaintiff's case, and was admitted by defendants. A pottah put in by defendants was found by the lower Court to be a forgery.

Held that plaintiff's contention that the kubuleut does not give the full terms of the agreement binds him to show beyond all reasonable doubt what were the actual terms of the pottah. Having failed to do this, the kubuleut was treated as complete and conclusive evidence of the nature of the tenancy, which was inferred by the Court to be permanent and at a fixed rate. *Golam Ali* v. *Gopal Lall Thakoor*, 9 W. R., 65.

A 10-annas shareholder (C.) in a factory, who was also manager of the whole, executed a kubuleut stipulating that as long as he was the mookhtear the lessor (plaintiff) was at liberty, in the event of the rent not being paid punctually, to take khas possession, or to lease the property to other parties; and that in case of another mookhtear being appointed, or the property being sold, the factory as well as the mookhtear or purchaser would be responsible for any arrears accruing before or after. C. then mortgaged the factory to L., who subsequently obtained a decree entitling him to satisfy his mortgage by the sale of the factory. Plaintiff sued C. and L. to obtain a declaratory decree to the effect that the factory could be sold in satisfaction of his decree for rent under Act X of 1859, free of incumbrances created by the bonds.

Held that, as no money was advanced for the lease, and no debt was due from the lessee to lessor, plaintiff had no lien on the factory in satisfaction of a debt.

Held that plaintiff could have proceeded under Section 110, Act X, and then under Section 111, if L. objected to the sale of the factory; but having no prior lien upon the factory he had no cause of action as against L. *Chummun Lall Chowdhry and others* v. *Rajah Rughoobundun Singh and another*, 11 W. R., 194.

The absence of a pottah in writing cannot of itself release the zemindar from the conditions of the agreement entered into with the tenant as established by the written kubuleut. *Shaikh Dunoollah* v. *Shaikh Amanuttoollah*, 16 S. W. R., C. R., 147.

13.—Suits for Kubuleut.

Where the purchaser of a share of a talook which had been attached under Section 26, Regulation V of 1812, and was under attachment nearly 30 years, sued for a kubuleut, and his suit was opposed by an intervenor who had purchased another share, it was held that the Judge was wrong in dismissing the suit because the intervenor and her vendors had been in exclusive possession before the attachment; the sole question having been, who was actually and in good faith in receipt and enjoyment of the rent before and up to the time of the suit? *Kalee Mohun Roy* v. *Shaikh Nazir and others*, 8 W. R., 516.

When a landlord sues to obtain from his ryot a kubuleut at a given rate of rent, and the Court finds that that rate exceeds the rate which, in the judgment of the Court upon the evidence before it, would be fair and equitable, the plaintiff is not entitled to a decree for a kubuleut at the lower rate, but his suit should be entirely dismissed. If, in a similar case, the plaint mentions no date for the commencement of the kubuleut, the plaint does not disclose a sufficient cause of action, and ought to be returned. The Court may however supply the omission by specifying in its decree the time from which the kubuleut ought to commence. *Golam Mahomed and another* v. *Asmut Ali Khan Chowdhry*, 10 W. R., F. B., 14.

In a suit for a kubuleut at an enhanced rate, under a pottah, the terms of which were that the lessee should hold the lands for four years rent free; that after measurement the lands were to be assessed; that then he was to pay four annas a beegah in year 1265, 6 annas in 1266, and eight annas and three gundas in 1267 and for five years after,—*Held* that this did not constitute a mokurruree holding at a fixed rate. The case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly.

Held also that a fresh ground could not be taken in appeal which had not been taken below, though based upon a Full Bench ruling. *Kasimuddi Khandkar* v. *Nadir Ali*, 2 B. L. R., A. C., 265; S. C., 11 W. R., 164.

Where, in answer to a suit for a kubuleut at a specified rent, defendant pleaded in the Court below, not that plaintiff was not entitled to any kubuleut at all, but that he was not entitled to a kubuleut at the rates he claimed,—*Held* that defendant could not be allowed in special appeal to take advantage of the Full Bench ruling at 10 W. R., F. B., 14, and ask for the suit to be dismissed. *Gholam Aly and another* v. *Augur Ali*, 11 W. R., 105.

In a suit before the Collector for a kubuleut, on the ground that the defendant had occupied and cultivated certain lands of the plaintiff, the defendant pleaded that he was co-parcener with the plaintiff of the land, but he admitted that he had given a kubuleut for some of the lands he occupied. *Held* that since by giving the kubuleut the defendant had acknowledged the plaintiff to be his landlord, the *onus* of proving the plea was upon the defendant. *Juggobundoo Mozoomdar and others* v. *Goorroopersaud Roy and others*, Marsh., 54.

Where a plaint asks for a kubuleut for a given term, without specifying the date from which the term is to commence, it is in the discretion of the Court to fix the proper term. *Poorno Chandra Roy* v. *W. Stalkartt and another*, 10 W. R., 362.

In a suit for a kubuleut at higher rates, where a third party intervened under Section 77, Act X of 1859, the first Court determined the case between the plaintiff and the intervenor upon a matter of title, and allowed that determination to govern his decision between the plaintiff and the defendant, decreeing to the plaintiff the kubuleut sued for. The decision was affirmed by the lower Court.

Held that there had been a mis-trial, the sole question to be decided between the intervenor and

plaintiff having been whether the latter had *bonâ fide* received the rent up to the date of suit, and the question between the plaintiff and defendant was whether they stood in the relation of landlord and tenant; and if so whether plaintiff was entitled to the kubuleut which he asked for. *Omed Aly* v. *Prosono Coomar Chowdhry*, 10 W. R., 97.

A landlord cannot compel every trespasser upon his land to execute a kubuleut; he is entitled to a kubuleut only from his tenants. *Mohunt Jalha* v. *Koylas Chandra Dey*, 10 W. R., 407.

An auction-purchaser cannot compel the holder of a tenure in perpetuity to execute a kubuleut acknowledging himself to be a tenant for one year at an enhanced rent. *Haran Chandra Ghose* v. *Gooroochurn Sircar*, 10 W. R., 421.

In a suit for a kubuleut at a specified rate of rent the first Court found that plaintiff was not entitled to a kubuleut at the rate claimed, but decreed that he should obtain one at the old rates Defendant appealed to the Judge on the ground that as plaintiff had not proved his claim to a kubuleut at enhanced rates, no decree for a kubuleut should have been given.

Held in special appeal from the Judge's decision dismissing the appeal, that the objection was a perfectly good one, and that as plaintiff had failed to make out his title to a kubuleut at the rent claimed his suit ought, under a late Full Bench ruling, to have been dismissed. *Deen Dyal Poramanic* v. *Surendranath Roy*, 10 W. R., 77.

In a suit for a kubuleut, where the ryot pleaded that others besides plaintiff were his landlords, and the lower Appellate Court found that plaintiff was only one of several shareholders, and came to the conclusion that inasmuch as he had not proved what his share was, or that defendant had notice of it, his suit must be dismissed,—*Held* that the decision was correct in law, and that a decree was rightly refused. *Nassarut Ali and others* v. *Abdool Kureem Chowdhry*, 11 W. R., 373.

In a suit for a kubuleut at an enhanced rate, a claim to the nerikh may be considered to be a claim to the pergunnah rate, *i.e.*, the rate paid by the same class of ryots for similar land in the neighbourhood. *Omrit Lall Bose* v. *Arbach Cazi*, W. R., Act X R., 47.

Where the tenure of a defendant is declared liable to assessment in a suit passed between him and the plaintiff's vendor, the plaintiff can sue for a kubuleut, as he is thereby only carrying out the provisions of the decree obtained in that suit. *Modhoosoodun Chowdhry and others* v. *Ram Mohun Ghur*, 8 W. R., 473.

In a decree for a kubuleut the term for which it is to remain in force should not be fixed.

An objection that the judgment of the Court of first instance is erroneous under a ruling of the Full Bench of the High Court, not taken before the lower Appellate Court, will not be allowed to be taken in special appeal. *Narattam Dass Chowdhry* v. *Roso Pearee Chowdhrain*, 3 B. L. R., A. C., 271.

A suit for a kubuleut will not lie for a portion only of the land included in an entire holding. *Ram Doss Bhuttacharjee and another* v. *Ramjeebun Poddar and others*, 6 W. R., Act X R., 103.

A suit for a kubuleut is a suit to enforce the performance of a contract for future occupation of the tenure, and cannot be maintained where there is no evidence of defendant having ever agreed to hold the land of the plaintiffs, or ever paid them rent. *Chunder Nath Nag Chowdhry* v. *Asanoollah Mundul*, 10 W. R., 438.

In a suit for kubuleut at an enhanced rent,—*Held* by Norman, J., that the Judge was not at liberty to reject, as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts which they related, and that the probative force arising from concurrent testimony was the compound ratio of the probabilities of the testimonies taken singly.

Held, by Seton-Karr, J., that, as there was a break of three years in the period of uniform payment which would give rise to the presumption of uniform holding from the time of the Permanent Settlement, the Judge, instead of accepting dakhilas, merely because they were not denied by the plaintiff, should have found whether the dakhilas were satisfactorily proved and attested, and, if so, whether they could legally support a uniform payment for 20 years. *Rajah Radha Kant Deb* v. *Khema Dossee and others*, 7 W. R., 105.

Where a plaintiff suing for a kubuleut at enhanced rates obtained a decree below, though he was found not entitled to the rate of rent which he claimed, the High Court, considering that under a ruling of the Full Bench the suit should have been dismissed, of its own motion in special appeal reversed the decree, notwithstanding the objection was not taken in the written grounds of appeal. *Hameed Ali and others* v. *Afaoodeen*, 10 W. R., 213.

Where a suit for a kubuleut at an enhanced rent is decreed without any term being fixed by the Court, the kubuleut executed is inoperative beyond the year of demand. *Rajah Kristo Chunder Murdraj* v. *Poorosuttum Dass*, 15 S. W. R., C. R., 424.

A proprietor of a fractional share of an undivided estate may sue to obtain a kubuleut from the ryot, without making his co-sharers parties, when there is no dispute as to his share, and when the tenant has paid him rent separately for his share. The want of specification of boundaries in a kubuleut is no ground for dismissing a suit for a kubuleut, when all the particulars of area are given as required by Section 2 of Act X of 1859.

The lower Appellate Court ought not to have entertained the objection of the defendant that no pottah had been tendered before the institution of the suit, as the objection had not been taken before the first Court. That issue was not essential to the right determination of the suit upon the merits. *Ramanath Rukhit* v. *Chund Huri Bhuya*, 6 B. L. R., 356; and 14 S. W. R., C. R., 432.

In a suit for obtaining a kubuleut, failure to prove the exact quantity of land for which the kubuleut is sought to be obtained renders the suit liable to dismissal. *Shib Ram Ghose* v. *Pran Piria*, 4 B. L. R., Ap., 89; 13 S. W. R., C. R., 280.

A decree of a Civil Court in a suit (the plaint of which referred to Section 30 of Regulation II of 1819, and Section 10 of Regulation XIX of 1793) which declared the right of the zemindar to assess rent on land not proved to have been held under a grant prior to 1st December, 1790, is sufficient to establish the relationship of landlord and tenant

between the zemindar and the party against whom the right of assessment was declared. *Srimati Sandumini Debi and another* v. *Sarup Chandra Roy and others*, 8 B. L. R., Ap., 82 ; 17 S. W. R., C. R., 363.

A suit will not lie in the Revenue Court for the delivery of a kubuleut until the plaintiff has established that the relation of landlord and tenant subsists, or has been admitted between himself and the defendant. *Keisurga* v. *Chotoo*, 1,4 N. W. R., 781.

14.—When Suits for Kubuleut will Lie.

The tender of a pottah is not necessary before a suit for a kubuleut can be laid. *Modhoosoodun Chowdhry and others* v. *Ram Mohun Ghur*, 8 W. R., 473.

The purchaser of an undisputed share of an estate may obtain from the Revenue Courts a decree for a kubuleut in respect of his share. *Nidhy Ram Sircar* v. *Dhun Kishen Bhutlacharjee and others*, 6 W. R., Act X R., 53.

In a suit for a kubuleut, on the allegation that the defendant is holding a specific quantity of land under him, if the plaintiff's allegations are disproved, and the relation of landlord and tenant is not established, the plaintiff's suit must altogether fail.

Quære,—Whether a suit for a kubuleut on an allegation of the kind stated will lie? *Yakoob Ali and others* v. *Kaernoollah and others*, 8 W. R., 329.

The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kubuleut. The decree may make the obtaining of the kubuleut contingent on the offering of a corresponding pottah. *Munsoor Ali and others* v. *Bunoo Singh and another*, 7 W. R., 282. See also *Sheikh Woolfut Hossein* v. *Jumoona Doss*, W. R., (1864), Act X R., 60. *Nityanund Ghose* v. *Kissen Kishore*, W. R., Act X R., 82. *Mahomed Yacool Hossein* v. *Sheikh Chowdhry Wahed Ali*, 4 W. R., Act X R., 23.

The purchaser of a transferable under-tenure in execution of a decree for rent may void any lease or holding within the tenure not specially proved by law, and consequently may sue for a kubuleut at rates paid for similar lands in the neighbourhood. *Sristeedhur Mundul* v. *Gobind Surukar*, 6 W. R., Act X R., 15.

There is nothing illegal in a suit for a kubuleut against jotedars. The plea of holding at fixed rents cannot be urged by a defendant who, on his own showing, is not even a tenant with a right of occupancy. *Ramzan Ali* v. *Rajcoomar*, W. R., 1864, Act X R., 13.

In order to entitle a landlord to sue for a kubuleut he must tender a pottah. *Abbay Sunkur Chuckerbutty* v. *Rajah Indra Bhuran Deb Roy*, 4 B. L. R., F. B. R., 58, and 12 S. W. R., F. B., 27.

15.—When Suits for Kubuleuts will not Lie.

Until the right to assess has been properly determined, a suit for a kubuleut will not lie under Act X of 1859. *Maharajah Ramnath Singh Bahadoor* v. *Huro Lall Pandey and others*, 8 W. R., 188.

A suit will not lie for kubuleut for a portion of the lands included in one entire holding, for which entire holding a kubuleut and pottah have been already exchanged between the parties. *Abdool Ali and others* v. *Yar Ali Khan Chowdhry*, 8 W. R., 467.

A separate kubuleut cannot be claimed for uncultivated lands already comprised in a lease, on the ground that such uncultivated lands have now been brought into cultivation. *Sheikh Mahomed Kaloo Chowdhry* v. *Fedaye Shikdar*, 8 W. R., 219.

It is not competent to landlords to whom a joint kubuleut has been given without any specification of shares to institute separate suits, and to call upon the Collector, on the original contract between the parties, to apportion to each plaintiff that share of the rents to which he may be entitled. *Kalee Churn Singh and others* v. *E. R. Solano and others*, 8 W. R., 200.

A proprietor of a fractional share of an undivided estate, though receiving a definite portion of the rent from the ryot, is not entitled to maintain against him a suit for a separate kubuleut in respect of such undivided share. *Ranee Sarutsundari Debi* v. *Watson*, 2 B. L. R., A. C., 159; S. C., 11 W. R., 25.

One of the shareholders of an undivided zemindary cannot institute a suit to obtain a separate kubuleut from a ryot for his fractional share thereof. *Udaya Charan Dhur* v. *Kalitara Dasi and others*, 2 B. L. R., Ap., 52 ; S. C., 11 W. R., 393.

A landlord cannot bring a suit to compel a ryot to execute a kubuleut unless he first tenders a pottah to the ryot, such as he is entitled to receive under Section 9, Act X of 1859; and a suit for a kubuleut at an enhanced rate of rent cannot be supported without a previous notice under Section 13, Act X of 1859. *Ukhoy Shunker Chuckerbutty* v. *Rajah Indro Bhosun Deb*, 12 W. R., 27.

The defendant was under-tenant in respect of lands which his lessor held under a modafut from the zemindar. Subsequently the lessor left, and the zemindar gave to the defendant a pottah for part of the lands covered by the modafut, and to the plaintiff a pottah for the whole land covered by the original modafut, but did not assign any of his rights as zemindar to the plaintiff, to recover or enhance the rent reserved in the pottah he had granted to the defendant.

Held, in a suit for a kubuleut at an enhanced rate, that the plaintiff and defendant were not in the position of landlord and tenant, so as to enable the plaintiff to maintain his suit. *Kulam Sheikh* v. *Pandur Mundel*, 2 B. L. R., A. C., 252 ; S. C., 11 W. R., 128.

Before a landlord can sue for a kubuleut he must tender a pottah. But the objection that a pottah had not been tendered should be made in the first Court or in the lower Appellate Court, and not for the first time orally in special appeal.

A landlord cannot sue for a kubuleut in respect of a portion of the land held under an istemraree pottah. *Doorgakant Mozoomdar* v. *Bisheshur Dutt Chowdhry*, W. R., 1864, Act X R., 44; see also *Troyluckhonath Chowdhry* v. *Kuleema Bibee*, 2 W. R., Act X R., 96 ; and see also 1 W. R., 82.

A suit for a kubuleut is not the correct mode of establishing a title. Where a separate title is pleaded, and there is no proof of receipt of rent from the party from whom the kubuleut is re-

quired, the question of title must be decided before the suit for a kubuleut can proceed. *Syed Jeshan Hossein* v. *Bakur*, 3 W. R., Act X R., 3.

A suit for a kubuleut will not lie for a right to fish in certain waters. *Mohun Gobind Sein and others* v. *Nittaye Haldar*, 6 W. R., Act X R., 101.

No suit for a kubuleut can lie where the plaintiff has never received any rent from the defendant, nor has there been any contract between the two to pay and receive rent, and where therefore there is no relationship of landlord and tenant between them. *Sreemunto Koondoo* v. *Brijonauth Paul Chowdry*, 16 S. W. R., C. R., 296.

16.—Suits on Kubuleuts.

In a suit on a kubuleut, the Court of first instance found that the kubuleut had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorized to sign it. The Judge on appeal reversed the decision. *Held* that the decision of the Judge holding the defendant responsible for the signature of a person of whose authority there was no evidence was erroneous in point of law, and was a ground of special appeal. *Sham Chand Bysack* v. *Bungo Chunder Chatterjee*, Marsh., 556.

The plaintiff claimed rent under a kubuleut, and turned out that the document upon which he relied was a forgery. *Held* that he could not, after thus failing to prove the kubuleut, be allowed to show that the defendant had paid him rent for a number of years.

An admission that rent was due after a particular rate is good evidence against the defendant making the admission, but is not evidence against his co-defendants. *Naranee Dossee* v. *Nurrohurry Mohonto*, Marsh., 70.

The plaintiff sued on a kubuleut which the Court pronounced a forgery. *Held* that, notwithstanding an allegation by the defendant that he had paid all his rent to the plaintiff, the suit was properly dismissed, without investigation as to whether rent was due in respect of any other obligation. *Bhoyrub Chunder Chowdhry* v. *Huradhun Ghose*, Marsh., 561.

A landlord cannot claim rent under a kubuleut where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent. *Hurish Chunder Koondoo* v. *Mohenee Mohun Mitter*, 9 W. R., 582.

Plaintiff sued upon a kubuleut, and filed a pottah in support of it. The pottah having been rejected, and the kubuleut not proved, he was held not entitled to fall back on a general statement that he has a jote pottah; that the lands in dispute are part of the same; and that he can oust the defendant who was duly in possession. *Gobind Chundra Lahoory and others* v. *Jardine, Skinner, and Co., and others*, 7 W. R., 163.

Where a tenant had executed a kubuleut to four persons, *held* two of them could not sue him for arrears of rent in the Collector's Court, making the other two co-sharers, or their representatives, defendants jointly with him. *Ganga Gobind Sen* v. *Gobind Chandra Roy*, 4 B. L. R., Ap., 39.

17.—Lease.

A. agreed to take at a stipulated rent a portion of the property leased to B. for the remainder of B.'s lease. Almost immediately after B. surrendered his lease to the landlord (S.), who gave a fresh lease to R., to whom he afterwards sold all his rights. A. continued in occupation some time, and on relinquishing was sued for rent at the stipulated rates. A. denied liability, alleging that he had made no agreement with R., but, from the time of R.'s purchase had held under him as a tenant-at-will.

Held that A. was bound, under the terms of his contract, to pay the rent for as many years as the lease had to run to his lessor, or to the person who represented his lessor. *H. Ruston* v. *W. L. Atkinson*, 11 W. R., 485.

Where A. taking a putnee to the prejudice of B., has notice of an agreement existing between B. and the zemindar, he cannot in equity maintain the lease which he has obtained, but B. will be entitled to relief against him. *Dwarkanath Chowdhry* v. *Komul Lochun Doss Mundle and others*, 10 W. R., 414.

Plaintiff took a sub-lease of land from a party who was lessee under the proprietor, but who, without ever receiving possession, surrendered his rights under his lease by a deed of estafa executed subsequently to the sub-lease.

Held that plaintiff had no right of action against the proprietor. *Beejoy Gobind Singh* v. *Sunkur Dutt Singh*, 10 W. R., 367.

The plaintiffs were mokurruree lease-holders, prior to whose lease the proprietor granted a pottah of the same land to A., with a stipulation that A. should not let the land to others without leave. A. afterwards, with the proprietor's consent, sold his lease to B., who again, without such consent, sold his rights to the defendants. The plaintiffs sued to eject the defendants as trespassers. *Held* that as there was nothing in the condition on which the plaintiffs (as exercising the proprietor's rights) rely that implies right of re-entry upon the land in case of a breach of that condition, the only effect of the want of the plaintiffs' consent on the part of the plaintiffs to B.'s sale was to maintain unimpaired B.'s liability to the landlord, without reference to the arrangement between B. and any other parties. *Gordon, Stuart, and Co.* v. *Taylor*, W. R., F. B., 9.

Held by the Court of first instance, and confirmed on appeal, that a covenant in a lease for years to grant a new lease on the expiration of the existing term under and subject to all covenants, as in the first lease contained, is satisfied, if such new lease contain the like covenants as the former lease, except the covenant for renewal. *P. and O. Co.* v. *Kunnyloll Dutt*, 2 Hyde's Rep., 217.

The defendant had unsuccessfully intervened in a suit between landlord and tenant, setting up a lease as middleman. *Held* that the landlord was entitled to sue in the Civil Court to have such lease declared fictitious. *Raghubar Chowdhry* v. *Bhaikdhari Singh*, 3 B. L. R., Ap., 48; S. C., 11 W. R., 455.

Where two parties bind themselves under an indenture, drawn up in the English form, the one to lease and the other to pay rent for certain land, the contract is complete, and a suit for arrears of rent due under it will lie under Act X of 1859, although no separate kubuleut is executed. *Kishen Doss and*

another v. *Hurry Jebun Doss and others*, 10 W. R., 324.

The term thekadar is properly applicable to hereditary cultivators only when they have also a theka or lease of a share in, or the whole of, the profits of an estate. *Buij Nauth* v. *Manglee*, 2 N. W. R., 411.

A thekadar is ordinarily a person who holds a theka or lease of the whole of a zemindar's interest in a village.

There is nothing in the law which renders a writing necessary to the creation of such an interest.

It is not to be inferred from the mere circumstance that persons accepted a theka that they forewent their existing right. *Leela Dhur* v. *Bhugwan and others*, 3 N. W. R., 39.

A lease for no definite time, but fixing an annual rent (সন বসন) falls within Clause 4 of Section 17 of Act XX of 1866, and must be registered in order to be admissible in evidence. *Ramkumar Mondle* v. *Brajahori Mridha*, 2 B. L. R., A. C., 75; 10 W. R., 410.

A lease providing for enhancement if the lands are found on measurement to exceed the quantity stated in the lease, does not necessarily give the right to abatement if the lands are found to be less than that stated in the lease. *Ram Kant Chowdhry* v. *Bindabun Chunder Gope*, 2 W. R., Act X R., 71.

Construction of the term "abadkaree talookdaree" in a lease explained.

Neither the acceptance of farming leases by the widow *quâ* farmer, subject to the Government proprietary right, nor the sale of that Government right, in any way *ipso facto* extinguishes any talookdaree right existing in the abadkaree talookdar in that capacity, if otherwise valid. *Huropershad Bhuttacharjee* v. *Bhyrubchunder Mojoomdar*, 8 W. R., 391.

Where the right, title, and interest of the owner of a house are purchased at a sale in execution, and the purchaser finds the house in the occupation of a lessee at a fixed rent, his giving the lessee notice that, after a certain date, he intends to charge him at a particular rate does not give him a right to rent at that rate. If not content with the rate fixed in the lease he can only get such sum as the Court finds to be a fair and reasonable rent. *James Fegredo* v. *Mahomed Madessur and others*, 10 W. R., 267.

A sum taken by a landlord as an advance, to be credited to his lessee in his accounts as rent, may be considered as security for the payment of the rent, but does not change the lease into a mortgage. *Baboo Gridharee Singh* v. *M. Collis*, 8 W. R., Cr., 497.

In a lease which provides for rent-free possession for 12 years, the rent-free possession contemplated does not necessarily date from the year of the lease, so that in a suit more than 12 years after the granting of the lease the lessee is entitled to plead that he has not yet had possession rent-free for 12 years. *Bharut Chunder Roy* v. *Issur Chunder Sircar*, 2 W. R., Act X R., 78.

Where a lease is not in writing, but the terms of holding are specified in a notification addressed by the lessor to his servants, such an acknowledgment is, as against the lessor, conclusive evidence of the terms of the agreement.

Where a lease for a fixed term of seven years contains no words to import a continuance of the interest after the death of the grantee, nor any expressions which point to any earlier determination of the interest, the *primâ-facie* meaning is a continuance for seven years, and that the lease did not terminate with the death of the original lessee, but survived during the remainder of the term to his heirs and representatives.

The *onus* is on the party who seeks to show that the transaction should be governed by Hindu law that the *primâ-facie* construction is contrary to the Hindu law, or the established custom of considering such contracts in Bengal. In this case the lessor having, on the death of the lessee, granted a putnee of his whole estate, including the farm in dispute, was adjudged liable to pay to the representatives of the lessee damages for the time they were deprived of the beneficial enjoyment of the farm, according to the increased rent which the new lessee had undertaken to pay. *Maharajah Tej Chund Bahadoor* v. *Sree Kanth Ghose and others*, 6 W. R., P. C., 48.

A pottah granted by a lessee from Government, whose lease fell in by his own default, cannot enure beyond the temporary interest of the grantor. *Bomeezoonissa Saheba and another* v. *N. Joachim*, 6 W. R., Act X R., 88.

A. conveyed land to B., with a collateral agreement to repurchase within a certain period; the right to redeem, however, being dependent upon the due performance by A. of the conditions of a certain lease of the land in question which A., remaining in possession, agreed to take from B. The rent falling in arrear, B. sold the land to C. within the period allowed A. to redeem.

On appeal the High Court set aside the sale, holding that there was no natural connection between the lease and the condition to redeem, and that the clause for forfeiture was so vaguely worded as to have the appearance of a mere threat, as in equity in the absence of specific mention of the nature of the failure which is to bring down the penalty of forfeiture, ought not to be enforced. *Anonymous*, 1 Ind. Jur., O. S., 130.

A lease granted by an ijaradar is not good beyond the term of the ijara.

It does not lie within the ordinary scope of a naib's authority to grant leases; special authority to grant them is necessary. *Ooma Tara Debia* v. *Peena Bibee*, 2 W. R., 155.

Where the appointment of a sezawal to collect the rents is provided for in the lease, in the event of the tenant failing to pay his rents, such appointment, when made, cannot be regarded as either avoiding the lease or evicting the lessee. *Fukeeroodeen Mahomed Hossein* v. *C. J. Phillip*, 11 W. R., 464.

A Government ijaradar's covenant with Government that he will not object to the use of the tanks, roads, cow-path, &c., within his ijara, does not prevent him from making settlements for those tanks, roads, &c.; and the mere fact of his giving a lease to one party cannot interfere with another party's right to use such road, or the waters of such tank, or give that other party cause to sue for a declaration of title. *Woosam Aly* v. *Jan Aly and others*, 11 W. R., 394.

A lease for a term of years contained a proviso that if in any year the rent should be three kists in arrear the lessor might appoint a sezawal, and the

lessee would pay his salary; and if, notwithstanding the appointment of such sezawal, the arrears of rent were not paid by the end of the year the lessor should be at liberty to rescind the lease. *Held* that it was a condition precedent to the right of the lessor to rescind the lease, that he should have appointed a sezawal. *Lall Lutchmee Pershaud* v. *Bhoodun Singh*, Marsh., 474.

A lease contained a stipulation that the ryot should give up such part of the land as was unfit for the cultivation of indigo, and should not sub-let the same. *Held* that as the lease contained no proviso for forfeiture, or right of re-entry for the breach of this covenant, the landlord was not entitled upon such breach to maintain a suit under Act X of 1859, Section 23, Clause 5, to eject the ryot. *Gooroopersaud Sircar* v. *Philippes*, Marsh., 366.

A lease was granted for a term of years at a certain reserved rent payable by instalments, with a stipulation in the kubuleut that in case default were made in the payment of such instalments on the days they severally should become due, the tenant should pay interest thereon at the rate of one per cent. per mensem. *Held* that the landlord was entitled to interest at the rate agreed upon, in respect of instalments of rents during the several periods they had remained due, notwithstanding he had received such instalments from time to time after the days for payment. *Rutty Kunt Bose* v. *Gungadhur Biswas*, Marsh., 40.

A lease purporting to be for a certain term of years contained a proviso that if at any time the lessee should make default in payment of rent the lessor should be at liberty to let the lands to another lessee. *Held* that the introduction of this proviso did not make the lease operate as a grant in perpetuity so long as the rent was paid, but merely had the effect of enabling the lessor to determine the lease within the term, in case of default by the tenant in paying the rent. *Shanye Rujree* v. *Burtin*, Marsh., 250.

A lease contained the following words: "You shall continue to pay the sum of sicca rupees 5 fixed on the whole as ticca jumma of the said mouzah every year, and having cleared the villages of jungle, and having brought the lands under cultivation, yourself and through others, as usual, enjoy and occupy the same with your sons and grandsons in succession." *Held* that the lease conveyed an absolute interest, and that the grantee and his heirs were entitled to transfer it; and that a transferee, not an auction-purchaser, was not liable to enhancement of rent. *Watson and Co.* v. *Joggeshur Attah and others*, Marsh., 330.

In every agreement to lease land there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee. *Munee Dutt Singh* v. *William Campbell*, 11 W. R., 278; S. C., 12 W. R., 149.

In strict law a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm. But cases of forfeiture are not favoured when no injury has resulted, or when a money compensation is a sufficient remedy.

Mere unpunctuality in the date of payment of rent is no ground for forfeiture. The zemindar, if he has sustained injury by such unpunctuality, may sue for the interest due during the period in which the different instalments remained unpaid and for conditional forfeiture, but he cannot demand at once the absolute forfeiture of the property.

When there is a covenant not to sub-let, what constitutes a sub-lease causing forfeiture? *Held* that the lessee must transfer all his rights of collecting rents and of suing for them in the Courts; and that although a sub-lease may not be so absolute and complete as to make the lease *ipso facto* void, yet it may be such a fraudulent evasion of the terms of the covenant as to entitle the plaintiff to equitable relief.

The mere fixing of a sum to be paid by the sub-tenant to the farmer, and the declaration of the sub-tenant's right to all sums collected beyond that amount, are not sufficient to convert an agency into a sub-lease. *Alum Chunder Shaw Chowdhry* v. *W. Moram and Co.*, W. R., 1864, Act X R., 31.

Though the holder of a younger brother's appanage has no power of complete and absolute alienation of property, of which he has only a limited tenure for maintenance, still a lease granted by him is good as between him and the grantee and those claiming under the grantor, at least during the grantor's life. Mining leases, like leases for building, are among those which the regulations particularly favour as being in their nature such as to require a long time for profitable working. *Gordon, Stuart, and Co.* v. *Tikaitnee Scolas Kowaree*, W. R., 1864, 370.

By indenture dated 1st February, 1856, A. leased certain premises in Calcutta to B. for a term of ten years, as from 1st November, 1855, at a rent of Rs. 100 per month, payable monthly. A. covenanted with B. to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms for three years, and that it should be lawful for B. at any time during the second lease, or extended lease, to remove or sell and dispose of all, or any part, of the screws and machinery which were at the time of the granting of the lease, or during the term or extended term might be, upon the premises, and immediately upon or within two months after the expiration of the term or extended term to remove, &c., the buildings, &c., which then were or might at any time, during the term or extended term, be erected on the premises by B., her executors, administrators, or assigns. B. erected buildings during her tenancy under the lease.

The defendant, on 24th August, 1858, became, by various mesne assignments, the assignee of the lease, without notice to A., and subsequently repaired and erected buildings on the land.

The defendant continued to occupy the premises, and paid the rent in the name of B. up to August, 1866. No renewal of the lease (which expired on 31st October, 1865) was ever demanded by B. or by any one claiming under her.

The plaintiffs who had become A.'s representatives in June, 1866, gave notice, through their attorneys, on 6th September, 1866, to B. to quit on 1st November, 1866, and not to remove buildings and fixtures put up since 1st November, 1855; and on 1st November, 1866, the plaintiffs, in pursuance of the notice of the 6th of September, demanded possession of B. and of the defendant who was in actual occupation of the premises.

Held that the acceptance of rent by A. and his representatives from the defendant holding over

after the expiration of the original term did not constitute a renewal of the lease for three years; that the defendant was not entitled to a renewal for three years; that the tenancy after 1st October, 1865, was a monthly tenancy in the name of B., and was terminated on 31st October, 1866, by the notice of 6th September, 1866; that the defendant was not entitled to remove buildings erected; that he might remove the machinery. *Brojonath Mullick and others* v. *Weskins*, 2 Ind. Jur., N. S., 163.

Where a joint lease was given to many persons, with an entirety and equality of interest among the tenants, the resignation of some of the joint lessees does not necessarily operate to void the lease. *Mohima Chunder Sein* v. *Petambur Shaha and others*, 9 W. R., 147.

In a suit for a declaration of right to, and to obtain possession of, a ryotee jote by virtue of an amaldaree pottah granted to plaintiff by defendant, where the terms of the pottah were substantially that the plaintiff was to have a ryotee jote at a certain jumma, and that on there being a measurement and re-assessment the plaintiff was to be liable to pay higher (*i.e.* pergunnah) rates, there being no mention of consideration or any reference to a right of occupancy,—*Held* that plaintiff could not urge that the written contract conveyed to him a right of permanent possession for due consideration, nor could defendant be legally called upon to prove payment of consideration.

Held also that as defendant had, on the contemplation of a re-measurement and re-assessment, tendered a pottah at the pergunnah rates which plaintiff had refused, the latter was not entitled to possession and to the lease claimed in the suit. *Bango Chunder Chuckerbutty* v. *Nuzmoodeen Ahmed and others*, 11 W. R., 156.

An instrument which is in terms a temporary lease is as binding on the lessor *quâ* lease, where the tenancy is to commence at a future day, or on the determination of an existing lease under which another lessee is in possession, as where it commences immediately. *Pitchakutti Chetti* v. *Kamala Nayakkan*, 1 Mad. Rep., 153.

In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of tirvai due from other tenants of the village, and to recover the increased tirvai imposed by the Collector,—*Held* that the plaintiff's right to enjoy his share of the village lands under the original pottah was not legally determined by resumption; and that, continuing liable only to the fixed rent, the plaintiff is entitled to the return of the amount paid under compulsion, in excess of such rent, at the date of the suit. *Ellaiy* v. *Late Collector of Salem*, 3 Mad. Rep., A. C., 59.

The fifteen days' grace allowed to a lessee prior to ejectment cannot be negatived by any condition in the lease. *Madhub Chunder Adit Chowdry* v. *Ram Kuloo Beeparee*, 16 S. W. R., C. R., 151.

Where a lease contained a stipulation against sub-letting without the lessor's consent, and the lease violated this stipulation, it was held that the stipulation was a reasonable one, and that the lessor might either bring an action for damages for its breach, or a suit for an injunction to restrain such sub-letting by the lessee. *Mohaná, widow of Gumáhi* v. *Shekh Sádodin et al.*, 7 Bom. Rep., A. C. J., 69.

Every breach of an agreement for a lease does not entail forfeiture of the lease, but where forfeiture is provided as the penalty for breach of a particular clause it may be enforced for such breach. *Mahomed Faez Chowdry* v. *Shib Doolaree Tewaree*, 16 S. W. R., C. R., 103.

For breach of a covenant by an izardar not to excavate a tank in the lands leased to him, or if so to be liable to eviction by the zemindar, and to pay the cost of filling up the tank, no suit will lie at the instance of the zemindar for the recovery of a fractional portion of the lands covered by the lease, but the zemindar may declare the lease cancelled and resume the whole of the lands, or he may sue for cancellation of the lease, and he may also sue for damages occasioned by the excavation of the tank. *Maharajah Beer Chunder Manick* v. *Shaikh Hossein*, 17 S. W. R., C. R., 29.

Suit to eject defendants (who held under a lease, Exhibit A) from a house-ground and to compel them to remove the buildings thereon erected. The defendants pleaded that A was a permanent lease, and that plaintiff had no right to eject. The lease A expressly authorized the lessee to build. The Court of first instance, holding that A was not a permanent lease, decreed as sued for. The Appellate Court, while concurring with the moonsiff as to the construction of A, gave to the plaintiff the option of paying for the house and resuming the land, or of receiving the value of the land from the defendant. *Held*, that the decree of the Principal Sudder Ameen was right. *Máhálatchmi Ammál* v. *Palani Chetti*, 6 Mad. Rep., 245.

Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a muttum of which the plaintiff was the trustee; and had been let to the defendant's father under a muchâlka (Exhibit A) dated 14th August, 1837, entered into with the Collector, the manager of the property on behalf of the Government. The tenancy continued to be regulated by this agreement until plaintiff, in 1867, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal the plaintiff, at the end of the fasli, and without tendering a pottah for another fasli stipulating for the increased rent, brought his suit to eject. The defendant (appellant) contended that the right to put an end to his tenancy was conditional upon his failure to pay the rent fixed by the agreement. *Held* by Scotland, C. J., upon the construction of the muchâlka, that the plaintiff possessed the absolute right to put an end to the tenancy at the end of the fasli, unless the condition relied upon by the appellant was by force of established general custom (which had not been alleged), or positive law made a part of the contract of tenancy.

By Holloway, J.—That whether the express contract was binding on the pagoda or not, it gave no right to hold permanently, and that there is nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations. Enamandoram Venkuyya *v.* Venkantanáráyana Reddi and Nalitambi; Puttar *v.* Chinnadevannáyagom Pillai, (1 M. H. C., 75 and 109), doubted. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*, 6 Mad. Rep., 164.

Suit to recover the proprietary right in a village belonging to plaintiff's muttah, which was let to defendant's father under a pottah and muchâlka, and which on the death of her father and since the defendant refused to surrender, upon the grounds (1) that the right had been leased permanently, subject to the regular payment of the stipulated rent, which condition had been strictly fulfilled; (2) that her father had expended large sums in making substantial permanent improvements in the village, and that he had by gift transferred the tenancy to her.

Held that on the true construction of the terms of the pottah and muchâlka only a tenancy from fasil to fasil was created. *Jessie Foulkes* v. *Rajahrathnee Mudali*, 6 Mad. Rep., 175.

A lease granted by a zemindar for a longer period than the term of his own engagement with the Government is not absolutely void for the excess, but only voidable and may be confirmed. *Semble*, that Act XVI of 1842 applied to agricultural leases, not to *bonâ-fide* leases for other purposes. *Nita Ram* v. *Nanuck Dass*, 1, 3 N. W. R., 47.

A perpetual or permanent lease at a low fixed rent, made by a zemindar who obtained the zemindary by self-acquisition, is binding upon the zemindar's successors, although the instrument was not registered under Regulation XXV of 1802, Section 8. *Mutta Viran Chetty* v. *Rani Kattama Natchiyur*, 4 Mad. Rep., 463.

The right to assign or sub-let is as well established an incident of a tenancy at a rent for a determinate period when the contract of letting is silent on the subject as it is of an estate for life or of inheritance, and there is nothing in the nature of the conditions attached to a zemindary estate which renders an assignment of a lease of such estate an exception to the general rules. *Held*, on the construction of a lease, that the language did not evidence a contract purely personal to the lessee and his heir so as to exclude the right to assign. *Venkatasamy Naick* v. *Srimata Muthuvijia Ragunanda Remi Kathama Natchiar*, 5 Mad. Rep., 227.

The defendant's father was engaged in litigation for the purpose of obtaining possession of a zemindary under a lease for ten years, given by the zemindar, commencing in 1857. While the suit was pending the defendant's father sold five-eighths of his interest under the lease to the plaintiff, and agreed to give plaintiff possession in consideration of certain sums of money paid and certain liabilities undertaken by the plaintiff. The defendant's father obtained possession in 1865, but refused to put the plaintiff's agents in possession on the ground that the plaintiff had not complied with the terms of the agreement. In giving a decree for the defendant's father against the lessor, the Privy Council reserved to the zemindar leave to institute a suit for redemption upon payment to the defendant of all sums advanced to him. In a suit instituted by the zemindar for redemption in 1866, a razinamah was signed by the plaintiff and defendant in the suit, by which the term of the original lease was extended to the year 1875 for the considerations therein contained. In 1867 the plaintiff brought a suit for possession, and claimed the benefit of the stipulations contained in the razinamah, or for damages. *Held* that the plaintiff was not entitled to possession on the ground that defendant was not in possession under the old lease, but plaintiff was entitled to recover damages for loss of profits during the defendant's possession under the old law. *Ramasawmy Naik* v. *Vinuithuthan*, 5 Mad. Rep., 257.

A perpetual or permanent lease at a low fixed rent, made by a zemindar who obtained the zemindary by self-acquisition, is binding upon the zemindar's successors, although the instrument was not registered under Regulation XXV of 1802, Section 8. *Muttu Viram Chetty* v. *Rani Kuttama Natchiyar*, 4 Mad. Rep., 463.

A permanent lease of a village in a muttah by the muttahdar (plaintiff's father) is not invalidated by Section 8 of Regulation XXV of 1802, although the lease has not been registered as required by that section. *Subrayalu Naick* v. *Rama Reddy*, 1 Madras High Court Reports, overruled. *Kendappa Naik* v. *Annamalay Chetty*, 4 Mad. Rep., 396.

Where there are no words in a lease extending its provisions to other parties beyond the lessee, its term must be interpreted as applicable to the lessee only, unless the Court is able, from the conduct of the parties and the surrounding circumstances, to come to a different conclusion.

Where a lease contains a condition whereby the lessor agrees not to put an end to the mukurruree of his lessee, except on the occurrence of a fresh settlement on the part of Government, it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement took place. *Lekhraj Roy* v. *Kunhya Singh*, 14 S. W. R., C. R., 262.

Where a lessor gives his lessee power to sub-let, and the latter sub-lets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. *Nehaloonissa* v. *Dhunnoo Lall Chowdry*, 13 S. W. R., C. R., 281.

Where a lease gives the lessee the right to continue in possession until money borrowed from him is liquidated, the lessor is put in the position of a mortgagee, and, to the extent of the security given, the lessee is in the position of a mortgagee, but the lessee is not entitled to have the property sold. *Kewal Sahoo* v. *Baso Narain Singh*, 13 S. W. R., C. R., 445.

A lease for more than a year is not the less a lease because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor. Such a lease cannot be used in evidence unless it is registered. *Buksh Ali Boohean* v. *Sreemutty Nabotara*, 13 S. W. R., C. R., 468.

18.—POTTAH.

It is not necessary that any particular form of words should be used in a pottah conveying rights to hold at fixed rates. *Afsur Mundul* v. *Ameen Mundul and others*, 8 W. R., 502.

Pottahs need not be attested or registered. *Ram Joy Sein* v. *Nunda Moyee Debea and others*, 10 W. R., 374.

Even if a ryot's pottah be declared by a Court to be null and void his title to the occupancy right laid down in Section 6, Act X of 1859, is not affected, provided he has held or cultivated con-

tinuously for a period of twelve years. *Shib Nath Roy* v. *R. T. Watson & Co.*, 8 W. R., 374.

Where lands in excess of the number of beegahs specified in a pottah have been held for more than 60 years, and have always been considered to form part of what was covered by the pottah, they are held to have been occupied as land included in the pottah since before the Decennial Settlement, and the rent of them cannot therefore be enhanced. *Janokee Bullub Chuckerbutty* v. *Nobin Chunder Roy Chowdhry*, 2 W. R., Act X R., 33.

A pottah which bars enhancement may be good as regards the person to whom it is granted, but not as regards his heirs not mentioned in the pottah. *Rajessuree Debia* v. *Shibnath Chatterjea*, 4 W. R., Act X R., 41.

A pottah must not, *primâ facie*, be assumed to give an hereditary interest, though it contains no words of inheritance; "pottah," as used in Act X of 1859, being a generic term, which embraces every kind of engagement between a zemindar and his under-tenants or ryots.

Where proof exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the want of the words "from generation to generation" in the pottah, and the tenant cannot be dispossessed by his superior. *Dhunput Singh* v. *Goamun Baee*, 9 W. R., P. C., 3.

Suit for ejectment and mesne profits before Act X of 1859. The defendant (a planter) was allowed to continue in possession of certain lands until a certain time, when he was to relinquish all but those fit for indigo cultivation, which he was to keep, on paying rent to and taking a pottah from the plaintiff. The plaintiff alleged that the defendant did not take a pottah; the defendant answered that he applied for one and was refused. *Held* that the landlord was bound to make a positive tender of a pottah, and not to insist on his tenant taking the initiative. *Huronath Roy* v. *Gow Smith*, 2 W. R., 73.

A jungleboore pottah granted by a Hindu widow, and acquiesced in and confirmed by various persons interested in disputing it, cannot, whatever its original defects, be cancelled at the suit of one of the persons who had recognized it. *Ram Sagur Singh* v. *Ranee Kasheesuree*, 2 W. R., 291.

The words "such lands continuing to be used for the purposes specified in the leases" in Clause 4, Section 26, Act I of 1845, do not restrain the effect of a lease for clearing land of jungle solely to such time as jungle remains to be cut on the land; but should be taken to mean that the lease will stand good as long as the land is kept clear of jungle, and not allowed to fall back into its old state.

If a pottah gives the tenant power to extend his lease beyond the land originally made over to him under the pottah, and gives the same rent for the additional land as for the other land, such additional land is not assessable with the pergunnah rate of rent; but the pottah is good and binding even on an auction-purchaser as respects the whole of the land cultivated by the tenant. *R. Watson & Co.*, v. *Jhukroo Singh*, 1 W. R, 195.

A prior pottah granted by an ijaradar, and ratified by the zemindar subsequently to his grant of a new pottah of the same to another party, cannot be questioned by that other party, who may however seek his remedy by a suit against the zemindar *Jeeaoollah Mundul* v. *Rajah Indoo Bhooson Deb Roy*, 5 W. R., 207.

The mere production of a pottah, without proof of possession under it, cannot avail. *Sheikh Luckhee* v. *Sheikh Babur*, 5 W. R., 213.

A pottah which provided that the grantor was not to alienate or lease the property to any other party during the term of the pottah, without giving the lessees under the pottah the refusal, was upheld. *Mohima Chunder Sein* v. *Pitambur Shaah and others*, 9 W. R., 147.

Where a pottah does not contain words specifying the right of re-entry, the Court will hold that such right exists. While land is held which a pottah which defines the period for under the land is to be held, no right of occupancy can accrue, although such a right may accrue under Section 6 in certain cases. *Shadhoo Jha* v. *Bhugwan Chunder Opadhea and another*, 1 Ind. Jur., N. S., 75, and 5 W. R., Act X R., 17.

A tenant not having a right of occupancy is not entitled to a pottah under Section 8, Act X of 1859, unless there is an agreement with his landlord fixing the rate of rent.

A tenant not having a right of occupancy is not entitled to an abatement of rent under Act X of 1859, Section 18. *Sree Nobodeep Chunder Sircar* v. *Lallah Seeb Loll*, Marsh., 325.

On the hearing of a suit for a pottah, it appeared that, by a mistake in calculation, a small arrear of rent was due to the defendant. *Held* that the Judge might notwithstanding make a decree in plaintiff's favour. *Rughoo Roy* v. *Sreeram Roy and others*, Marsh., 257.

In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of trivari due from other tenants of the village, and to recover the increased trivari imposed by the Collector,—*Held* that the fact of pottahs having been issued separately to each tenant, stating the share of land occupied, without defining the holding by boundaries and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of trivari stated in his pottah and no more, is not conclusive evidence of such individual liability. *Ellaiya* v. *Late Collector of Salem*, 3 Mad. Rep., A. J., 59.

Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and build a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. *Pearee Mohun Mookerjee* v. *Raj Kisto Mookerjee*, 11 W. R., 259.

Where a pottah, after providing for payment of rent by the dur-putneedar "year by year, month by month, and kist by kist," contained a distinct declaration that if the dur-putneedar did not at the end of each month pay up the amount due for that month he should from the first day of the succeeding month pay interest upon the amount in arrear, the Court held that the Judge below was not correct in his construction of the pottah that the dur-putneedar was not bound to pay rent in equal

monthly kists, nor liable to interest if he did not so pay it. *Bhyrub Chunder Banerjee* v. *Meer Ameeroodeen*, 17 S. W. R., C. R., 173.

The word "karindah" as used in the pottah in this case was held to be merely a term used to set forth what was the *status* of the person to whom the pottah was granted, and to afford no ground for the presumption of the tenants holding previous to the date of that pottah. Nor did the word "nij-jote," as used in this pottah, mean lands cultivated by the cultivator himself, but lands held by the zemindars in their own possession or their own private lands. *Hajee Shaikh Wajoodeen Hossein* v. *Madhoo Chowdry*, 17 S. W. R., C. R., 404.

Where a pottah purports to convey so many beegahs of land "more or less" within certain boundaries, the test of what is really conveyed is not the area of the land but its boundaries. *Sheeb Chunder Mahneeah* v. *Brojonath Aditya*, 14 S. W. R., C. R., 301.

Where a pottah had no attesting witnesses and was not capable of direct proof, it was held to have been established by the fact of having come from proper custody, corroborated by the exact identity of the grantor's signature with his admitted signature on other documents.

A pottah which gave land for building purposes and recited that no abatement of rent was to be granted at any time or for any cause, and that no increase of jumma should ever be demanded, was held distinctly to provide that the land was granted at the rate then fixed for ever, even though no such words were used as "istemraree" or "Ba-furzundan." *Binode Beharry Roy* v. *C. B. Masseyk*, 15 S. W. R., C. R., 494.

19.—Lessor and Lessee.

A lessor cannot, after the expiration of the lessee's lease, appeal from the dismissal of the lessee's suit concerning a boundary dispute. *The Commissioner of Soonderbunds* v. *Chunder Coomar Ghose*, 3 W. R., 175.

A *bonâ-fide* lessee from a party actually in possession as zemindar is entitled to recover mesne profits for the unexpired period of his lease, on being evicted by the auction-purchaser in execution of a decree. *Teknarain Singh* v. *Dewan Ameer Ali Khan*, 3 W. R., 222.

Where the proprietor of resumed lakheraj land leases it for valuable consideration, and at a stipulated jumma, while the settlement proceedings are under reference to the higher revenue authorities for confirmation, he cannot afterwards turn round upon the lessee and plead that he had no power to grant a permanent lease, on the ground that the settlement with him was temporary, and not permanent. *Ameer Aly* v. *Ameeroonissa Begum*, 11 W. R., 11.

Lands forming part of the endowment of a temple were demised by the Collector at a svamibhogam rent of four annahs per cottah, the lessee paying the Government tirvai. The lessee entered, improved, and paid his rent for several years. *Held*, reversing the decree of the Principal Sudder Ameen, that the smallness of the rent showed that the lessee was merely a tenant-at-will, and the hákdar of the endowment, having regained possession, might oust him at his pleasure.

Regulation V of 1822, Section 8, refers only to zemindars and other proprietors of estates permanently settled under the Regulation of 1802. *Nallatambi Pattar* v. *Chinnadeyvanayagam Pillai*, 1 Mad. Rep., 109.

Where a lease is granted in perpetuity at a fixed rent, and the lessor reserves no reversionary interest in the land or in the trees growing on it, the lessees are entitled to the ownership of the trees. *Sharoda Soondery Dabea* v. *Gour Singh and others*, 10 W. R., 419.

A lessee who sues, alleging that there has been an interruption to his lease to cut or sell the trees on the land included therein, must base his right, first, upon its being a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or fourthly, under the express terms of the lease. *Ruttonjee Eduljee Shet* v. *The Collector of Tanna and the Conservator of Forests*, 10 W. R., P. C., 13.

To justify a holding over after expiry of lease, a direct consent on the part of the landlord is requisite. No implication of consent can or ought to be received when there has been every opportunity of consent in express terms, and particularly in the face of a special warning from the landlord that he should re-enter on the land when the term expired. When tenants have no right to hold over, their use and occupation of the land is a trespass, and they are liable not for rent as tenants, but for damages as trespassers. *G. P. Mackintosh* v. *Gopee Mohun Mojoomdar*, 4 W. R., 24.

Plaintiff let to defendant a quantity of land, of which he was not certain how much was in cultivation and how much was jungle, at a total jumma to be eventually settled on the footing of 12 annas per beegah culturable, and 10 annas per beegah jungle, on the number of beegahs of each sort which existed at the end of the year next preceding the date of the pottah, the calculation of the rent to be made permanently by effecting a measurement within six months, until which time defendant should pay a provisional jumma at 12 annas a beegah on a given number of beegahs, amounting to a specified sum. Plaintiff sues for arrears of rent, no measurement having taken place, though years have elapsed.

Held that until ascertainment by measurement of a settled jumma, the rent due under the terms of the pottah would be the provisional sum mentioned above; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected. *Bharuth Chunder Roy* v. *Bepin Beharee Chuckerbutty*, 9 W. R., 495.

A. cannot be summarily evicted and deprived of his title under a mokurruree lease duly made in his favour, by reason of a previous arrangement between his lessor and B., which never went beyond the lessor's receipt of earnest-money from B., and of which A. had no notice.

Quære,—Whether B. can sue the lessor for damages? *Mookto Ram Paul* v *Kalee Komul Roy and another*, 6 W. R., 234.

Where a lessor, who had never been in possession, granted a pottah of lands to which his title was disputed, and the lessee was kept out of pos-

session by the defendant who disputed lessor's title,—*Held* that the lessee could maintain his action for possession of the land, and need not make his lessor a co-plaintiff. *Prankissen Dey* v. *Biswambhur Sen*, 2 B. L. R., A. C., 207.

A suit for rent will not lie where the lessee has never obtained possession of the land leased to him. *J. B. Bullen* v. *Lalit Jha*, 3 B. L. R., Ap., 119.

A Collector may give a decree for arrears of rent against the real lessees in possession, although no previous realization of rent directly from them is established, and no written agreement is shown to have been executed by them in their own names, another party being the ostensible holder of the lease, and not denying liability. *Judoonath Paul* v. *Prosunnonath Dutt and others*, 9 W. R., 71.

The heir of a lessee is liable to the lessor for rent payable by virtue of a kubuleut, notwithstanding he is not in possession of the land. *Tarineepersad Ghose* v. *Sreegopaul Paul Chowdhry*, Marsh., 476.

The lessor is not bound to recognize the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family. *Upendra Mohun Tagore* v. *Thanda Dasi*, 3 B. L. R., A. C., 349.

A zemindar, after he had granted a zur-i-peshgi lease, collected the rents from the ryots. *Held*, first, that the lessee was entitled to recover from the zemindar the amounts of rents so received in excess of the rent due under the lease, and next, that a suit to recover such excess was properly instituted before the Collector. *Rampershaud Vogut* v. *Ramtohol Singh*, Marsh., 655.

Where the proprietors of a mehal had agreed with an ijaradar that in the event of their granting a putnee to anybody he should have the refusal, and, notwithstanding their agreement, gave a putnee to another ijaradar,—*Held* that the latter, having been no party to the stipulation, was not bound thereby, and that the putnee granted to him cannot be set aside. *Komul Lochun Doss* v. *Dwarka Nath Chowdhry*, 10 W. R., 254.

A lessor who prevents ryots from paying rent to the lessee when the latter comes to take possession is liable for mesne profits, even though he may not himself collect the rents. *Bhechumbur Singh* v. *Roy Chunder Ghose*, 15 S. W. R., C. R., 196.

Where a lease contains a condition whereby the lessor agrees not to put an end to the mokurruree of his lessee except on the occurrence of a fresh settlement on the part of Government, it does not follow that the lessor intends to constitute an hereditary lease if no Government settlement takes place. In such a case a lessor's right to re-enter arises on the death of the lessee; but if the representatives of the lessee to whom they have paid rent, the cause of action to a purchaser of the lessor's rights and interests arises on the refusal of the lessee's representatives to permit him to re-enter. *Lakhraj Roy* v. *Kanhya Singh*, 14 S. W. R., C. R., 262.

In a suit by an ejected lessee to recover a year's balance of rent from his lessor, who had given a lease to another party and dispossessed plaintiff,—*Held* that by granting the later lease defendant had made himself responsible for any loss which might thereby be occasioned to plaintiff, even though he (the lessor) had not collected the rent himself. *Gobind Chund Juttee* v. *Mun Mohun Jha*, 14 S. W. R., C. R., 43.

Where a lessee of land under an izarah erected an indigo factory thereon, with the knowledge of and without any objection by the lessor, upon the determination of the izarah lease, and the delivery of possession to the lessor, the lessee was held entitled to remove the materials. *Kinoo Singh Roy* v. *Nupeeroodeen Mahomed Chowdry*, 17 S. W. R., C. R., 97.

Any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property, and if the heirs take the estate of the deceased lessee they take it with all rights and responsibilities. *Shaikh Danoollah* v. *Shaikh Amamtoollah*, 16 S. W. R., C. R., 147.

Unless evidence to the contrary be forthcoming, a lessee of zemindaree rights must in this country be presumed to have all and the same powers in relation to the location or ejectment of ryots as are possessed by the zemindar. *Suda Nund* v. *Dwarka Singh*, 2 N. W. R., 194.

A plea that the defendant was deceived into taking a lease by the misrepresentation of the plaintiff cannot be pleaded as an answer to an action for rent.

Such a defence should be made the subject of a cross suit. *Ishree Pershad Rae* v. *Beharee Lal*, 2 N. W. R., 243.

Where a lessee whose lease has expired, and who is unwilling to give the increased rent demanded by the landlord, and retains possession in the hope of obtaining a new lease without such increase, parties entering upon the land as cultivators with the consent of the landlord are not called upon to show the ex-lessee their authority. *M. H. Gale* v. *Maharanee Sreemutty*, 15 S. W. R., C. R., 133.

A sub-lessee without title cannot plead any law of limitation against the landowner either himself or through his lessee. *Mohurrum Shaikh* v. *Nowkurree Dass Mohuldar*, 14 S. W. R., C. R., 357.

A landlord having obtained a decree declaring that certain homestead land was liable to assessment, the occupants, owing to certain criminal proceedings against them, abandoned the land, and the landlord leased it out to others, who held possession, paying rent for upwards of twelve years, after which they were ousted by the original occupants who claimed the land rent free. *Held* in a suit by the lessees that they were entitled to recover possession. *Moneerooddeen Mojoomdar* v. *Parbutty Churn Ghose*, 15 S. W. R., C. R., 121.

A breach of any of the stipulations in a lease does not cancel the lease or give a right to eject, unless there has been an express provision to that effect in the lease. *Augur Singh* v. *Mohinee Dutt Singh*, 2 W. R., Act X R., 101.

Where an application for a lease for farming jungle lands was in its nature general, but the answer was specific and clear, and granted the lease on certain conditions, the answer determined the contract, and was the only contract between the parties.

The word "farmer," as used in Regulation XVII of 1827, is used, not as a cultivator of the ground, but as a farmer of public revenue, a person who would stand between the Government and the ryots as possessors of the ground. *Held* that, in a suit

for the cancelment of a lease on account of a breach of its conditions, the breach complained of consisting in the non-payment of rent for a particular period specified in the lease, the lessee is entitled to avail himself of the proviso in Section 78, Act X of 1859, that section applying to all suits for the ejectment of a ryot, or for cancelment of lease for non-payment of rent. *Jan Aly Chowdhry* v. *Nitye Nund Bose*, 10 W. R., 12.

A decree for cancelment of a lease is virtually one for possession in supersession of that lease, and may be so executed by a Court under Act X of 1859 by which it has been passed. *Mahomed Faez Chowdry* v. *Shib Doolaree Tewaree*, 16 S. W. R., C. R., 103.

Where a tenant suing for a renewal of his lease proves right of occupancy, the Court should proceed to determine what rates of rent should be imposed, even should he fail to make good his claim to hold at fixed rates. *Sheodie Mahometan* v. *Huree Kishen*, 9 W. R., 81.

The proprietors of a certain holding having refused the terms of the Government, a farming settlement was made with the present defendant, who undertook to confirm and ratify all amulnamahs granted by the zemindars while the settlement proceedings had been pending. Plaintiff being a ryot without a right of occupancy, but one who had got an amulnamah, sued for a pottah at the rate fixed by the amulnamah. *Held* that the amulnamah formed the basis of a special contract between the parties, and took their case out of the purview of the Sections 5 and 8 of the Rent Law; and that by the terms of the amulnamah the defendant was bound to give plaintiff a pottah on fair and equitable rates ("upajukta"), which were to depend on the rates which he himself obtained from Government. *Held* that the *onus* of proving that the rate which he claimed was fair and equitable was upon the plaintiff. *Kishen Pershad Singh* v. *Mohun Singh*, 15 S. W. R., C. R., 420.

20.—Rent.

Where a tenant pays money to his landlord on account of rent, without any specification whether the payment was for old or enhanced rent, the landlord is at liberty to credit the payment as he thinks fit. *Ranee Shurno Moyee* v. *Kashee Kant Bhuttacharjee and others*, 7 W. R., 511.

Under Regulation VII of 1790 a plaintiff could only sue for and recover the rent of the current year. No legal presumption arose from his doing so that the rent of prior years had been satisfied. *Thakoor Mirtherjeet Singh* v. *Chokee Narain Singh*, 2 W. R., 58.

A suit was brought in the Revenue Court to set aside an attachment for rent, on the ground that such attachment was for rent at a higher rate than was due. The landholder claimed the higher rate under an alleged assessment of a Butwarra Ameen. The Collector made a decree setting aside the attachment, on the ground that the landholder failed to prove that the higher amount was due.

Held that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued, on the ground of prior service of notice of demand of the higher rate, under Regulation V of 1812, that question having been already adjudicated upon by a Court of competent jurisdiction. *Mussamut Bibee Reazoonnissa Khanum* v. *Doyanauth Sha*, Marsh., 638.

As a general rule, a landlord who has attached the lands of a tenant, and has collected the rents due by a sezawal, would not be entitled to claim from the tenant the difference between the collections made by the sezawal and the actual rents. *Jhoomuck Chowdhry* v. *G. Anderson*, 5 W. R., Act X R., 40.

Where a person has a right to make deductions of rent payable to the surburakar under his kubuleut on account of rent due from ryots or others, and pays his full rent without making any deduction, his not doing so gives him no right of action against the zemindar or his representatives. *Chunder Seekur Roy and Mohesh Roy* v. *Gholam Shurreef, alias Loopan Meeah*, 1 Ind. Jur., N. S., 146.

A payment on account of rent cannot be credited to previous arrears beyond the term of limitation. The payments in each year must be presumed to be for the current year, and surplus payments to be for the past, not subsequent years. *Taramonee Dossee* v. *Kally Churn Surmah*, W. R., 1864, Act X R., 14.

A general payment made in one year, without proof that it was in satisfaction of the rents of that year, may be applied in satisfaction of the arrears of the previous years. *R. Ahmuty* v. *K. Brodie*, W. R., 1864, Act X R., 15.

The payment of the entire rent of a subsequent year affords a presumption in favour of the payment of the rent for the previous year. *R. Solano* v. *Doolhin Umrit Koer*, W. R., 1864, Act X R., 65.

A payment for rent should be credited to the oldest rents first, and not to current rent, unless so specifically stated by the party making it. *Ranee Surnomoye* v. *Singhroop Bibee*, W. R., 1864, Act X. R., 133.

Where the principal subject of occupation is a building or buildings, when the rent is substantially the price of such occupation, the land on which the buildings stand being a merely subordinate matter, the rent cannot be truly described as the rent of land either kherajee or lakheraj. *Mothoora Nath Koondoo* v. *Campbell, W.*, 15 S. W. R., C. R., 463.

Rent is not altered by being paid in a different coin, *viz.* in kuldar, instead of sicca rupees; and the apparent addition of one anna per rupee (the difference in value between the two kinds of rupees) is not a real addition to the rent, nor is it an extra cess of an arbitrary nature or an illegal character.

Where a landlord who may originally have had a right to collect a higher rent is for a long period of years content to accept a lower, it would be manifestly unjust to allow him to turn round upon the tenant at any time he pleases and demand the higher rent. *Roocha Ram Misr* v. *Naga Dass*, 2 N. W. R., 92.

The produce of the land is by law (Section 112, Act X of 1859) hypothecated for the rent payable in respect thereof, but not the land itself. *Tirthanund Thakoor* v. *Paresman Jha*, 13 S. W. R., C. R., 449.

Where the jummas of different tenures are distinct the tenures must be treated as distinct and the rent charged accordingly. *Dabee Churn Dey* v.

Sreeshteedhur Chuckerbutty, 17 S. W. R., C. R., 346.

(*a*) *Rent Suits.*

A zemindar may sue to convert rents paid in kind into rents paid in money. The fact of the ryot having paid in kind for a number of years is no bar to enhancement. *Thakoor Pershad and others* v. *Nawab Syud Mahomed Bakur*, 8 W. R., 170.

The proper course to be observed where, in answer to a claim for rent, a lakheraj title is pleaded. *Bissessur Chuckerbutty and others* v. *Wooma Churn Roy*, 7 W. R., 44.

In a suit to recover rent in a Revenue Court, under Regulation XVII of 1827, Section 31, Clause 3,—*Held* that the proper questions to determine were whether the defendant occupied the land as tenant of the plaintiff during the period alleged, and if so, what rent was due; and that a defendant so sued could not deprive the Court of jurisdiction by setting up a title in himself, nor did the suit by such defence become one "in which the right to possession of land is claimed" within the meaning of Section 1, Clause 1 of Act XVI of 1838. *Bai Mahalakshmi* v. *Audhara Keshavram Narasiram*, 2 Bom. Rep., 193.

A decree for rent under the old law was held to be a simple money decree, and as not burdening the tenure after it had *bonâ fide* passed by private purchase out of the hands of the debtor. *Indur Chundra Doogur* v. *Ruttun Koomaree Bibee*, 7 W. R., 376.

A suit for arrears of rent at a certain rate decreed in a former suit may be maintained without notice under Regulation V of 1812; the decree itself being held to be sufficient notice. *Ramjeebun Bose* v. *Tripoora Dossee*, W. R., F. B., 93.

A suit for rent against several parties is maintainable against such of them as are shown to be in possession as tenants, whether they are registered or not. *Jerabutoonissa Khanum* v. *Ram Chunder Doss and others*, 6 W. R., Act X R., 36.

In a suit for rent, where the defendant admitted the plaintiff's right as landlord, and did not dispute the correctness of the rent, but pleaded payment, the non-registration of the kubuleut filed by the plaintiff was held to be no ground for dismissing the suit, which could have proceeded whether the kubuleut was or was not produced; the time for raising the objection as to non-registration being only when the kubuleut was tendered in evidence upon any disputed point. *Syud Reza Aly* v. *Bhikun Khan*, 7 W. R., 334.

A suit for rent from a party holding lands as zerat in his own possession is one for rent as between landlord and tenant, and cognizable under Act X of 1859. *W. S. Crowdy* v. *Sree Misser and others*, 12 W. R., 4.

In a suit brought by ryots to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the possession of the property evidenced thereby, leaving the contending co-sharers to settle the question of title in a separate suit brought for that purpose. *Modhoosoodun Acharj* v. *Kishore Hazrah*, W. R., F. B., 36.

When a decree-holder obtains possession of an estate in execution he is not at liberty to sue the ryots for rents falling due before the date of his taking possession. His proper course is to sue the late wrongful possessor for mesne profits, including the rents. *Umes Chandra Roy* v. *Shastidhar Mookerjee*, 3 B. L. R., Ap., 99; 12 W. R., 35.

A suit for rent due from several ryots, on account of a holding which has been let out to them, cannot be properly and legally brought against one of them, but must embrace all. *Roop Narain Singh* v. *Juggoo Singh*, 10 W. R., 304.

In a suit by the Court of Wards, on the part of the Durbunga Rajah, for unpaid instalments of rent, where the agreement under which the defendant held his zemindary was that he should pay his Government revenue into the collectorate through the Rajah,—*Held* that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant, and that the instalments of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue. *Gridharee Singh* v. *The Court of Wards*, 10 W. R. 368.

In a suit for rent in which defendants, admitting their joint tenancy, set up that they had, as among themselves, made an allotment of the land in certain shares,—*Held* that as such partition was not shown to have been recognized by the plaintiff the plea could not avail. *Bhola Nath Sircar* v. *Baharam Khan and others*, 10 W. R., 392.

A talookdar in executing a decree for rent sold his ryot's right and interest in the tenure. He afterwards instituted a suit against the same ryot for arrears and ejectment. *Held* that the execution-purchaser should have been made a party to the latter suit. *Prosono Moye Dossee* v. *Bhobo Tarinee Dossee*, 10 W. R., 474.

Held (by Markby J.) that no one can be plaintiff in a suit for rent except the person who has the right to recover; the only effect of Section 69 being to enable the person who is employed in the collection of rents to sue as agent. *Modhoosoodun Singh* v. *W. Moran and Co.*, 11 W. R., 43.

The plaintiffs' maâfeedars sued the defendants for rent due as cultivators of their puttee, but in the plaint referred to Clause 3, Section 1, Act XIV of 1863. *Held* that such reference, which was by mistake, should not have prevented the Court from trying the substantial cause of action, *viz.*, the fact of the rent being due from the defendants as cultivators in the puttee. *Mohun Lall and others* v. *Noor Khan and others*, 4 Agra Rep., 218.

Where a third party is made a defendant under Section 77, Act X of 1859, the question for trial is the receipt and enjoyment of the rent up to the date of commencement of the suit, and not the title in the land. *Mussamut Thakooroveen Bhogmanee Koonwar* v. *Syud Furzund Ali*, 1 Agra Rep., R. A., 20.

In a suit for arrears of rent the defendant is entitled to a deduction for lands washed away. *J. Savi* v. *Obhoy Nath Bose*, 2 W. R., Act X R., 28.

A claim to rent for certain land must not be dismissed merely because the defendant, by planting indigo, has obliterated the boundary-mark of that land. It must be ascertained who by previous enjoyment is entitled to receive the rents of the land,

if the plaintiff is not so entitled. *Brojonath Roy* v. *D. D. Gilmore*, 2 W. R., Act X R., 48.

In a suit for rent, in which the rents decreed for previous years had still to be ascertained, when the decree was given the Judge should have postponed the decision till the Ameen had ascertained what was the proper rent of the lands for the previous years. *Anund Moyee Chowdhrain* v. *Monee Kurnika Chowdhrain*, 3 W. R., Act X R., 168.

Two daughters, as co-partners, were owners of certain property, each having an eight-anna share therein. On June 30th, 1868, they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree she seized and sold property belonging to the tenant. The sale took place on the 12th of February, 1869. On the 15th of February the other owner brought an interpleader suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree. *Held* that she was not entitled to have it so paid. *Held* also, *per* Peacock, C. J.—The Statute 8 Anne, c. 14, does not apply to this country. *Held* that it would not at any rate apply to a cause in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor. *S. M. Padamani Dasi* v. *S. M. Jagadamba Dasi*, 3 B. L. R., O. C., 56.

A suit for rent brought while a suit for a kubuleut is pending should not be struck off, but kept in abeyance until the other is decided. *Mahomed Aali Shikdar* v. *Sheikh Ali Hossein Chowdhry*, 3 W. R., Act X R., 5.

A Collector is not competent in a decree for rent to make a special direction such as that realization shall be against the property of the judgment-debtor. *Dabee Pershad Sing* v. *Syud Delawar Ali*, 13 S. W. R., C. R., 312.

In a suit for arrears of rent under Act X of 1859, where defendant admitting plaintiff's interests in the land alleged that it was the ismalee property of himself and the plaintiff, the Revenue Court dismissed the suit on the ground that it had no jurisdiction. The Judge in appeal reversed the decision and gave plaintiff a decree. *Held* that even if the Judge had gone simply into the question of title and decided whether the estate was joint or separate, and on that decision based a decree, he would not have been wrong. *Mohesh Dutt* v. *Beg Narain Singh*, 16 S. W. R., C. R., 82.

The assignee of a zemindar's right to receive rent has a right to sue in the Collector's Court, whether the assignment has been effected by the intervention of the Civil Court or by the private act of the zemindar. *Reedoymonee Burmonee* v. *H. Sibbold*, 15 S. W. R., C. R., 344.

A suit against a talookdar for arrears of rent at an enhanced rate would, under Act X of 1859, lie in a Revenue Court even though it were not brought for determination of the rate at which defendant should be required to give a kubuleut. *Rowshun Bibee* v. *Chundermadhub Kur*, 16 S. W. R., C. R., 177.

In a rent suit the Court ought in the first instance to examine the agents, and then to declare the issue between the parties and fix a day for hearing. *Dinonath Mookerjee* v. *Debnath Mullick*, 14 S. W. R., C. R., 429.

A party holding an assignment from the landlord to recover rents from C., a registered tenant, having sued both C. and D. as co-tenants of the tenure, the suit against D. was dismissed by the lower Courts. *Held* that as the assignment respected the rents of that tenure, and D. had admitted being in possession of the land, the suit ought to have been allowed to proceed against both. *Dhoolee Chund* v. *Rajroop Kooer*, 15 S. W. R., C. R., 107.

P. got a decree on a mortgage-bond in the terms of a compromise by C. and others to the effect that the amount due should be paid by instalments, the property mortgaged remaining hypothecated. Meantime one M. got a decree against C., and in execution sold part of the property, *viz.*, a house, subject to the lien of P., bought it in herself and sold it again by private sale to plaintiff, who realized rent for some months. When M. was put in possession P. petitioned the Court, objecting, but being referred to a regular suit he executed his original decree, bringing the hypothecated property to sale, and bought it in himself, without however getting possession from the Court till many months later. Plaintiff now sues the tenant of the house in the Small Cause Court for rent, and P. intervenes as a party to the suit, claiming the rent which has fallen due from the date of his getting possession. *Held* that the plaintiff is not in a position to maintain the suit, his possession having been put an end to by P., whose lien on the property was anterior to the sale under which plaintiff purchased. *Poorno Chunder Bose* v. *Nobin Chunder Ghose*, 14 S. W. R., C. R., 77.

In a suit by putneedars for rent where the defendants plead a lakheraj title set up long before the plaintiffs acquired their putnee, the issue to be tried is, not whether the lakheraj title is valid or not, but whether plaintiffs have at any time received rent for the lands in dispute. *Purbooddeen Mullick* v. *Molaem Bibee*, 14 S. W. R., C. R., 149.

A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue such lessee in the Collector's Court for rent due from him as tenant, unless the latter has previously attorned to him. *Ram Lall Misser* v. *Chundrabulla Dabee*, 13 S. W. R., C. R., 228.

A suit by a sharer in a joint undivided estate for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate, falls within the provisions of Section 108, Act X of 1859. Where the owner of an undivided estate lets his share to a tenant by giving a pottah and taking a kubuleut, a suit for the rent of such undivided share, treated as a separate and distinct under-tenure, may come under the provisions of Section 4, Act VIII (B. C.) of 1865. *Dwarkanath Chuckerbutty* v. *Dhun Monee Chowdrain*, 15 S. W. R., C. R., 524.

A suit for rent is not maintainable at the instance of one or more of several co-sharers, unless the latter have been accustomed to collect their rents

separately. *Sree Misser* v. *Crowder*, 15 S. W. R., C. R., 243.

Where rents are not sued for within three years from the end of the year for which they are alleged to be due, the fact that damages were awarded against the plaintiff in a former suit for not giving receipts for that year will not create a cause of action. *Huro Pershad Roy Chowdry* v. *Wooma Tara Debee*, 15 S. W. R., C. R., 194.

A suit for arrears of rent of a quantity of land alleged to have been held by defendant over and above the quantity covered by his pottah was held to be in substance a suit for rent at an enhanced rate, requiring the issue of a notice under Section 13, Act X of 1859. *Thekmee Beldar* v. *Ramkessin Lall*, 15 S. W. R., C. R., 71.

Unless the circumstances of a rent suit are on all fours with those of another, it is a serious error for a Court to refer to its judgment in one cause for the reasons of its decision in another case. *Dhunraj Koonwar* v. *Ooggur Narain Koonwar*, 15 S. W. R., C. R., 2.

The price for the use of land in its improved state is rent which can be sued for in the Collector's Court, whether the improvement consists in the clearance of jungle, draining, fencing, accessibility by means of roads made upon or leading to it, contrivances for irrigation, or buildings erected upon the land. *Mothooranauth Koondoo* v. *W. Campbell*, 15 S. W. R., C. R., 463.

In a suit for rent where the defendant held under a lease from a party who subsequently gave a lease to plaintiff which gave him the right to collect rents from the defendant in accordance with the terms of the former (the defendant's) lease,—*Held* that no attornment was necessary, and that the suit could be instituted in a Revenue Court under Act X. *Sree Chund* v. *Budhoo Singh*, 13 S. W. R., C. R., 301.

In a suit for rent where defendant denies the relationship of landlord and tenant as subsisting between himself and the plaintiff, and states that he paid his rent to an intervenor, it is not enough that the intervention is set aside; it still remains for the Court to investigate the question whether the defendant is a ryot of the plaintiff. *Jagurdee* v. *Radha Kishore*, 13 S. W. R., C. R., 259.

The Civil Court has jurisdiction in a suit for arrears of rent recoverable upon a liability arising out of matters not within the cognizance of a Revenue Court. Such a suit is not governed by the period of limitation specified in Act X of 1859. *Prossono Coomar Paul Chowdry* v. *Muddur Mohun Paul Chowdry*, 13 S. W. R., C. R., 390.

Where the contract between the parties to a rent suit is in no way disputed or denied, and the fact of certain lands having been taken at a certain rent is admitted, the only issue being whether the rent has been paid or not, the case may be tried notwithstanding that the kubuleut is inadmissible by reason of non-registration. *Dinnonauth Mookerjee* v. *Debnauth Mookerjee*, 14 S. W. R., C. R., 429.

Held (by L. S. Jackson, J., whose opinion prevailed) that the provisions of Act X of 1859 do not apply to a suit for arrears of rent where the land is occupied for the purposes of building, and not agriculturally, or is not in the neighbourhood of lands occupied agriculturally.

Held (by Mitter, J.) that there is nothing in Act X of 1859 to justify any distinction between suits for arrears of rent on account of land used for agricultural purposes and suits for arrears on account of land used for other purposes. *In the matter of Brohmo Moyee Bewah*, 14 S. W. R., C. R., 252.

Where the kutkeenadar of an alleged share sued the kutkeenadar of the remaining portion for a proportion of rent, and defendant while admitting himself to be plaintiff's tenant disputed the extent of the alleged share,—*Held* that the question of the extent of the shares of the parties as co-kutkeenadar could only be decided by a Civil Court, which could give complete relief on the whole case with reference both to shares and rent. *Verasut Hossein* v. *Jughdharee Sing*, 13 S. W. R., C. R., 59.

L. having claimed certain lands as lessee from the zemindar, and A. having pleaded that he held them under a mourousee tenure from the same zemindar, the Court held that the two leases could co-exist, and that L. was entitled to recover actual possession and to pay to A., as an intermediate holder, the rent due to the zemindar. In execution of the decree, L. was put in possession of all the land except a portion covered by factory buildings in the possession of A., which buildings the Court held did not go with the land. Unable to get possession, L. brought a suit to recover rent for the land covered by the building. *Held* that no suit for rent could lie, A.'s representative being a trespasser, and his mere statement of willingness to pay rent being insufficient to constitute the relation of landlord and tenant. *Lyons* v. *Betts*, 13 S. W. R., C. R., 94.

In suits for arrears of rents of land, when the claim is under Rs. 500, a special appeal lies to the High Court, such claims not being generally cognizable by Courts of Small Causes.

For the purpose of recovering rent from a tenant the enrugsál year ends on the 31st of July. *Ramchundra Rughunuth* v. *Abaji bin Rustya*, 6 Bom. Rep., A. C. J., 12.

In a suit for rent where defendant pleads payment to a tehsildar appointed by plaintiff to collect the rents, the plea should be put in issue, and defendant should not be referred to a Civil Court. *Darimbu Debia* v. *Nilmonee Singh Deo*, 13 S. W. R., C. R., 266.

In a suit for rent in which defendant pleaded that during the period for which rent was claimed the tenants had been out of possession of the land, having been ousted by a third party to whom the zemindars (plaintiffs) had given a lease of the land. —*Held* that the zemindars were precluded from suing defendants for rent on account of such period, even though the latter had recovered a decree with wasilat for the period of dispossession. *Kalumbinee Dossia* v. *Kasheenauth Biswas*, 13 S. W. R., C. R., 338.

A Judge is not competent to hear a review in a case in which a special appeal has been admitted by the higher Court.

When a tenant is sued for arrears of rent, even though he should deposit the rent in Court during the pendency of the suit, he is still liable to have the decree passed against him, as the arrear was admittedly due when the suit was brought. Interest to date of deposit in Court and costs of suit being paid within fifteen days, execution would be avoided. *Baboo Sheo Nath Singh* v. *Ram Thul Rae*, 1 N. W. R., Par. 2, 39.

Quære,—Whether the provisions of Section 7, Act VIII of 1859, are applicable to rent suits under Act X of 1859.

Where a former judgment decided that the plaintiff had no cause of action, it is clear that there was no cause of action tried and determined between the parties, and consequently Section 2, Act VIII of 1859, is not applicable. *Ram Soondur Sein* v. *Krishno Chunder Goopto*, 17 S. W. R., C. R., 380.

The question was for which party M. had received rent. The High Court, on the former occasion, said it was not sufficient for M. to say that he was plaintiff's agent, and directed the question to be determined upon the issue whether plaintiff was the landlord or not. *Held* that what the Court meant was not to order the Revenue Court to go into the question of title between the parties and determine it, which the Revenue Court would have no power to do, but to find whether M. had been acting as plaintiff's agent and receiving rent for him or not; and that as the Judge found that M. was the plaintiff's agent and received rent for him from defendant, this was sufficient to determine defendant's liability to pay his rent to plaintiff. *Ramgutty Mundle* v. *Gourish Chunder Pauray*, 17 S. W. R., C. R., 14.

Plaintiff sued for rent describing herself as holding a dur-mourosa jote, and the lower Appellate Court treated that description of her jote as misdescriptive, because the jumma-wasilbakee papers called her a mourosa-izardar, and other papers showed her to be a dur-mourosa talookdar. *Held* in special appeal that the misdescription, if there were any, was an utterly insufficient ground for throwing out plaintiff's claim. *Bhoobun Moyee Dassee* v. *Russic Mundle*, 17 S. W. R., C. R., 17.

In a suit for rent before the Moonsiff, special appellant petitioned and was irregularly admitted into the suit as intervenor, as if the suit were being tried under Act X of 1859 in a Revenue Court. Defendants having admitted their liability to plaintiff under a kubuleut set up by the latter, the suit was decreed in the lower Appellate Court, and intervenor now appeals, specially claiming to be treated as if he had petitioned and was made a party to the suit under Section 73, Act VIII of 1859. *Held* that as he made no such application he was not entitled to be so treated, and that his interests were not likely to be affected by the decree if he had abstained from intervention. *Chunder Kalee Ghose* v. *Shibnauth Bhuttacharjee*, 17 S. W. R., C. R., 176.

An allegation of wrongful ejectment of defendant by plaintiff is no answer to a suit for rent during the period of possession. *Bhyrub Chunder Mojoomdar* v. *Huro Prossuno Bhuttacharjee*, 17 S. W. R., C. R., 258.

In a suit for rent, the lessee pleaded dispossession; but not being able to show that his lessors had no title and that the person who ousted him had a title, and relying for that purpose upon the result of certain suits, one of which in no way affected the property in question, and the other in no way affected the title of his lessors, who were not parties to it, his defence was held to have wholly failed. *Rung Lall Singh* v. *Lalla Roodur Persaud*, 17 S. W. R., C. R., 386.

Where a decree of 1848 gave plaintiffs the right to assess and to receive the rents for each year according to the assessment made for that particular year, a notice under Section 13, Act X of 1859 was held not necessary when the rent found assessable for the years for which rent was claimed varied from what was found assessable in 1848. *Salehoonissa Khatoon* v. *Mohesh Chunder Roy*, 17 S. W. R., C. R., 452.

Held that in this case the solenamah was a distinct transaction from the pottah, and that the plaintiff was entitled to bring separate suits for rent in respect of the tenures held under those documents respectively. *Ooma Churn Chowdry* v. *Ram Kant Chowdry*, 17 S. W. R., C. R., 488.

(*b*) *Abatement of Rent.*

A claim by defendant for abatement of rent under remission granted to plaintiff by Government may be tried in a suit for arrears. *Boikunto Paraki* v. *Soorendronath Roy*, 1 W. R., 84.

A putneedar or any other leaseholder can sue for abatement of rent under Section 23, Act X of 1859. *Horokishen Banerjee* v. *Joykishen Mookerjee*, 1 W. R., 299.

To sustain a suit for abatement of jumma in proportion to the area of lands now in his actual possession, the ryot must prove dispossession by the zemindar and not by a stranger. *Moheshchunder Ghose* v. *Bowl Chunder Ghose*, 1 W. R., 209.

The real meaning of Section 18, Act X of 1859, is that the grounds for which an abatement of rent may be claimed by a ryot must have resulted from causes beyond his control. *Munsoor Ally* v. *R. Harvey and another*, 11 W. R., 291.

Rent for a talook may be abated if a portion of the talook be washed away.

Independently of Section 18, Act X of 1859, a suit for abatement of rent will lie by a talookdar on the ground that part of the talook has been washed away.

A deduction may be made on such ground in a suit for arrears of rent.

In a suit for abatement of rent on the ground that part of the talook has been washed away by a river, measurement papers prepared by the revenue authorities in a case between Government and the talookdar, in respect of a share belonging to Government in the zemindary of the zemindar, are not admissible as evidence against the latter, they being *res inter alios acta*. In a suit for arrears of rent, decrees in summary suits against the defendant for rent for years subsequent to those in respect of which the rent is claimed, are no evidence of such rent being due; but such a decree is *primâ-facie* evidence in support of a claim for rent for the next ensuing year. *Afsuroodeen* v. *Musst. Sharooshee Bulu Duba*, Marsh., 558.

An abatement of rent by order of a Civil Court in consequence of diluvion does not prove alteration of the rate of rent, or affect a ryot's claim to the benefit of the presumption arising under Section 4, Act X, 1859. *Musst. Reazoonissa* v. *Tookun Jha*, 10 W. R., 246.

Even if a grantor can resile from his grant of abatement, he cannot do so without giving notice of his intention. *Raja Enayet Hossein* v. *Beebee Mhooboonnissa*, 9 W. R., 246.

A granted a putnee to B., to which a certain mehal appertained. The Government to which the mehal belonged, in reversion upon an ijara held

by A., sold it to C. *Held* that B. was entitled to abatement of rent from A., and that a suit for abatement, under the circumstances, was cognisable by the Revenue Court.

Semble,—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. *Brijanath Pal Chowdry* v. *Hiralal Pal*, 1 B. L. R., A. C., 87; S. C., 10 W. R., 120.

A. obtained from B. a putnee lease whereby it was agreed that A. should prepare a hustabad (rent-roll); that if it should appear that there was any deficiency in the jumma stated in the pottah, the correct jumma should be ascertained as therein provided; and that the rent should be made up to A. by B., and B. should return a proportionate amount of the consideration-money. A. sued B. for an abatement of rent for a refund of rent paid in excess, and for a proportionate refund of the consideration-money. *Held*, the suit was not a suit for abatement of rent within Section 23 of Act X of 1859, and the Civil Court had jurisdiction to try the different questions together in the same suit. *Rajah Nilmoni Singh* v. *Annundpersaud Mookerjea*, 1 B. L. R., F. B., 93; S. C., 10 W. R., F. B., 41.

A putneedar can sue for abatement of rent under Act X of 1859. *Prosunomoyee Dasee* v. *Soondur Coomaree Debia*, 2 W. R., Act X R., 30.

A howaladar has a right to sue for abatement of rent. *Komlakant Doss* v. *I. G. N. Pogose*, 2 W. R., Act X R., 65.

To sustain a suit for abatement of jumma in proportion to the area of lands now in his actual possession, the ryot must prove dispossession by the zemindar, and not by a stranger. *Mohesh Chunder Ghose* v. *Boul Chunder Ghose*, 1 W. R., 209.

In a suit for arrears of rent, a claim for abatement may be made by way of set-off in respect of land taken up by Government for the purposes of a road. *Deen Dyall Lall* v. *Mussamut Thukroo Koonwar*, 6 W. R., Act X R., 24.

A suit for abatement of rent will not lie, unless the plaintiff admits that the relation of landlord and tenant exists between him and the person from whom the abatement is sought, as to the lands in respect of which it is sought. *Obhoy Gobind Chowdhry* v. *T. J. Kenny*, 8 W. R., 518.

A ryot can have no claim in law to hajuts (or remissions), which being acts of grace on the part of the landlord, rest solely on his discretion. *Paneeollah Nashyo* v. *Nubodee Chunder Saha*, 15 S. W. R., C. R., 270.

A landlord receiving remission from Government on account of damage done to his estate by a cyclone is not on that account bound to allow a remission to his under-tenants, unless he received the former on the understanding or agreement that he would allow it in turn. *Goluck Chunder Mytee* v. *Parbutty Churn Dass*, 15 S. W. R., C. R., 167.

There is no provision in the Rent Law prescribing that suits for enhancement or abatement shall not be brought within a certain period after the determination of a similar suit on the same grounds. And there is no provision throwing upon a plaintiff in a suit for abatement of rent the burden of proof that there has been some change in circumstances since a decision in a previous similar suit was passed. *Cheda* v. *Nunhoo Beg*, 2 N. W. R., 348.

Quære,—Whether the proprietor of a talook created before the Permanent Settlement can claim abatement of rent on the ground of diluvion. *Ram Churn Bysack* v. *L. T. Lucas*, 16 S. W. R., 279.

A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he had to a deduction or abatement, notwithstanding that he has paid full rent for several previous years. When land is taken away for railway purposes, and compensation made, which is divided between the zemindar and those holding under him, any deduction of rent claimed from the zemindar must be reckoned with reference, not to the gross amount of compensation, but to the proportion which passed into his hands. *Maharajah Dheraj Mahtab Chami Bahadoor* v. *Chittro Coomaree Bibee*, 16 S. W. R., C. R., 201.

Though a pottah provided for an abatement of defendant's rent if on measurement the land was found to be less than 145 beegahs, yet it was held that if defendant came to be in possession of that less quantity by his own default, and not that of the lessor, the mere fact of defendant having been in possession of less than 145 beegahs would not entitle him to an abatement. *Seetanath Bose* v. *Shamchaund Mitter*, 17 S. W. R., C. R., 418.

A ryot who has held his land for a few months, and paid no rent at all, cannot sue for an abatement of rent on the ground that the land, on measurement, is less than the quantity mentioned in his pottah. *Brojonauth Koondoo Chowdry* v. *Unant Ram Dutt*, 17 S. W. R., C. R., 449.

(*c*) *Arrears of Rent.*

A zemindar may bring a suit for arrears only against the tenant whose name is recorded in his sherista, and in execution of a decree obtained in such a suit the whole tenure may be sold, though others, not recognized by the zemindar as his tenants, may be interested in the lease. *Huree Churn Bose* v. *Meharoonissa Bibee and others*, 7 W. R., 318.

Where a party, after obtaining a decree establishing his title to land, sues for and gets a decree for a kubuleut against another who was holding the land adversely to him without any contract, express or implied, for the payment of rent, he cannot maintain a suit for arrears of rent for a period previous to the kubuleut, which cannot have retrospective effect. *Jan Ali* v. *Gooroo Doss Roy and others*, 8 W. R., 338.

Where a claim was made for arrears of rent, and the Court was satisfied that there had been a grant for the worship of an idol which had been duly carried out, and where the parties have had peaceable possession for sixty years, the Court will not interfere. *Mussamut Chundrabally Debia* v. *Luckhee Debia Chowdhrain*, 1 Ind. Jur., N. S., 141.

(*d*) *Commutation of Rent.*

Where a tenant applied for commutation of rents paid in kind, one of three lumberdars was held en-

titled to insist upon the adjudication on the amount of the rate as directed by law; and the consent of two other lumberdars to accept a lower rate of rent cannot debar this right. *Roopa* v. *Sahib Singh*, 1 Agra Rep., R. A., 58.

A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent. *Held* that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. *Luchmun Persaud* v. *Holas Mabtoen*, 2 B. L. R., Ap., 27.

(*e*) *Collection of Rent.*

Surunjamee should be allowed upon the amount actually collected, and not upon the net proceeds coming to the zemindar. *Erfoonissa Chowdhrain* v. *Mussamut Rukeeboonissa*, 9 W. R., 457.

Held (by Markby, J.) that though it has been decided that a general authority to collect rents and to sue for them must be stamped, it has not yet been decided whether such authority must be in writing. *Modhoosoodun Singh* v. *Wickham and others*, 11 W. R., 43.

(*f*) *Liability for Rent.*

The purchaser at a sale in execution of a decree of the rights and interests of the former holders of a heritable and transferable tenure, is bound by their engagements with the zemindar, among others, for payment of rent. Notwithstanding the purchaser's priority of sale, the zemindar can sell the tenure for arrears of rent. *Khoobaree Rai* v. *Roghoobur Rai*, 2 W. R., 131.

A tenant paying rent to the superior landlord, after the grant of an intermediate lease, but without notice of it, is not liable to the intermediate lessee in respect of the same rent. *Sheikh Attapyee Mowlee* v. *Sheikh Sukhuwut Ally and others*, Marsh., 102; W. R., F. B., 1862, 30.

No subsequent interruption by A. in B.'s occupation and enjoyment of land would be an answer to A.'s claim for rent which had previously accrued. B.'s eviction by A. will not relieve him from liability for rent which accrued due prior to the eviction. *Madhub Chunder Mozoomdar* v. *Sidhee Nuzeer Ali Khan*, 8 W. R., 54.

The purchaser of a specific share of a talook, which with other talooks was held by the same jotedar, can be held liable only for the rent due upon the share purchased; and there can be no difficulty in determining the rent payable if each tenure has a separate jumma, and each shareholder holds a specific share. *Khema Moyee, alias Khamessuree Debia* v. *Radha Pearee Debia Chowdhrain and others*, 8 W. R., 469.

The appointment of a sezawal by the landlord absolves the lessee from liability for rent subsequent to such appointment and during the continuance of it. *Jhoomuck Chowdhry* v. *George Anderson*, 6 W. R., Act X R., 23.

In the absence of any covenant by the assignee of the lease of an indigo factory to take the liability for previous rents on himself, he is only liable for rent which accrues after the date of his assignment. *Mussamut Phool Koonwar and others* v. *W. Chardon and others*, 6 W. R., Act X R., 89.

When lands are liable to be assessed with rent as bastoo, and when as oodbastoo lands. *Prem Lall Chowdhry* v. *B. M. Brown and others*, 6 W. R., Act X R., 92.

No implication of a contract to pay rent to the zemindar on the part of the tenant can arise in a case in which the defendant has been paying rent to another zemindar than the one now suing for a kubuleut. *Digambur Mitter* v. *Huropershad Roy Chowdhry and others*, 7 W. R., 126.

The mere fact of a tenant relinquishing the land will not excuse him from payment of rent if he is otherwise liable, unless he makes some terms with his landlord.

A landlord, by taking rent from a party, and by suing him for arrears of his predecessor's rent, acknowledges him as a tenant, and cannot eject him, or enhance the rent, except according to law. *Cazee Syud Mahomed Azmur and others* v. *Chundee Lall Pandey and others*, 7 W. R., 250.

By partition a co-sharer's proprietary right to the land which has fallen in another puttee becomes extinguished, and he becomes a mere cultivator in respect to that land and liable to rent.

Held further that, though the rent was exigible, the claim for arrears of rent could not be decreed in the absence of express or implied contract for the same. *Zalim Rai* v. *Doorga Rai*, 1 Agra Rep., R. A., 69.

Held that the plaintiff, not having been put into the possession of land purchased by him, and holding no contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. *Ram Dass Singh* v. *Ram Narain*, 2 Agra Rep., R. C., 9.

As long as a ryot retains possession of any portion of his jote he is liable for the rent of the whole. *Saroda Soondery Debee* v. *Hazee Mahomed Mundul*, 5 W. R., Act X R., 78.

Where a co-sharer occupies more than his own share, or holds the whole estate by renting the land he occupies from one or more of his co-sharers, the liability of the cultivating shareholder to payment must, in the absence of usage, agreement, or evidence, be deemed single and entire. But if there is an agreement, express or implied, that the occupying shareholder shall pay separately to each of his co-proprietors a definite sum, such sum may be recovered by each co-proprietor by a separate rent suit. *Kalee Pershad* v. *Sheikh Lutafut Hossein*, 12 W. R., 418.

An arrear of rent is not due within the meaning of Section 32, Act X of 1859, until the rent itself has been determined. *Comul Lochun Roy* v. *Moran and Company*, 2 W. R., Act X R., 82.

A remission of rent by a naib who is shortly afterwards dismissed from office requires the sanction of the zemindar. *Bhoobun Mohun, alias Prolad Sandyal* v. *Shabo Soondery Debia Chowdhrain*, 8 W. R., 452.

A., the holder of an independent istemrarce tenure lying in B.'s zemindary, lets it to C., who under cover of his lease encroaches upon the zemindary lands. *Held* that there was no implied contract of tenancy between C. and B., and B. could not sue C. for rents on account of the excess lands.

Joyanarayan Singh v. *Mati Lall Jha*, 1 B. L. R., A. C., 21.

A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rent unless the tenant has paid or agreed to pay to him separately.

In decreeing enhanced rent it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed.

To prove receipts it is not necessary to produce the writer of them. The ryot can prove his own receipts. *Ganga Narayan Das* v. *Saroda Mohun Roy Chowdhry*, 3 B. L. R., A. C., 230; 12 W. R., 30.

In the case of transfer of a mere ryot's jote, the person in possession is liable for the rent, whether he is registered or not. *Gunga Ram Sirdar* v. *Biressur Banerjee*, 6 W. R., Act X R., 32.

A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized by the use of stall or huts erected by the tenant for the use of pilgrims frequenting a fair annually held on the land in honour of an idol which the defendant has there. *Kewajah Chyemun Rajah* v. *Jan Ally Chowdhry*, 1 W. R., 45.

A tenant was authorized by his landlord to pay a certain portion of his rent to T., a creditor of the landlord. T. afterwards obtained a decree against the tenant for the amount of rent he was required by his landlord to pay to him. The landlord brought a suit for the entire amount of the arrears. *Held* that he was entitled to recover only the surplus beyond the amount for which T. had obtained a decree, notwithstanding such decree was unsatisfied. *Lalla Gour Narain* v. *Kurren Lall Thakoor*, Marsh., 363.

Where a putneedar's rent is payable in monthly instalments, he agreeing to pay the revenue out of the rent and to file the Collector's receipts as payment, he is not entitled to deduct from an instalment of rent any portion of the Government revenue which may not be payable until after the instalment is due. He is bound to pay either in cash or partly in revenue receipts: failing to pay in both shapes, he may be sued for an arrear of rent. *Radhamonee Chowdhrain* v. *James Gray*, 12 W. R., 295.

An action for rent does not lie against a person said or shown to be in possession of a tenure which is written in the books of the zemindar in the name of a different person, unless there is a contract for rent, express or implied. *Eshan Chunder Gopal* v. *Burno Moyee Dassee*, 16 S. W. R., C. R., 233.

By law a zemindar is not bound to recognize as his tenant one whose name has not been registered in his books; and when his rent becomes due and is not paid it is sufficient for him to bring his suit against the parties from whom he has hitherto received rent. *Sadhun Chunder Bose* v. *Gooro Churn Bose*, 15 S. W. R., C. R., 99.

B. having covenanted to take from A. without enquiry 18 beegahs of land at a rent of R. 1 a beegah, with a stipulation that if on enquiry any excess land should be found he would pay the same rate of rent for such excess; or if the area should be found less than 18 beegahs, that he would receive a proportionate deduction from his rent; a measurement took place, and an excess was discovered. A. then sued B. for rent on the entire quantity of land. *Held* that B. was liable to pay rent for the excess at the rate of R. 1 a beegah, and that the tender of a pottah by A. to B. was not necessary. *Radhika Prosunno Chunder* v. *Neha lee Churn Dey*, 15 S. W. R., C. R., 410.

If no rent has ever been paid for land, this is *primâ facie* strong proof of a *de facto* exemption protected by limitation.

The party claiming the rent must satisfy the Court that the remedy is not affected by lapse of time, and that the land was held for some service due and rendered to the zemindar, or otherwise by the zemindar's permission. If the holding were merely permissive it could not prejudice the zemindar's right. *Ali Bux* v. *Mussamut Roop Kooer*, 2 N. W. R., 106.

No such relation as that of landlord and tenant exists between a mortgagor (after redemption) and the grantee of the mortgagee, and such mortgagor must establish his right to collect rent before he can sue to have the amount thereof ascertained. *Adjoodhya Singh* v. *Girdharee*, 2 N. W. R., 197.

Where a tenant holds over after the expiration of his lease, and no fresh arrangement is entered into, he is bound to pay the same rent as that which he had agreed to pay on entering into possession. *Shib Sahae* v. *Syud Mukbool Akmed*, 2 N. W. R., 204.

There is sufficient privity of estate between the purchaser of a rent-paying holding and the zemindar to entitle the latter to claim rent. *Kooloo Misr* v. *Bhyro Kulwar*, 2 N. W. R., 258.

Occupation by a trespasser does not create a claim to rent, though it may give grounds for an action for damages. *Bichook Pandey* v. *Narain Datt*, 1 N. W. R., Par. 1., p. 26.

A party stripped by a decree or order of proprietary interest in land does not by mere subsequent occupation of it become vested with the character of a tenant, and therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent. *Mukurdhooj Singh* v. *Ram Churn*, 1 N. W. R., Par. 1., p. 14.

To establish a right to recover rent a zemindar must show that either by assessment in due course of law or by agreement the tenant is liable to pay it. *Shaikh Gyasoodeen* v. *Shaikh Khoodabun*, 1, 4 N. W. R., 87.

Where certain persons were in possession of lands by virtue of a decree of Court, their tenants, the appellants, cannot be called upon to pay rent to the respondent, to whom they had not attorned, but who subsequently obtained a decree for the lands in suit, so long as no decree of Court had declared the title of the respondent to be superior to that of the persons under whom the tenants, the appellants, held. Respondent's remedy in such case is an action against the persons who were wrongfully in possession for mesne profits, and not in a suit for rent against their tenants, who had in good faith dealt with the persons who were the ostensible proprietors in possession under a decree.

Lands may be cultivated by a mere trespasser, and in that case the cultivator would not be liable to a suit for rent, but to a suit for mesne profits.

Owners of land may take advances for the cultivation of indigo, and the persons by whom the

advances were given may find it necessary to enter on the land and look after the cultivation and harvesting of the crop, but if they did so they could not be sued as tenants for rent.

To render a person liable to pay as a tenant it must be proved that he has by an express or implied agreement promised to pay rent, or that he has been assessed with rent in due course of law.

To hold a person bound by the acts of his agent, it must be shown that the agent acted within the scope of his authority. *Munchur Dass* v. *Dun Dyal*, 3 N. W. R., 179.

(*g*) *Rate of Rent.*

The assessment of revenue on resumed lakheraj land does not entitle the landlord to claim a re-adjustment of the rents of ryots holding at fixed rates from the Permanent Settlement. *Coonwar Raj Koomar Roy* v. *Assa Bibee*, 3 W. R., Act X R., 170.

Possession from the Permanent Settlement is not sufficient to prove that a uniform rate of rent has been paid from that date. *Mussamut Mahmooda Bibee* v. *Haradhun Khuleepa*, 5 W. R., Act X R., 12.

A ryot who brings jungle land into cultivation is liable, after a reasonable period, to pay the full pergunnah rates of cultivated land. A ryot who does more than bring uncultivated land into cultivation, *i.e.*, converts, by means of special works and special labour, unculturable into culturable land, is entitled to hold at exceptionally low rates. *Chowdhry Khan* v. *Gour Jana*, 2 W. R., Act X R., 40.

A zemindar, by consenting to a subdivision of, addition to, or subtraction from the total holding of a ryot, does not destroy the continuity of the tenure in respect of the rate of rent, and the rent paid for each beegah of land. *J. Hills* v. *Huro Lall Sein*, 3 W. R., Act X R., 135.

A zemindar is entitled to as much rent for his tanks as is leviable on tanks in the neighbourhood, without reference to the rent which Government may take from ryots whose tanks it has resumed. *Kurraly Churn Banerjee* v. *Modhoosoodun Patter*, 3 W. R., Act X R., 146.

A landlord is only entitled to demand a fair and equitable rent, even though his tenant be not a ryot. *Petumber Shaha* v. *Jebun Singh Burmonee*, 2 W. R., Act X R., 6.

A ryot who holds over after the expiry of his lease, in spite of his landlord, is liable to pay at the rates current for the same kind of land in the village. *George Tommy* v. *Sooba Kureem Lall*, 2 W. R., Act X R., 73.

A fair and equitable rate of rent for tanks should be assessed independently of the acts of Government. *Ram Churn Banerjee* v. *Kisto Deegar*, 3 W. R., Act X R., 132.

A zemindar who allows a tenant to remain on his land without express contract can only demand a fair rate of rent, *i.e.*, the full market rate. *Moneerooddeen Merdha* v. *T. J. Kennie*, 4 W. R., Act X R., 45.

If a ryot shows payment of rent for 1265 and 1266, proof of back rents being still unpaid devolves upon the landlord. *Ranee Sooruth Soondery Dabee* v. *K. Brodie*, 1 W. R., 274.

A decree in a suit for ejectment of a ryot for non-payment of rent was modified upon review, by reducing the amount of arrears awarded to the plaintiff.

Held that the amended decree was the final decree in the suit, and that the ryot was entitled under Section 58, Act X of 1859, to fifteen days from its date for payment of the arrears with costs and interest. *Radhamohun Mundle* v. *Buckshee Begum*, Marsh., 471.

If the Judge has to adjust rates of rent in a rent suit, he should adjust them so that the increased rent bears the same proportion to the old rent as the present value of the produce of the land bears to its former value. *Skib Narain Ghose* v. *Kashee Pershad Mookerjee*, 1 W. R., 226.

Where a higher rate was declared payable by a decree of a competent Court,—*Held* that the zemindar is entitled to recover the rent at the rate so fixed, although he may never have insisted upon the higher rent declared to be payable. *Syud Muzzum Ali Khan and others* v. *Pirthee Singh*, 4 Agra Rep., 263.

In a suit by the plaintiffs as inamdars to compel the defendants, occupiers of plaintiffs' land, to accept pottahs under Madras Act VIII of 1865, the defendants objected to the rates of rent claimed by the plaintiffs. There was no contract between the parties as to the rent to be paid, nor was there any assessment made under a survey made previous to the 1st January, 1859. *Held* that the proper rent to be paid by the defendants was to be determined according to the rates established or fixed for neighbouring lands of a similar kind. *Mahasingavastha Aiya and others* v. *A. Gopaliyan and others; A. Gopaliyan and others* v. *Mahasingavastha Aiya and others*, 5 Mad. Rep., 425.

A landlord is bound to prove that the rate of rent at which he claims a kubuleut is the rate that he has been in the habit of receiving from the tenant. *Ram Jeehun Chuckerbutty* v. *Khoodeeram Chatterjee*, 17 S. W. R., C. R., 388.

(*h*) *Distraint.*

A zemindar is not entitled to rent for a year in which he has illegally distrained and (to a great extent) destroyed the crops of the ryot. *Ram Dyal Singh* v. *Luchmee Narain Singh*, 1 W. R., 240.

The goods of third parties on the premises of the tenant are not distrainable for rent under provisions of Act VII of 1847. *Dwarka Nauth Biswas* v. *Uddit Churn Auddy*, 1 Ind. Jur., N. S., 361.

A landlord cannot distrain crops for arrears due, not from the tenant, but from another person not in possession, and who did not cultivate the crops. *Mohinee Dossee* v. *Ram Coomar Kurmokar*, W. R., 1864, Act X R., 77.

Certain putneedars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the ryots allowed them to cultivate, and when they had cultivated cut and carried away their crops. *Held* that the act of the putneedars was an abuse of the Law of Distraint, and rendered them liable for damages. *Ador Mohun Chuckerbutty and another* v. *Thakoor Monee Dabee and others*, 10 W. R., 70.

By Act X of 1859, Section 138, the Collector is required, in case of irregular distress for rent, to

allow to the distrainer the amount of rent due; if, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require. *Held* that the award of the Collector, with respect to the amount of damages, is not final, but is subject to be reviewed by the Judge, in appeal. in cases where the damages exceed Rs. 100. *Ramjoy Mundul* v. *Kally Mohun Roy Chowdhry*, Marsh., 282.

Trees are not subject to distraint for arrears of rent under Act X of 1859.

The term "produce of land" referred to in that Act means that which can be gathered and stored; crops of the nature of cereal, or grass or fruit crops; it does not apply to the trees from which the crops, if fruit crops, are gathered. *Sheo Pershad Tewary* v. *Musst. Moleema Bebee*, 1, 3, N.W. R., 53.

21.—ENHANCEMENT.

(a) *Miscellaneous.*

A person not being an auction-purchaser for arrears of revenue cannot, even under the old law, demand proof of uniform payment of rent twelve years before the Permanent Settlement. *Shookhoda Debia* v. *Bishambhur Shaha*, 6 W. R., 46.

Where a landlord fails in his claim for enhanced rent he is entitled to recover the old rents. *Shazada Mahomed Rohimooddeen* v. *Radha Mohun Mundul*, 6 W. R., Act X R., 56.

While a suit for enhancement of rent is pending defendant is not liable for interest, inasmuch as his rent is undetermined; but after the rent is determined he is liable to interest for all arrears from, and for all instalments after, that date. *Rajmohun Neogee and others* v. *Anund Chunder Chowdhry and others*, 10 W. R., 166.

An intermediate holder's rent should not be enhanced so as to render his holding altogether void of all reasonable profit. *Gouree Pershad Doss* v. *Ranee Shurno Moyee*, 6 W. R., Act X R., 41.

A talookdar's rent cannot be enhanced to the same rate as that paid by cultivating ryots; the talookdar is entitled to some reasonable profits. *Hurosoondery Chowdhrain and others* v. *Anund Mohun Ghose Chowdhry and others*, 7 W. R., 459.

The mere fact of a plaintiff suing for enhancement proves tenant's right of occupancy, for a tenant-at-will may be ejected at once on refusing to pay such rent as the landlord demands. *Mussamut Taramonee Dossee* v. *Birressur Mozoomdar*, 1 W. R., 86.

A suit for a kubuleut at a given rent, where the rate claimed is found to be above what is fair and equitable, is a suit for enhancement to which the Full Bench Ruling, 10 S. W. R., p. 14, applies, even though the rent is asked only for excess land. *Kunchun Dass Singh* v. *Tekait Sidh Nath Singh*, 15 S. W. R., C. R., 289.

The provisions of Act X of 1859 for enhancement of rent are applicable only where the occupant of the land has such a right to be there that the owner cannot turn him out. *Chunder Coomar Banerjee* v. *Azeemooddeen*, 14 S. W. R., C. R., 100.

In a suit for enhancement of rent on the ground that the rates at which defendant held were below the prevailing rate paid by the same class of ryots for adjacent lands of a similar description and with similar advantages, the evidence of three putwarees who put in their jummabundees showing the rates paid by almost all the ryots, *i.e.*, the majority, was held sufficient to prove the prevailing rate. *Prag Lall* v. *Brockman*, 13 S. W. R., C. R., 346.

(b) *Right to Enhance.*

In a suit to recover khas possession of land, of which the plaintiff alleged he had been fraudulently dispossessed by the defendant, the defendant claimed to be entitled to the possession of the land under a deed of gift at a fixed rent. The Judge found upon the fact that the deed of gift was invalid; that the land was mâl; and that the defendant was entitled to retain the possession, and thereupon dismissed the suit. *Held* that the plaintiff was not precluded by the decision in this suit from afterwards maintaining a suit against the defendant to enhance the rent.

In a suit for the enhancement of rent, the Collector dismissed the suit. On appeal the Judge held that the rent was liable to enhancement, and remanded the case to the Collector to find what rate was equitable. *Held* that an appeal lay from the decision of the Judge, notwithstanding the remand to find the rates. *Neelmoney Singh Deo* v. *Mussamut Shobhun Bibee*, Marsh., 600.

A landowner is not estopped from enhancing rent by the circumstance that he has caused the tenure to be sold under a decree.

In a suit to enhance rents the Deputy Collector found that the annual revenue obtained by the ryots was Rs. 12,579, and that an increase in such rates was partly due to the exertion of the defendant in reclaiming some waste land, and he deducted Rs. 2,579 as the defendant's share, and awarded Rs. 10,000 as a fair and reasonable rate to be paid to the plaintiff. *Held* that there was no reason for impeaching his award of this rate. *Ranee Surno Moye* v. *Adoito Churn Roy*, Marsh., 605.

The mother of an infant shebait or trustee cannot sue to enhance the rent of land held under a mokurruree pottah granted by a former shebait, whose power to grant such a lease is disputed. *Maharanee Shibessuree Debia* v. *Jumeer Biswas*, 5 W. R., Act X R., 1.

Until a plaintiff shows that the defendant holds of him a rent-paying howala he cannot enhance the rent thereof. *Anund Lall Roy Chowdhry* v. *Ramtonoo Doss*, 3 W. R., Act X R., 150.

If a zemindar has come under any valid and binding engagement with the ryot to the effect that the rent shall not be enhanced during the term of the settlement, or during any other term, Act X of 1859 gives him no privilege to set aside that contract. *Shib Singh and others* v. *Bhoop Singh*, 2 Agra Rep., 303.

One of several joint proprietors of an estate may maintain a suit for enhancement of his share of the rent without a butwarra. *Troglochtoran Chowdhry* v. *Moothoor Mohun Dey*, W. R., 1864, Act X R., 41.

Before Act X of 1859 there was no law which prevented a zemindar from enhancing his rent, unless it were shown that the ryot held at fixed rates for twelve years before the Decennial Settlement. A

holding for seven years was not sufficient, nor could the ryot rely on a pottah granted by the Collector as giving him a mokurruree tenure, when the Collector had no power to grant such pottah. *Romesh Chunder Dutt* v. *Denobundoo Dey*, W. R., 1864, Act X R., 58.

When an auction-purchaser at a sale for arrears of revenue demands an enhancement, the presumption arising from a uniform payment holds good, and the tenant's protection is not swept away by the sale. *Shudek Sircar* v. *Sreemutty Mohamaya Dabee and another*, 1 Ind. Jur., N. S., 77.

The fact alone of variations in the amount of rent paid between one year and another does not necessarily establish a right in the plaintiff to enhance or affect the defendant's right to hold at a fixed rent. It is for the defendant to account for such variation. *Huronath Roy* v. *Chittramoney Dossee*, 3 W. R., Act X R., 122.

An action for enhancement of rent by a plaintiff will not lie against any but his own ryots. The absence of a plea to that effect will not sustain a special appeal if the Judge has found upon the fact. *T. Bruce* v. *Doorgachurn Mitter*, 1 Ind. Jur., O. S., 77.

A suit for enhancement is barred by proof of the existence of a tenure from the Decennial Settlement, unless plaintiff is an auction-purchaser, in which case he must show when he purchased before he can insist on proof of the tenure twelve years before that Settlement. *Romesh Chunder Dutt* v. *Modhoosoodun Chuckerbutty*, 5 W. R., 252.

A zemindar cannot be allowed to enhance the rent of a cultivator in violation of the express terms of the wajib-ool-urz. *Nuttha Ram* v. *Sookh Ram and others*, 3 Agra Rep., 90.

A zemindar on ousting his intermediate holders is entitled to collect from the intermediate holding tenants only the rents which were due, and cannot enhance those rents without proceeding in the regular way. *Doyal Chand Mullick* v. *Prankisto Pal Chowdhry*, W. R., 1864, Act X R., 102.

On a sale for arrears of revenue under Regulation XI of 1822, the right of enhancement, though not enforced by the original purchaser, may be revived by his successor, unless the tenant can show clearly that he is protected. *Rajah Sutto Churn Ghosal* v. *Tarinee Churn Ghose*, 3 W. R., 178.

A dur-ijaradar can enhance the rents of the estate of which he holds the sub-lease. *Gungaram Bearer* v. *Ujoodhyaram Myte*, 2 W. R., 158.

Held that the particular terms of the pottah did not preclude the zemindar from demanding fair and legal rent. *Mussamut Alee-oon-nissa* v. *Nowhut Singh*, 1 Agra Rep., R. A., 54.

The mere division of a ryot's holding among his heirs (each one paying his share of the old rent separately) does not destroy the continuity of the old holding. The default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. *J. Hills* v. *Besharuth Meer*, 1 W. R., 10.

Where collection is jointly made by the lumberdars, they both ought to join in the application for issue of notice of enhancement. *Ram Pershad* v. *Mahomed Hashim*, 2 Agra Rep., A. C., 249.

Held that the powers vested in the settlement officer under Section 8, Act XIV of 1863, are to be exercised where dispute arises between the persons mentioned in Section 9 of that enactment, but where the question is between a maafeedar and a ryot relating to the right of enhancement, the power to enhance, without notice of enhancement, is not conferred on the settlement officer by Act XIV of 1863. *Hurkishan and others* v. *Mookund Eam*, 2 Agra Rep., A C., 233.

A zemindar may sue to enhance punchukee lakheraj lands without first suing for their resumption. *Madhub Chundra Janah and another* v. *Rajkissen Mookerjee*, 7 W. R., 86.

Prior to Act X of 1859, a zemindar was not prevented (unless otherwise expressly restricted) from enhancing the rent of a tenant who could not prove payment of a fixed rent for twelve years before the Permanent Settlement. *Kaleedhun Banerjee* v. *Romesh Chunder Dutt*, 3 W. R., 172.

Where a pottah had been granted by a putneedar whose putnee had been created while the mehal was under temporary settlement, and who had to pay a higher rent to the zemindar when the latter obtained a permanent settlement from Government at a higher jumma, it was held that the fact of the putneedar having to pay a higher rent to the superior holder did not, under the circumstances, warrant his raising his lessee's rent.

Where a putneedar sued for enhancement of rent on the foregoing ground, he was held not to be entitled to a decree for enhancement of excess land in defendant's possession, or to treat him as a trespasser in respect of such excess. *Binode Beharry Roy* v. *C. B. Masseyk*, 15 S. W. R., C. R., 494.

The fact that at a distant time the ryot or his ancestors have by their own agency or at their own expense made wells or effected improvements, is not a legal bar to the landlord's right to enhance. *Lalla Sheo Narain* v. *Oodhun Singh*, 1, 11 N. W. R., 180.

Where a landlord provides facilities for irrigation, of which the tenants may without expense avail themselves, bringing the water to their holdings,—*Quære* whether after proper notice he would not be allowed to enhance the rent.

A tenant of unirrigated land, if the landlord make that land irrigable without cost to the tenant, must pay at the rates paid by other similar tenants for irrigable lands in the neighbourhood. *Syud Ikram Ali* v. *Baboo Lall*, 1, 11 N. W. R., 178.

A suit for enhancement was filed under Act X of 1859, in the Court of a Deputy-Collector. The issues were framed and the evidence recorded by an Assistant Collector, apparently not invested with the powers of a Deputy-Collector, who wrote a report recommending the mode in which the suit should be disposed of. It was then disposed of by another Deputy-Collector who was probably acting at the time as Collector. *Held* that this procedure by which the suit was heard by one officer and decided by another is illegal.

A claim for enhancement of rent should not be disposed of without determining the propriety of the enhanced rent with reference to the ground on which it is claimed. *Hurdyal Oopadhya* v. *Mahomed Narain*, 1 N. W. R., Par. 2, 19.

Difference of opinion as to whether enhancement of rent can be had under Act X of 1859 on land situate in the middle of a town or bazaar and used entirely for building purposes, Glover, J., holding that it cannot, and Mitter, J., *contra*. *Rance Doorga*

Soondaree Dossia v. *Bibee Oondadoonissa*, 17 S. W. R., C. R., 151.

The rent of a joint undivided tenure cannot be enhanced on the strength of an ikrar executed by one of the co-parceners. *Hamayetoollah Chowdry* v. *Nil Kant Mullick*, 17 S. W. R., C. R., 139.

(c) *Liability to Enhancement.*

Section 51, Regulation VIII of 1793, refers solely to dependent talookdars, and cannot be applied so as to protect from enhancement a person whose tenure is terminable at the end of any year, or at the pleasure or caprice of his zemindar. *Kaleedhun Banerjee* v. *Romesh Chunder Dutt*, 3 W. R., 172.

The mere circumstance that the landlord has assigned to a creditor a certain amount of the rents for certain years extending beyond an existing lease, does not prevent him from enhancing the rent after the expiration of the term. *Maharajah Essen Chunder Manick* v. *Seebjoy Thakoor*, Marsh., 435.

A mourosee pottah, in which the rent is not fixed as invariable, does not protect the ryot from enhancement. *Taruck Chunder Nundee* v. *Modhoosoodun Nundee*, 5 W. R., Act X R., 80.

A lease granted for building purposes may protect the tenant from enhancement; but if granted by a person with a limited right in the estate, or by a life-tenant, it cannot relieve the tenant from a claim to enhancement made by a party succeeding to the life-tenant. *Juggessuree Boistobee* v. *Rajendur Gangooly*, 5 W. R., Act X R., 34.

If the tenant's expenditure has caused an increase in the productive power of the land, such expenditure once made cannot permanently bar enhancement of rent, but after the lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just share of profit in respect of it, his rent may be enhanced on any legal ground. *Mujlis* v. *Moher and others*, 3 Agra Rep., 223.

Land had been let under different pottahs to a man for building and horticultural purposes, to be enjoyed by him, his sons, his sons' sons, for ever at a rent mentioned in the pottahs. *Held* that the rent was not liable to enhancement. *Kailas Chundra Roy and others* v. *Hiralal Seal and others*, 2 B. L. R., A. C., 93; S. C., 10 W. R., 403.

A ryot is not liable to pay any higher rent than that which he has always paid, until the landlord sues him for enhancement, or can show that the defendant has agreed to pay a higher rent. *Sheikh Sobhee* v. *Chummun Lall Chowdhry*, 2 W. R., Act X R., 34.

A person by taking a perpetual pottah in 1237 at the same rate as the former holders, must be considered to have acquired a new tenure, and is not protected from enhancement on the ground that the former holders held at the present rate from twelve years before the Permanent Settlement. *Ramchunder Dutt* v. *Romesh Chunder Dutt*, 2 W. R., Act X R., 47.

Bastoo lands are not exempt from enhancement. *T. J. Kenny* v. *Greedhur Manjee*, W. R., 1864, Act X R., 9.

The purchase of a tenure at a sale for arrears of rent gives the new tenant no right of exemption from enhancement. *Ram Narain Chuckerbutty* v. *Banee Chunder Chatterjee*, 6 W. R., Act X R., 95.

Where there is no joint lease, and the plaintiff's share is not disputed, a suit for a kubuleut at an enhanced rent will lie. In such a case the suit must be for the enhancement of the rent of the whole of defendant's tenure, to enable the Courts to decide as to the proportion payable to plaintiff. *Dookee Ram Sircar* v. *Gowhur Mundul*, 10 W. R., 307.

A talook being once created at some former unknown period, not having a fluctuating rent, is not protected from enhancement under Section 51, Regulation VIII of 1793. The holders not being common ryots, they were held entitled to a deduction for expenses of collection. *Bama Soonduree Dossee* v. *Radhika Chowdhrain*, 1 W. R., 339.

A ryot who pleads no grant, and admits that he is not a mokurruree ryot, and who is unable to prove his allegation of uniform payment of rent since 1190, is not protected from enhancement under the old law prior to Act X of 1859. *Kishen Mohun Holdar* v. *Woomesh Chunder Dutt*, 1 W. R., 350.

A dependent talookdar, whose tenure was in existence before the Permanent Settlement, is entitled to protection under Section 49, Regulation VIII of 1793, unless his zemindar can prove a title to enhance rent under Section 51 of that law. *Radheeka Chowdrain* v. *Ram Mohun Ghose*, 1 W. R., 367.

A howaladar who is so only in name, but is in reality a mere cultivating ryot, and tills with his own hands the land he holds, is not entitled to hold at a lower rate than his neighbours. *Asmutoollah* v. *Kalee Pershad Doss Chowdhry*, 3 W. R., Act X R., 11.

The words "such land continuing to be used for the purposes specified in the leases" in Clause 4, Section 26, Act I of 1845, do not restrain the effect of a lease for clearing land of jungle solely to such time as jungle remains to be cut on the land, but should be taken to mean that the lease will stand good as long as the land is kept clear of jungle, and not allowed to fall back into its old state. If a pottah gives the tenant power to extend his lease beyond the land originally made over to him under the pottah, and gives the same rent for the additional land as for the other land, such additional land is not assessable with the pergunnah rate of rent, but the pottah is good and binding even on an auction-purchaser as respects the whole of the land cultivated by the tenant. *R. Watson and Co.* v. *Jhukroo Singh*, 1 W. R., 195.

The date of the Permanent Settlement for the district of Jessore was April 11th, 1790. The variation of a few rupees between a ryot's admitted jumma and the jumma of his doul is not such a variation as to destroy the right of a fixed jumma. *Huroo Nath Roy* v. *Ameer Biswas*, 1 W. R., 231.

A ryot who takes a pottah or gives a kubuleut for his homestead is not entitled to the privileges granted to those who erect "dwelling-houses" on leased lands, and is not protected from enhancement. *Nuffer Chundra Saha* v. *Gossain Jysingh Bharuttee*, 3 W. R., Act X R., 144.

A purchaser at a sale in execution of a decree of the right and interest of a person in position of a ryot holding at a low and favourable rate (the

privilege being personal to him and his family) is not entitled to exemption from enhancement. *P. Flowest* v. *Kootoob Hossein and others*, 2 Agra Rep., A. C., 274.

Held that an ex-maâfeedar, whose land at the time of settlement was separately assessed, and the sum so assessed made payable through zemindar, cannot be treated as a mere ryot liable to enhancement. *Kedar Pooree* v. *Kullan Khan*, 1 Agra Rep., R. A., 56.

Jungleboory tenants are liable to enhancement. *Dhunput Singh* v. *Gooman Singh*, W. R., 1864, Act X R., 61.

No tenures are liable to enhancement of rent, by judicial proceedings, except the tenures of ryots having right of occupancy. *Rance Surnoo Moye*, v. *Reverend C. Blumhardt*, 9 W. R., 552.

When a tenant claims a mokurruree tenure under a judicial decree of 1792, if his title be established, the mere fact of his having been at some time forced to pay a rent larger than that due will not suffice to render him liable to enhanced rent for ever. *Goluck Chunder Roy* v. *F. C. Sandes*, 5 W. R., Act X R., 32.

A talook created before the accession of the British Government, held at an unvaried rent from before the Perpetual Settlement, is protected from enhancement by Section 15 of Act X of 1859. *Gobind Chunder Dutt* v. *Hurronath Roy and others*, 1 Ind. Jur., N. S., 52.

Held that the plaintiff, whose land at the time of the settlement was assessed with a proportionate Government demand, was not liable to enhancement by zemindars, who in their right were restricted to get a certain percentage only for risk and labour of collection by the order of settlement officer. *Moosey Khutery* v. *Mahomed Tuqee*, 1 Agra Rep., R. A., 3.

A farmer is liable to give a kubuleut at enhanced rates when there is nothing in his pottah to show that his lease was taken for building purposes, or that the zemindar's right of enhancement was restricted. *Sharoda Soonduree Chowdhraney* v. *J. Tissendie*, 2 W. R., Act X R., 7.

The stipulation in a pottah, "after this in no manner shall enhancement be demanded," precludes enhancement during the existence of the pottah, notwithstanding in a preceding part of the pottah the words "year by year" are used (Bayley, J., *dissentiente*). *Punchanun Bose* v. *Peary Mohun Deb*, 2 W. R., 225.

Act X of 1859 does not affect or destroy a privilege of being protected from enhancement during the currency of settlement which admittedly existed before that enactment came into operation. *Byj Nath* v. *Chutter Singh*, 3 Agra Rep., 181.

Suit for enhancement (under the old law) of rent of a talook held to be a dependent talook within the meaning of Section 51, Regulation VIII of 1793, although not duly registered by the zemindar. *Held* that the defendant having made out a strong *prima-facie* case to prove that he and those through whom he claimed had held the talook at a fixed rent from a date more than twelve years prior to the Decennial Settlement, and the zemindar having relied on the weakness of the defence, and having failed to show that the rent had varied, the tenure was exempt from re-assessment. *Mussamut Mohamoya Dossee* v. *Mussamut Doyamoye Dossee Chowdhrain*, 7 W. R., 62.

An amulnamah, by which the defendant, for clearing and cultivating chur lands, was to pay no rent for the first three years, and then a low rate of rent gradually rising till it reached a certain rate, no period being fixed for the duration of such last mentioned rate, was held to be no bar to the plaintiff's right of enhancement. *Poddomony Dossea* v. *Puramanund Sein and another*, 7 W. R., 158.

Where tenants held for some twenty-five years upon a rent apparently much below that payable for lands of the same description in the neighbourhood, they were held not entitled at the end of that long period to allege the expenditure of their own capital and labour against the landlord's claim to a kubuleut at an enhanced rate. *Prosono Coomar Paul Chowdhry* v. *Radha Nath Dey Chowdhry and others*, 7 W. R., 97.

A ryot who was held liable, by a decree passed in 1855, to pay an enhanced rent, on the ground that he had not paid a uniform rate for twelve years before the Permanent Settlement, is not entitled, in consequence of the delay in the hearing of a portion of his claim, to ask for a modification of that decree, on the ground of an alteration in the law made subsequently by Act X of 1859, by which uniform payment from the settlement protects a ryot from enhancement. *Modhoosoodun Koondoo* v. *Gopeekishen Gossain*, 6 W. R., Act X R., 81.

A talook having a fluctuating rent is not protected from enhancement under Section 51, Regulation VIII of 1793. The holders not being common ryots were held entitled to a deduction for expenses of collection. *Bama Soondery Dassee* v. *Radhika Chowdhrain*, 1 W. R., 339.

Ryots holding lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement, are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. *Hurryhur Mookerjee* v. *Puddolochun Dey and others*, 7 W. R., 176.

A suit under Act X of 1859 will not lie for arrears of rent at enhanced rates, in conformity with an unexecuted decree declaring the plaintiff's right to enhance passed before that Act. *A. B. B. Mackintosh* v. *Adurmarnee Dossee*, 6 W. R., Act X R., 87.

The words "tikka mohto" cannot be construed as conferring a permanent or mourosee lease at a fixed rate. *Nuffur Chunder Shaha* v. *Gossain Joy Singh Bharattee*, 3 W. R., Act X R., 144.

In a suit for arrears of rent at an enhanced rate, where a Judge finds that plaintiff is not entitled to the only relief asked for, he has no right to declare defendant's tenure liable to enhancement prospectively. *Surubjeet Mundle* v. *Misslebach*, 15 S. W. R., C. R., 148.

The rent of a tenure protected from enhancement under the provisions of Section 4, Act X of 1859, cannot be increased on the ground of excess land. *De Courcy, R.*, v. *Meghnath Jha*, 15 S. W. R., C. R., 157.

A specific provision in the administration papers protecting the ryot from enhancement of rent during the term of the settlement will be enforced. *Jhummun Shah* v. *Debee Dass*, 1 N. W. R., Par. 1, p. 8.

Land held ancillary to the enjoyment of a house,

as, for instance, a garden or compound, is not subject to enhancement of rent under the Rent Acts.

Acts X of 1859 and XIV of 1863 do not apply to land occupied by houses, but only to land held for agricultural purposes. *Alfred Powell* v. *Wahid Khan*, 1, 7 N. W. R., 133.

Lands used for other purposes than for purposes of agriculture and horticulture are not liable to enhancement under Act X of 1859, Section 17, or Act VIII of 1869 (B. C.), Section 18. *Muddun Mohun Biswas* v. *W. Stalkart*, 17 S. W. R., C. R., 441.

In order to maintain a suit for enhancement on the ground mentioned in Clause 3, Section 17, Act X of 1859, it is necessary to prove the existence of the alleged excess and the rate at which such excess land ought to be assessed. *Nubo Kishore Mundle* v. *Fukeer Paramanick*, 17 S. W. R., C. R., 558.

(*d*) *Notice of Enhancement.*

A notice of enhancement by a farmer as agent and on behalf of the zemindar is legal. *Hem Chunder Chatterjee* v. *Pooran Chunder Roy*, 3 W. R., Act X R., 160.

A suit for a kubuleut at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. *T. Brae* v. *Kumul Saka*, 4 W. R., Act X R., 5.

A suit for enhancement should be dismissed on failure to prove service of notice. *Anund Moyee Chowdhrain* v. *Chunder Monee Dossia*, 3 W. R., Act X R., 139; see also p. 140.

In order to obtain the benefit of Clause 4, Section 26, Act I of 1845 (protecting garden lands from enhancement), it is not sufficient that the notice of enhancement should describe the lands as garden lands, but there must be a clear finding that the lands have been held as such under *bonâ-fide* leases. *Siddessuree Chowdhrain* v. *Kissoreekant Gossain*, W. R., 1864, Act X R., 101.

Where a notice of enhancement treats the party served with it as a talookdar, the Court should not assess ryotwaree rates upon him. *Munnekurnyka Chowdhry* v. *Anundmoyee Chowdhry*, 10 W. R., 245.

Where a landlord in his notice of enhancement styles the ryot's land jotedaree land, and there is no question of the land being so, the mere use of the word "khamar" in some of the ryot's dakhilas cannot affect his *status*, or place him in a different position from what the landlord's own notice declares him to hold, so as to deprive him of the right of occupancy, or of exemption from enhancement under Section 6, Act X of 1859. *Rajmohun Mitter and others* v. *Gooroo Churn Aych*, 6 W. R., Act X R., 106.

In a suit for arrears of rent of a particular year, after notice of enhancement on specified grounds, plaintiff (if his title is established) can only have a decree for the arrears claimed, and on one or other of the grounds alleged. The Judge has no jurisdiction in appeal to declare his right to any enhanced rents for the future. *Bhoobun Mohinee Dassee* v. *Kadarnath Bose*, 12 W. R., 141.

When a zemindar has received rent for 22 years from the tenant in possession, notwithstanding that he is not registered in his sherista, it is upon such recognized tenant, and not upon any other party, that his notice of enhancement must be served. *Noboo Coomar Ghose* v. *Kishen Chunder Banerjee*, W. R., 1864, Act X R., 112.

A notice of enhancement must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient. *Tarachand Roy* v. *Keenaram Kurmokar*, W. R., 1864, Act X R., 118.

A plaintiff is not to be prejudiced by reason of his plaint demanding less rent than that specified in his notice to enhance, when such notice has not been disputed until after action brought.

A plaintiff cannot recover higher rent than that demanded in the notice of enhancement. *James Hills* v. *Panch Cowree Shaikh*, 1 W. R., 3.

In a case of joint tenure not subdivided under any sanction from the superior landlord, notice of enhancement need not be served on all persons interested under an alleged subdivision. *Mothooranath Chatterjea* v. *Khetternath Biswas*, 2 W. R., Act X R., 92.

A zemindar is not bound by the ground of enhancement mentioned in his notice in the case of a tenant-at-will. Nor has the tenant any right to claim the prevailing rate, but is liable, after notice of enhancement, to the highest rack-rent. *Koobir Sirdar* v. *Goluck Chander Chuckerbutty*, 3 W. R., Act X R., 126.

A notice of enhancement should not be prospective, the principle being that the ryot should be prepared to meet the claim on grounds existing at the time the notice is received. *Byjenauth Koonwar* v. *Saheb Koonwar*, 12 W. R., 532.

In a suit to recover arrears of rent at enhanced rates, when the question of the liability of the tenure to enhancement has been put in issue and fully tried, a decree may be given declaring the tenure liable to enhancement, though notice to enhancement is not proved.

In a suit for enhancement, where the defence is that the land is lakheraj, the plaintiff should prove that the defendant has paid rent. If the land has been in fact held rent free, the validity or invalidity of the lakheraj tenure cannot be tried in such a suit. That question should be tried in a suit to resume or assess. *Gomanee Kajee* v. *Huryhur Mookerjee*, W. R., F. B., 115.

At the hearing of a suit brought to contest the right of the defendant to enhance plaintiff's rents, it appeared that the notice of enhancement was defective, no ground of enhancement being stated in it: but the plaintiff waived this objection, and the representatives of both parties asked for a decision on the merits. The Judge thereupon made a decree in favour of each party as to a portion of the lands. *Held* that the decree was valid. *Gungadhur Sunnaputty* v. *Heeraloll Seal*, Marsh., 60.

In a suit for enhancement of rent after notice, on the allegation that the defendant holds land in excess of the area admitted by him to be in his occupation, it must be shown that the notice stated that such excess has been proved by measurement. *Kalee Kumary Dossee and others* v. *Shumbhoo Chunder Ghose and others*, 6 W. R., Act X R., 23.

In a former suit brought by a ryot against the holder under a temporary ijara extending down to 1271, a decree was passed maintaining the ijaradar's right to enhance. But notwithstanding this decree the ryot was by express agreement allowed, and in

fact continued, to hold at the old rates. On the expiration of the ijara the zemindar entered upon the lands, and after collecting a part of the rents for 1272 gave the plaintiff a putnee of the estate from 1273, and an assignment of the right to collect the uncollected portion of the rents of 1273. The putneedar now sues to recover from the defendant the rent for the remainder of 1272 and for 1273, at the enhanced rates decreed to the ijaradar.

Held that neither the zemindar nor the putneedar could recover enhanced rents from the ryot without some notice. *Bodnarain Singh* v. *Ruggo Lall Mundur*, 7 W. R., 190.

In a suit for rent at an enhanced rate founded on notice, if the plaintiff fails to prove service of notice, instead of his obtaining a declaratory decree with reference to future years, his suit ought to be dismissed. *Radhamonee Dossee* v. *Maharanee Shidessuree Debia*, 6 W. R., Act X R., 25.

Per Norman, J.—Affirmance of the principle of the original judgment that the cause of action in a suit for enhancement of rent after notice does not accrue until after a decree declaring the right to enhance, notwithstanding a subsequent Full Bench ruling to the contrary. *Madhub Chundra Ghosee* v. *Radhica Chowdhrain*, 7 W. R., 405.

A suit for enhancement of rent after notice should not be dismissed merely because the landlord has made a mistake as to the exact area of the lands which his tenants hold. *Woomanauth Roy* v. *Ashumpurree Benn*, 12 W. R., 476.

Notice of enhancement, issued on the application of the person to whom the rent is payable, on account of any part of the land in respect of which the notice is served, is good for that part. *Gubdoo Mull* v. *Hoolasea and Tej Singh*, 2 Agra Rep., A. C., 247.

Summary suits brought by a landlord demanding rent at the current rates are held to be sufficient notice of enhancement under Regulation V of 1812. *George Tommy* v. *Sooba Kureem Lall*, 2 W. R., Act X R., 73.

Notice of enhancement to a husband is not sufficient when his wife is the acknowledged tenant. *Sreeram Ghose* v. *Molook Chand Deb*, 4 W. R., Act X R., 3.

A suit for a kubuleut at an enhanced rate to take effect prospectively from the date of suit may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. *T. Brae* v. *Kumul Shaha*, 4 W. R., Act X R., 5.

In a suit brought by a zemindar for two years' rent on account of newly-formed land which had accreted to the defendant's old jote, but had since diluviated, wherein the Civil Court decreed the rent, allowing defendants to retain possession as tenants, —*Held* that no notice was necessary under Section 13, Act X of 1859, before rent could be demanded by the zemindar in the case. *Watson and Co.* v. *Nilcant Sircar and others*, 10 W. R., 331.

Where a notice of enhancement is served during the pendency of a suit in which the only decree which can be passed is one simply declaratory of the plaintiff's right to recover rent at an enhanced rate, and fixing the rate to which the rent is to be enhanced, the notice is inoperative, and will not enable the Court to give a decree in that suit for the payment of a sum by way of rent from the year subsequent to the service of the notice. *Romanath Dutt and others* v. *Joy Kishen Mookerjee*, 6 W. R., Act X R., 80.

The object of Section 13, Act X of 1859, is that a suit for enhancement should not be brought without previous due notice, and not that when a notice under that section has been once duly given, if the tenant does not immediately, on service of notice, give up the tenure, a suit for enhanced rents for the next and following years must be brought within the said year. *Shahzada Mahomed Rohimoodeen* v. *Radha Mohun Mundul*, 6 W. R., Act X R., 96.

A notice of enhancement of an intermediate tenure, specifying that the tenant holds more lands than he originally did, and that the productive powers of the land and the value of the produce have increased otherwise than by the agency or at the expense of the tenant, is sufficient if the grounds are proved to exist, and if the rent claimed as fair and equitable is not more than is paid by the holders of similar tenures in the pergunnah or neighbourhood. *Grish Chunder Ghose* v. *Ramtonoo Biswas*, 12 W. R., 449.

The rent of a talookdar cannot be enhanced under a notice treating him as a ryot having a right of occupancy. *Doyamoyee Chowdhrain* v. *Mohima Chunder Roy and others*, 12 W. R., 137.

Where a notice of enhancement, though informal, was sufficient to inform the ryot of the landlord's intention to increase the rent to the rates paid for similar lands in places adjacent, and the notice was accepted by the ryot, and treated by him in the lower Court as a notice under Clause 1, Section 17, Act X of 1859, it was held that the informality could not be objected to for the first time in the High Court in special appeal. *Kasheenath Deb* v. *Maharanee Shibessuree Debia and others*, 8 W. R., 503.

A ryot is competent to object to the legality of a notice of enhancement even in a suit in which he is plaintiff. *Lalla Singh* v. *Mussamut Bibee Reazoonissa*, 8 W. R., 271.

A landlord serving notice of enhancement under Section 13, Act X of 1859, has no right to consolidate distinct and independent holdings, without the consent of the ryot. The ryot, on the other hand, is entitled to a notice or notices specifying the several holdings in his possession, the amount of enhanced rent he is liable to pay upon each, and the ground of such enhancement upon each instance. *Beejoy Gobind Bural and others* v. *Jannokee Bromonya*, 8 W. R., 72.

According to Section 13, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zemindar, as the person to whom the rent is payable. *Doorga Roy* v. *Shyam Jha*, 8 W. R., 72.

The inaccuracy of a notice in consequence of its not specifying properly the grounds on which enhancement is claimed, is a substantial objection to the maintenance of a suit for enhanced rent under that notice.

A notice of enhancement to a neem-howaladar was held to be insufficient because, in stating that the rate sought to be enhanced was less than that paid for neighbouring lands, it left it uncertain whether the latter rate was paid by similar neem-howaladars or by ryots, Clause 1, Section 17, applying to ryots and not to middlemen. *Kaleenauth Chowdhry* v. *Humee Bibee*, 12 W. R., 506.

It is sufficient if a notice makes a ryot aware of

the legal grounds on which enhancement is sought, although it is not in the exact words of the law. *Radha Bullub Ghose* v. *Beharee Lall Mookerjee*, 12 W. R., 537.

Following a previous decision of a Division Bench, it was held that a judgment passed against a ryot in a contested suit operates as a notice to him under Section 13, Act X of 1859, taking effect from the commencement of the year following that in which the decree was passed. *Ramanath Dutt and others* v. *Joykissen Mookerjee*, 11 W. R., 3.

A notice of enhancement can only have prospective effect. *Luchmee Pershad* v. *Ramgolam Singh*, 2 W. R., Act X R., 30.

A Deputy Collector has authority to issue a notice of enhancement under Section 13, Act X of 1859. *Cazee Syed Nasir Ali* v. *Sheikh Neaz*, 2 W. R., Act X R., 66.

Previous notice of enhancement is not necessary to maintain a suit for a kubuleut at enhanced rents. *Mahomed Sechee* v. *Kunmur Ali*, 2 W. R., Act X R., 66.

A suit for arrears of rent at enhanced rates cannot be maintained where the notice of enhancement has been served on parties other than the one known to the zemindar as the actual tenant from whom he had received rents, and to whom he had given receipts, even though the parties served with the notice are the representatives of the registered tenant. *Huro Mohun Mookerjee* v. *Goluck Chunder Sirkar*, 12 W. R., 265.

A notice of enhancement, according to the rate mentioned in an agreement, is necessary as to lands found in excess on measurement where no term is specified in the written agreement. *Rajah Burodakant Roy Bahadoor* v. *Sib Sunkuree Dossee*, 4 W. R., Act X R., 35.

A notice of enhancement, on the ground that the land will bear a higher rent, is a good and valid notice as against a tenant-at-will. *Roghoobuns Tewaree* v. *Shib Dutt*, 4 W. R., Act X R., 48.

When a Court dismisses a suit on a preliminary objection to the sufficiency of a notice of enhancement, it should not go on and decide also a question of title. *Ram Chunder Chowdhry* v. *Hurrish Chunder Chowdhry*, 5 W. R., Act X R., 14.

In the case of a tenant who has no right of occupancy, a landlord's notice of enhancement under Section 13 of Act X of 1859 is valid, if it specifies the rent to which the tenant will be subject for the ensuing year and the ground on which the enhancement is claimed, even if among the reasons assigned are some which will not bear examination. The only limit to the landlord's power of enhancement after notice is the fairness and reasonableness of the rent. *Sreegopaul Mullick* v. *Dwarkanauth Sein*, 15 S. W. R., C. R., 520.

Where a party who was not personally a cultivator of the land, but held a large jumma with a number of ryots below him, was treated in a notice of enhancement under Clause 17, Act X of 1859, as an ordinary ryot having a right of occupancy, it was held that the notice was not on that account illegal or informal. *Kallee Prossono Ghose* v. *Hurrish Chunder Dutt*, 15 S. W. R., C. R., 57.

Where a zemindar, after obtaining a decree declaring certain land to be invalid lakheraj appertaining to his zemindary, serves a notice upon the occupier to pay rent at the rate current in the neighbourhood, such notice does not make the claim one for arrears of rent at an enhanced rate, but is simply a requisition to come to terms. *Deen Dyal Paramanick* v. *Maharajah Suttish Chunder Roy*, 15 S. W. R., C. R., 272.

A childless Hindu widow granted a pottah to defendant. On her death there was a dispute as to the heirship to her husband, and the right of plaintiff's vendor having been declared, the latter brought a suit againt defendant for a kubuleut at enhanced rates of rent. Defendant disputed the claim, setting up the title of the opposite party, but the suit was decreed to the extent of the rate of rent admitted by defendant. Subsequently plaintiff issued a notice of enhancement, and defendant not coming to terms, sued to set aside the pottah and obtain possession. *Held* that the decree obtained by plaintiff's vendor created a new contract between the parties under the kubuleut, by which defendant was entitled to hold at the rent admitted by him till plaintiff took further steps. And that plaintiff's vendor having conveyed his whole title to plaintiff, who then gave defendant distinct notice, plaintiff was entitled to succeed in the present suit. Case at 12 W. R., 299 distinguished. *Nubo Kishen Mookerjee* v. *Kalachaund Mookerjee*, 15 S. W. R., C. R., 438.

Where an under-tenant holding or cultivating land under the conditions mentioned in Section 13, Act X of 1859, enters into no fresh engagement at the time of re-settlement, he has a right to receive a written notice before he can be called upon to pay enhanced rent, the provisions of that section qualifying those of Sections 7 and 9, Regulation VII of 1822. *D'Silva, I. P.* v. *Rajcoomar Dutt*, 16 S. W. R., C. R., 153.

Semble, (By Markby, J.)—That when a landlord gives notice of enhancement to a tenant on the first of the grounds stated in Section 17, Act X of 1859, he treats him as a ryot having a right of occupancy. *Thakoor Dutt Singh* v. *Gopaul Singh*, 14 S W. R., C. R., 4.

A person holding a tenure of an intermediate character is entitled to a notice under Section 51, Regulation VIII of 1793, before his rent can be enhanced. *Rajah Nilmonee Singh* v. *Chunder Kant Banerjee*, 14 S. W. R., C. R., 251.

A suit to assess rent upon land paying no rent at all is not a suit for enhancement of rent. A zemindar who seeks to enhance the rent of a person holding an intermediate tenure, is bound to give a specific notice in which the ground of enhancement is clearly specified. *Baroda Kant Roy Bahadoor* v. *Radha Churn Roy*, 13 S. W. R., C. R., 163.

Where a suit for enhancement of rent is dismissed on the ground that no notice was served, any decision in the Court's judgment as regards the mâl or lakheraj character of the land must be deemed to be mere *obiter*. Where it is found in such a suit that the notice did not state that the ryot pays less than ryots of the same class, the informality may be overlooked if there is evidence on the record of the rates of rent payable by such ryot; but if there is no evidence of that nature, the suit must be dismissed. *Mothoornauth Sircar* v. *Nil Monee Deo*, 13 S. W. R., C. R., 297.

Rent-Enhancement,—Act X of 1859, Section 17. What sufficient notice of ground. *Kumar Paresh Narayan Roy* v. *Gaur Sundar Bhumik*, 6 B. L. R., Ap., 159; and 15 S. W. R., C. R., 391.

Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought.

Notice of enhancement to the effect "that as the rent of "the land" (in the occupation of the tenant) "is below the rate prevailing in the pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patit lands have been cultivated, I am entitled to receive from you Rs. 794-5-7-11½ per annum," was held to be indefinite and uncertain; and therefore no suit thereon could lie for enhancement of rent. *Gobind Kumar Chundry* v. *Huro Chundra Nag*, 4 B. L. R., Ap., 61.

A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, Section 13. *Akhay Sunkur Chuckerbutty* v. *Raja Indra Bhusun Deb Roy*, 4 B. L. R., F. B. R., 58; and 12 S. W. R., F. B., 27.

Informality in a notice for enhancement of rent was not allowed to prevail in this case where the defect was held to have been made good by the evidence on the record, and where there could be no doubt that the tenant knew exactly the nature of the demand he had to meet, and where also the objection was a mere after-thought and not put forward until after the order of remand by the High Court. *Wooma Churn Dutt* v. *Grish Chunder Bose*, 17 S. W. R., C. R., 32.

Where a defendant has known perfectly well the grounds upon which enhancement of rent is demanded from him, a clerical omission which in no way prejudiced the defendant cannot operate to invalidate the notice of enhancement under Section 17, Act X of 1859. *Ryesunnissa Begum* v. *Bydonauth Saha*, 17 S. W. R., C. R., 354.

In enhancing rents on the first of the grounds specified in Section 17, Act X of 1859, not only must the amount of rent paid by neighbouring ryots be considered, but also the class of the ryots, and whether the lands in question are similar to the lands held by the neighbouring ryots and enjoying similar advantages.

In this case a notice based on that ground and specifying "that the rates paid are below those paid for similar lands in adjacent places" was held to be bad. *Shib Narain Dutt* v. *Ekramonissa Begum*, 17 S. W. R., C. R., 356.

Where a ryot well knew and pleaded to the grounds of enhancement, the mere omission of the words "same class of ryots" in the notice was held not fatal to the plaintiff's suit.

Nor was the omission of the words "otherwise than by the agency and at the expense of the ryot" considered material when the plaintiff distinctly stated in his plaint that the productive powers of the soil had increased, owing to the land having been irrigated from the plaintiff's khas tank. *R. Watson & Co.* v. *Ram Dhun Ghose*, 17 S. W. R., C. R., 496.

A landlord has never been able in this country to recover rents at enhanced rates for a past time, in respect of which he has given no antecedent notice; and, since the passing of Act X of 1859, Section 13 has made it necessary that the notice should bear sufficient ground of enhancement. *Dinauth Doss* v. *Gugun Chunder Sen*, 12 S. W. R., C. R., 274.

The object of the notice of enhancement is that the defendant may know what are the grounds on which the plaintiff seeks to enhance his rent, so that he may have an opportunity of coming forward to contest any of those grounds; and as the defendant's own answer in the case showed that he was fully aware of and came forward to contest the main ground on which the plaintiff sought to enhance his rent, the notice issued by plaintiff was held to be sufficient to meet the requirements of Section 17, Act X of 1859. *Tirth Nund Thakur* v. *Mohur Mundle*, 17 S. W. R., C. R., 278.

In a suit for a kubuleut at enhanced rates to correspond with the terms of a pottah which had been tendered at some date preceding the suit, where the lower Court decreed the plaintiff's appeal,—

Held that the decree was defective, inasmuch as it did not declare what the kubuleut was to which the plaintiff was entitled, and that the claim of the plaintiff could not succeed, inasmuch as it demanded higher rate for a period which had already elapsed when the suit was instituted; a right forbidden by Section 13, Act X of 1859, without giving such notice as therein prescribed, which notice the plaintiff had failed to give in this case. *Zinnut Bibee* v. *Jaffur Ali*, 14 S. W. R., C. R., 172.

A notice of enhancement of the rent of a talook on the simple ground of the rents having become less by degrees is not based on the "abatement" contemplated by Section 51, Regulation VIII of 1793, or any of the other grounds specified in that section. *Nobb Kisto Mojoomdar* v. *Tara Monee*, 12 W. R., 320.

Section 51, Regulation VIII of 1793 (looked at with Sections 13 and 15, Act X of 1859), does not require any notice in the case of a dependent talookdar, preliminary to a claim for enhancement of rent; but in order to succeed in a suit under that section plaintiff must show that he is about to enhance on one of the three grounds therein mentioned. *Tarinee Kant Lahooree* v. *Koonjo Behary Awustee*, 12 W. R., 112.

A suit for enhancement should not be dismissed merely because the plaintiff has included in his notice of enhancement land belonging to the defendant's lakheraj holding. *Chunder Coomer Roy* v. *Bholanath Sircar*, W. R., 1864, Act X R., 110.

(*e*) *Grounds of Enhancement.*

Where the enhancement was claimed on the first of the grounds mentioned in Section 17, Act X of 1859, the decree should have been based exactly on that ground, and not on other arbitrary grounds. The holding of the ryot sought to be enhanced should be compared with ryots of the same class holding similar lands either in the same village or in adjacent villages. *Bheem Sein* v. *Hur Gobind*, 3 Agra Rep., R. A., 12.

In a lease of jungle-booree howla tenure, which provided that the lands covered by it should be held rent free for five years, and that after a low rate had been paid for one year the "poora dustoor" should be paid, the intention was construed to be that, inasmuch as the ryot was bringing those lands into cultivation for the first time, he should for a certain period either pay no rent or something less than customary rates. The landlord did not by this bind himself never to enhance the rate under cer-

tain circumstances. *Held* that if, when the under-tenants paid 1 rupee 4 annas to the hostadar, he paid 14 annas to the landlord, it was only fair that when they paid him 1 rupee 8 annas he should pay 1 rupee. *Bhurut Chunder Aitch and another* v. *Gourmonee Dossee*, 11 W. R., 31.

The occurrence of a catastrophe, such as an inundation, during the year succeeding a notice of enhancement, was held to be sufficient to render the demand of a higher rent unfair and inequitable. *Bamasoonderee Dossee* v. *Kaloo Peadah*, 10 W. R., 395.

A deduction of 15 per cent. from the gross rent is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed. *Rani Swarnamyi* v. *Gauri Prasad Dass*, 3 B. L. R., A. C., 270.

In a suit for enhancement of rent of land originally leased for the purposes of a homestead, where defendant had erected shops, and made other improvements at a great outlay and considerable risk, as the river had encroached and was encroaching, a Judge was held not to have done wrong in allowing the tenant a reduction on account of the increase of value of the land induced by his energy. *Nuffer Chunder Shah* v. *Gunga Dutt Bharutty*, 11 W. R., 190.

In a suit for enhancement of rent on the ground that the value of the produce of the land has increased, the Court shall determine whether the rent is fair and equitable with reference to the increase in the value of the produce, and not merely decide that the old rent is fair and equitable because there has been an increase in the wages of labour and the necessaries of life. *Savi* v. *Jetoo Meah*, W. R., F. B., 59.

A casual increase in the fertility of the land is not a ground for permanent enhancement of rent. *Cristo Mohun Puttur* v. *Hurree Sonkur Mookerjee*, 7 W. R., 235.

A talookdar is liable to enhancement only to the extent of what other similar talookdaries in the neighbourhood pay for similar under-tenures with similar lands. *Mohima Chundra Dey* v. *Gooroo Doss Sein*, 7 W. R., 285.

In deciding a suit for a kubuleut at enhanced rate for five years, the probable result of an exceptional bad season should not be taken into consideration, but the average of the past five years.

Claims to enhancement on the basis of increased produce and increased value of produce are inconsistent and incompatible with one founded on an inequality between the rent paid by a tenant on the estate and paid by a tenant on a neighbouring estate. *Shreesh Chundra Doss, agent on behalf of Soodhamonee Dosse* v. *Assimonissa and others*, 7 W. R., 234.

The plaintiff claimed to enhance defendant's rent from Sicca Rs. 661 to Company's Rs. 7,528. No evidence was given as to the time at which the holding had commenced, or how long it had continued; but an attempt was made to prove a doul bundobust of 1803, which would have shown that the persons through whom the defendants claimed were then in occupation of the land at the same rent, but no legal evidence of the doul was given.

Held, per Peacock, C. J. (*dissentiente* Bayley, J., and Kemp, J.), that, independently of the doul, it might be presumed, from the great differences between the rent at which the lands were held and the present value of the lands, that the occupation at the low rent had been continued as of right, and not merely by the sufferance of the zemindar, and that such occupation at the same rent had existed twelve years before the date of Regulation VIII of 1793.

Per Bayley, J., that, independently of the doul, the facts did not satisfy such a presumption; but that if the doul were proved then it might be presumed that the occupation at the same rent had commenced twelve years before the date of the Regulation.

Per Kemp, J., that, even if the doul were proved the presumption would not arise. *Mussamut Brojunggona Dassee* v. *Mussamut Debranee Dassee*, Marsh., 424; S. C., W. R., F. B., 94.

In a suit for a kubuleut at enhanced rents, if the rents of the adjacent lands have been already adjusted and enhanced, the enhancement of the defendant's holding will depend on the rates paid by those adjacent lands, supposing them to be of the same kind, and not on any doctrine of proportion which will only apply when no adjustment has taken place. *Azim Mullick* v. *Gunga Dhur Bancrjee*, 5 W. R., Act X R., 58.

In a suit for enhancement the rent demanded must be proved to be fair and equitable, even if the tenant has no rights of occupancy. *Jeeun Lall Jha* v. *Kaleenath Jha*, 5 W. R., Act X R., 41.

The produce of a beegah of dhan in 1267 and 1268 should not be valued at the prices of 1269. Whether a ryot borrows his food or not, he cannot receive his wages out of the proceeds of crops before the crops are gathered. An allowance for a house cannot be made to a ryot in addition to a fair allowance for wages.

Loss on account of crops destroyed or injured cannot be taken into consideration twice over: (1st) in ascertaining the average of the quantities and prices, and (2nd) in making an allowance for risks based upon injuries done to the crops, of which the quantities and prices must have been taken into consideration in calculating the average. A landlord cannot be charged with a rate of interest or profit on capital far beyond the ordinary rate of interest or profit, and also with an allowance for insuring the return of the capital with such extraordinary rate of interest.

One rate of rent cannot be fixed for a ryot who spends his own capital, and another for a ryot who is compelled to borrow it. The rate of rent which the landlord has a right by law to demand does not depend upon the size of the holding or the circumstances of the ryot. What is a fair and equitable rent for one ryot for lands of a similar description and with similar advantages in the same neighbourhood, must also be fair and equitable for another, so far as the landlord is concerned. A ryot who, but for the Permanent Settlement, would have been entitled to no more than half of the gross proceeds of his land, is not over-assessed when he is allowed to retain at least five-sixths of the gross proceeds for his labour and profit on capital, and called upon to pay something less than the other one-sixth as rent to the zemindar.

A ryot having a mere right of occupancy, and not a right to hold at a fixed rate of rent, has not such an interest in the land as gives him a right to a share of the rent. He has simply a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. A Judge cannot fix the term in suits by a landlord for rent or for kubuleuts, as can be done in a suit by a ryot having a right of occupancy for the delivery of a pottah. *James Hills* v. *Ishore Ghose*, W. R., F. B., 1863, 131.

A cultivator cannot claim altogether to be exempted from enhancement on account of the increase in the productive power of land which has been effected by a canal which was not made at his expense or labour, but he can fairly ask that the expenses, such as the cost of making ducts and the payment of canal rates, should be calculated and deducted from the total amount of increased value. *Piran* v. *Ram Buksh*, 2 Agra Rep., 346.

In a suit for enhancement, where not only the value of the produce has decreased, but the productive powers of the land have decreased, and the expenses of cultivation increased, the formula to be applied in determining the rent will be as follows: The average value of the produce before the decrease in the productive powers of the land will be to the average value of the present decreased produce, *minus* the increased cost of production, as the rent previously paid will be to that which the land ought now to pay. *Showdamonee Dosse* v. *Shookul Mahomed*, 7 W. R., 94.

A proprietor who has settled with Government under a jummabundee cannot sue for enhancement on the mere ground that the rate is below the prevailing rate, but must sue either on the ground of increase in the value of the produce or of an excess quantity of land. *Sukhi Mani Holdar* v. *Gunga Gobind Mundle*, W. R., 1864, Act X R., 126.

When a pottah contains no term, and does not provide against enhancement, and the tenant has not occupied for twelve years, if it is shown that the tenant has improved the land he will be entitled to a proportionate reduction in determining the rent he should pay. But if it is also shown that the value of land generally in the neighbourhood has increased irrespectively of the agency of the ryot, the landlord will be entitled to enhancement proportionate to that improvement. *Mathura Mohun Saha* v. *Gyaram Haldar*, W. R., 1864, Act X R., 128.

In fixing the rent to be paid for cultivated land originally held on a jungle-booree grant, the Court should ascertain the rate payable by the same class of ryots for lands of a similar description and with similar advantages. *Deen Dyal Agustee* v. *R. Watson and Co.*, W. R., 1864, Act X R., 113.

When the purchaser of a moiety of an estate settled in perpetuity some years ago according to a jummabundee then made, does not sue directly to set aside the jummabundee of settlement, but many years after the settlement he sues to enhance the rents entered therein, to entitle him to succeed he must show that since the period of settlement circumstances have occurred which have tended to raise the value of the ryot's lands, and consequently to entitle him to an increased share of the surplus profits arising from the lands. *Ram Lochun Paul* v. *Mussamut Brojo Mohinee*, W. R., 1864, Act X R., 118.

That the value of produce is said generally to have doubled or trebled is not a sufficient reason for doubling the rate of rent, except where new rates of rent are not to be found. The best mode of ascertaining a fair rate is by finding what rate is paid by similar ryots for similar lands. *Amanoollah* v. *Ram Nidhee Ghose and others*, 9 W. R., 392.

A plaintiff must be kept to the grounds of enhancement stated in his notice. *Hurri Mohun Acharjee* v. *Okhoy Kumar Bose*, W. R., 1864, Act X R., 14.

In a suit for a kubuleut at an enhanced rent, where, in spite of the shortness or deficiency of the crops, their value, owing to the additional care and labour expended by the ryot, had increased considerably above that in former years, it was laid down that the Court must try and discover what the ryot was entitled to as a set-off against the increased value of the produce for the additional care and labour expended by him, and whether or not the zemindar was not entitled to some portion of the increased value of the produce in the shape of enhanced rent. *Showdaminee Dossee* v. *Haran Chunder Surma and others*, 6 W. R., Act X R., 103.

In a suit for enhancement on the ground that the defendant pays a lower rent than that paid by neighbouring ryots of the same class for similar lands, the Judge, instead of decreeing what he considers a fair rate, should find specifically whether the rate claimed by the plaintiff is actually paid by the neighbouring ryots of the same class for similar lands, or what rate is so paid, and decide accordingly. *Pelaram Kotal* v. *Nund Coomar Chuttoram*, 6 W. R., Act X R., 45.

In a suit for enhancement on the ground of increase in the value of the produce, the rent will be raised in proportion to such increase only when it is proved to be steady and normal increase. *Thakooranee Dosse* v. *Bishesur Mookerjee*, 3 W. R., Act X R., 142.

In a suit for enhancement of the rent paid by shikmee talookdars, the plaintiff is bound to afford data (*e.g.*, the rate paid by intermediate tenants of the same class) upon which the Court can come to a satisfactory conclusion as to what would be a fair and equitable rate to be paid by defendant, plaintiff being competent, under Section 10, Act VI of 1862, to measure the talook and ascertain the assets. *Dabee Doss Neogee Chowdhry and others* v. *Gobind Mohun Ghose and others*, 10 W. R., 213.

A middleman is liable to enhancement when the productive powers of his land have been increased otherwise than by the agency or expense of the ryot. Two-thirds was held to be a fair proportion of the surplus profits of the land to be awarded to the landlord. *Jadub Chunder Halder* v. *Ishoree Lushkur*, W. R., 1864, Act X R., 74.

When a defendant sets up a deed as exempting him from liability to pay a certain enhanced rent, he is not at liberty to fall back on his right to hold at fair and equitable rates when the Court finds his deed to be a fabrication. *Gooroo Doss Ghose* v. *Sristee Dhur Dey*, W. R., 1864, Act X R., 39.

The mode of calculating the increase in the value of produce according to the rule of proportion is

by simply taking the former and present value of produce, and not by calculating former and present profits after deducting costs. *Ram Taruck Ghose* v. *Biressur Banerjee*, 6 W. R., Act X R., 32.

Nature of proof required to be given by the plaintiff in a suit for enhancement to enable him to start his case. *Juggessuree Debia* v. *Gudadhur Banerjee*, 6 W. R., Act X R., 21.

In a suit for enhancement of rent where the expenditure is stationary, and the value of the produce has increased, the proper rule is that the rate of rent to be paid shall bear to the old rate the same proportion as the present value of the produce bears to the old value. *Doorganath Shah and others* v. *Kajim Fakir and others*, 9 W. R., 348.

In respect to excess area it was held (Phear, J.) that plaintiff was entitled to a fair and equitable rate; (Bayley, J.) that excess land should, as a part of the same lease, be liable to the same terms as the other land originally given under it. *Golam Ali* v. *Gopaul Lall Tagore*, 9 W. R., 65.

The rule of proportion is not applicable where the rates between the present value of the produce of the soil and the former value at the time of the original taking cannot be ascertained, and where it is only necessary to see what is a fair and equitable rate by comparison with the rate paid by the neighbouring ryots for similar land. *Jadub Chunder Holdar* v. *Etburry Lushkur*, 3 W. R., Act X R., 160.

Held that a ryot is entitled to deduction of the actual amount paid by him in the shape of canal dues, and also other expenses which are occasioned by bringing the water into the land, together with interest on the capital employed in such expenses and payment of canal dues. *Maheeput Singh* v. *Rajah Lok Indeer Singh*, 2 Agra Rep., A. C., 179.

Held that though the land may have been improved otherwise than by the exertions of the cultivator, yet the zemindar is not entitled to demand rent beyond what is fair and equitable for the same class of cultivators as the cultivator sought to be enhanced to pay for such improved lands. *Jumna Pershad* v. *Bhowanee and others*, 2 Agra Rep., R. A., 1.

In ascertaining the rate of enhancement the Court is not bound to calculate the exact value of the produce and the cost of production, but to estimate the average productive value and cost of production. *Huro Mohun Mookerjee* v. *Thakoor Doss Mundul*, 1 W. R., 112.

Where in places adjacent no land of similar description, with similar advantages to the land sought to be enhanced, is found to exist, it is not illegal to decree enhancement at the average of the rates paid for adjacent lands. *Nubee Buksh* v. *Ram Suhai*, 1 Agra Rep., R. A., 57.

A landlord suing a ryot for a kubuleut is bound to make out the reasonableness of the rent which he demands, and *à fortiori* that the defendant is holding the particular land specified in his suit. *Shib Chunder Bose* v. *Ram Chund Chund*, 9 W. R., 521.

Held that the plea of increased expense on account of irrigation in a suit to contest enhancement cannot for the first time be admitted in special appeal. *Held* further, that where cultivators of similar stamp were not to be found in the village or its vicinity, plaintiff's rate may be compared with that of another class, making suitable allowance in consideration of the superiority of class attached to him. *Kunchun Singh* v. *Sheoraj, agent of Chowdhry Jaychund*, 1 Agra Rep., R. A., 7.

A neem-ousut talookdar (whose tenure was created subsequent to the settlement with the ousut talookdar) cannot claim from a howladar holding under a pottah granted to him by Government a higher rent than the rate fixed by Government as the maximum rate after a progressive jumma. *Bama Soonduree* v. *Sheeb Soonduree Dabea*, 2 W. R., Act X R., 7.

A landlord is not entitled to enhancement on the ground of improvement of the ryot's tenure by the making of a bund, if he fails to prove that he erected the bund, or that the increased value of the land is owing to the bund. *Huro Pershad Roy Chowdhry* v. *Wooma Tara Debia*, 2 W. R., Act X R., 12.

If a ryot sets up a mokurruree pottah as an answer to a landlord's claim to enhance his rent, and fails to prove the pottah, or the pottah produced by him is held to be forged, the landlord is not necessarily entitled to enhance the rent to the full amount claimed, but only to a fair and equitable rate, having regard to the grounds of enhancement. *Issur Chunder Doss* v. *Nittyanund Doss*, 6 W. R., Act X R., 70.

In a suit for enhancement upon a specified ground, such ground is the sole point to be tried. If in such a suit the defendant does not ask for an abatement for diminished area the Court ought not to refer to it. It is not always requisite to produce a copy of a notice to enhance. *Reazoonissa* v. *Oomun*, 3 W. R., Act X R., 125.

In a suit for a kubuleut at enhanced rent, where the ground relied on is the prevailing rate paid by adjacent occupiers of similar land, such ground cannot be established by the probability or even the certainty that if the rents of the neighbouring occupants were re-adjusted they would come up to the rate claimed. *Bridabun Dey* v. *Bisma Bibee*, 13 S. W. R., C. R., 117.

When application is made for enhancement of rent of a right-of-occupancy cultivator, care should be taken to compare his rent with that paid by cultivators of the same class in places adjacent, even if not in the same mouzah and cultivating under similar advantages in every way. *Ismail Khan* v. *Bhaudoo*, 1 N. W. R., Par. 1, p. 26.

Where it is found that the productive powers of a holding have been increased at the expense of the tenant, and it is not found that they have increased otherwise, no grounds of enhancement under Section 17 of Act X of 1859 are shown. *Oimda* v. *Raheem Shere Khan*, 3 N. W. R., 138.

In a suit for enhancement of rent on the ground that "the produce and productive powers of the land have increased otherwise than by the agency or at the expense of the ryot," the *onus* is upon the plaintiff to prove the grounds upon which he seeks enhancement.

In coming to a conclusion as to whether the produce or the productive powers of the land have increased otherwise than by the agency or at the expense of the ryot, the average of four or five years ought to be taken; the increase of an exceptional year should not be the guide. *Rajkrishna Mookerjee* v. *Kalee Churun Dobain*, 6 B. L. R., Ap., 122; and 15 S. W. R., C. R., 109.

It is not a good ground of enhancement that the holder of a tenure may possibly, having regard to the quality of the land, be able to increase the profits which he derives from it. It must be shown that he is able to increase the profits. *Dinonath Dass* v. *Gugun Chunder Sein*, 14 S. W. R., C. R., 274.

In a suit for enhancement of rent upon different grounds, the fact that at the hearing the plaintiff relies on one of the grounds only, and that in the judgment of the first Court the whole case was rested on that ground only, is not a safe warrant for the inference that the other grounds were waived.

Although in a suit for enhancement the plaintiff should not be tied down too strictly to his statements, yet he must to some extent be limited to the case made in the plaint. *Bonomalee Churn Mytee* v. *Shoroop Hootait*, 14 S. W. R., C. R., 60.

(*f*) *Procedure.*

In a suit for enhancement of rent upon a certain area of land which plaintiff alleged to be mâl, defendant set up that a portion of that area was lakheraj and did not belong to plaintiff's zemindaree. *Held* that plaintiff was bound to prove that he had received rent for the disputed portion before he could obtain a decree for rent for such portion. *Quære*,—Is it sufficient that defendant's plea is a mere allegation of lakheraj, or must it be supported by *primâ-facie* evidence? *Mun Mohun Dey* v. *Sreeram Roy*, 14 S. W. R., C. R., 285.

In a suit for enhancement against a ryot having a right of occupancy, if the notice served is found to be bad in law the Judge has no power under the Procedure Code to remand the case with a view to the ascertainment by local enquiry of the area of the land in dispute and the rates prevailing in its neighbourhood. *Pran Huree Doss* v. *Parbutty Churn Mojoomdar*, 13 S. W. R., C. R., 227.

Points out the procedure to be adopted by a Court in a suit for enhancement of rent, when the defendant pleads that he is a shamilat talookdar, that is to say, a talookdar protected under the provisions of Section 5, Regulation VIII of 1793. *Sharoda Prosunno Mookerjee* v. *Bisseen Beharee Bose*, 13 S. W. R., C. R., 71.

In a suit for enhancement of rent, when the defendant objected in his grounds of appeal that the rates of the village in which his land was situated were lower than the pergunnah rates,—*Held* that the Judge had no right to take the report of an Ameen who did not give credit to defendant's witnesses on account of something he heard in the neighbourhood, but that he ought himself to have examined those witnesses. *James Tweedie* v. *Poono Chunder Gangoolee and others*, 12 W. R., 138.

Where a ryot brings a suit to contest the right to enhancement under Section 13 of Act X of 1859, it is not necessary to plead in terms that he held at a fixed rate from before the Decennial Settlement. At the same time parties should use the exact terms of the pleas to assist which the presumption laid down in Section 4 of Act X of 1859 had been created. *Nomutollah* v. *Gobind Chunder Dutt and others*, 1 Ind. Jur., N. S., 2.

A ryot who contests his landlord's right to demand enhanced rent, but fails to prove his own right to exemption, may nevertheless ask the Court to fix the proper enhanced rent. *Sheikh Golamee* v. *Imam Buksh*, 2 W. R., Act X R., 91.

In a suit for arrears at an enhanced rate, the defendant having successfully pleaded a mokurruree pottah,—*Held* that the plaintiff could not in this suit obtain a decree for the arrears at the mokurruree rate, as the defendants had not admitted any arrears. *Kashee Chunder Chowdhry* v. *Kartick Chunder Paul*, 2 W. R., Act X R., 56.

The bringing of a suit by a landlord to recover arrears of rent at enhanced rates under Act X of 1859, cannot annul the former decree of a competent Court declaring the ryot's holding to be liable to enhancement, by entitling the ryot, on proof of payment of uniform rent for twenty years, to claim the benefit of the presumption under Section 4. *Rakhal Doss Bose* v. *Sheikh Gholam Surwur*, 2 W. R., Act X R., 69.

In a suit for enhancement of rent, where plaintiff's right to assess certain lands alleged to be in excess of ghatwalee lands held by defendants was disputed by the latter,—*Held* that as the right which plaintiff claimed had never been exercised up to the time of the suit, it should first be determined in a civil suit. *Jugg Jeebun Lall* v. *Rughoonath Kopatte and another*, 10 W. R., 383.

A suit for enhancement of rent of land situated in different jurisdictions cannot be entertained unless it is first determined, under Section 20, Act VI of 1862 (B. C.), in which district or sub-district the greater portion of the lands lie. Such suit must be brought in the Court of the district in which the greater part of the lands is situate. *Moheah Chunder Sircar and others* v. *Bholanath Raha Gomastah and others*, 8 W. R., 506.

In a suit to recover a kubuleut at enhanced rates for excess lands, where defendant filed a pottah on which were endorsed the numbers of certain daghs of a measurement made by the zemindar, and composing a mokurruree tenure, and also pleaded that part of the excess land was lakheraj, it was held in regard to the land claimed as lakheraj, that plaintiff's remedy lay in a suit for resumption and assessment; and with regard to the land covered by the pottah that defendant was entitled to hold the whole of the lands comprised within the daghs, notwithstanding that a recent measurement showed a greater extent of area than had been formally ascertained. *Modee Haddin Jowadrar* v. *F. Sandes*, 12 W. R., 439.

In a suit for a kubuleut at enhanced rents, where the defence is that the tenure is kaemee, and not liable to enhancement, the Court ought to decide the question of liability before going into that of the rates. *Ghyrullah Mundul* v. *Kishorenath Koondoo*, 5 W. R., Act X R., 60.

The ryot's omission to object to the fairness of the rates when contesting notice of enhancement in a former suit does not preclude him from raising the objection in the present suit. *Puddo Lochun Bhadooree* v. *Chundernath Roy*, 5 W. R., Act X R., 51.

In a suit for enhancement the first Court deputed an Ameen to enquire into the rates, and on his report gave a decree to the plaintiff. The lower Appellate Court disallowed the Ameen's report, on the ground that by itself it was not good evidence of neighbouring rates, and, reversing the decision of the first Court, dismissed the suit for want of

proof. *Held* on special appeal that the lower Appellate Court should have attached greater weight to the Ameen's report, or should have at least allowed the plaintiff an opportunity to adduce his proof of rates. *Guddadhur Banerjee* v. *Nund Lal Biswas*, 5 W. R., Act X R., 54.

In a suit to recover arrears of rent at enhanced rates, when the question of the liability of the tenure to enhancement has been put in issue and fully tried, a decree may be given declaring the tenure liable to enhancement, though notice of enhancement is not proved.

In a suit for enhancement, when the defence is that the land is lakheraj, the plaintiff should prove that the defendant has paid rent. If the land has been in fact held rent free, the validity or invalidity of the lakheraj tenure cannot be tried in such a suit; that question should be tried in a suit to resume or assess. *Huryhur Mookerjee* v. *Goomunee Kazee*, Marsh., 523.

In a suit for a kubuleut at an enhanced rate of rent, if the defendant himself calls upon the Court to enter into a consideration of what rent less than that asked for is fair and equitable, he cannot afterwards complain that the Court was wrong in entering upon that enquiry. *Umbika Churn Mundul* v. *Ramdhone Mohurrir*, 11 W. R., 35.

In a suit for arrears of rent at enhanced rates after notice, in which defendants did not appear, but plaintiffs' witnesses deposed to the village being a ghatwallee one,—*Held* that plaintiff had called all the assessable lands mâl lands, and the case could not proceed in the form in which it was made. *R. Watson and Co.* v. *Nidhoo Digwar*, 10 W. R., 87.

In a suit for enhancement of rent, where defendants plead a mokurruree lease of a date subsequent to the Decennial Settlement, but filed no pottah, the existence of the tenure must be proved by evidence, dakhilas, or possession under colour of these for twenty years not entitling them to exemption. *R. Watson and others* v. *Aunjunna Dossee and others*, 10 W. R., 107.

Where a ryot relies on a mokurruree pottah as protection against enhancement, he is bound to prove his special title; mere possession and payment of rent for a number of years cannot bar a farmer's right to enhance where such a title is pleaded. *Watson and Co.* v. *Sham Lall Pundah*, 10 W. R., 73.

In a suit to contest a notice of enhancement, on the allegation of a holding under an istemraree pottah, if the plaintiff fails to prove such a holding, the Judge need not try whether the ground of enhancement existed, or whether the enhancement was fair. *Gunga Persad Singh* v. *Ramloll Singh*, W. R., F. B., 59.

The holder of a specific share in an estate not regularly partitioned may sue for enhancement of his share of the rent. A slight irregularity in the drawing up of a notice of enhancement cannot affect the plaintiff's right to a declaratory order reciting his right to enhance at some future time on service of a fresh notice. *Ram Lochun Dutt* v. *Petumber Paul*, W. R., 1864, Act X R., 111.

In a suit for enhancement, if the defendant relies not on the fact that he had held at an unvaried rent from the time of the Permanent Settlement, but upon a pottah granted long after that time, his own defence rebuts any presumption which might arise from a twenty years' uniform payment of rent. *Ramkishen Sircar* v. *Meeah Deler Ali*, W. R., 1864, Act X R., 36.

Where a suit for enhancement of rent is decided by a Deputy-Collector upon the issue whether notice has been served or not, without any question of the right to enhancement arising, the appeal lies to the Collector. *Omrao Singh* v. *Toofanee Roy*, 12 W. R., 446.

Where a suit for a kubuleut at an enhanced rate of rent was dismissed on the ground that it was not for enhancement of plaintiff's share of the rent, but for a kubuleut at an enhanced rate for the rent of a specific portion of land, although plaintiff's agent in his examination deposed that the suit had reference not to a specific portion of land, but to a certain jumma,—*Held* that the Court below might permit plaintiff to amend or explain his plaint, or, if he had asked too much, might give him what he was entitled to under the law. *Poorno Chunder Roy* v. *W. Stalkartt*, 10 W. R., 362.

In order to bar enhancement of rent, proof of uniform payment must be shown, if not for every year in the twenty years, at least for the greater portion of that period, and for years in the earlier, as well as in the later, portion of the same. *Surnomoyee Dassee* v. *Sham Mundul*, 9 W. R., 270.

The objection that the documents relied on by the defendants in support of their mokurruree title contain no expressions importing the hereditary character of the alleged tenures, was held to be one not open to the plaintiff in a suit for enhancement, where the pleadings admitted the existence of the tenure and the lawful occupation of the defendant, and the only question was whether the tenures were held at a variable, or at a fixed and invariable rent. Even if the objection were open to the plaintiff, it was held that it could not prevail against the evidence which the record afforded that for upwards of a century the talooks in question had been treated as hereditary, and as such had descended from father to son, and been the subject of purchase. *Gopal Lall Tagore* v. *Tilluck Chunder Rai*, 3 W. R., P. C., 1.

All the pleas under which a ryot can resist a notice of enhancement ought to be considered in the suit he brings to resist the notice. *Puddolochun Bhudoori* v. *Chunder Nauth Roy*, 1 Ind. Jur., N. S., 171.

When a ryot sues to contest a notice of enhancement, although the *onus* is on the landlord to prove his grounds of enhancement, yet the Court, instead of giving the plaintiff a decree, merely upon an Ameen's report of the defendant having overstated the area held by the plaintiff, ought to find clearly how far the evidence afforded by the Ameen's report supported the defendant's special grounds. *Dinnonath Bose Mullick* v. *Juggessur Mundul*, 1 W. R., 155.

In a suit to recover arrears of rent at enhanced rates the *onus* of proving both the quantity and the rates is upon the plaintiff, and not upon the defendant; and when the rates are to be fixed by a Court of Justice the plaintiff is not entitled to interest and damages, on the ground that the defendant did not pay the enhanced rates demanded by the plaintiff. *Golam Ali* v. *Gopal Lall Tagore*, 1 W. R., 56.

In a suit for enhancement it is not necessary to

make an alleged purchaser of a mokurruree tenure a formal defendant under Section 73, Act VIII of 1859, when the transfer is not proved. *Kanchunissa Khatoon* v. *Khajah Abdool Gunnee*, 1 W. R., 171.

A variation of rent from change of currency only is not a variation rebutting the presumption arising from uniform payment for more than twenty years. *Ram Coomar Mookerjee* v. *Rugoonath Mundul*, 1 W. R., 356. See also 1 W. R., p. 248.

In a suit for enhancement of rent which was dismissed in the lower Court, where the sole issue raised was the genuineness of a pottah pleaded by the defendant,—*Held* that an entirely new plea of misconstruction of the terms of the lease could not be admitted in special appeal, when the facts on which alone it could be supported had not been found in the lower Court. *Satooram Mojoomdar and others* v. *Preonath Banerjee*, 10 W. R., 424.

Held that a cultivator is not affected by a condition entered in the village administration paper, to which he was no party. *Hakeem Syad Mehur Ali* v. *Kunhyee and another*, 1 Agra Rep., R. A., 13.

In a suit for arrears of rent at enhanced rates, if plaintiff asks for rates admitted by defendant he must abide by those intended to be admitted; and if he desire to take advantage of the finding of the lower Court he must submit to the whole finding taken altogether. *Soorendronath Roy* v. *Bhyrub Mundle*, 14 S. W. R., C. R., 462.

In a suit for enhancement for rent on the ground that defendant holds land in excess of what he pays rent for, it is plaintiff's duty to show that the lands in question are all included within the tenure of the defendant, but that the latter has been paying rent for a quantity less than the area of those lands. *Shaikh Ahmed Hossein* v. *Mussamut Bundee*, 15 S. W. R., C. R., 91.

In a suit after notice for a kubuleut at enhanced rates, said to be those prevailing in the adjacent villages for similar lands held by the same class of ryots as defendant, the evidence of seven occupant ryots of the neighbourhood, though not a majority, was held to be legally sufficient to make a case which defendant was bound to rebut. *Sarroop Manna* v. *Bonomally Churn Mytee*, 15 S. W. R., C. R., 240.

In a suit for arrears of rent at an enhanced rate, where defendants pleaded protection under a mokurruree pottah of old date, which had been lost long ago, and also pleaded the presumption arising from uniform payment for more than twenty years, —*Held* that the defendants' inability to adduce sufficient proof of that pottah was no reason why they should not be allowed an opportunity to prove the uniform payment pleaded. *Nilmoney Singh Deo* v. *Anunt Ram Putnaik*, 15 S. W. R., C. R., 393.

The plaint in a suit for enhancement is not a substitute sanctioned by law for the notice of intended enhancement required to be given by Section 13 of Act X of 1859. *Sobha Mahton* v. *Paburoo*, 2 N. W. R., 310.

In a suit for a kubuleut at enhanced rates after notice under Section 13, Act X of 1859, where the defendant stood by, and though raising a good many objections on other points raised no question as to rates, their conduct and pleadings were held to afford a fair presumption of admission of the plaintiff's claim as to the rates sued for. *Thakoor Dutt Singh* v. *Gopal Singh*, 14 S. W. R., C. R., 4.

(*g*) *Decree.*

In a suit for enhancement the omission of the Ameen or Judge to appropriate to every portion of the land which varies in quality its own rent is no ground of special appeal. *Gooroodoss Roy* v. *Hurronath Roy*, W. R., 1864, 61.

In decreeing enhanced rent it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed. *Gunga Narayan Das* v. *Saroda Mohun Roy Chowdhry*, 3 B. L. R., A. C., 230; S. C., 12 W. R., 30.

The liability of a tenure to enhancement of rent, when decided by a competent Court, is a *res adjudicata*. *Sreedhessury Chowdhry* v. *Mudun Koowar Jha*, 1 W. R., 128.

In a suit for enhancement the first Court dismissed the suit on the ground that the defendant had proved a uniform payment of rent, and that certain old pottahs adduced by him were genuine. The Judge in appeal held the pottahs to be forgeries, and reversed the decree, omitting to decide whether the defendant was protected from enhancement by his long holding at a uniform rate. *Held* that this adjudication was defective. *Sreenath Doss Moonshee* v. *Shib Kristo Bose*, 1 W. R., 159.

The question of the right to enhance having been decided in the plaintiff's favour in a former suit, must be considered as *res adjudicata* in this suit for enhanced rent. *Bhuggobutty Debia* v. *Ram Kanaye Laha*, 1 W. R., 167.

In a suit for enhancement, the Judge is not wrong in confining his judgment to the right to enhance, without decreeing the plaintiff's claim at the rate admitted by the defendant. *Ram Kumar Mookerjee* v. *Rugoonath Mundul*, 1 W. R., 356.

Held that the Judge's decision was defective, inasmuch as he had failed to adjudicate upon two important pleas, which impugned the lower Court's finding as to the mode of comparing similar and adjacent fields held by the same class of ryots on the ground that they also were served with notices of enhancement; and that the appellants, zemindars, have constructed wells and increased the capabilities of the soil. *Shama Nund* v. *Ramanath Pandy*, 1 Agra Rep., R. A., 1.

In fixing the prevailing rate of rent of a talook, it is an error to strike an average between the statements of witnesses on opposite sides; the proper plan is to ascertain on which evidence reliance can be placed. *Rowshun Bibee* v. *Chunder Madhub Kur*, 16 S. W. R., C. R., 177.

A decree for enhancement of rent can have no retrospective effect. *Chunder Mun Chowdry* v. *Sree Mun Chowdry*, 15 S. W. R., C. R., 119.

In a suit for enhancement of rent after notice under Section 13, Act X of 1859 (such notice not treating the defendant as a ryot having a right of occupancy) if the defendant claims to be protected from enhancement otherwise than under Section 17, it is for him to prove, or at least to allege, that he has a right of occupancy, before an issue can be received under the section last mentioned. If a defendant in such a suit has no right of occupancy, and the Judge considers the rate

claimed represents the fair value of the land, he should give the plaintiff a decree, notwithstanding a very large number of ancient ryots having right of occupancy at less rates. *Duff, W. C.* v. *Sowdagur Sahoo Jotedur*, 13 S. W. R., C. R., 255.

(*h*) *Rulings under Act VIII of* 1869 (*B. C.*).

A suit for enhancement of rent under Act VIII of 1869 (B. C.) will not lie in respect of lands occupied by buildings. A landlord who allows his lessee to invest capital in erecting buildings on lands let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of buildings having been permitted without objection to stand on lands for a considerable number of years is *primâ-facie* proof that the land had been originally leased for building purposes. *Braja Nath Kundee Chowdry* v. *A. Stewart*, 8 B. L. R., Ap., 51 ; and 16 S. W. R., C. R., 216.

Section 29, Act VIII (B. C.) of 1869, does not apply to a suit for a fractional share of certain arrears of rent after determination of an issue as to the shares of the parties. *Hurish Chunder Dutt* v. *Sreemutty Jugodumba Dassee*, 16 S. W. R., C. R., 61.

The words "District Judge," in Section 102, Act VIII (Bengal Code) of 1869, mean the Judge of the district, and not any subordinate Judge to whom the case may be transferred for disposal; and an appeal therefore lies under that section in a case tried by a subordinate Judge. It is not necessary to admit an intervenor in a rent suit under Act VIII (Bengal Code) of 1869, if his interest cannot be injured by a decree therein. *Issur Chunder Sein* v. *Bipun Beharry Roy*, 16 S. W. R., C. R., 132.

A suit under Section 30, Act VIII (B. C.) of 1869, against a gomashta to obtain accounts, after the agency has determined, must be brought within a year from such determination.

The proviso in that section refers to suits for money, and under that proviso, where a fraudulent account has been given in by the agent, concealing the fact of the receipt of certain moneys, the zemindar has one year from the discovery of the fraud to bring his suit for such money. *Jan Ali Chowdry* v. *Ishan Chunder Sein*, 16 S. W. R., C. R., 149.

A gomashta holding a written authority from his employer, and suing for rent in the name and on behalf of the latter, should be admitted as the recognized agent of such employer within the meaning of Section 13, Act VIII (B. C.) of 1869. *Ram Lall Kurjurma* v. *Ram Tarun Koondoo*, 16 S. W. R., C. R., 254.

A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant, is not a suit for rent under Act VIII of 1869 (B. C.), and is subject to the six years' limitation prescribed by Clause 16, Section 1, Act XIV of 1859. *Mussamut Kishenbutty Misrain* v. *Mr. Roberts*, 16 S. W. R., C. R., 287.

The subordinate Judge had before him the fact of a kubuleut having been given in the year 1200 at a certain rent, and being the Judge who had to decide upon the evidence in the case, and what inference was to be drawn from it, he said that it appeared to him that the tenure originated at that time, and that consequently the case did not come under the presumption (provided by Section 4, Act VIII of 1869, B. C.) of uniform rent from the time of the Permanent Settlement, so as to bring the ryot within Section 3, which entitles ryots holding at uniform rent from the time of the Permanent Settlement to receive pottahs at those rates. The High Court sitting in special appeal could not say that the Judge was wrong in law in coming to that conclusion. *Mahomed Manoo Bhooyah* v. *Shaikh Mahomed Asanoollah Chowdry*, 17 S. W. R., C. R., 349.

A special appeal was held to lie under Section 102, Act VIII of 1869 (B. C.), in a suit for rent below Rs. 100 in which the question of right to enhance had been determined. *R. Watson and Co.* v. *Ram Dhun Ghose*, 17 S. W. R., C. R., 495.

A suit can be brought under Act VIII of 1869 (B. C.) for arrears of rent due on account of land used for building purposes. *Brojonath Koondoo Chowdry* v. *Gopeenath Shaha*, 17 S. W. R., C. R., 183.

In this case the Judge wrongly dismissed plaintiff's suit, on the ground that no notice had been served on defendant, mistaking the nature of the suit, which was not one for enhancement, but to recover rent at rates previously settled, no notice being required in the latter case. But as the value of the suit was under Rs. 100 the High Court could not interfere, there being no appeal to it under Act VIII of 1869 (B. C.), Section 102. *Goluck Chunder Dutt* v. *Meah Ruja Mijee*, 17 S. W. R., C. R., 119.

No appeal lies under Section 102, Act VIII of 1869 (B. C.), from the order of a District Judge on an application connected with the sale of a tenure in execution of a decree for arrears of rent below Rs. 100. *Deb Coomaree Dassee* v. *Gungadhur Dutt*, 17 S. W. R., C. R., 189.

Payment into Court by a judgment-debtor, within 15 days from the date of decree, of rent, interest, and costs, with a protest as to the sum improperly charged against him as interest, is a sufficient payment, under Section 52, Act VIII of 1869 (B. C.), to save him from liability to be ejected from his tenure. *Shreesteedhur Dey* v. *Doorga Narain Naig*, 17 S. W. R., C. R., 462.

D. C. S., the zemindar, brought a suit against B., a ryot, for recovery of arrears of rent, value below Rs. 100. B. set up in defence that the rent was not payable to D. C. S., but to N. C. A., the mokurrureedar. N. C. A., who claimed under a mokurruree title, and alleged that he was in the receipt of the rents from the ryot, was made a party under Section 73, Act VIII of 1859. The Moonsiff passed a decree in favour of the plaintiff. An appeal by N. C. A., which was heard and decided by the subordinate Judge, on reference by the District Judge, the decree of the first Court was reversed and the suit dismissed. On appeal to the High Court,—*Held* that N. C. A. was properly made a party defendant to the suit, and that he could prefer an appeal from the decree of the Court of first instance, and that the Court of Appeal could on his appeal set aside the whole decree.

A special appeal lay to the High Court; the words "District Judge," in Section 102 of Act VIII of 1869 (B. C.), do not include a subordinate Judge to whom, under Act XVI of 1868, or Act VI of

1871, the District Judge may make over appeals filed in his Court.

The only issue to be tried was whether the relation of landlord and tenant subsisted between D. C. S. and B. *Dayal Chand Sahoy* v. *Nabin Chandra Adhikari*, 8 B. L. R., 180; and 16 S. W. R., C. R., 235.

(*j*) *Rulings under Madras Act VIII of* 1865.

A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865, and forcibly carried away from the person distraining, may be maintained in a Court of Small Causes under Section 27 of the Act. The suit may be brought either by the landlord or the person authorized to distrain. A petition and summons and order after hearing the parties and their evidence appear to be the fitting mode of exercising the jurisdiction. *Vadamalai Thiruvana Tevar* v. *Caruppen Servai*, 4 Mad. Rep., 401.

By Madras Act VIII of 1865, an appeal from the decree of the Collector lies to the Civil Court. The Civil Judge has no power to refer an appeal under the Act to a Principal Sudder Ameen for disposal. *Olaga Sundaram Pillay* v. *Multian Chetty*, 4 Mad. Rep., 227.

A suit brought by the plaintiff, a zemindar, to recover mesne profit from the defendant who held under the preceding zemindar, whose possession of the zemindary during the period included in the suit was declared to be wrongful, was dismissed by the Civil Judge on the ground that puttahs and muchilkas had not been exchanged between the plaintiff and defendant under Section 7, Madras Act VIII of 1865.

Held that the cause of action did not arise out of the relation of landlord and tenant, the ground of suit being that the defendants were wrongfully in the enjoyment of the villages as against the plaintiff, and liable to account for all the profits received during the period of such enjoyment.

Held, further, that the period of limitation applicable to such a claim is six years before suit. *Rani Kattama Nachiar* v. *Subbarama Aiyan*, 4 Mad. Rep., 302.

The definition of the word "landholders" in Madras Act VIII of 1865, Section 1, includes the poligar of an unsettled polliem. Such a landholder is therefore entitled to sue under the Act to compel the acceptance of puttahs by his tenants. *Chanki Gounden* v. *Venkataramanjina*, 5 Mad. Rep., 208.

In a suit before the Collector under Madras Act VIII of 1865, brought by a zemindar to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment, on the ground that he had at his own expense repaired a tank and rendered the land formerly cultivated as dry land capable of being cultivated as wet land,—*Held* that the plaintiff could not maintain the suit, inasmuch as he had not obtained the sanction of the Collector to raise the rent, and such a condition was a condition precedent to such a suit.

Semble,—That the right of the plaintiff to recover was dependent on the further condition that an additional revenue was levied on him consequent upon the improvement made. *Kattasawmy* v. *Sandumada Naik*, 5 Mad. Rep., 294.

A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the powers conferred on a Collector by Madras Act VIII of 1865. *Rajaram Lala* v. *Kulizappen*, 5 Mad. Rep., 129.

A Civil Court, in hearing an appeal from the decision of a Collector under Madras Act VIII of 1865, must be guided by the Civil Procedure Code, and the judgment of the Civil Court may be reviewed under Section 376 of the Code. The order granting a review is final.

Semble,—The terms of Section 57 of Act VIII of 1865 are wide enough to justify a Collector in treating as *ex parte* a defendant not appearing on the day to which the hearing of the suit may have been adjourned under Section 66 of the Act. *Subburamaniya Pillay* v. *Perumal Chetty*, 4 Mad. Rep., 251.

Madras Act VIII of 1865, Section 6, imposes upon village kurnums the duty of signing and registering puttahs and moochilkas exchanged under the Act. Where such puttahs and moochilkas were not signed or registered by the kurnum,—

Held that a suit for rent may be maintained, founded upon the moochilka, the signature and registration by the kurnum not being intended to be a condition of the right to sue. *Venkata Subba Ram* v. *Sesha Reddy*, 4 Mad. Rep., 243.

A suit for rent is maintainable when a puttah in the form required by Section 4, Act VIII of 1865 (Madras), and such as the defendant was bound to accept, has been tendered to the defendant, although no attempt has been made by a summary suit before the Collector to enforce its acceptance.

Under Madras Act VIII of 1865 a landlord may compel a tenant to accept a puttah for palmyra trees. *Multusamy Mudaby* v. *Sudagopa Gramaly*, 4 Mad. Rep., 398.

Section 7 of Madras Act VIII of 1865 applies to cases where the landlord is the exclusive proprietor of both the mélwarum and the mirásiwarum, and the tenant has no saleable interest in the land. *Ramasami Aien* v. *Manjeya Pillai*, 6 Mad. Rep., 61.

Before a dispute regarding the rate of rent can be decided in a suit brought under Section 9 of Madras Act VIII of 1865, merely on the ground of what appears to be just, the Court must consider the reasonableness of the rate according to the local usage, and when such usage is not ascertainable, according to the rates for neighbouring lands of similar description and quality. *Kristna Rán* v. *Máhadéva Mudali; Kristna Rán* v. *Nyniappa Mudali; Kristna Rán and another* v. *Solayappa Mudali; Kristna Rán and another* v. *Chinna Subbu Mudali; Kristna Rán and another* v. *Kristna Mudali*, 6 Mad. Rep., 204.

The provision in Madras Act VIII of 1865, Section 2, Rul. 3,—"And when such usage is not clearly ascertainable, then according to the rates established or paid for neighbouring lands of similar description and quality,"—does not admit of rates of rent being determined on an average of varying rates paid for neighbouring lands; but it does not require, for determination of the proper rate of rent for particular lands, the existence of a fixed general rate of rent for neighbouring lands of similar description and quality. The words "according to the rates established or paid" import clearly the power to determine the rate of rent in accordance with either the general rate at which neighbouring lands of a similar kind are let, or where the

rents of such lands vary, the rate at which rents had for any time been actually paid by some of the tenants of such lands. *Máhá Singavastha Ayyar and another* v. *Agopálá Ayyan and twenty-one others*, 6 Mad. Rep., 239.

A petition sent by post is not a substitute for the presentation of a plaint as required by Section 50 of Madras Act VIII of 1865. *Moparti Pitchi Naida* v. *Vuppalee Kondamma*, 6 Mad. Rep., 136.

Neither the Rent Recovery Act nor the Regulations operate to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*, 6 Mad. Rep., 164.

Neither Regulation XXX of 1802 nor Madras Act VIII of 1865 operate to make a tenancy established by ordinary pattah and muchalka of a permanent nature, by attaching to it the condition that it should be indeterminable as long as the stipulated rent was paid. *Foulkes Jessi* v. *S. Rajahrathna Mudali*, 6 Mad. Rep., 175.

Suit brought by plaintiff, as receiver of the Tanjore Rajah's property, in April 1869, for rent for Faslis 1272, 73, 74, and 75. At the first hearing it was objected that the suit was barred as to the claim for Faslis 1272-74, by Section 1, Clause 8, of the Limitation Act. Against that it was urged that a suit had been pending for upwards of two years, and that time ought to be allowed under Section 14. The suit in question was brought in May, 1866, by one Surfogi, who had assumed the management of the property, for the same cause of action against the present first defendant, and dismissed in November, 1868, because the plaintiff had failed to produce any evidence. Before November, 1868, the title assumed by Surfogi was set aside by the High Court, the present plaintiff was appointed, and applied to the Court to make him a supplemental plaintiff, but his application was neglected. *Held* (affirming the judgment of the Civil Judge that the claim was barred) that it was quite open to the present plaintiff at his election either to affirm or disaffirm Surfogi's contract; and that, having elected to affirm it, he should have been admitted into the former suit, but that in the present action he is in this dilemma—coming in as successor to Surfogi and suing upon the obligation created by his contract, the plaintiff is barred by *res judicata*. Coming in paramount to him, and upon a discordant title, Surfogi's proceedings were no interruption to the period of limitation, because then Surfogi is not the person through whom he claims.

As to Fasli 1275, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January, 1866. *Held* (reversing the decision of the Civil Judge) that Act VIII of 1865 was inapplicable to the case.

The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to Procedure are not exception, but the question here was not one of processual but of material law. *G. Lee Morris* v. *Sambamarthi Rayar*, 6 Mad. Rep., 122.

Certain landholders applied to the Collector for warrants to be put into possession of lands under Section 41 of Madras Act VIII of 1865. The warrants were issued, but certain ryots appealed under Section 43 by presenting ordinary petitions. In disposing of these petitions, the Collector referred certain questions to arbitrators named by the parties, and then made an order in accordance with the award. The Civil Court heard an appeal from the order. *Held* that the Civil Court had no jurisdiction to hear the appeal. *Madai Thalavay Kummarasamy Mudhajur* v. *Nallakanun Tevan*, 5 Mad. Rep., 289.

The continuing of offensive trades in premises already used is not an offence under Section 114 of Madras Act X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades. 5 Mad. Rep., Rul. XVI.

22.—Rulings under Act X of 1859.

Act X of 1859 provides for two classes of ryots only, *viz.*, those who have held and cultivated the land for a period of twelve years, and those who have held at fixed rates from the time of the Permanent Settlement; it makes no provision for ryots who have held since the time of the Permanent Settlement at varying rates. *Denobundhoo Dey* v. *Ramdhone Roy*, 9 W. R., 522.

Suits for rent under Act X of 1859 are not summary suits, but to all intents and purposes regular suits, only tried by Collectors. *Nobo Tarince and others* v. *J. J. Gray*, 11 W. R., 7.

A decision in an Act X case is binding on a Civil Court. *Woomesh Chunder Sootee* v. *Ram Chunder Mowree*, 4 W. R., Act X R., 40.

The procedure under Act X of 1859 does not provide for the entertainment of a second application to set aside an *ex-parte* decree after the first application has been dismissed for default. *Suderooddeen* v. *Huronath Sein*, 8 W. R., 87.

As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them is defined by Act X itself. Where a defendant agreed to pay the amount of a decree under Act X by two instalments, and the remedy provided for the enforcement of the contract in the event of the defendant making default was the execution of the decree, and not a suit in the Civil Court,—*Held* that a suit would not lie in the Small Cause Court to recover the amount of the second instalment. *Aghore Chunder Mookerjee* v. *Woomasoondery Debia*, 7 W. R., 216.

A claim for huq-i-zemindary is not cognizable under Act X of 1859. *Jowahran Lall* v. *Sultan Ali*, 12 W. R., 214.

Lands used for building purposes situated in a town are not liable to enhancement of rent under Act X of 1859. *Kailas Chandra Sirdar* v. *Doorga Dass Turafdar*, 3 B. L. R., A. C., 284.

The plaintiff filed a suit for rent at an enhanced rate under Act X of 1859. The Court of first instance dismissed the case on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement. *Narakant Mozoomdar*

v. *Rajah Barodakant Roy Bahadoor*, 3 B. L. R., Ap., 31.

The question of jurisdiction cannot be raised in appeal for the first time, unless it appear upon the face of the pleadings, or the admission of the parties, or upon the evidence, that the suit will not lie.

Bastu land (land used for sites of houses) situated in a town cannot form the subject of suits under Act X of 1859 for enhancement. Bastu land which is the site of a house occupied by a ryot engaged in cultivating the surrounding lands, does fall under the provision of Act X of 1859.

When it did not appear on the face of the pleadings, or on the evidence, under what kind of bastu the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court would not remand the case to enquire under which class of bastu land the subject-matter of the suit fell, nor entertain the point of jurisdiction in appeal. *Naimudda Jowardar* v. *R. Scott Moncrieff*, Agra Rep., A. C., 283.

A suit will not lie, under Act X of 1859, to recover rent wrongfully collected by a person not the agent of the landholder, and without his authority; but such suit must be brought in the Civil Court. *Seetul Kristo Roy* v. *Gopeenath Shah and others*, Marsh., 465.

The proceedings of a settlement officer under Section 3, Act XIV of 1863, are not judgments or orders appealable to the Judge, or specially to this Court under Act X of 1859. *Ahmed Aly Khan* v. *Nubeea and others*, 2 Agra Rep., A. C., 239.

A plaintiff ousted by the real defendant is not barred from suing in the Civil Court, until the real defendant and the zemindar defendant settle any dispute between them by a suit under Act X of 1859. *Tara Chand Dutt* v. *Oofunissa Bibee*, 5 W. R., Act X R., 52.

A zemindar cannot sue to set aside a tenant's mokurruree lease when once that mokurruree (in a suit between them under Act X of 1859) has been upheld, and a claim for enhanced rent dismissed in consequence. But the zemindar can sue to eject a party holding on an alleged mokurruree whom he has never recognized as a tenant, but treated as a trespasser. *Shah Unwar Ali* v. *Nund Kishore Pershad*, 1 W. R., 222.

Suits under Act X of 1859 must be preferred in the revenue office of the district, or when a subdivision of the district has been placed under a Deputy Collector, in the revenue office of the subdivision in which the cause of action arose. The authority given to the Collector to withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector, does not cure the defect caused by the institution of the suit in a Court other than that of the subdivision in which the cause of action arose. *Purna Chandra Chatterjee* v. *C. Macarthur*, 3 B. L. R., A. C., 366; 12 W. R., 310.

A suit for ejectment does not lie under Act X of 1859, unless there has been an illegal ejectment by the party entitled to receive the rents, and not when the contention is between two rival ryots. *Amjid Ali Khan* v. *Gholam Hyder Khan*, 1 W. R., 313.

A suit to assess land and recover rents at an enhanced rate must be dismissed if not brought under some section of Act X of 1859. *Sreedhur Jha* v. *Dabee Dutt*, 9 W. R., 170.

Act X of 1859 is not applicable to a dispute between two ryots concerning the same land. It can only apply where the zemindar or his personal servants have taken some actual part in the dispossession. *Modhoosoodun Chuckerbutty* v. *Nufur Bawal*, 1 W. R., 196.

A suit by a zemindar against a putneedar for zemindary dâk charges, under Act VIII of 1862 (B. C.), for which the latter is liable under his kubuleut, is not cognizable under Act X of 1859. *Ruttunmonee Dossee and others* v. *Jotendromohun Tagore*, 6 W. R., Act X R., 31.

Act X of 1859 makes no provision for a case where, before the sale of the distrained property, because the defaulter paid the debt demanded by the landlord, the crops distrained and alleged by the plaintiff to be his were made over to the ryot, who, the plaintiff states, has misappropriated them. In such a case a suit for damages only can be brought in the Civil Court. *Sheikh Goreeboollah* v. *Sheikh Syefoollah*, 7 W. R., 41.

A suit for a kubuleut for the payments of the rents of a fishery is cognizable under Act X of 1859. *Koylash Chunder Dey* v. *Joy Narain Jalooah and others*, 7 W. R., 193.

An allegation of fraud made in a plaint, the plaintiff meaning thereby nothing more than that the defendant had obtained something to which, in the plaintiff's opinion, he was not entitled, does not give a Civil Court jurisdiction to interfere in a case under Act X of 1859. *Juggobundhoo Samunt* v. *Gyanendur Nath and others*, 8 W. R., 290.

Where house-rent includes the rent of the ground upon which the house stands, and the ground-rent can be separated from the other items forming the aggregate of the house-rent, the claim to the extent of the ground-rent may be cognizable by the Revenue Court under Act X of 1859. *Ram Churn Singh Kettree* v. *Meadhun Durjee*, 8 W. R., Act X R., 90.

Tenants, intermediate between proprietors and ryots, are subject to the jurisdiction of the Collector under Act X of 1859, which contemplates under-tenants as distinct from ryots, and contains provisions relating to both classes. *Dhunput Singh* v. *Gooman Singh and others*, 9 W. R., P. C., 3.

Act X of 1859 applies where rent is reserved in kind, just the same as in the case of suits for rent in money, but not where articles are to be delivered under a separate agreement unconnected with the question of rent. *Bhubo Soondery Debia* v. *Nawab Syud Jynul Abdin*, 8 W. R., Act X R., 393.

The jurisdiction of a Collector under Act X of 1859 is not affected by the nature of the defence set up.

Section 97, Act VIII of 1859, does not apply to suits under Act X of 1859. *Doyal Chunder Ghose* v. *Dwarkanath Mitter*, W. R., F. B., 1862, 47.

The incident of a deposit gives a tenant no right to institute a civil action to set aside a sale made in execution of a decree under Act X of 1859. *Ram Coomar Haldar and others* v. *Brojo Coomar Chowdhry*, 6 W. R., Act X. R., 85.

A. obtained a decree against B. for arrears of rent. C. was an under-tenant of B., under an ijara lease. In executing A.'s decree against B., the Collector sold the "rights and profits of the debts due for rent" from C. to B., for the years 1273-4-5. A.

became the purchaser in a suit brought by D., as assignee of A., of rents alleged to be due for the years 1273-4-5. *Held* that, for the purposes of Act X of 1859, rent is moveable property; and that the Collector, therefore, was competent to effect the sale to A. *Mahes Chandra Chuttapadhya* v. *Guruprasud Roy*, 5 B. L. R., 155; 13 S. W. R., C. R., 401.

Held, in a case under Act X of 1859, in which the plaintiff had appeared at the preliminary hearing when the issues were framed, and where he was not required to appear in person on the day of the trial, that the presence of the plaintiff's pleader and revenue agent was an appearance within the meaning of the law, having reference to Section 20, Act XX of 1865. *Sonatan Dass* v. *Kaleepersaud Dass*, 13 S. W. R., C. R., 146.

The purchaser of a decree under Act X of 1859 is entitled to ask the holder for a power of attorney to proceed with the execution. *Brojo Coomar Mullick* v. *Mon Mohinee Debia*, 16 S. W. R., C. R., 55.

There is no general provision in Act X of 1859 for a review of judgment, though in certain specified cases the Revenue Courts are authorized to order a re-hearing. *Mahomed Suckee and others* v. *Musamut Ahmudee Begum*, 3 N. W. R., 22.

Act X of 1859 is not in force in the Dehra Dhoon District.

The Dhoon forms part of "the territories not subject to the General Regulations." *Dick* v. *Heseltine*, 1 N. W. R., Par. 12, p. 196.

The object of Act X of 1859 was to re-enact the provisions of existing laws relative to the rights of ryots, and not in any way to destroy those rights. If, therefore, the plaintiff had a gorabundee tenure existing before the enactment of Act X (and it had been found that the plaintiff's gorabundee tenure had been recognized in a long series of decisions commencing from the year 1846), the enactment of that Act has in nowise deprived him of his rights in that tenure. *Rajah Leelanund Singh* v. *Nirput Mahtoon*, 17 S. W. R., C. R., 306.

The Judge is not competent, under Act X of 1859, to hear appeals from the decision of the Collector given in appeal. The decision of the late Sudder Court, dated 19th March, 1862, Ghous Buksh *v.* Kidha, overruled. *Syud Abdool Ali* v. *Syud Moodud Ali*, 1 N. W. R., Par. 2, p. 8.

With reference to the provisions for appeals from decisions of Collectors and Deputy Collectors in Act X of 1859, it is not to be held that appeals from one and the same decision are meant to be carried to different Courts.

Whenever the question of title to an interest in land is involved, an appeal presented against any portion of the decree lies to the Judge. *Ram Autar Singh* v. *Heeranum Pandey*, 1 N. W. R., Par. 1, p. 39.

Where a tenant sues a landlord not only for possession but also for mesne profits, and makes other parties besides the landlord defendants, the suit cannot be brought under Act X of 1859. *Nuffer Mytee* v. *Monchur Sirdar*, 13 S. W. R., C. R., 334.

A suit on the ground of illegal ejectments effected by the zemindar, or by a servant acting under him, cannot be brought under Act X of 1859, when the defendant is the ijaradar entitled to the rents. *Mussamut Gobind Monee* v. *Rajendro Kishore Chowdry*, 15 S. W. R., C. R., 18.

The privilege of keeping the decree alive by *bonâfide* proceedings within three years before the date of the last application for execution, cannot be enjoyed by holders of decrees for sums below 500 rupees. *Shaikh Hossein Ali*, 13 S. W. R., C. R., 295.

There is no prohibition or rule of law forbidding the assignment of a decree under Act X of 1859, any more than another decree. *Junmejoy Mookerjee, in the matter of*, 14 S. W. R., C. R., 215.

This decision calls into question the doctrine laid down by a Division Bench at 147 of the Special Number of the Reporter, *viz.*, that when a sale has taken place by order of the Collector in execution of a decree under Act X of 1859, a civil suit for the purpose of questioning the regularity and propriety of the proceeding is taken away, as well as anything in the shape of an appeal. *Tekaet Bhoo Narain Deo* v. *The Court of Wards on behalf of Maharajah Ram Narain Deo*, 15 S. W. R., C. R., 58.

The provision of Act X of 1859, which requires that every agreement as to division or distribution of rent should be in writing, applies only to division or distribution made after the Act came into operation. *W. O. Allender, General Manager of the Land Mortgage Bank of India* v. *Dwarkanath Roy*, 15 S. W. R., C. R., 320.

Section 2.

A landlord cannot sue for cancelment of lease and ejectment under Section 2, Act X of 1859, after he has sued for and realized the arrears of rent due. *Woomesh Chundra Chatterjee and others* v. *Sheikh Kumuroodeen Luskur*, 7 W. R., 20.

Section 3.

In a suit brought by a ryot to obtain a pottah at a fixed rent, under Section 3 of Act X of 1859, on the ground that the lands have been held at a fixed rent which has not been changed from the time of the Permanent Settlement, if the plaintiff fail in proving such a holding, he is not entitled in that suit to have decree under Section 5 for a pottah at a fair and equitable rate. *Doorga Mahtoun* v. *Kunhye Lall Agha*, Marsh., 371.

When there has been a breach of contract to sow and cultivate indigo, both liquidated damages and the amount advanced to the cultivators cannot be recovered under Section 3, Act X of 1836. *Meer Mahomed Kasem Chowdhry* v. *A. J. Forbes*, 5 W. R., 277.

Section 4.

When in a suit for enhancement, a ryot or talookdar pleads possession for a long time and claims the benefit of the presumption under Section 4, that is tantamount to his having named the Permanent Settlement. *Dhun Singh Roy* v. *Chunder Kant Mookerjee*, 4 W. R., Act X R., 43.

To entitle a tenant to the presumption under Section 4, Act X of 1859, he must prove that he has paid a uniform fixed rent for the last twenty years. *Mussamut Mahmooda Bebee*, 5 W. R., Act X R., 12.

The fact of the zemindar who sues for enhance-

ment having been an auction-purchaser at a sale for arrears of revenue does not deprive the ryot of his right of pleading the presumption of uniform payment from the Permanent Settlement under Section 4, Act X of 1859. *Saduck Sircar* v. *Mohameya Debia*, 5 W. R., Act X R., 16.

Twenty years' uniform payment of rent previous to suit must be proved by the ryot, and clearly found by the Court before the ryot can have the benefit of the presumption contemplated by Section 4, Act X of 1859. *Pearee Mohun Mookerjee* v. *Bissumbhur Mookerjee*, 5 W. R., Act X R., 70.

The fact of uniform payment of rent for 20 years, as required by Section 4, Act X of 1859, must be clearly *proved*, and not *presumed* from any evidence, however strong, before the presumption of having held at the same rate from the time of the Permanent Settlement can arise. *Ram Kishore Mundul* v. *Chand Mundul*, 5 W. R., Act X R., 84.

When a ryot has held at a fixed rent for 45 years, the absence of the specific allegation that he had held at a fixed rate from the time of the Permanent Settlement does not deprive him of the right to rely on Section 4, Act X of 1859, if he distinctly and in terms claims the benefit of that section. *Gooroo Doss Mundul* v. *Sheikh Durbaree*, 5 W. R., Act X R., 86.

The legal presumption arising under Section 4, Act X of 1859, from uniform payment of rent for 20 years, cannot be rebutted except by clear proof to the contrary. The same cannot be rebutted by a mere inference drawn from a particular fact, *e. g.*, the omission of mention of the defendant's holding in certain jumma-wasil bakee papers from the office of the canoongoe, dated 1229. *Ram Lochun Goopto* v. *Bama Soondery Debee*, 6 W. R., Act X R., 95.

Section 4, Act X of 1859, has no application in a case in which the defendant pleads payment of a uniform rent of Rs. 67 for 20 years when it appears that the plaintiff obtained a decree for rent at Rs. 79 in April, 1861, since which time until the present suit was brought in July, 1865, no appeal was preferred from that decison, and no suit brought to contest its correctness, and where it appears that rent at Rs. 79 was, in fact, paid under that decree. *Kodubooddeen Mundul and others* v. *Kisto Soondery Debea*, 6 W. R., Act X R., 69.

In a suit for enhancement, before giving the defendant the benefit of the presumption in Section 4, Act X of 1859, it must be specifically and expressly determined that he has established payment at uniform rates for 20 years. *Prem Sahoo and others* v. *Sheikh Nyamut Ali and others*, 6 W. R., Act X R., 89.

In a suit for enhancement, positive proof, and not a negative inference of a varied jumma after the Decennial Settlement, is requisite to rebut the presumption arising under Section 4, Act X of 1859.

A difference of currency is not a variation of rent rebutting the presumption under Section 4, Act X of 1859. *Kattyani Debea* v. *Soonduree Debea*, 2 W. R., Act X R., 60.

In the absence of documentary evidence to show that a pottah of 1239 was merely confirmatory of a previous holding, the possession of a ryot claiming under that pottah will commence from the date of his pottah, and he is not entitled to the benefit of the presumption under Section 4, Act X of 1859. *Sheikh Jainooddeen* v. *Purno Chunder Roy and others*, 8 W. R., 129.

In a suit for enhancement brought by an auction-purchaser before Act X of 1859, the ryot cannot avail himself of the presumption arising under Section 4 of that Act from a uniform payment for 20 years, but must prove uniform payment for 12 years before the Decennial Settlement. Notwithstanding proof of such payment, he will still be liable to enhancement in respect of lands held by him in excess of the quantity mentioned in his lease. *Showdominee Dossia* v. *Gooroo Pershad Dutt*, 3 W. R., 14.

A nominal reduction in the jumma of one anna and three pies, and that too in the ryot's favour, is not a variation that deprives him of the benefit of the presumption created by Section 4, Act X of 1859.

The special plea of having held from before the Decennial Settlement is not indispensable to entitle the ryot to the benefit of the presumption. *Ramrutno Sircar* v. *Chunder Mookhee Debia*, 2 W. R., Act X R., 74.

A temporary arrangement among joint owners, by which one of their number holds a portion of the joint property on payment of a certain sum of money, does not convert the occupier into a ryot holding at a fixed rent, nor entitle him to the benefit of the presumption under Section 4, Act X of 1859. *Roghoobun Tewaree* v. *Bishen Dutt Dobey*, 2 W. R., Act X R., 92.

Held by Bayley and Jackson, JJ., that in a suit for determination of rent, as well as a kubuleut, the tender of a pottah is not necessary; the order for the delivery of a pottah before the decree is given effect to being sufficient.

Held by Trevor and Jackson, JJ., that a bhowlee rent, varying yearly in amount with the varying amount of the gross produce of the land, though fixed as to the proportion it is to bear to such produce, is not a fixed unchangeable rent to which the presumption of law laid down by Section 4, Act X of 1859, is applicable. *Mahomed Yacoob Hossein* v. *Sheikh Chowdhry Wahed Ali*, 4 W. R., Act X R., 23.

If the holding at a uniform rent for twenty years is proved to the satisfaction of the Court, the presumption under Section 4, Act X of 1859 is established, whether the evidence be direct or indirect. *Radhanath Sircar* v. *Binodee Paul*, 3 W. R., Act X R., 151.

A defendant is not precluded from the benefit of the presumption under Section 4, Act X of 1859, because he does not plead in words a tenure from the Decennial Settlement. *Hem Chunder Chatterjee* v. *Poorno Chunder Roy*, 3 W. R., Act X R., 162.

In the absence of express stipulation, or of a right such as is mentioned in Sections 3 and 4, Act X of 1859, all ryots having rights of occupancy are liable to have their rents enhanced, if such rents are below the rate payable by the same class of ryots for land of a similar description, and with similar advantages in the places adjacent. *Puhlwan Thakoor* v. *Godooree Koonwar and others*, W. R., F. B., 142.

A presumption of occupancy from the time of the Permanent Settlement, under Section 4, Act X of 1859, cannot be pleaded after the setting up of a mourosee pottah which has been found to be ficti-

tious. *Petumber Shaha* v. *Jebun Singh Burmonee*, 2 W. R., Act X R., 6.

Section 4, Act X of 1859, makes no exception as to khamar lands. *Ram Coomar Mookerjee* v. *Rugoonath Mundul*, 1 W. R., 356.

In a suit for reversal of a notice of enhancement of rent the plaintiff endeavoured to show a holding at a fixed rate within Act X of 1859, Sections 3 and 4. *Held* that upon his failing to prove such a holding the defendant was entitled to have the suit dismissed, and was not bound to show his title to enhance. *Gungapersaud Singh* v. *Ramloll Singh and others*, Marsh., 185.

In a suit for enhancement, before giving a defendant the benefit of the presumption created by Section 4, Act X of 1859, there must be legal evidence of actual uniformity of rent for the whole of the twenty years immediately preceding the commencement of the suit. *Rajnarain Roy Chowdhry* v. *Mrs. Olivia Atkins*, 1 W. R., 45.

The consolidation of several holdings into one, or the omission of fractions by the settlement officer, cannot deprive a ryot of the benefit of the presumption under Section 4, Act X of 1859. *Lukhi Moni Haldar* v. *Gunga Gobind Mundle*, W. R., 1864, Act X R., 126.

Proprietors paying rent for the right of occupancy are not "ryots" in the sense contemplated in Section 4, Act X of 1859. *Mitter Jeet Singh and others* v. *W. Fitzpatrick and another*, 11 W. R., 206.

Held by Kemp and Glover, JJ., that the production of a pottah is not necessary before a ryot can claim the benefit of the presumption under Section 4, Act X of 1859.

Held by Trevor and Kemp, JJ., that the ryot is not precluded from the benefit of the said presumption, simply because he does not in terms claim to hold from the Permanent Settlement, if he uses words equivalent to that claim. *Nyamutoollah* v. *Gobind Chunder Dutt*, 4 W. R., Act X R., 25.

A bhachee rent, varying yearly in amount in a fixed proportion to the produce of the crop, is not a fixed unchangeable rent of the nature contemplated by Section 4 of Act X of 1859. *Mullick Mahomed Jacoob Hossein* v. *Chowdry Waheyd Ally*, 1 Ind. Jur., N. S., 29.

Section 4, Act X of 1859, does not require that in a suit for enhancement the ryot should specifically claim to hold from the time of the Permanent Settlement in order to obtain the benefit of the presumption enacted by that section. On proof of payment of a uniform rent for 20 years the presumption imperatively arises, unless the contrary be shown, that the rent has been unchanged from the time of the Permanent Settlement. *Rakhal Doss Tewaree* v. *Kinooram Halder*, 7 W. R., 242.

A variation of one anna is not sufficient to destroy the uniformity required by Section 4, Act X of 1859. *Munsoor Ally and others* v. *Buno Singh and another*, 7 W. R., 282.

The presumption of occupancy from the Permanent Settlement created by Section 4, Act X of 1859, is rebutted by the ryot relying upon a pottah granted after the Permanent Settlement. *Rajah Monnohur Singh* v. *Watson and Co.*, W. R., F. B., 22.

When a ryot alleges that he has paid rent at a uniform rate for forty years, and claims the benefit of the presumption under Section 4, Act X of 1859, it is not necessary, in order to entitle him to a decree, that he should expressly state that rent has been paid at the same rate from the time of the Permanent Settlement. *Poolin Behary Sen and others* v. *Nemaye Chand*, 7 W. R., 472.

In a suit for rent under a lease of eight annas of a certain bill and of fourteen beegahs of land, by which the lessee reserved a yearly rent of Rs. 200 for the land, and the right of levying a yearly tax on the parties who were employed in quarrying the stone,—*Held* that this was not a suit cognizable by the Revenue Courts under Act X of 1859. *Khalut Chunder Ghose* v. *William Minto*, considered and approved; *Shalgoam* v. *Mussamut Kubooim*, 3 B. L. R., A. C., 61.

In a suit for enhancement of rent where the defendant set up a pottah alleged to have been granted in 1212 at a certain yearly rent, and asserted that he had been in possession for fifty-seven years at that rent, it appeared that the alleged pottah was not genuine. *Held* that the defendant could not rely on his occupation at the smaller rent for a period exceeding twenty years before the commencement of the suit, as an answer under Act X of 1859, Section 4, which provides that, "where there has been payment of rent for such period, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement;" for the presumption in such a case is excluded by the assertion of the defendant of the grant of pottah at a subsequent date. *Watson and others* v. *Choto Kooree Mundle*, Marsh., 68.

A plea of holding "for a long time from olden date from before" is not inconsistent with a holding from the time of the Decennial Settlement so as to deprive the defendant of the benefit of the presumption created by Section 4, Act X of 1859, which does not require a specific plea that the tenure was held at a fixed rent at the Permanent Settlement, but only proof of payment for twenty years at a fixed rate in order to raise the legal presumption. *Munmohun Ghose* v. *Hosrut Sirdar*, 2 W. R., Act X R., 39.

The consolidation of several tenures into one cannot deprive a ryot of the benefit of the presumption under Section 4, Act X of 1859. The fact of uniform rent having been continuously paid for a long time entitles a ryot to the benefit of the presumption under Section 4, Act X of 1859, although he may not have stated in so many words that the tenure existed from the Decennial Settlement.

In cases of saleable tenures the period of possession by the ryot's vendor is included in the twenty years mentioned in Section 4, Act X of 1859. *Kazee Khoda Newaz* v. *Nubo Kishore Raj*, 5 W. R., Act X R., 53.

The discovery among title-deeds of an ancient pottah dated 1167, of the genuineness of which the ryot could have no means of judging, is no bar to prevent him from claiming the benefit of the presumption under Section 4, Act X of 1859. *Huronath Roy* v. *Kumola Kant Chuckerbutty*, 5 W. R., Act X R., 56.

The plaintiff was the auction-purchaser at a sale of land made prior to the passing of Act X of 1859. In 1253 he dispossessed a tenant who had been in occupation of the land for twenty-seven years at a uniform rent. In 1260 the tenant was restored to the land under a decree, finding that he held a

mokurruree tenure. Afterwards, and before the plaintiff had received any rent, he brought a suit against the tenant for enhancement of rent. *Held* that the enactment in Section 4 of Act X of 1859 that, when it shall be proved that the rent at which land has been held by a ryot in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, did not apply to deprive the plaintiff of the right to enhance, since there had not been a holding for twenty years before the commencement of the suit within the meaning of the section; and the plaintiff under the law in force before the passing of Act X of 1859 was as an auction-purchaser not bound by the rent, unless the mokurruree tenure was created twelve years before the date of the Permanent Settlement. A special appeal will not lie upon a question of jurisdiction depending upon a question of facts which had not been determined by the lower Court, or admitted by both parties. *Quære*, —Whether, if the fact appears, special appeal will lie, unless the error in procedure has affected the merits. See Act VIII of 1859, Section 372. *Poolin Behary Sen* v. *Lutuffinessa Bibee*, Marsh., 107; and *see* W. R., F. B., 31 and 91, and also 1 Ind. Jur., O. S., 10.

In a suit for enhancement, when the ryot dates his holding from a certain date, and cannot carry it back by presumption to the time of the Permanent Settlement, he is not entitled to the benefit of the presumption under Section 4, Act X of of 1859. *Beer Kishore Lall* v. *Kunbooly Lall*, W. R., 1864, Act X R., 109.

Section 4, Act X of 1859, does not require that in a suit for enhancement the ryot should specifically claim to hold from the time of the Permanent Settlement, in order to obtain the benefit of the presumption enacted by that section. *Jugmohun Doss* v. *Poorno Chunder Roy*, 3 W. R., Act X R., 133.

If a tenant has held land at a uniform rate for generations, and the pottah given to him subsequently does not fix a rent different from that previously paid, but merely asserts the rent he is to pay during the term of the pottah, he is entitled to the benefit of the presumption contained in Section 4, Act X of 1859, if it be found that his rent has not been changed for twenty years.

Held also that the entry in the jummabundee alone (though material evidence) is not sufficient to justify a decree for higher rent, if it be shown that the rent actually paid and received by the landlord or his agent for years was less than that therein stated. *Mowlas Koonwar* v. *Moonshee Shiva Sahai*, 1 Agra Rep., R. A., 65.

A diminution in the jumma caused by the alienation of part of a ryot's jote does not prove change of the rate of rent, nor deprive the ryot of the benefit of the presumption under Section 4, Act X of 1859. *Kenaram Mullick* v. *Ramcoomar Mookerjee*, 2 W. R., Act X. R., 17.

The presumption allowed by Section 4, Act X of 1859, of holding certain orchard land at a uniform rent since the Permanent Settlement, was held not to be removed by defendant's statement that the orchard was planted more than forty years ago; and it was for plaintiffs to prove it to have been made since the Permanent Settlement. *Soodishtee Lall Chowdhry and others* v. *Nuthoo Lall Chowdhry and others*, 8 W. R., 487.

The presumption under Section 4, Act X of 1859, of holding at a uniform rate from the Permanent Settlement need not be specifically pleaded, but (unless rebutted) arises as a matter of course on proof of uniform payment for twenty years. *Moneekurnicka Chowdhrain* v. *Anund Moyee Chowdhrain*, 8 W. R., 6.

The fact of a ryot having relied upon a mokurruree tenure cannot prevent his falling back on the presumption arising under Section 4 of Act X of 1859. *Chamarnee Bibee* v. *Ayenoollah Sirdar*, 9 W. R., 451.

In order to prove the benefit of the presumption under Section 4, Act X of 1859, it is not necessary for the ryot to show how he obtained possession of the tenure. A plea of twenty years' uniform payment is sufficient.

The variation of a few annas in the dakhilas, when not proved to be a variation in the annual rents, is not sufficient to deprive the ryot of the benefit of the presumption. *Tara Soondery Burmonya* v. *Shibessur Chatterjee*, 6 W. R., Act X R., 51.

It is not absolutely necessary that a ryot who seeks the benefit of the presumption raised by Section 4, Act X of 1859, should state explicitly that he has held at a uniform rent. Proof of uniform payment of rent for more than twenty years is sufficient. *Sham Lall Ghose* v. *Muddun Gopaul Ghose, alias Makhum Lall Ghose, and another*, 6 W. R., Act X R., 37.

In a suit for enhancement, if the defendant pleads pottahs which are not inconsistent with the presumption under Section 4, Act X of 1859, and proves twenty years' uniform payment of rent, the presumption will arise unless the opposite party prove a variance in the pottahs. *Koroona Moyee Dossee* v. *Shib Chunder Deb*, 6 W. R., Act X R., 50.

Uniformity in the amount actually paid is not required to raise the presumption under Section 4, Act X of 1859, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid. *W. Moran and Co.* v. *Anund Chunder Mozoomdar*, 6 W. R., Act X R., 35.

The presumption sanctioned by Section 4, Act X of 1859, only applies to a case in which existing circumstances are stated to have been continued from the Decennial Settlement, and proof of such continuance for more than twenty years is given. *Ram Coomar Mookerjee* v. *Raghub Mundul*, 2 W. R., Act X R., 2.

Proof of uniform payment of rent up to the date of suit is not absolutely necessary to entitle a ryot to the benefit of the presumption under Section 4, Act X of 1859, in a case when the landlord has refused to take rent for a few years before suit. *Gyaram Dutt* v. *Gooroochurn Chatterjea*, 2 W. R., Act X R., 59.

The question whether a party who has propounded a forged pottah could have the benefit of the presumption arising from paying a fixed rent for twenty years, was held not to rise in a suit brought before Act X of 1859 came into operation, Section 4 applying only to suits commenced under the pro-

vision of that Act. *Gopal Chunder Roy* v. *Gooroo Doss Roy*, 7 W. R., 135.

In order to bring himself within Sections 3 and 4, Act X of 1859, a ryot need only show that the particular land which is the subject of suit, not the whole tenure of which it may once have formed a part, has been held at an unchanged rent since the Permanent Settlement. It is not necessary that the land should have remained a separate holding. *Kaseenath Nusker* v. *Bama Soondery Dossia and others*, 10 W. R., 429.

In a suit for enhancement of rent when defendant claimed the benefit of the presumption arising under Section 4, Act X of 1859, it was held that his sworn declaration that the rent had not varied for more than twenty years, corroborated by the records of the Collectorate, which showed that the rent was the same as it had been more than thirty years ago, was sufficient to warrant the presumption, seeing that plaintiff had failed to show any intermediate variation. *Raj Doollab* v. *Mohessur Bhutt and others*, 10 W. R., 364.

Held (by Jackson, J., whose opinion prevailed) that where a ryot in his answer to a suit for enhancement pleads possession for a very long time, and expressly claims the benefit of the presumption under Section 4, Act X of 1859, it is tantamount to his naming the Permanent Settlement, but where the defendant's allegation, whether oral or written, suggests a commencement of a holding at a much later period, and his evidence is of the same character, then the presumption claimed will not arise from the proof of twenty years' occupation at a rate unchanged.

Held (by Mitter, J.) that where a ryot's answer distinctly states that the tenure and the provisions of Section 4 and the rulings of the High Court under that section are expressly set up as a bar to the enhancement sought for by the plaintiff, it would be inconsistent with the entire contest for him to say that his tenure had come into existence at a time subsequent to the date of the Permanent Settlement: he cannot be held to have intended to say this by using the words "long before twenty years." *Hurruck Singh and others* v. *Tolsee Ram Sahoo*, 11 W. R., 84.

In a suit for arrears of rent at an enhanced rate, where defendant claimed the presumption arising under Section 4, Act X of 1859, it was held that the question to be decided was not whether defendant's tenancy was a continuation of former holdings or a new creation out of other holdings, but whether the rent had been changed or not for a period of twenty years before the suit.

Held also that the principle laid down in a former decision, *viz.*, that consolidation of jummas into one tenure does not deprive the ryot of the benefit of the presumption arising where the rent has not been changed, applies equally to jummas derived in part or in whole, with the consent of the landlord, and subsequently consolidated. *Rajkishore Mookerjee* v. *Hureehur Mookerjee*, 10 W. R., 117.

Where a defendant who claims to have held lands for more than 100 years is able to prove that the rent has not changed for twenty years, he is entitled to the presumption allowed by Section 4, Act X of 1859. *Luchmeeput Singh* v. *Rungulbee Kullyan Doss*, 9 W. R., 147.

The presumption arising under Section 4, Act X of 1859, is not necessarily restricted to proceedings under that Act; but even if it did not apply to suits other than those under Act X a Court would not do wrong to follow the rule laid down in Section 4 in determining for what length of time payment of a fixed rent should be made in order to warrant the presumption of its having been made since the Permanent Settlement. *Dukhina Mohun Roy* v. *Kureemoollah, mookhtear*, 12 W. R., 243.

A defendant who rested his defence in a suit for enhancement upon a pottah, which he set up as entitling him to hold free from enhancement under Section 4, Act X of 1859, cannot plead that the tenure is protected from enhancement by reason of payment of rent at a uniform rate for 20 years.

Where the ground of enhancement was that defendant paid rent below the prevailing rate for land of similar description and with similar advantages in the places adjacent, and the plaintiff failed to prove the existence of any such ground, the plaintiff was not entitled to a decree at the rates which the defendant's lands would bear, as Act X of 1859 does not authorize enhancement of the rent of a ryot to the rates which the lands will bear. *Jaun Ali* v. *Jan Ali*, 9 W. R., 149.

In a suit for enhancement of rent the ryot pleaded that he had held certain lands from generation to generation at a uniform rate; that he was therefore entitled to claim the presumption arising under Section 4, Act X of 1859, that he should be allowed to date his claim from the date of the Permanent Settlement.

Held that he was entitled to such presumption, on showing that he had paid rent at a uniform rate for a period of 20 years previous to the suit. *Mitrajit Singh* v. *Tundan Singh*, 3 B. L. R., Ap., 88; S. C., 12 W. R., 14.

A tenant is not entitled to the presumption, under Section 4 of Act X of 1859, of having held his tenure at a uniform jumma from the Permanent Settlement, when it appears from his pleadings that his holding first began under a pottah at a period subsequent to the Permanent Settlement, and he does not allege that he held the land previous to his obtaining the pottah. *Kunda Misser* v. *Ganesh Singh*, 6 B. L. R., Ap., 120; and 15 S. W. R., C. R., 193.

Semble,—A tenant who has paid at the same bhaoti rate, *i.e.*, in kind, for a period of twenty years, is entitled to the presumption of Section 4, Act X of 1859, and to exemption from enhancement under Section 3. *Ram Dayal Singh* v. *Baboo Lutchim Narayan*, 6 B. L. R., Ap., 25; and 14 S. W. R., C. R., 388.

Section 5.

If a Collector finds an agent unable to answer questions which he thinks necessary, and determines that the appearance ought to be by the party himself, and if the party fails to appear, the case comes under Section 5, Act X of 1859, and no appeal lies from the Collector's judgment in such a case. *Seetab Chand Naha* v. *Masoom Ali Chowdry*, 13 S. W. R., C. R., 411.

Section 6.

Defendant had occupied the land upon which

his huts were standing for some thirty years, and he put up a wall round the land some ten or twelve years ago. *Held* that the permissive occupancy of land under such circumstances could not give defendant a right to retain possession of it when the landlord desired to put an end to the tenancy, or entitle him to compensation; Section 6, Act X of 1859, having no bearing upon the case. *Addoyto Churn Dey* v. *Peter Doss*, 17 S. W. R., C. R., 383.

The presumption under Section 6, Act X of 1859, cannot be established by imperfect and unproved evidence. *Sreenath Bose* v. *Poglian Mollah*, 17 S. W. R., C. R., 374.

Dakhilas are not the only evidence to prove a right of occupancy under Section 6, Act X of 1859.

Per Mitter, J.—The expiration of the lease of the ijaradar under whom the ryot's possession under a jotedaree right commenced cannot affect the application of that section.

A tacit understanding that the ijaradar should give up possession on the expiry of his lease is not an express stipulation within the meaning of Section 7.

Quære,—Whether such an understanding between the zemindar's predecessors and the ijaradar can affect the ryot. *Golan Panja and others* v. *Hurrish Chunder Ghose*, 17 S. W. R., C. R., 552.

In a suit to recover possession of debutter land where plaintiff relied upon a mourosee pottah which had been granted by or with the permission of a poojaree no longer in office, the principal defendant claiming under a lease from the existing poojaree, —*Held* that plaintiff could not succeed in the absence of evidence of a right of occupancy, under Section 6, Act X of 1859, and his title was bad as based upon a grant from a person who had only a limited or temporary interest in the land. *Gooroo Pershad Roy* v. *Ram Lochun Pauray*, 13 S. W. R., C. R., 241.

Section 6 of Act X of 1859 applies to land "held" as well as to land "cultivated," and although a tenant may not have personally cultivated, but may have made over the land to another to cultivate (assuming that by custom he has such power), he still may gain a right of occupancy if he continues to be recognized by the zemindar as the holder of the land. *Butabee Begum* v. *Khoosal*, 2 N. W. R., 24.

Land held as a grove upon the terms which have been heretofore customary in this country is not subject to the provisions of Section 6 of Act X of 1859. By an occupancy thereof for twelve years no right of occupancy can accrue. The provisions of Section 6 of Act X of 1859 were intended to apply to kashtkari lands. *Pirtum Koormy* v. *Bhikuree*, 2 N. W. R., 364.

Holdings which have commenced or continued under a mortgagee in possession are not within any exception to the general rule contained in Section 6 of Act X of 1859, that a ryot who has held or cultivated a holding for twelve years is entitled to a right of occupancy therein. *Heeroo* v. *Dhoree*, 2 N. W. R., 129.

The purchaser of a transferable tenure, under which the rent cannot be enhanced, is entitled to the benefit of it, although he may not have occupied for 12 years, or acquired a right of occupancy under Section 6, Act X of 1859. *Fisher* v. *Nundoo Coomer Mundle*, Marsh., 625.

Section 6, Act X of 1859, is retrospective. A suit to enhance the rate of rent after notice is the proper mode of suing for enhancement of rent. But the same matter may be determined in a suit for a kubuleut. A suit for a kubuleut may be brought without notice of enhancement (Peacock, C. J., and Norman, J., dissenting). But in such a suit brought without notice the kubuleut cannot be decreed, except to commence with the year following that in which the decree is given.

By Peacock, C. J.—A suit for kubuleut may be maintained without tendering a pottah. (Norman, and Phear, JJ., dissenting).

By Peacock. C. J., and Norman, Kemp, Shumboonath Pundit, and Campbell. JJ.—In a suit for a kubuleut at an enhanced rent the plaintiff is restricted to the grounds mentioned in Section 17.

By the majority of the Court.—In a suit to enhance the rate of rent of a ryot having a right of occupancy under Section 6, the sole ground of enhancement being an increase in the value of the produce, the words "fair and equitable" in Section 5 mean, not the rate obtainable by open competition, but the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent. If the customary rate of the neighbourhood had not been adjusted, with reference to the increased value of the produce, then the rate of rent to be paid should bear to the old rate the same proportion as the present value of the produce bears to the old value, except in special cases, when this rule may be departed from. *Thakooranee Dasee* v. *Bisheshur Mookerjee*, 3 W. R., Act X R., 29.

The mere fact of a party sub-letting does not make him a middleman excluded from the privileges of Section 6, Act X of 1859. The real question for trial is whether he was or was not a ryot, or one who held land under cultivation by himself or others who took for him under his supervision as a superior cultivator; or whether he was a middleman because he really did not cultivate in the sense of Section 6, but was a general leaseholder or a speculator in land rent. *Ram Mungul Ghose* v. *Lukheenarain Shaha*, 1 W. R., 71.

In a suit for enhancement of rent it was held that the provisions of Section 6, Act X of 1859, do not apply to the case of a ryot not having a right of occupancy; and in fixing a fair and equitable rate for such a ryot Courts are not restricted to the grounds laid down in Section 17. *Pitambar Kurmokur* v. *Ramtunoo Roy*, 10 W. R., 123.

Unless the case be one which comes within the provisions of Clause 5, Section 23, Act X of 1859, an action for ejectment is not barred in the Civil Court under Act VIII of 1859, nor is the Civil Court in such a case precluded from determining the question of a right of occupancy pleaded by the defendants.

Under Section 6, Act X of 1859, it is only when occupancy is inherited that the occupancy of the predecessor is considered as the occupancy of the tenant in possession; and unless the tenant hold a transferable tenure, the sale by him of his jote to another party, without the consent of his landlord, does not transfer to the purchaser any right of occupancy which the latter may have possessed, or enable the present occupant to plead that the period of his own possession, joined to that of the former tenant, gives him a presumptive right of occupancy.

Watson and Co. v. *Ranee Shurut Soonderee Debee*, 7 W. R., 395.

Section 6, Act X of 1859, does not exclude from the acquisition of the right of occupancy persons holding from ryots, but only persons holding from ryots who themselves have no more than a right of occupancy. Act X was not intended to apply to any land except land of which the main object was cultivation. *Ramdhun Khan* v. *Haradhun Poramanick*, 12 W. R., 404.

The right of occupancy given in Section 6, Act X of 1859, is a right to occupy and hold the land. When a ryot leaves his home he ceases to be a khodkast ryot; and if he refuses to come back and cultivate the land when called upon, the zemindar is at liberty to settle the land with others. *Haro Dass and another* v. *Gobind Bhuttacharjee*, 3 B. L. R., Ap., 123.

Persons who are not shown to have held possession of lands of which they complain they have been illegally dispossessed, as ryots, or in any other sense than as middlemen receiving rents from the actual cultivators, do not come under Section 6, Act X of 1859, and cannot acquire any rights of occupancy. *Gopee Mohun Roy* v. *Sibchunder Sen*, 1 W. R., 68.

A holding for twelve years under one of several proprietors gives a right of occupancy under Section 6, Act X of 1859, provided the tenant has paid the rent, which payment he may, in the absence of fraud, make to any one of the co-proprietors whom he chooses. *Mooktakeshee Dossee and others* v. *Koylas Chundra Mittra*, 7 W. R., 493.

A cultivator of nij jote land may acquire a right of occupancy under Section 6, Act X of 1859, when it had not been let under a lease for a term of years, or year by year. *Gaurhari Singh* v. *Behari Raut*, 3 B. L. R., Ap., 138.

The benefits of Section 6 of Act X of 1859 are not restricted to those who with their own hands till the soil, but apply to those who are actual cultivators in the sense of deriving their profits from the produce directly. *Kaleechurn Singh* v. *Ameerooddeen*, 9 W. R., 579.

Section 6 of Act X of 1859 does not convert a non-transferable jote into a transferable one, because a ryot who has held it for twelve years has thereby acquired a right of occupancy. *Ajoodhya Pershad* v. *Mussamut Emam Bandee*, 2 Ind. Jur., N. S., 192; S. C., 7 W. R., 528.

The occupation intended to be protected by Section 6, Act X of 1859, is occupation of land subject to agricultural or horticultural cultivation, and used for purposes incidental thereto, and does not include occupation, the main object of which is the dwelling-house itself, and where the cultivation of the soil, if any there be, is entirely subordinate thereto. *Kalee Kishen Biswas* v. *Sreemutty Jankee and others*, 8 W. R., 250.

A plaintiff claiming to be reinstated in the occupation of lands under Section 6, Act X of 1859, and desirous of joining others with the zemindar in order to obtain his remedy against them jointly, must bring his suit in the Civil Court. *Sree Kant Chowdhry* v. *Keetaboodeen Sirdar and others*, 10 W. R., 49.

Section 7.

A ryot with a right of occupancy, though holding under a temporary pottah for a term of years, cannot be ejected by his landlord, unless the latter can prove a stipulation under Section 7, Act X of 1859. *Sheeb Dyal Paulect* v. *Dwarkanath Sookul*, 2 W. R., Act X R., 54.

There is nothing in the mere fact of a tenant having been in possession for over 12 years under a series of pottahs, each for a fixed term, which gives him a right of occupancy. *Damonulla Sirdar* v. *Mamudi Nashis*, 3 B. L. R., A. C., 178.

Section 7, Act VIII of 1859 (providing against an endless multiplicity of suits) is applicable to suits for rent under Act X of 1859. *Ranee Bhabosoonduree* v. *Bhugwan Chunder Mozoodar*, W. R., Act X R., 88.

Section 9.

A proprietor of an estate is not barred from measurement by the fact of its being leased to a third party; nor is a proprietor bound, under Section 9, Act X of 1859, to show that he is in actual receipt of the rents at the time when he applies to measure the land. *Ranee Kristo Mutee Dabea* v. *Ram Nidhee Sircar*, 9 W. R., 331.

Where a party pays into the Collectorate, under the provisions of Section 9, Act X of 1859, arrears of revenue due by a defaulting proprietor of an estate, his suit to recover the amount paid is not inadmissible merely because there exists no priority between plaintiff and defendant. *Woomamoyee Burmonea and others* v. *J. Hills*, 11 W. R., 377.

Proof of uniform payment of rent for twenty years by ryots pleading possession from the Decennial Settlement will, unless rebutted by the landlord, entitle them to the presumption under Section 9, Act X of 1859, and save their holdings from enhancement. But proof of uniform payment by ryots pleading possession for fifty or sixty years will entitle them to nothing but a right of occupancy. *Ramnarain Singh* v. *Horonath Roy*, W. R., 1864, Act X R., 86.

A landlord is not entitled, under Act X of 1859, Section 9, to require his tenant to give him a kubuleut unless the tenant holds under a pottah, or the landlord has tendered a pottah. *Gobinlall Seal* v. *Kinoo Kyal*, Marsh., 400.

Section 9, Act X of 1859, does not require that a pottah should be tendered before a suit for a kubuleut can lie, but merely that the condition on which it is to be decreed is that a pottah shall be given in exchange. *Govind Chunder Addy* v. *Mussamut Anloo Beebee*, 1 W. R., 49.

Section 10.

Where money is actually paid as rent and the necessary receipt is withheld, the case is not one of *injuria sine damno*, but one in which the law (Section 10, Act X of 1859) gives the Court discretion to award any sum as damages not exceeding double the amount for which the receipt is withheld. *Joheerooddeen Mahomed* v. *Dabee Pershad Singh*, 13 S. W. R., C. R., 391.

A challan bearing a *mublukbundi* or total in figures, and some mark, not a signature, of the tehsilder, is not a "receipt" within the meaning of Section 10, Act X of 1859. An award of damages by a lower Appellate Court under this Section, though excessive, if it is within the legal limit, cannot be

interfered with in special appeal as an error of law. *Joheerooddeen Mahomed* v. *Dabee Pershad Singh*, 13 S. W. R., C. R., 22.

Damages decreed under Section 10, Act X of 1859, against a landlord for giving his tenant (the plaintiff) a receipt which did not specify the payment of rent. The landlord admitted the receipt of the money, but was unable to prove his allegation that it was paid not as rent, but partly as a deposit, and partly as a nuzzur. *Teelok Chunder Sircar* v. *Kumola Kant Mitter*, 1 W. R., 318.

Under Section 10, Act X of 1859, the power of a Judge to award damages for receipts withheld as discretionary only as to the amount to be awarded. The tenant being entitled by law to double the amount paid as rent, the Judge cannot refuse him costs on the ground that he had demanded double what was due to him. *Zoomeeroodunnissa Khanum* v. *C. J. Phillipi*, 1 W. R., 290.

Contemporaneously with the execution of a pottah it was verbally agreed that the tenant should supply the zemindar with a certain quantity of rice, and that a deduction should be made from the rent reserved in respect thereby. The zemindar took proceedings against the tenant under Regulation VIII of 1819, for the recovery of the entire amount of rent, notwithstanding the tenant had supplied the rice and was entitled to the deduction. The tenant, without contesting his liability, or demanding an investigation as to the amount due, paid the entire amount. *Held* that this was not "an exaction from the ryot of a sum in excess of the rent specified in the pottah" within the meaning of Section 10, Act X of 1859, and that a suit was not maintainable in respect of it under Act X. *Chundermonee Chowdrain* v. *Debendernauth Roy Chowdry*, Marsh., 420.

Section 13.

Under Section 13, Act X of 1859, a ryot served with a notice of enhancement, which is silent about the ground of enhancement, is not liable to pay the higher rent. *Lalla Singh* v. *Mussamut Bibee Reazoonissa*, 8 W. R., 271.

Where a notice under Section 13, Act X of 1859, clearly recognized defendants as talookdars, and at the same time sought to enhance rent under Section 17, it was held (following a decision of the Privy Council) that a suit for enhancement would not lie, as Section 17 did not apply to intermediate holders, but only to ryots having rights of occupancy. *Badroonissa Chowdhrain and another* v. *Chunder Coomar Dutt*, 10 W. R., 455.

Section 13, Act X of 1859, only gives a right to sue for enhanced rent on due notice, and not the right to sue for title to enhance. *Issur Chunder Ghosal* v. *Shuhodeb Pandey*, 3 W. R., Act X R., 25.

A notice of enhancement under Section 13, Act X of 1859, is not required to state that it is for the ensuing year. *Gudadhur Banerjee* v. *Nund Lal Biswas*, 3 W. R., Act X R., 145.

The service of a defective notice of enhancement (*i.e.*, one not containing the reasons assigned in Section 13 or 17, Act X of 1859) is tantamount to non-service. *Rajkishen Roy* v. *Prankishen Roy*, W. R., 1864, Act X R., 89.

The fact that a mokurrureedar has for any reason agreed to pay an enhanced rent to one shareholder, does not entitle another shareholder to demand enhanced rent, except according to Section 13, Act X of 1859. *Salgram Opadhya* v. *Maharajah Moheshur Bux Singh*, W. R., 1864, Act X R., 94.

No notice is required under Section 13, Act X of 1859, to set aside an alleged right to a quit-rent tenure in a suit for declaration of title. *Ghunskym Chobey* v. *Kasheenath Shanteekaree*, 3 W. R., Act X R, 4.

The condition and rights of ryots, whose tenures have commenced since the Permanent Settlement, depend not on *status*, but on contract and on laws and regulations specially enacted. In 1793 the zemindars were declared to be the proprietors of the lands. From 1793 to 1812 they were prevented from granting pottahs or leases to ryots for more than ten years, and could not therefore have created ryots with hereditary rights of property in the soil. After Regulation V of 1812 they could grant leases at any rate and for any term. By the retrospective effect of Section 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid.

In this case it was admitted that the value of the produce had increased otherwise than by the agency or at the expense of the ryot, and that the notice required by Section 13, Act X of 1859, had been served before the end of Chyte in the year preceding that for which enhancement was claimed. Upon being served with that notice the defendant had a right to quit according to Section 19. The Statute of Limitation does not give him a right of occupancy under Section 6 by holding for twelve years. But for Act X of 1859, therefore, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the Permanent Settlement) would have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267, if he and his landlord could not agree as to the rent to be paid for the future. But it being admitted that he had a right of occupancy under Act X of 1859, he was entitled to hold at a fair and equitable rate. What is fair and equitable depends on the value of the produce and cost of production.

After the Permanent Settlement, and before Act X of 1859, a right of occupancy was not acquired by a ryot merely by holding or cultivating land for a period of 12 years. When that Act created the right, Section 5 declared that ryots having rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Court to determine in every case of dispute what is a fair and equitable rate. To be fair and equitable it must be so as regards both parties.

When there is no contract, and the Statute of Limitation does not apply, the ryot cannot, by occupying and cultivating, become the proprietor of the soil; neither can he, by occupying with the consent of the zemindar, and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859.

The objection that this Court on special appeal had decided a matter of fact in this case was held not tenable, inasmuch as the Judge below had found the facts specially, and his finding was in the nature of a special verdict. If therefore in fixing the rent he had improperly deducted certain items from the value of the gross produce of the land, this Court

had the power on special appeal to disallow those items. *Issur Ghose* v. *James Hills*, W. R., F. B., 1864, 148.

According to Section 13, Act X of 1859, a notice of enhancement must be served by the farmer, and not the zemindar as the person to whom "the rent is payable," notwithstanding an agreement between the zemindar and the farmer, by which the zemindar reserved to himself the right of serving notices of enhancement. *Binodee Lall Ghose* v. *Mackenzie*, 3 W. R., Act X R., 157.

Where notice of enhancement of rent has been served, under Section 13, Act X of 1859, upon a ryot who has no right of occupancy, and whose rent has not been fixed by agreement with his landlord, such ryot cannot maintain a suit to set aside the notice of enhancement. His remedy in case the rent is excessive is under Section 14. *Sheikh Moheen* v. *Sheikh Ruheemotoollah*, Marsh., 341.

A notice of enhancement of rent under Section 13 of Act X of 1859, signed by the naib of the landlord, is valid, without evidence that he was specially authorized to sign the notice. *Degumbur Mitter* v. *Gobindo Chunder Halder*, Marsh., 354.

According to Section 13, Act X of 1859, a notice of enhancement must be served, not upon the under-tenant or ryot or his agent, but personally upon the under-tenant or ryot himself, in or before the month of Cheytra. If it cannot be so personally served, it must be affixed at his usual place of residence in the district in which the land is situated, or if he have no such place of residence, at the mâl kutcherry, &c. *Chunder Mony Dossee* v. *Dhuronee Dhur Lahoory and others*, 7 W. R., 2.

A notice of enhancement under the second clause of Section 17, Act X of 1859, is defective if it omits to state that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot himself. *Syud Soojaat Ali* v. *Huree Thakoor*, 6 W. R., Act X R., 44.

By Section 10, Act XIV of 1863, the necessity for the issue of notice of enhancement required by Section 13, Act X of 1859, is dispensed with in cases which are preferred to the settlement officer under Sections 8 and 10 of that enactment, but the section provides that the statement of claim shall set forth the grounds on which such enhancement is claimed. *Held* that the grounds to be stated should be one or more of the grounds which are mentioned in Section 17 of Act X of 1859, and that such grounds should be stated with as much distinctness as is required in the notice of enhancement served under the provisions of Act X of 1859. *Dewan Peetumber Rai* v. *Bahadoor Khan and others*, 2 Agra Rep., 185.

An indigo factory is a "conspicuous place" within the meaning of Section 13, Act X of 1859, where a notice of enhancement may be fixed. A notice of enhancement served under the provisions of Section 13, Act X of 1859, is not informal because it does not bear the signature of the landlord or his agent. *Huronath Roy* v. *Mirnomoyee Dabee*, W. R., 1864, Act X R., 56.

Section 13 does not apply to farmers holding on after the expiry of their lease. *Nathooram Shaha* v. *Doorga Manjee*, W. R., 1864, Act X R., 92.

Under Sections 13 to 16 of Act X of 1859 the rent of a tenant who is a middleman may be enhanced on notice on the same grounds (except as provided in those sections) on which he was liable to enhancement prior to the passing of that Act. *Grish Chunder Ghose* v. *Ramtonoo Biswas*, 12 W. R., 449.

A notice under Section 13, Act X of 1859, for enhancement of rent upon land held by a ryot in excess of the land for which he pays rent to the zemindar must state the quantity of land so held in excess. The mere statement of "excess land" is not a sufficient compliance with the provisions of the law.

A plaintiff cannot take advantage of a statement made by a defendant which at most amounts to a piece of evidence, and not to an admission, but which is found to be untrue, unless it be shown that the *status* of the plaintiff had been affected, or that he had been misled by such statement. *Grish Chandra Ghose* v. *Issar Chandra Mookerjee*, 3 B. L. R., A. C., 337.

Section 13, Act X of 1859 (requiring previous service of notice) has no application to a case in which there is an express written engagement between the parties providing for the payment of rent at a specified rate from a specified point of time. *Bhyrub Chunder Mojoomdar* v. *Huro Prosunno Bhuttacharjee*, 17 S. W. R., C. R., 258.

Whether land is held under an ootbundee tenure or not, the tenant is entitled to notice under Section 13, Act X of 1859, before the rate at which he pays can be enhanced. *Dwarkanath Mikree* v. *Noboo Sirdar*, 14 S. W. R., C. R., 193.

Section 14.

A suit under Section 14, Act X of 1859, to contest a notice of enhancement, is cognizable by the Revenue Courts, anything in Clause 3, Section 23, notwithstanding. *Soroop Chunder Paul* v. *Durup de Dombal*, 1 W. R., 72.

In a suit by a tenant under Section 14, Act X of 1859, to contest the landlord's right of enhancement, the question of rates may be decided, whether at the instance of the tenant or landlord. *Gora Chand* v. *Gudadhur Chatterjee and others*, 7 W. R., 470.

Section 14 does not apply to the case of a purchaser of a putnee talook at a sale under Regulation VIII of 1819, unless the jumma is shown to be a mesne incumbrance which came into existence subsequently to the creation of the putnee. *Hurromohun Mookerjee* v. *Brojokishore Roy*, W. R., 1864, Act X R., 103.

Section 15

In determining whether a party is entitled to the benefit of the presumption under Section 15, Act X of 1859, or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit. *Ahmed Ali* v. *Golam Gafar*, 3 B. L. R., Ap., 40; 11 W. R., 432.

A talookdar who has paid unchanged rent from the time of the Permanent Settlement, is protected from enhancement under Section 15, Act X of 1859, notwithstanding the zemindar's right to enhance under a decree passed before that Act, in

pursuance of which decree no steps were taken before the passing of the Act to vary the rent of the talook.

In a suit to enhance, a decree cannot be given for rent at the ordinary rate. *Huronath Roy and others* v. *Gobind Chunder Dutt*, 6 W. R., Act X R., 2.

Moostagirs are protected from enhancement, not as ryots, but as intermediate tenants, under Sections 15 and 16, Act X of 1859. *Dhunput Singh* v. *Gooman Singh*, W. R., Act X R., 1864, 61.

In a suit for arrears of rent at enhanced rates, where defendant pleads the provisions of Sections 15 and 16, Act X of 1859, if it is found that the tenure has been held at a uniform rent from the time of the Permanent Settlement, the plaintiff has no right to enhance the rent, even though the land in possession of defendant may be in excess of that covered by the original tenure. If, on the other hand, the excess land was not included in the original tenure, but obtained subsequently without the consent of the plaintiff, the possession of the defendant must be considered adverse, and the suit must fail for want of privity. *Indro Bhoosun Deb* v. *Goluck Chuckerbutty*, 12 W. R., 350.

A putneedar is protected from enhancement under Section 15, Act X of 1859, notwithstanding the zemindar's right to enhance under a decree passed before that Act, by which decree the zemindar was declared entitled to enhance, but which decree he had rendered inoperative by his omission to take any effectual steps before that Act to vary the rent of the talook since the Decennial Settlement. *Gobind Chunder Dutt* v. *Huronath Roy*, 5 W. R., Act X R., 10.

Section 16.

In a suit for enhancement the presumption under Section 16, Act X of 1859, established by twenty years' holding at a uniform rate, cannot be rebutted by the fact that the plaintiff did not obtain direct possession of the estate for many years, and was for other reasons prevented from suing, but the *onus* is on the plaintiff to prove that the present rent has been varied or fixed at a period subsequent to the Decennial Settlement. *Dhun Singh* v. *Chundar Kant Mookerjee*, W. R., 1864, Act X R., 25.

In a suit for enhancement the burden of proof that a tenure is protected under Section 16, Act X of 1859, is on the defendant, and it is only for the plaintiff to rebut any presumption which the defendant may make out under that section. *Nobokristo Mojoomdar* v. *Tara Monee*, 12 W. R., 320.

Section 16, Act X of 1859, does not limit the inference of the presumption of payment from before the Decennial Settlement only to the best evidence adducible to establish the fact of uniform payment for twenty years. *Huronath Roy Chowdhry* v. *Bibee Khojeshtah Khatoon*, 3 W. R., Act X R., 13.

Section 16, Act X of 1859, does not require proof of actual payment of one rate of rent for twenty years, but that the rent has remained unchanged for that period. *Catherine Foschola* v. *Hurrochunder Bose*, 8 W. R., 284.

In a civil suit by a zemindar to get possession of a holding on the ground that defendant, who paid a varying rent, refused to come to terms with his landlord, and claimed to hold from before the Decennial Settlement at a fixed quit-rent, it was held that the question between the parties was for the Revenue Courts, under Section 16, Act X of 1859, and that the presumption arising from the payment of a uniform rent cannot be applied by the Civil Courts, which have no jurisdiction in such cases. *Nilmoney Singh* v. *Ramessur Dobey and others*, 9 W. R., 605.

The provisions of Sections 15 and 16 of Act X of 1859 apply to the whole of the provinces of Bengal, Behar, Orissa, and Benares, and not only to such of the districts in those provinces to which the Permanent Settlement has been extended. Surborakari tenures in Cuttack are permanent, hereditary, and transferable. *Saddanundo Maita* v. *Nowrattam Maiti*, 8 B. L. R., 280, and 16 S. W. R., C. R., 289.

Section 17.

With reference to the first ground specified in Section 17, Act X of 1859, it is not sufficient to find that the enhanced rent claimed is the same as that in an adjoining village, but it is also necessary to enquire whether that rent is paid by the same class of ryots, or whether the land is of a similar description, or whether it possesses similar advantages. *Nobocoomar Biswas* v. *Thomas Owen*, 7 W. R., 148.

Section 17 does not say that in every case the rate of rent may be raised to the prevailing rate, but only that the rent shall not be raised except on some one of the grounds specified. That section must always be read with reference to the general provision of Section 5, that the rent of a ryot having a right of occupancy shall not be more than is fair and equitable; and in considering what is fair and equitable, the ryot should not be called upon to pay to the landlord, under the name of rent, what is in fact, not rent but the produce of his own labour and capital sunk in the land. *Noor Mahomed Mundul* v. *Hurriprosonno Roy*, W. R., 1864, Act X R., 75.

By serving a notice on defendant under the terms of Section 17, Act X of 1859, plaintiff was held to have treated defendant as a ryot having a right of occupancy, and to be debarred from suing him for enhancement of rent as an under-tenant or middleman. *Chundernauth Ghose* v. *Shootooram Mojoomdar*, 12 W. R., 343.

When a zemindar sued a ryot for enhancement of rent on the ground that he was holding more land than he paid for, the land in excess not being included in any pottah which had been granted to the ryot, but being within his "jote,"—*Held* that the zemindar could properly sue for enhancement of rent under Act X of 1859, Section 17, Clause 3, and the Court would grant such relief, notwithstanding that the plaint also asked that execution of a kubuleut might be ordered after determining the rate of rent. *Mooktakesi Debee Chowdrain* v. *Sajed Sheikh and another*, 2 B. L. R., Ap., 5.

Where a plaintiff sues, not under Section 8, but under Section 17, Act X of 1859, he is bound to prove the alleged rate he claims. On his failure to do so the Judge is not obliged to order the Ameen who measured the lands to fix the rates. *Khola Mundul and another* v. *Peroo Sircar and others*, 6 W. R., Act X R., 18.

Section 17, Act X of 1859, applies only to ryots,

not to zemindars having a tenure of a talooki character. *E. O. Panioty* v. *Juggut Chunder Dutt*, 9 W. R., 379.

By the words "increase of productive powers" in Section 17, Act X of 1859, the Legislature did not mean capacity for realizing a higher rent for building or other purposes, but an increase of the productive powers of the land itself. *Bisseshur Chuckerbutty and others* v. *Woomachurn Roy*, 9 W. R., 122.

The words "same class" in Section 17, Act X of, 1859, refer to the division of ryots into two classes, *viz.*, those having, and those not having, rights of occupancy.

The words "prevailing rate" in Section 17 mean the rate generally prevalent, or the rate paid by the majority of the ryots in the neighbourhood. *Shadhoo Singh* v. *Ramanoograha Lall*, 9 W. R., 83.

Section 17, Act X of 1859, does not mean that the rent of every under-tenant to whom notice is given may be enhanced, but only that, in those cases in which his rent can be enhanced, it is not to be enhanced unless notice is given. *Kaleenath Chowdhry* v. *Humee Bibee*, 12 W. R., 1864, 506.

Lands in excess of the area recorded in a mokurruree pottah containing no boundaries are liable to assessment under Section 17, Act X of 1859. *Bipro Doss Dey* v. *Mussamut Sakermonee Dossee*, W. R., 1864, Act X. R., 38.

Where a tenant holds excess lands for which no rent has hitherto been paid, the zemindar may treat him either as a trespasser or a tenant. In the latter case a suit will not lie for enhancement, but only for a kubuleut and for a determination of the rate at which the same should be delivered.

A ryot is entitled to no deduction under Section 17, Act X of 1859, for the expenses which he has incurred in cultivating excess lands for which he has paid no rent. He is a mere squatter, and that section refers only to tenants with a right of occupancy. *M. A. David* v. *Ram Dhun Chatterjee*, 6 W. R., Act X. R., 97.

There is nothing in Section 17, Act X of 1859, which provides that if one of the grounds specified in the notice of enhancement be not proved, there shall be no decree for enhancement on account of any other ground which is proved. *Ram Kant Chuckerbutty* v. *Rajah Mohesh Chunder Singh and others*, 7 W. R., 172.

A notice of enhancement does not come within Section 17, Act X of 1859, where the ground alleged for the claim of higher rent is merely that the productive powers of the land have increased, or that the rent paid is below the prevailing rate paid by neighbouring ryots. *Ram Surun Singh and others* v. *Khogan Dobey*, 11 W. R., 15.

In a suit for arrears of rent at an enhanced rate after notice, in which the only ground of enhancement specified was that plaintiff was entitled to enhancement at the pergunnah rates by virtue of a decision between himself and the defendant, dated May, 1855, --*Held* that as defendant was admitted to be a ryot having a right of occupancy, he was clearly entitled to the protection of Section 17, Act X of 1859; and that the notice was not of itself a notice within the meaning of Clause 1 of that section, "pergunnah rates" not being necessarily the prevailing rates. *Kallee Chunder Chowdhry* v. *Ruttun Gopal Bhadooree and others*, 11 W. R., 571.

Where a landlord treats ryots as having a right of occupancy subject to enhancement under Section 17 of Act X of 1859, he must, before he can enhance, show that some of the conditions of Section 17, Act X of 1859, exist. *W. Fitzpatrick and P. T. Onraet* v. *Seeta Roy*, 1 Ind Jur., N. S., 170.

In a suit for enhancement of rent, on the ground specified in Section 17 of Act X of 1859, that "the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot," the amount of the increased rent is not to be ascertained by establishing a proportion between the former rent and the old produce; but the absolute increased value of the produce being ascertained, the enhanced rent is to be arrived at by considering what part of such increased value ought to be apportioned to the tenant, as the produce of his capital and labour, and what part of it is rent, that is, as it has been defined, "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to the cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." Rent cannot be enhanced beyond the rate demanded in the plaint, and it can be enhanced only in respect of such part of the land as has increased in value.

In a special appeal, as well as in a regular appeal, it is competent for the respondent to show that points decided against him ought to have been decided in his favour. As in an appeal in a suit for enhancement of rent, where the tenant is appellant, and seeks to reduce the amount, the respondent may show, on other points of law, that it ought to have been enhanced beyond that which the decree gave him. *Hills and others* v. *Ishore Ghose*, Marsh., 151; S. C., W. R., F. B., 1862, 48.

A claim to enhancement of rent on the basis of increased produce, and one on that of increased value of produce, are not inconsistent and incompatible; and if they were so they would not, by being advanced together, cancel each other, and thus neutralize plaintiff's claim to the benefit of Clause 2, Section 17, Act X of 1859.

Where a tenant is found to be holding a greater quantity of land than that for which rent has been paid by him, and the excess land lies within the land originally leased to him, the landlord is entitled to enhanced rent under Clause 3, Section 17, Act X of 1859. *Gopeenath Mookerjee* v. *Ranhury Mundul*, 9 W. R., 476.

It is not sufficient for a notice of enhancement of rent to allege generally the grounds of enhancement mentioned in Section 17, Act X of 1859. It should set forth specific and tangible grounds of enhancement applicable to the particular case. *Dwarka Nath Chowdhry* v. *Beejoy Gobind Bural and others*, 10 W. R., 323.

Where a lower Court was required, by a conditional order of remand in a rent case, to go in the usual way into a claim for enhancement, the usual way was held to include an enquiry into the service of the preliminary notice under Section 17, Act X of 1859.

The decree of a Civil Court passed many years previously, fixing the rate of rent in regard to a 10-annas, share of a putnee, was held not to bind

the ryot's successor as to the rent claimed from him in a suit for enhancement by the putneedar of the 6-annas share. *Moodhoo Soodun Chowdhry and another* v. *Beharee Lall Mookerjee*, 11 W. R., 323.

A notice in a suit for enhancement under Section 17, Act X of 1859, should be distinct and intelligible as to the grounds upon which enhancement is sought. A rise in the value of the lands, owing to a considerable portion of the town in which the lands are situated having been swept away by a river, is not such an increase in the productive powers of the land as is contemplated by Clause 17 of Section 17 of Act X. *Khondkar Abdoor Ruhman and others* v. *Woomachurn Roy and others*, 8 W. R., 330.

In a suit for enhancement under Clause 3, Section 17, Act X of 1859, on the ground that defendant held lands in excess of that originally granted to him, the mere fact that defendant held for 20 years at an unvarying rent does not excuse him from payment of rent on any land in excess of his jote, unless under special circumstances. *Bibee Reazoonissa* v. *Sheikh Dad Ali*, 8 W. R., 326.

A dependent talookdar's rent is not liable to enhancement, unless it can be shown to have changed since the Perpetual Settlement, and he must be proceeded against under Section 15 (not 17) of Act X of 1859. *Nubokissor Bose* v. *Pandul Sircar and others*, 8 W. R., 312.

In a suit under Clause 1, Section 17, Act X of 1859, to enhance rents, on the ground that the rates are below the prevailing rates payable by the same class of ryots for land of a similar description, and with similar advantages in the places adjacent, the question whether and to what extent the rents ought to be enhanced is to be determined by a comparison of the rents actually paid by similar adjoining lands, and without reference to the value of the produce.

In a suit for enhancement of rent upon the above grounds, the Judge exempted from any enhancement a tank and garden, on the ground that the tank had been dry for public use, and that the garden had been rendered productive by the exertion of the tenants. *Held* that neither reason was any ground of exemption from enhancement. *Sreeram Chatterjee* v. *Luckhun Majilla*, Marsh., 379.

Where a ryot, who had taken a clearing lease for certain jungles at a russuddee jumma rising by degrees to 10 annas, which had been reached and had been paid for some time, was sued for enhancement of rent, it was held that the mere fact of the ryot's produce having largely increased in value, and of his rent being materially below that paid for similar lands in the neighbourhood, were not sufficient grounds for enhancement of rent under Section 17, Act X of 1859.

It is essential to a right to enhance, under Clause 1, Section 17, that the higher rates in the neighbourhood should be paid by the same class of ryots, and by ryots with similar advantages. *Purmanund Sein* v. *Puddomonee Dossee*, 9 W. R., 349.

That a tenant is holding at a rent lower than surrounding rates is not a sufficient ground to be specified in a notice of enhancement; the words "surrounding rates" being not tantamount to the ground of enhancement indicated in Section 17, Act X of 1859. *Boydonath* v. *Ramjoy Dey*, 9 W. R., 292.

Where the enhancement was claimed on the first of the grounds mentioned in Section 17, Act X of 1859, the decree should have been based exactly on that ground, and not on other arbitrary grounds. The holding of the ryot sought to be enhanced should be compared with ryots of the same class holding similar lands either in the same village or in adjacent villages. *Bheem Sein* v. *Hur Gobind*, 3 Agra Rep., R. A., 12.

Held, in accordance with former decisions, that comparison under Clause 1, Section 17, must be made with ryots of the same caste. *Bainee Pershad* v. *Mahomed Ukber Hossein*, 3 Agra Rep., R. A., 3.

The lower Courts having failed to recognize the important distinction between ryots having rights of occupancy and other ryots, in case of enhancement under Clause 1, Section 17, Act X of 1859, their judgment was defective. *Luchmun* v. *Jogul Kishore*, 3 Agra Rep., 99.

The increase in the "value of the produce" which is to form a ground for enhancement of rent under Section 17 of Act X of 1859, means an increase in its natural and usual value in ordinary years. The accidental and exceptional high prices of a particular year, in consequence of drought and scarcity, cannot be treated as a measure by which rent is to be adjusted. A tenant takes land, not with reference to the exceptional high prices of a past year, but with reference to the prices he may reasonably expect to realize for the crops which he will raise in succeeding years. *Bhagruth Doss and others* v. *Mahasoop Roy and another*, 6 W. R., Act X R., 34.

In determining the enhanced rent which a ryot is liable to pay under Section 17, Act X of 1859, a Court cannot legally include putwareean and other abwabs paid by ryots in the neighbouring lands. *Surmah Chowdhry* v. *Sreenund Singh*, 12 W. R., 29.

In an appeal from a decree for enhancement of rent, where the lower Court found that the defendant had failed to give evidence of non-liability,—*Held* that it should have enquired whether the rates assessed by the first Court were proper and such as plaintiff would be entitled to have under Section 17, Act X of 1859. *Rungomoney Dossee* v. *W. Campbell*, 12 W. R., 111.

Under Clause 1, Section 17, Act X of 1859, the enhancement of rent is not restricted to the rates of the pergunnah or of the village, but is to be according to the rates prevailing in the places adjacent. *Syud Sudurooddeen Mutwalee* v. *Ghetoo Pulee*, 5 W. R., Act X R., 70.

Where enhancement of rent is sought on the ground "that the rate of rent payable by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description, and with similar advantages in the places adjacent," the question of enhancement is to be determined by reference to such state of affairs as is provided for by Act X of 1859, Section 17, and cannot be decided merely on the ground that, although the value of the land has increased, there has also been an increase in the rate of wages, and in the price of pro-

visions consumed by the ryots. *Savi* v. *Jeetoo Meeah*, Marsh., 186.

In a suit for enhancement on one of the grounds set forth in Section 17, Act X of 1859, the notice under Section 13 can be served on a ryot with rights of occupancy; but in a case of a dependent talookdar the plaintiff must proceed under Section 51, Regulation VIII of 1793, and not on the grounds laid down in Section 17, Act X of 1859. The defendant's talook in this case being a shikmee one, the suit under Section 17 was informal, and was accordingly dismissed. *Brojo Soondur Mitter Mozoomdar* v. *Kalee Kishore Chowdhry and others*, 8 W. R., 496.

The grounds of enhancement stated in Section 51 of Regulation VIII of 1793, and not those in Section 17 of Act X of 1859, are applicable to dependent talookdars. *Huronath Roy* v. *Bindoo Bashinee Debia*, 3 W. R., Act X R., 26.

Section 17, Act X of 1859, is applicable to cases where the land was undoubtedly included in the original tenure, but it has been found in a fresh measurement that there was some mistake in the former measurement, and that a greater amount of rent ought to be paid, not in respect of any fresh land but in respect of land which was included in the original tenure. *Prankissen Bagchee* v. *Mannachina Dassee*, 17 S. W. R., C. R., 33.

Section 18.

Sections 17 and 18 were passed for the benefit of the ryot, and not for the protection of the zemindar.

Section 18 was intended to give the ryot a right to abatement in certain cases, but not to protect the zemindar from liability to make abatement in any other case.

In a suit for abatement of rent on the ground that the jumma payable to Government had been reduced upon condition that the rents of the ryot should be reduced in a like proportion,—*Held* that the right to abatement applies only to the case of rents of which the amount had been fixed before the jumma was reduced by Government, and not to rents fixed by pottahs or kubuleuts entered into subsequently. *Sukhawatoollah and others* v. *Puthoo Goldar*, 1 Ind. Jur., O. S., 7.

Section 18, Act X of 1859, is not applicable to a case in which a plaintiff putneedar sues for an abatement of rent, on the ground of fraud caused by the concealment from him of the existence of an intermediate tenure created by the zemindar. Clause 3, Section 28 of that Act, is wide enough to admit of such a suit being tried by the Revenue Courts. *Shokoor Ali* v. *Umola Ahalya and others*, 8 W. R., 504.

Section 19.

A joint notice of enhancement was served upon several ryots, whose jummas were in fact separate, but which for a great many years, in suits and other proceedings, had been mutually treated as joint. *Held* that the ryots ought not to be allowed, in a suit for an excessive demand of rent, to object that they were entitled to separate notices, but that they were entitled to the benefit of some of the holdings being separate for the purpose of surrendering some, and retaining others, of such separate holdings under Section 19 of Act X of 1859.

An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of enhancement, under Section 17 of Act X of 1859.

An under-tenant or ryot is not bound by a measurement under Act X of 1859, Section 261, made in his absence, unless he has received notice. *Jadub Chunder Halder* v. *Etwaree Sirkar*, Marsh., 498.

Held that the provisions of Section 19, Act X of 1859, are not applicable to a lessee who has contracted for a definite specified interest in the land, and that the contract or lease must regulate the whole relationship between the lessor and lessee, not only in regard to the time of commencement and continuance, but also in regard to the termination of the holding. *Baboo Dwarka Doss* v. *Gukul Doss*, 1 Agra Rep., R. A., 22.

Section 19, Act X of 1859, does not imperatively require an application for service of notice of relinquishment of land by a ryot to be made to the Collector. The non-service of notice by the Collector cannot affect the rights of the tenant, if he can prove that, previous to his application to the Collector, he had given actual notice direct to the landlord himself or to his authorized agent. The application to the Collector is not bad because it was not made in the month of Chyet preceding. *James Erskine* v. *Ram Coomar Roy and others*, 8 W. R., 221.

A perpetual contract by a lessee for his heirs, reciting that they shall never relinquish the jote, cannot operate against Section 19, Act X of 1859, which says that any ryot may relinquish his jote, if he does so in a legal manner. *Gopal Pal Chowdhry* v. *Tarinee Pershad Ghose*, 9 W. R., 89.

When a landlord served a notice on an ootbundee ryot that unless he paid at an enhanced rent for the ensuing year he was to quit the land, and the ryot thereupon intimated to the landlord's agent his intention to relinquish the land,—*Held* that that there was a sufficient compliance with Section 19, Act X of 1859. *T. J. Kenny* v. *Issur Chunder Poddar*, W. R., 1864, Act X R., 9.

A ryot who has taken a lease in writing for a fixed term cannot, under Section 19, Act X of 1859, throw it up during its currency. *Kashee Singh* v. *P. Onraet and T. Grant*, 5 W. R., Act X R., 81.

Section 20.

By a deed between A. and B., B. purchased from A. a fractional share of a pergunnah, the Government revenue payable on which was Rs. 43-12; and it was stipulated that B. was to apply to the Collector for mutation; and that until the mutation was completed he should pay the above quota of the Government revenue through A.; and that after the mutation the relation between A. and B. should be an independent one. *Held* that the relation of landlord and tenant was not created by the deed, and consequently that Section 20 of Act X of 1859 did not apply to entitle A. to interest upon the recovery of a quota of revenue payable by B. under the deed. *Goluck Chunder Roy and others* v. *Juggernauth Roy Chowdhry*, Marsh., 146, and W. R., F. B., 47.

The word "liable" in Section 20, Act X of 1859, leaves it in the discretion of a Court to grant in-

terest or not. *Kasheenath Roy Chowdhry* v. *Mynuddeen Chowdhry*, 1 W. R., 154.

A cause of action accruing against an agent for money received and accounts kept, falling within the class mentioned in Section 20, Act X of 1859, survives the death of the agent. *R. T. Hills* v. *Shokhee Monee Dossee and others*, 10 W. R., 59.

Section 20, Act X of 1859, refers to the established usage in the pergunnah, and not to the established usage between the parties. *Chytunno Chunder Roy* v. *Kedarnauth Roy*, 14 S. W. R., C. R., 99.

Held by Norman, J., that a Deputy Collector's decree for rent cancelling a mokurruree tenure, with reference to Section 22, Act X of 1859, as not creating a permanent or transferable interest, though erroneous, cannot be treated as a nullity or as passed without jurisdiction. The tenure, however, is not cancelled as long as the decree is not executed. *Lalla Sham Soondur* v. *Sooraj Lall*, 13 S. W. R., C. R., 441.

The right to cancel a lease for non-payment of rent by a leaseholder not having a permanent or transferable interest in the land being given by Section 22, Act X of 1859, need not be provided for in the lease. *Kadir Cazee* v. *Mohadebee Dossia*, 6 W. R., Act X R., 47.

Where a decree under Sections 22 and 78, Act X of 1859, for the ejectment of a ryot from three plots of land was executed against two of the plots, —*Held* that the pottah was not in force as regards the third plot also. *Kalee Churn Banerjee* v. *Mahomed Hashem and others*, 7 W. R., 8.

With reference to Sections 22 and 78 of Act X of 1859, a decree for an unconditional re-entry cannot be given against a farmer. *Buksh Ali* v. *Ramtonoo Gun*, 6 W. R., Act X R., 64.

Clause 1, Section 4, Regulation XI of 1825, and Section 22, Act X of 1859, will not allow a suit for the assessment of lands accreted to a zimma tenure; and holders like the zemindar, in a case of this nature, are not liable under Section 15, Act X of 1859, for additional rent for chur land, until they are shown by the zemindar to be holders of tenures subsequent to the Decennial Settlement not having a fixed jumma, and then only liable for the talookdaree rates paid by others of the same class for similar lands. *E. O. Panioty* v. *Juggut Chunder Dutt*, 9 W. R., 379.

Section 23.

A suit by a ryot for the recovery of the value of his property illegally distrained as the property of another ryot, is one falling under Section 23, Act X of 1859, and cannot be brought in the Civil Court. *Ram Bhisto Acharjee* v. *Chyet Lall Tewarry*, 15 S. W. R., C. R., 451.

A suit by a zemindar against a putneedar or ijaradar for rent is cognizable in a Collector's Court under Section 23, Act X of 1859, although there may be houses on the land described. *Mothoora Nath Koondoo* v. *W. Campbell*, 15 S. W. R., C. R., 463.

A suit by a zemindar to try the question of the mokurruree title of two of his tenants who had recovered possession under Section 23, Act X of 1859, after he had ousted them, is cognizable in the Civil Court. *Lalla Gokool Pershad* v. *Rajah Rajendur Kishnore Singh*, W. R., 1864, Act X R., 4.

A suit for dispossession between two ryots with which the zemindar has nothing to do, except as a witness on one side, is cognizable, not by the Collector under Section 23, Act X of 1859, but by the Civil Court. *Radhanath Mozoomdar* v. *Purikhit Budrik*, W. R., 1864, Act X R., 60; *Kally Doss Banerjee* v. *Bonomalee Doss*, W. R., 1864, Act X R., 61.

The mere incidental and descriptive mention of such tenures as howala and neem-howala does not oust the jurisdiction of the Civil Court in cases of trespass and the like, nor does it vest the jurisdiction in the Revenue Courts under Section 23, Act X of 1859. *Silvestre Barairo* v. *F. H. Pellew*, 5 W. R., Act X R., 82.

Under Section 23, Act X of 1859, a landlord's right to eject a ryot can be enforced only through the Revenue Court; and the refusal of those Courts to aid the landlord, even if erroneous, does not give jurisdiction to the Civil Courts. *Chunder Shekur Deb* v. *Peary Chand Mitter*, 11 W. R., 147.

Money advanced to a naib for the construction of a bund, or for the payment of the salaries of tehsildars and peadahs, comes within the terms of Section 23, Act X of 1859, with regard to the management of land, and a suit by a manager of an estate to recover such advance is cognizable by a Revenue Court. *Ram Dyal Banerjee* v. *The Court of Wards*, 12 W. R., 269.

The Revenue Court has not cognizance under Act X of 1859, Section 23, of a suit to set aside a kubuleut on the ground that it is a forgery. *Shah Mahamood Luskkur* v. *Pahur Khan*, Marsh., 496.

The jurisdiction of the Collector, under Section 23 of Act X of 1859, to entertain a suit to recover the possession of land from which the plaintiff alleges that the defendant, the person entitled to receive the rent, has ejected him, is not affected by the defendant setting up in answer that he had purchased the tenure from the plaintiff.

Section 97 of Act VIII of 1859, enacting that if the plaintiff withdraw from the suit, without permission of the Court, "he shall be precluded from bringing a fresh suit for the same matter," does not apply to suits instituted under Act X of 1859. *Doyal Chunder Ghose and others* v. *Dwarkanath Misser and others*, Marsh., 148.

A suit for enforcing an alleged right to erect golahs at certain ghats, and to collect duties from persons using them, is not a suit "on account of any right of pasturage, forest right, fisheries, or the like," within Section 23 of Act X of 1859, and the Collector has no jurisdiction to entertain it. *Furlong* v. *Johurree Loll*, Marsh., 194.

All suits which are specially provided for by Act X of 1859, and which arise out of the exercise of the power of distraint, or out of any acts done under colour of the exercise of the said power, are within the provisions of Section 23 of that Act. *Joyloll Sheikh* v. *Brojonath Pal Chowdhry*, 9 W. R., 162.

In a suit for declaration of title to land from which a ryot has been ejected at the suit of his zemindar by the order of a Collector under Section 23, Act X of 1859, and wherein the genuineness of the pottah upon which the suit is brought is at issue, the order of the Collector cannot be pleaded

in bar. *Bhairo Singh* v. *Uditraran Singh*, 3 B. L. R., Ap., 139.

An appeal lies to the Judge from a decision of a Collector in a suit under Clause 1, Section 23, Act X of 1859. *Rajoo Naik* v. *Mohunt Kosalee Ram Doss*, 1 W. R., 210.

Suits may be brought, under Clause 1, Section 23, Act X of 1859, against parties other than mere ryots in the ordinary sense of that term. *R. Watson and Co.* v. *Koer Narain Singh Bhooya*, 5 W. R., Act X R., 19.

A suit to set aside a decree passed by a Deputy-Collector for executing a kubuleut in favour of the defendant, and for a declaration that the land in suit pertains to the talook of a third party, is not cognizable by the Civil Court. By Clause 1, Section 23, Act X of 1859, the exclusive cognizance of suits by a zemindar against his ryot to obtain a kubuleut is reserved to the Court of the Collector. *Sonaton Roy and another* v. *Annund Coomar Mookerjee and others*, 2 B. L. R., Ap., 31.

Held by the majority of the High Court (Norman, J., dissenting) that a suit for a kubuleut under Clause 1, Section 23, Act X of 1859, will lie, without previous notice, under Section 13; the Chief Justice being of opinion, however (concurred in by Norman, J.), that in this case that question did not arise, inasmuch as, as against the plaintiff, the defendant was a mere trespasser and not a tenant, and that therefore the plaintiff could not sue him to obtain a kubuleut under Act X of 1859. *Ram Kanth Chowdhry* v. *Bhoobun Mohun Biswas*, W. R., F. B., 183.

The relation of landlord and tenant is not to be presumed to subsist between the proprietor of land and any person occupying that land, so as to give the proprietor a right under Clause 1, Section 23, Act X of 1859, to sue for a kubuleut. *Poorno Doss* v. *Ocjoodhia Proshad*, 3 W. R., Act X R., 16.

Held that the defendants, whose proprietary title at the time of settlement was recognized in the land then covered with trees, were not liable to assessment by zemindars, under the provisions of Clause 1, Section 23, Act X of 1859, on account of the trees having since disappeared and the land having been brought into cultivation. *Jadoo Rai* v. *Syud Mahomed Taquee*, 1 Agra Rep., R. A., 24.

Held that a suit by plaintiff, a co-parcener in the land in question against another co-parcener, holding as his seer land, to assess the same, was not one cognizable by the Revenue Court, under Clause 1, Section 23, Act X of 1859. *Jodha Singh* v. *Oomaid Singh*, 2 Agra Rep., Rev. 5.

Clause 1, Section 23, Act X of 1859, contemplates suits for delivery of pottahs by ryots in possession only. *Bharut Chunder Sein* v. *Oseemooddeen*, 6 W. R., Act X R., 56.

Where a zemindar had obtained an *ex-parte* decree declaring certain lands to be his mâl lands, it was held that his only remedy was to have the rates at which he was authorized under Section 10, Regulation XIX of 1793, to collect the rents determined and to obtain a kubuleut, and his only course was to sue in the Collector's Court, under Clause 1, Section 23, Act X of 1859. *Rohinee Nundun Gossamee* v. *Rutencepur Koondoo*, 15 S. W. R., C. R., 345.

Clause 2, Section 23, Act X of 1859, relating to the illegal exaction of rent, is not limited to suits at the instance of the ryot, but applies to any under-tenant. *Gopul Paul Chowdry* v. *Grish Chunder Pandey*, 14 S. W. R., C. R., 269.

A suit for abatement of jumma and refund of excess rents paid on account of diluviated lands is cognizable before the Collector under Clause 3, Section 23, Act X of 1859. *G. R. Barry* v. *Abdool Ali*, W. R., 1864, Act X R., 64.

A Civil Court has no jurisdiction to try a suit for abatement of rent by a putneedar. Such a suit must be brought under Clause 3, Section 23, Act X of 1859. *Man Gurobinee Dossea* v. *Khetturchunder Ghose*, 2 W. R., Act X R., 47.

In a suit for damages by a lessee, where the plaint shows a distinct prayer for abatement of rent, and also sets forth as the main ground of the suit a fraudulent breach of contract by misrepresentation and refusal of deduction and refund stipulated for, so much of the claim as refers to abatement is, by Clause 3, Section 23, Act X of 1859, beyond the jurisdiction of the Civil Court; but the rest of the suit is properly cognizable by such Court. *Nilmoney Singh and others* v. *Issur Chunder Ghossal*, 9 W. R., 92.

Clause 3 of Section 23 of Act X of 1859, gives the Revenue Courts the adjudicature of complaints of excessive demands of rent, and the Courts are not deprived of jurisdiction in such cases because incidentally they may have to determine as to the genuine character of a kubuleut. *Kashee Ram* v. *Gunga Pershad*, 2 N. W. R., 304.

A Judge has jurisdiction to try an appeal in a suit for arrears of rent under Clause 4, Section 23, Act X of 1859, where plaintiff also sued for ejectment under Clause 5 of the same section. *Kishen Chunder Gooptee* v. *Dewan Ali*, 15 S. W. R., C. R., 165.

A suit for a share of rent against a tenant and co-lessors is not cognizable by the Collector as a suit for rent within the meaning of Clause 4, Section 23, Act X of 1859. *Lalla Isree Pershad* v. *Stuart*, W. R., 1864, Act X R., 28.

A suit for arrears due under an assignment of rent is a suit to recover arrears of rent, and as such is only cognizable under Clause 4, Section 23, Act X of 1859, by the Revenue Courts. *Kishen Coomar Mitter* v. *Mohesh Chunder Banerjee*, W. R., 1864, Act X R., 3.

The class of cases made cognizable by a Collector under Clause 4, Section 23, Act X of 1859, is described in terms wide enough to extend his jurisdiction in suits for rent to cases of tenancies not strictly agriculturable, provided the subject of the lease is land, and the rent issues out of the land, and is due on account of and for the use of the land, whatever may be the purpose for which the surface of the land is used. *R. Watson & Co.* v. *Gobind Chunder Mozoomdar*, W. R., 1861, Act X R., 46.

A suit for arrears of rent of a hâk is cognizable by the Collector under Clause 4, Section 23, Act X of 1859. *Gaetree Dabea* v. *Thakoor Doss*, W. R., 1864, Act X R., 78.

A suit for rent is cognizable only by the Collector, under Clause 4, Section 23, Act X of 1859, whether it be based upon a kubuleut or agreement, or neither. *Dhunput Singh* v. *M. Mills*, 7 W. R., 473.

A suit for arrears of rent, under Clause 4, Section 23, Act X of 1859, may be entertained by the Collector both against the lessee who was made origi-

nally liable, and against the surety who would be liable on the default of the lessee. *Bhoobun Mohun, alias Prolad Sandyal* v. *Bhubo Soondery Debia Chowdhrain*, 8 W. R., 452.

A suit for arrears of rent due on account of an indigo factory is not a suit for arrears of rent due on account of land within Clause 4, Section 23, Act X of 1859. Such a suit therefore must be brought in the Civil Court, and not in a Revenue Court. *Oddit Chunder Paul and others* v. *Komola Kant Paul and others*, Marsh., 401.

A suit for rent against two persons, one as the benamee and the other as the actual farmer, is cognizable by the Revenue Court, under Clause 4, Section 23, Act X of 1859. In such a suit the plaintiff can only obtain a decree against one or other, not both of the defendants. *Heeralall Buckshee* v. *Rajkishore Mozoomdar*, W. R., F. B., 1862, 58.

A suit to recover rent on lease of toll arising from a canal or river navigation is not cognizable under Clause 4, Section 23, Act X of 1859. *H. W. Garland* v. *Rai Mohun Hazrah*, 1 W. R., 15.

A suit for half the price of trees cut down by the tenant, and claimed by the landlord by right of usage, is not cognizable under Clause 4, Section 23, Act X of 1859, but in the Civil Court. *Tohul Roy* v. *Moonshee Mahadeo Dutt*, W. R., 1864, 327.

A suit lies under Clause 4, Section 23, in respect of a joint liability for kists accruing due after the purchase, either from the date of the sale or from the date of the confirmation of the sale. *Sreeram Biswas* v. *Juggernath Doss Mohunt*, 5 W. R., Act X R., 45.

Suits for the rents of fisheries are provided for by Clause 4, Section 23, Act X of 1859. *Allum Chunder Shaha* v. *Bhurut Baboo*, 5 W. R., Act X R., 92.

A person having a right to sue for possession and wasilat is not obliged to divide his causes of action, so as to bring one suit for possession under Clause 6, Section 23, Act X of 1859, in the Collector's Court, and another for wasilat in the Civil Court, but may bring one suit for both in the Civil Court. *Ramlachun Doss* v. *Mungul Sheikh*, W. R., 1864, Act X R., 3.

The disturbing or dispossessing the cultivators is tantamount to ejecting and disturbing in the receipt of rent the farmer to whom they pay rent, for which a suit will lie under Clause 6, Section 23, Act X of 1859. *Lungut Mahtoon* v. *Rameshur Roy*, W. R., 1864, Act X R., 54.

Clause 6, Section 23, Act X of 1859, which restricts to the Collector's Court all suits to recover the occupancy of land from which a ryot has been dispossessed by the person entitled to receive rent for the same, is applicable equally to cases in which the tenant words his suit as for confirmation of possession, and brings the suit against the person entitled to receive rents in order to settle the question of right to possession. *Gooroo Churn Coomar* v. *Khetter Mohun Roy*, W. R., 1864, Act X R., 79.

To bring a case of ejectment within the jurisdiction of the Collector's Court, under Clause 6, Section 23, Act X of 1859, there must have been some direct act on the part of the person entitled to receive the rent towards ejecting the tenants, either personally or by his servants, or by joining with those who actually ejected them. *Joykissen Mookerjee* v. *Mudoosoodun Kulliah*, W. R., 1864, Act X R., 90.

Where a zemindar sold a mourosee tenure for arrears of rent, and purchased it himself, and then evicted the dur-mouroseedar, and made a fresh settlement for the tenure with a third party,—*Held* that a suit for ejectment by the dur-mouroseedar against the zemindar was cognizable under Clause 6, Section 23, Act X of 1859. *Wooma Sunkory* v. *Syad Ally Ashruff*, W. R., 1864, Act X R., 96.

A suit for possession by an ejected tenant may be brought against a person whose title as adverse holder accrued before the institution of the suit. Clause 6, Section 23, Act X of 1859, does not apply to such a case. *Ruttun Monee Debia* v. *Dhurmomyee Dossee*, 2 W. R., Act X R., 9.

An ejectment, though carried out with the assistance and enforced by the orders of the Magistrate is still an ejectment by the landlord, and is illegal if the tenant be entitled to retain possession; and whether the ejectment is from the whole tenure or only a portion of it the suit is only cognizable by the Revenue Courts under Clause 6, Section 23, Act X of 1859. *Bhugeeruth Chunder Doss* v. *Kashee Preah*, 1 W. R., 269.

A suit for possession brought in reality by one lessee against the other lessee as co-parceners in collusion with the zemindar, and not against the zemindar as landlord, is rightly brought in the Civil Court, and not before the Collector under Clause 6, Section 23, Act X of 1859. *Shumboonath Shaha* v. *Ram Sundar Sircar*, 2 W. R., Act X R., 105.

A Collector has no jurisdiction in a suit for ejectment brought by a lakherajdar under Clause 6, Section 23, Act X of 1859. *Gooroo Pershad Roy* v. *Nimaye Chand Pulshain*, 3 W. R., Act X R., 5.

Clause 6, Section 23 of Act X of 1859, applies only to cases where the ejectment complained of is effected solely by the person to whom the plaintiff's rent is payable. If a third person acts jointly with the person entitled to receive the rent, in ousting the tenant, the tenant has a joint cause of action against both the wrong-doers. *Luckhee Prea Dabea* v. *Juggodumba Dabea*, 3 W. R., Act X R., 8.

A suit for possession by a purchaser from a tenant whose right to sell is questioned by the zemindar is cognizable only in the Civil Court, and not under Clause 6, Section 23 of Act X of 1859. *Kanaye Mollah* v. *Debnath Roy*, 3 W. R., Act X R., 161.

Neither Clause 6, Section 23, nor Section 25 of Act X of 1859, applies to a suit for recovery of possession on expiry of assignment of land assigned over for a term of years as security for a loan and as the means for its repayment. Such a suit is cognizable only by the Civil Court. *Khettur Mohun Paul* v. *Ram Coomar Paul*, 5 W. R., Act X R., 2.

The ownership of a zemindary having changed hands under a decree, a ryot with a right of occupancy brought a suit in a Revenue Court on the ground of illegal dispossession by the new zemindars. *Held* that the suit was maintainable under Clause 6, Section 23, Act X of 1859. *Sheo Prokush Misser* v. *Fukeer Roy*, 13 S. W. R., C. R., 20.

A suit brought under Clause 6, Section 23, Act X of 1859, to recover possession of land where, although the servants of the zemindar were made nominal

defendants, the real defendants were parties who were not shown to have been in receipt of the rent, and who set up an entirely different and independent right, was held not to be cognizable by the Collector, but by the Civil Court. *Ram Dehul Pandey* v. *Kasha Ruwat*, 14 S. W. R., C. R., 232.

Plaintiff sued to recover possession of land from which he stated he had been illegally ejected. He had never been in possession of the land, which he claimed under a document alleged to be a valid pottah. *Held* that this was matter for a civil suit in the ordinary Courts, and not one cognizable by the Collector under Clause 6, Section 23 of Act X of 1859. *Jodoo Nath Ghose* v. *Ranee Sookmoye Dossee*, 1 W. R., 201.

A suit by a ryot (against a zemindar and other persons who colluded with the zemindar in dispossessing the ryot) to recover possession of the land from all these persons, and also to recover mesne profits from the time during which he was dispossessed, is not cognizable by the Collector under Clause 6, Section 23, Act X of 1859. *Ram Gopal Mozoomdar* v. *F. J. Saunders*, 1 W. R., 139.

A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that these trees were planted by a person whose rights had passed to the plaintiff by a bill of sale, is cognizable by the Civil Courts, and does not come within the meaning of Clause 6, Section 23 of Act X of 1859. *Sheikh Ramzan Ali* v. *Syud Anwar Ali*, 2 B. L. R., Ap., 19.

A party aggrieved by an order of a Deputy Collector passed under Section 25, Act X of 1859, may sue under Clause 6, Section 23, whether he was illegally ejected directly by the landlord, or indirectly by him through the Deputy Collector. *Golam Koodsee Chowdhry* v. *Kishoree Bewah*, 5 W. R., Act X R., 46.

If a tenant has the right to the possession he may sue under Clause 6, Section 23, Act X of 1859, although he may not have a right of occupancy under Section 6 of the Act. *Watson and Co.* v. *Dwarkanauth Sircar*, Marsh., 415.

The Civil Courts have no jurisdiction in cases of ejectment between landlords and tenants, whether under colour of an Act IV award or otherwise. All such cases must be brought under Clause 6, Section 23, Act X of 1859. *Muthooranauth Koond* v. *Sameeruddee Mollah*, 1 W. R.. 42.

An ejectment, though carried out with the assistance and enforced by the orders of the Magistrate, is still an ejectment by the landlord, and is illegal if the tenant be entitled to retain possession. Whether the ejectment is from the whole tenure, or only a portion of it, the suit is only cognizable by the Revenue Courts under Clause 6, Section 23, Act X of 1859. *Bhugeeruth Chunder Doss* v. *Kashee Preah*, 1 W. R., 269.

A plaint was held to disclose no cause of action under Clause 6, Section 23, Act X of 1859, because the plaintiffs were neither farmers nor tenants, but persons holding over after the expiry of their lease, and consequently mere trespassers. *Uma Kishoree Dassi* v. *Huro Gobind Shaha*, 5 W. R., Act X R., 95.

A purchaser of an under-tenure at a sale in execution of a decree, who has never been able to obtain any substantive or real possession, and whose title, as well as that of the person whose rights he purchased, is contested, cannot sue to recover the land under Clause 6, Section 23, Act X of 1859, but must proceed by suit in the Civil Court to prove his title in the ordinary way. *Rajah Anundnath Roy Bahadoor* v. *Junmeyjoy Biswas*, 8 W. R., 240.

A suit for recovery of possession of land, in which the plaintiff's title is put in issue and tried, does not fall within the words of Clause 6, Section 23, Act X of 1859, and is cognizable by the Civil Courts. *Lalljee Sahoo and others* v. *Bhugwan Doss*, 8 W. R., Act X R., 337.

In a suit brought under Clause 6, Section 23, Act X of 1859, setting forth that plaintiff had been ousted from his homestead, and his crops had been plundered by his lessors in concert with their co-trespassers whom they had located on the lands, it was held that the suit was substantially against the tenants in possession, their lessors having been joined in the suit, and that the Collector had no jurisdiction. *Mahomed Jakhee* v. *Goopee Roy and others*, 10 W. R., 5.

A., after the grant of a putnee talook to B., fraudulently granted a pottah of the same land to his own daughter, and by means thereof she intervened in a suit by B. against a ryot for rent, and prevented B. from recovering in the suit. *Held* that this was evidence to support a suit by B. against A. under Act X of 1859, Section 23, Clause 6, for illegally ejecting him from the tenure, and that the Collector finding that the pottah was a mere device had jurisdiction, notwithstanding the daughter was joined as a defendant in the suit. *Hurree Dyal Chuku* v. *Birjussurree Dossee and others*, Marsh., 604.

Where plaintiffs alleged themselves to be tenants with rights of occupancy, and as such not liable to ejectment by defendant, the owner of the land, under a religious grant as alleged by them (plaintiffs), —*Held* that the suit was exclusively cognizable by the Revenue Court, under Clause 6, Section 23, Act X of 1859. *Sewak Ramand and others* v. *Ram Bhawan Ojha*, 1 Agra Rep., A. C., 212.

Held that a suit by a cultivator for maintenance of possession in his holding from which he was not actually ejected by cancelment of the order of Revenue Court, under Section 25, Act X of 1859, was cognizable in the Civil Court, not being one of the description defined in Clause 6, Section 23, Act X of 1859. *Dowlat Rai and others* v. *Gya Misser*, 2 Agra Rep., A. C., 95.

Held that to give the Revenue Court jurisdiction under Clause 6, Section 23, Act X of 1859, there must have been possession and ejectment, and that the mere granting of a lease and refusal to give possession under it does not constitute such possession and ouster as contemplated by that clause. *Ahmed Khan* v. *Mussamut Goomanee Begum*, 2 Agra Rep., A. C., 181.

Where a cultivator having rights of occupancy has been illegally ejected under the form of proceedings taken by the Collector under Section 25,—*Held* that the remedy for such cultivator is by suit in the Collector's Court for restoration of possession under Clause 6, Section 23, Act X of 1859; while the zemindar may sue for the ejectment of the ryot in the Civil Court. *Sewa Ram* v. *Mussamut Ruhsee*, 4 Agra Rep., 53.

A decision in a suit to recover occupation where the plaintiff is found to have been illegally ejected

under Act X of 1859, Section 23, Clause 6, does not bar a regular suit for possession by the defendant in the former suit grounding his claim on title, and in which the question of title is to be tried. *Soorjee Kanto Roy* v. *Forlong*, 1 Ind. Jur., N. S., 382, and 6 S. W. R., Act X R. 44.

Clause 6, Section 23, Act X of 1859, applies to the case of the illegal ejectment of a putneedar by the zemindar. *Thakoor Doss Mozoomdar* v. *Radha Soonderee Dossee*, 2 W. R., Act X R., 3.

A shikmee talookdar may sue under Clause 6, Section 23, Act X of 1859, to recover possession. *Raj Chunder Surma Gossain* v. *Ali Newaz Khan*, W. R., 1864, Act X R., 133.

Clause 6 of Section 23 of Act X of 1859 does not take from the Civil Court the power to try the question of title, but refers only to possessory actions against the person entitled to receive rent. *Gooroodoss Roy and others* v. *Ramnarain Mitter and others*, 2 Ind. Jur., N. S., 112; 7 W. R., 186.

To maintain a suit under Clause 6, Section 23 of Act X of 1859, the plaintiff must show some right to be restored to his tenure. It is not to be assumed that he was in lawful possession and therefore entitled to be restored to possession, because he was ejected without an application to the Collector under Section 25. A zemindar is not bound to proceed under Section 25 unless he finds legal impediments to his resuming his possession. *Rughoonundun Singh* v. *Gopal Singh*, 1 W. R., 191.

Held that Clause 6, Section 23, Act X of 1859, which refers to suits to recover occupancy in any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by a person entitled to receive the rent, does not apply to a suit brought by a zemindar against a maâfeedar to establish his right as such, and to recover possession and malikana allowance secured to him at the time of settlement, and that such suit was cognizable by the Civil Court. *Mussamut Radha Moonee* v. *Kishna*, 3 Agra Rep., 188.

Clause 6, Section 23, Act X of 1859, refers to suits by a tenant against his landlord, and not to suits by a tenant against a third party between whom and the tenant the relation of landlord and tenant does not exist. *Seraj Mundul and others* v. *Bistoo Chundra Roy and others*, 7 W. R., 459.

A person calling himself a ryot has not a right to recover possession under Clause 6, Section 23, Act X of 1859, merely because the landlord turned him out of his own authority, and without applying for the Collector's assistance under Section 25 of Act X of 1859.

In a suit under Clause 6 it is necessary to determine the question whether the plaintiff has been illegally ejected. This involves the question whether the tenancy was at an end or not when the ejectment took place; if it was at an end the plaintiff must fail.

If a landlord ejects a ryot of his own authority without the intervention of a Court of law or the Collector, the case will fall within Section 15 of Act XIV of 1859, and if the ryot sue him in the Civil Court within six months, he will be entitled to recover possession without reference to the title of the landlord to eject him. *Jonardun Acharjee* v. *Haradhun Acharjee*, 9 W. R., 513.

Every suit to cancel a lease on account of a breach of any conditions thereof must be brought before the Collector under Clause 5, Section 23, Act X of 1859. *Ramchunder Dutt* v. *Din Doyal Poramanick*, 2 W. R., Act X. R., 16.

A suit by a putneedar to recover khas possession of land against a tenant who has sold his rights and interests to a third party is cognizable only by a Revenue Court under Clause 5, Section 23, Act X of 1859. *Kedar Monee Dossee* v. *Chunder Koomar Roy*, 2 W. R., Act X R., 75.

A suit to set aside a lease as null and void does not fall within the provisions of Clause 5, Section 23, Act X of 1869, but is cognizable by a Civil Court, even though plaintiff mentions that a balance of rent is due by defendant. *Tajeh Mahomed Purdhan* v. *Jogendro Deb Roykut*, 8 W. R., Act X. R., 368.

In a suit for arrears of rent, where a claim to eject the defendant under the powers provided by Clause 5, Section 23, is inserted in the plaint, but is not made the subject of an issue, or is not adjudicated upon, the insertion of such claim does not shift the jurisdiction of the Court of Appeal. *Shoudaminee Dossee* v. *Ram Chand Baido and others*, 10 W. R., 38.

The dismissal of a previous suit brought by plaintiff for ejectment of defendant, his cultivator, on account of breach of contract under Clause 5, Section 23, Act X of 1859, as being barred by limitation, does not operate as a bar to a suit for removal and possession of certain trees, and avoidance of sale-deed executed by cultivator, which is of a different nature from the one dismissed, and does not come within the suits defined in Section 23, Act X of 1859, and therefore was not cognizable by the Revenue Court. *Jogul Kishore* v. *Chutter Singh*, 1 Agra Rep., A. C., 27.

A Collector's decision is not final under Clauses 2, 4, and 7 of Section 23, and under Section 24 of Act X of 1859, if to the cause of action, under one of those clauses or sections, there be joined a separate cause of action under Clause 5 or under any other section of the Act. *Nimaye Churn Mytee* v. *Nursing Purdhan*, 9 W. R., 534.

A suit against a ryot who sets up title as tenant to a hostile zemindar, against both of whom (as defendants) the plaintiff established his title to the land of which he sued to recover possession, is not a case that falls under Clause 5, Section 23, Act X of 1859. *Fakeer Rohoman* v. *Bhabosoondery Dabea*, 1 W. R., 232.

A suit for possession against an occupant by transfer, whom the landlord does not recognize as his tenant, is not cognizable in a Revenue Court under Clause 5, Section 23, Act X of 1859. *Mussamut Taramonee Dossee* v. *Birressur Mozoomdar*, 1 W. R., 86.

In a suit under Clause 5, Section 23, Act X of 1859, the question of illegal ejectment is the only question for adjudication. The *onus* in such a case is upon the plaintiff. *Asgur* v. *Goluck Chunder Chowdhry*, 8 W. R., 383.

In the absence of any condition declaring that a mortgage of a tenant's interest shall render him liable to ejectment, the landlord cannot maintain a suit in the Revenue Court to eject the tenant under the provisions of Clause 5, Section 23, Act X of 1859, though he may maintain a suit in the Civil Court to set aside the mortgage, and to oust the mortgagee if he has taken possession; and may also obtain an

injunction restraining the tenant from mortgaging if he can establish his claim to it. *Imam Buksh and others* v. *Syud Hoob Ali and others*, 4 Agra Rep., R. A., 8.

A suit by a proprietor for possession and ejectment of lessee, on the allegation that, by cancelment of lease, the lessee, after having resigned his lease, has forcibly taken possession of the demised property, was not one cognizable by the Revenue Court under Clause 5, Section 23, Act X of 1859, being not a suit to eject any ryot or to cancel any lease, &c., as provided in the said clause and section. *Kafaetoollah Khan* v. *Futteh Ali*, 1 Agra Rep., R. A., 28.

A suit by A. to set aside an alleged collusive decree for rent obtained by B. against C., under which decree A. was ejected from his lands and his crops were seized, is properly brought in the Civil Court as raising a question of title. Such a case is distinguishable from a case of illegal distraint by a landlord, provided for by Clause 7, Section 23, Act X of 1859. *Goopenath Dutt* v. *Preonath Sircar*, 6 W. R., Act X R., 7.

Section 24.

In a suit by two shareholders to recover certain accounts and papers alleged to have been kept by their agents, it was held that a zemindar has a right, under Section 24, Act X of 1859, to institute such a suit, and that right is not taken away by the fact of his being one of several shareholders. *Puddo Monee Dossee* v. *Banee Kant Ghose*, 9 W. R., 344.

The words "management of land" in Section 24 are not confined to the local agents or gomastahs whose duty it is to make arrangements for the cultivation of waste or unoccupied lands in their villages, but may be extended to agents who are employed in giving leases, and against whom a suit is cognizable in the Collector's Court under that section. *Lalla Jebun Lall* v. *Tekait Pokheerun Singh*, W. R., 1864, Act X R., 99.

A suit under Act X of 1859, Section 24, is not maintainable, unless the defendant was an agent or servant employed in the management of lands or collection of rents. *Held* therefore that the Collector had not jurisdiction in a suit for papers in the possession of Sudder Amlahs employed in keeping the books of the office, and in performing the other duties incidental to the office of Sudder Amlahs and not Mofussil Amlahs. *Rajah Mohindronarain Singh* v. *Lalla Ruttun and others*, Marsh., 289.

Suits under Section 24 of Act X can only be brought by zemindars or persons in receipt of the rent against agents employed by them. The section does not apply to cases in which prior questions of title are involved. *Dullcel Mahomed* v. *Mohima Chunder Ghose*, 1 Ind. Jur., N. S., 78.

Section 24, Act X of 1859, does not apply to suits against agents involving pure questions of title, *e.g.*, when plaintiff never received rent or was acknowledged by defendant as entitled to it, and defendant never was employed by him or acted as his agent. *Jumeer Mundul Gomashtah* v. *Mohima Chunder Ghose*, 5 W. R., Act X R., 15.

A suit against an agent for accounts and papers under Section 24, Act X of 1859, will not lie when the defendant was not employed by the plaintiff, and the plaintiff never was in receipt of the rent. *Dubel Mahomed Gomashtah* v. *Mohima Chunder Ghose*, 5 W. R., Act X R., 36.

When two landholders jointly appoint an agent for the collection of rents of their joint property, they can sue him separately under Section 24, Act X of 1859, provided the one who does not sue is made a defendant. *Pudda Monee Dossee* v. *Bistno Chundra Biswas and others*, 10 W. R., 495.

In taking an account under Section 24 of Act X of 1859, an agent is bound to account for all moneys received by him on account of his principal, but he may render such account either by showing that they were paid to the principal, or for his benefit and by his authority. As a general rule an agent or collector cannot discharge himself of moneys for which he is liable to account, by proving payments or advances to third parties, unless he can show that such payments or advances were made by the express authority of the principal, or with his knowledge and consent. *G. L. Fagan and others* v. *Chunder Kant Banerjee*, 7 W. R., 452.

A suit for moneys received and not accounted for during the agency of the defendant, is cognizable only in the Revenue Court under Section 24, Act X of 1859, notwithstanding that the agency may have been determined prior to the institution of the suit.

An arbitration award cannot change the nature of the claim and convert it into a simple debt cognizable by the Civil Courts. *Shoshee Mohun Shaha* v. *Aheer Sircah*, 5 W. R., Act X R., 13.

When a tenant sues to recover possession from the party to whom he pays rent, he is bound to sue in the Revenue Court under Section 24, Act X of 1859. The Civil Court has no jurisdiction in such a case under Section 15, Act XIV of 1859. *Hosseinee Khanum* v. *Rubbia Khanum*, 5 W. R., Act X R., 14.

According to Section 24, Act X of 1859, the Civil Court has no jurisdiction to try a suit by a zemindar against an agent and his sureties for money received by the agent in collection of the rents of the zemindary. *Syud Woozeer Ali* v. *Doorga Churn Roy*, 5 W. R., Act X R., 79.

A suit for the value of rice received as rent by an agent will lie in the Revenue Court under Section 24, Act X of 1859. *Koylash Chunder Ghose* v. *Jonmajouya Shyam*, 7 W. R., 415.

An assignee of a landlord can sue a gomastah employed by the latter for the recovery of moneys received by the gomastah in the course of his employment under Section 24 of Act X of 1859. *Lalmohun Singh* v. *Trailakhanath Ghose*, 6 B. L. R., Ap., 17, and 14 S. W. R., C. R., 456.

Under Section 24, Act X of 1859, an agent cannot be called upon to account for matters other than rents, or what represents rents collected by him in the course of his employment. *Nobinchunder Roy* v. *Gooro Gobind Surma*, 14 S. W. R., C. R., 447.

A sum of money (bhikya) by ryots to the zemindar under compromise instead of on suits for enhancement comes within the category of rents, and a suit by a zemindar against a gomastah to recover such moneys comes within the purview of Section 24, Act X of 1859. *Bholanath Mookerjee* v. *Brijomohun Ghose*, 14 S. W. R., C. R., 351.

Section 25.

A suit to recover possession by a tenant with a right of occupancy, illegally ejected by his zemindar, whether with or without the assistance of the Collector, under Section 25, Act X of 1859, is cognizable only in the Collector's Court under Clause 6, Section 23.

Where such a suit is brought in the Civil Court, the Judge on appeal should have refused to exercise jurisdiction in the matter, instead of going into the merits when he thought that he had no jurisdiction. *Ram Bhujun Bhukut* v. *Ketaye Ram Chowdhry and others*, 6 W. R., Act X R., 21.

An appeal from the order of a Deputy-Collector, under Section 25, Act X of 1859, lies to the Commissioner and not to the Judge, and the Deputy-Collector on the application preferred under that section ought not to have determined the question of the validity of a contested pottah. *Thakoor Dass* v. *Phoolay*, 1 Agra Rep., A. C., 182.

A zemindar cannot eject a ryot having a right of occupancy by giving a pottah to another party. In any case under Section 25, Act X of 1859, the zemindar must proceed to the ejectment by due process of law, and not *proprio motu*. *Sheikh Khossal* v. *Sheikh Shukhowda*, 1 W. R., 119.

A plaintiff who had obtained a decree for ejectment under Section 25, Act X of 1859, and did not execute that decree for some months after, is not entitled to a decree in a suit subsequently brought for damages, in respect of the same lands, for the period included between date of the institution of the ejectment suit and the execution of the decree in that suit, the occupation of the defendants being the occupation of tenants-at-will, and not of trespassers. *Aymel Islam* v. *Jardine, Skinner, and Co.*, 8 W. R., 501.

Section 25, Act X of 1859, does not give an exclusive jurisdiction to the Collector. *Hurro Chunder Nundy* v. *J. Savi*, 1 W. R., 142.

Section 25, Act X of 1859, does not prevent a suit being brought in the Civil Court for possession with mesne profits. *Roy Oodit Narain Singh* v. *Ram Sarun Roy*, 1 W. R., 221.

An ejectment by a zemindar without application made to the Collector under Section 25, Act X of 1859, is not necessarily an illegal ejectment. The illegality of the ejectment must be established by evidence. *Sheo Ruttun Singh* v. *Phool Koomaree*, W. R., 1864, Act X R., 68.

The proviso in Section 25 of Act X of 1859 is limited to applications for ejectment "on the determination of a lease."

A breach of a stipulation in a lease does not cancel the lease or give a right to eject, unless there is an agreement to that effect. *Augur Singh* v. *Mohinee Dutt Singh*, 2 W. R., Act X R., 101.

No appeal lies to the Judge of the Zillah Court from a decision of the Collector under Section 25, Act X of 1859.

Delay in preferring an appeal should be explained.

The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under Section 25, Act X of 1859. *Amra Nashya* v. *Gogun Shootur*, 2 B. L. R., Ap., 35; 11 W. R., 130.

A tenant in possession after expiry of his lease can only be ejected by due course of law (Section 25, Act X of 1859); and if illegally dispossessed he is entitled, under Section 15, Act XIV of 1859, to sue and recover possession, notwithstanding a pottah set up by defendant. *Safaoll Khan and another* v. *Woopean Khan and another*, 9 W. R., 123.

Section 25, Act X of 1859, does not preclude a zemindar or other person in receipt of the rent of land from suing in the Civil Court for the ejectment of a tenant after the expiration of his lease, instead of applying to the Collector for assistance. *Muddun Mohun Roy* v. *Gourmonee Goopto*, W. R., F. B., 126.

An application under Section 25, Act X of 1859, is not equivalent to the institution of a suit; and whether the Collector accedes to or refuses it, he in no sense adjudicates between the parties. *Huree Nath Doss* v. *Tara Chand Sircar and another*, 10 W. R., 295.

Section 25 does not apply to a case in which the plaintiff admits that the defendant has a pottah, but questions the authority of the Naib who granted it. The appeal in such a case lies to the Judge and not to the Commissioner. *Joy Kishen Mookerjee* v. *Ramdhun Roy*, 2 W. R., Act X R., 16.

An order passed by the Collector under Section 25, Act X of 1859, has not the force and effect of a Civil Court's decree, and is not binding as against an intervenor in a suit under that Act. *Janaye Sirdar* v. *Dwarkanath Roy*, 12 W. R., 322.

Held that the words of Section 25, Act X of 1859, imply that a suit by a zemindar to recover a rent reserved on land which has been let out on a zur-i-peshgee lease should be brought in a Civil Court. *Sheo Gholam Singh* v. *Roy Dinkur Dyal*, 12 W. R., Act X R., 215.

Where a party is restored to possession under Section 15, Act XIV of 1859, the opposite party is not deprived of the right to institute proceedings under Section 25, Act X of 1859, and an appeal against an order under this section lies to the Commissioner. *Shib Doss Tribedee* v. *Pearee Soonduree Chowdrain*, 14 S. W. R., C. R., 417.

A zemindar is not bound to proceed under Section 25 of Act X of 1859, or to bring a suit for plaintiff's ouster. Section 25 of Act X of 1859 enables a zemindar to apply to the Collector for aid in the ouster of a tenant, but does not make it "incumbent" on him to do so. Where the right to re-enter accrued to defendant at the end of the preceding agricultural year, the ouster of plaintiff in November was not illegal. *Girwar* v. *Syad Nyaz Ali*, 2 N. W. R., 306.

Section 27.

Under Section 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding, without the consent in writing of the landlord. *Upendra Mohun Tagore* v. *Thanda Dasi*, 3 B. L. R., A. C., 349; 12 W. R., 263.

Two purchasers of holdings in the defendant's zemindary at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zemindar's sherista, under Act X of 1859, Section 27. Their application was refused, and then they brought a suit in the Civil Court to set aside the Collector's order and register their names.

Held that proceedings authorized to be taken in the Collector's Court, under Section 27, Act X of 1859, are not proceedings in a suit, and consequently such proceedings are no bar to a suit in the Civil Court, under Section 2, Act VIII of 1859. *Chanda Narayan Ghose* v. *Kasinath Roy Chowdhry*, 4 B. L. R., F. B., 43; S. C., 12 W. R., F. B., 30.

The purchaser of the rights and interests of a cultivator is not bound under Section 27 to notify his purchase to the zemindar. *Maharajah Sutteeschunder Roy Bahadoor* v. *Muddoosoodun Paul Chowdhry*, W. R., 1864, Act X R., 91.

A suit will not lie in the Civil Court to set aside an order by a Collector, made under Section 27, Act X of 1859, for the registration of the names of the defendants as shikmee talookdars in the plaintiff's sherista. *Moonshee Mahomed Noor Buksh* v. *Mohun Chunder Poddar and others*, 6 W. R., Act X R., 67.

The right given by Section 27 of Act X of 1859 to the transferee of a permanent transferable interest in land to have his name registered in the sherista of the zemindar, in the place of that of his vendor, is a right of a civil nature; and therefore the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such right. The jurisdiction of the Collector is not exclusive, but concurrent. *Madhub Chunder Pal* v. *A. Hills*, 1 B. L. R., A. C., 175; 10 W. R., 197.

Section 28.

The jurisdiction of the Civil Court to try a resumption suit brought by a zemindar, when the defendant pleads a lakheraj title from before 1790, is not affected by Section 28, Act X of 1859. *Sonaton Ghose* v. *Moulvie Abdool Furar*, 2 W. R., 91.

An application under Section 28, Act X, 1859, to dispossess the defendant from certain lands which he held rent free, on the ground that they were part of the plaintiff's estate, and had paid rent subsequent to the Decennial Settlement, was held to raise no cause of action within that section. But as the plaint was received, and the issue under Section 28 raised, the Courts had jurisdiction to try and decide the case. *Reazoonnissa* v. *Motee Singh*, 12 W. R., 135.

Suit for assessment on a ryot alleged to hold land within the plaintiff's brimotur estate. *Held* that, as the ryot claimed no lakheraj holding, no suit under Section 28, Act X of 1859, could lie; and that the only questions for decision were whether the defendant was ryot of the plaintiff, and if so, what rate of rent the plaintiff was entitled to obtain from him. *Modhoosoodun Moitre* v. *Chunder Churn Bhudro*, 1 W. R., 360.

An application to the Collector under Section 28, Act X of 1859, is a suit, and an appeal lies to the Zillah Judge, and not to the Revenue Commissioner. So held *per* Peacock, C. J., Bayley, J., and Jackson, J.; *dissentientibus* Trevor, J., and Raikes, J. *Bissumber Misser* v. *Gunput Misser*, Marsh., 350, and W. R., F. B., 90.

In a suit by a zemindar to assess or resume land alleged to be invalid lakheraj, under Section 28 of Act X of 1859, a Collector has no jurisdiction to try whether a title under a grant made prior to the 1st of December, 1790, is valid or not. *Mooroobhee Sahoo* v. *Latoo Coomar*, W. R., F. B., 70.

The proceeding prescribed by Section 28, Act X of 1859, is to be regarded as a suit, and is subject to the provisions respecting appeals to which other suits under the Act are subject. *Chowdra Jey Chund* v. *Kadhoree*, 2 N. W. R., 244.

When a suit under Section 28 of Act X of 1859 has been determined by a Collector having jurisdiction to try it, it is subject to an appeal to the Judge, but cannot be contested in a separate suit. *Thakoree* v. *Dhuleep Singh*, 2 N. W. R., 261.

A zemindar's suit, under Section 28, Act X of 1859, to resume and assess an invalid lakheraj having been dismissed on the ground that the ryot's holding was of date prior to 1790, it is not competent to the Court, in a subsequent suit under Section 30, Regulation II of 1819, to try the issue whether the holding is of date before or after 1790, but the Court should take for granted, as judicially settled, that the tenure is of date prior to 1790. A zemindar not being an auction-purchaser, the defendant's possession from 1790 bars his claim by limitation. *Kalee Pershad Haldar* v. *Sreemutty Soobhogea Debia*, 1 W. R., 218.

The limitation prescribed by Section 28, Act X of 1859, applies only to suits brought under that section.

A suit brought under Section 10, Regulation XIX of 1793, to assess or resume invalid lakheraj created subsequent to December 1st, 1790, is exempt from limitation. In such latter case the *onus* is on the plaintiff to show that the grant was subsequent to December 1st, 1790. *Sonaton Ghose* v. *Abdool Turab*, 2 W. R., 205.

Section 30.

Where a tenant was restored to his holding by a decree to set aside the auction sale of his right,—*Held* that the cause of action for the tenant to sue under Clause 6, Section 23, Act X of 1859, arose on the zemindar's refusal to admit him into possession of his holding; and a suit brought within one year from the date of such refusal, which was practically an illegal ejectment by zemindar, would not be barred under Section 30 of that enactment. *Luchmun Singh* v. *Mahomed Hossein*, 1 Agra Rep., R. A., 42.

The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of limitation prescribed by Section 30 of Act X of 1859; subsequently to this decree Act LIII of 1860 came into operation, which by Sections 1 and 30 provides that suits for causes of actions which had accrued before the 1st of August, 1859, may be instituted within two years from that day; and by Section 2 that suits or appeals dismissed on the ground that they had not been commenced within the period prescribed by the Act of 1859 may be revived. The Zillah Judge rejected an application under the Act of 1860 to revive the suit. *Held* that this was not an application for a "review of judgment" within Section 378 of Act VIII of 1859, as to which the order of the Court is final; but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal. *Bungseedhur Mundle* v. *Puddolochun Roy and others*, Marsh., 38.

Held that a suit to eject a cultivator for a breach of contract by planting a bagh must be brought within one year under Section 30 of Act X of 1859,

from the date of the first accruing of the cause of action. *Ruhmut-ool-lah* v. *Tuffuzzool Hossein*, 1 Agra Rep., R. A., 67.

Section 30, and not Section 33, Act X of 1859, is applicable to the case of sureties of a deceased agent, against whom a claim is made for moneys appropriated by him, and the cause of action accrues from the time when the plaintiff had means of knowing what was the amount due to him from the deceased agent, *i.e.*, from the date on which his accounts were put in by his sureties, and not from the date of his death. *Sreemutty Puree Soondery Debia* v. *Bholanath Roodro and others*, 8 W. R., 159.

Held that the limitation of one year under Section 30, Act X of 1859, in a suit by a landlord to eject a cultivator for sinking a well, should be computed from the date when the building of the well has assumed such a form that there can be no doubt of the purpose for which it was intended. *Heera Kooree* v. *Syud Noor Ali*, 4 Agra Rep., R. A., 1.

A landlord having obtained a decree for enhancement against his tenant, sued him for arrears of rent. *Held* (with reference to Sections 30 and 32 of Act X of 1859) that the suit might be brought within one year from the date of the final decree fixing the rent in the suit for enhancement, or within three years from the end of the month of Jeyet of the Fusly or Willayuttee year for which such rent is claimed. *Joymonee Dassee* v. *Hurronath Roy*, 2 W. R., Act X R., 51.

The limitation prescribed by Section 30, Act X of 1859, applies only to suits instituted under that Act. *Surbeshur Dey and others* v. *Fukeer Mahomed Sircar*, 7 W. R., 243.

In 1857 the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof, 2,000 betel-nut trees. The defendant failed to do so. In 1867 the plaintiff brought the present suit for ejectment, on account of the breach of the contract entered into by the defendant. *Held* that, by Section 30, Act X of 1859, the suit was barred by limitation. *Kali Kamal Mazumdar* v. *Shib Suhai Sukul*, 3 B. L. R., Ap., 47.

An appeal lies under Section 30, Act X of 1859, whenever there is a difference of opinion between the Judge and the Assessors whether the Assessors agree with each other or not.

Semble,—In cases under that Act the evidence should be recorded by the Judge according to the provisions of Section 172, Act VIII of 1859. *William Heysham* v. *Bholanath Mullick*, 17 S. W. R., C. R., 221.

Section 32.

Under Section 32, Act X of 1859, the rent of any portion of one year (1273) is recoverable at any time up to the last day of the third year (1276) after its close. *Bykunt Ram Roy* v. *Mussamut Shurfoonissa Begum*, 15 S. W. R., C. R., 523.

Under Section 32, Act X of 1859, an appeal relating to the valuation of a claim can be entertained by the High Court. *Basoohend Furush* v. *Huree Pandey*, 11 W. R., 479.

Section 32, Act X of 1859, does not authorize the recovery of only 3 years' rent, but requires suits for the recovery of rents to be instituted within 3 years from the end of the Bengalee or Fuslee year, as the case may be. *Gossain Umur Narain Poorec* v. *Arurut Lall, alias Baboo Jan*, 7 W. R., 301.

The words in Act X of 1859, Section 32, limiting suits for arrears of rent due at the passing of the Act, to a period of "three years after the passing of the Act," refer to the date when the Act passed, and not to the subsequent date fixed for its coming into operation. *Peary Mohun Dass* v. *McArthur*, Marsh., 637, and *Watson & Co.* v. *Rutnokant Roy*, W. R., 1864, Act X, Rul. 19.

The words "passing of this Act" in Section 32, Act X of 1859, refer to April, 1859, the date on which the Act received the Governor-General's assent. For all rents then due, suit should be brought within three years from that date, or before April 29th, 1862. *Moran* v. *Bindoobashinee Debea*, W. R., 1864, Act X R., 5.

In a suit governed by the limitation prescribed by Section 32, Act X of 1859, a plaintiff is entitled to no diminution of time on account of the period during which the suit was pending in a Court without jurisdiction, as provided by Section 14, Act XIV of 1859. *Juggurnath Roy Chowdhry* v. *Raj Chunder Roy*, W. R., 1864, Act X R., 120.

The three years' limitation provided by Section 32, Act X of 1859, is in general terms, and does not admit of any exceptions, *e.g.*, the pendency of a suit for enhancement for 1265 will not save limitation in respect to the rent for 1266. *Nobokanth Dey* v. *Rajah Borodakanth Roy Bahadoor*, 1 W. R., 100.

Act X of 1859 recognizes no deduction whatsoever in computing the three years' limitation prescribed by Section 32. *Dakhina Dabea* v. *Romeshchunder Dutt*, 1 W. R., 142.

Where a ryot's suit contesting a notice of enhancement was dismissed, and the dismissal confirmed in special appeal in the month of May, the landlord's suit brought in December of the same year, for rent at an enhanced rate, according to notice, was held to be barred by Section 32, Act X of 1859. *Huree Kishore Ghose* v. *Komodinee Kant Banerjee*, 10 W. R., 41.

The dismissal of a former suit to contest a notice of enhancement, on the ground of protection as a mokurrureedar holding under a pottah, is a sufficient confirmation of the enhancement to take the present suit for arrears of rent at the enhanced rate out of the operation of the proviso in Section 32, Act X of 1859. *Puddo Lochun Bhadooree* v. *Chundernath Roy*, 5 W. R., Act X R., 51.

The limitation of six months prescribed by Section 6, Act VI of 1862 (B. C.), applies to deposits made after rents have become due, and does not interfere with the limitation for suits for enhanced rent, as prescribed by Section 32, Act X of 1859. *Taramonee Koonwaree* v. *Jeebun Mundar and others*, 6 W. R., Act X R., 98.

When a suit was brought within three years from the passing of Act X of 1859, for arrears of rent of 1266 to 1269, and three months of 1269,—*Held* that the suit was not barred by limitation under Section 32, and that the claim for the arrears of 1266 which were not due till 1267 was in time, though that was a period preceding the passing of the Act. *Ranee Mashishuree Dossee* v. *Ram Sagur Singh*, W. R., 1864, Act X R., 69.

Section 33.

In a suit by the manager of a factory to recover from a surety certain sums collected as rent by a

deceased putwaree, in which suit the defendant pleaded limitation,—*Held* that plaintiff was not entitled to reckon the year which the law gave him to bring the suit from the date on which he acquired from the surety information of the state of his accounts. If a person's ignorance of the state of his accounts is owing to his own negligence, he can claim no benefit under Section 33, Act X of 1859. *William Biddell* v. *Chutterdharee Lall and others*, 12 W. R., 116.

In a suit against an agent under Section 33, Act X of 1859, where fraud is alleged, before applying the limitation prescribed by that section, the plaintiff should have an opportunity of proving that by the fraud of the defendant he was kept from a knowledge of his rights. *Ram Kant Chowdhry* v. *Brojo Mohun Mozoomdar*, 6 W. R., Act X R., 20.

In a suit for the recovery of money in the hands of an agent, the limitation prescribed by Section 33, Act X of 1859, counts from the date of the suspension of the agent. *Radhika Pershad Chatterjee* v. *Ramdhun Pooroheet*, 6 W. R., Act X R., 27.

Section 33, Act X of 1859, gives the benefit of the extended period of limitation to a man who shows reasonable diligence, and not to one who having the means of knowledge carelessly neglects to investigate the accounts. *Dhanput Singh* v. *Rhamun Mundul*, 2 B. L. R., A. C., 269.

A suit under Act H of 1859 against the surety of an agent employed in the collection of rents, for losses occasioned by the embezzlement of his principal, is not governed by the period of limitation prescribed by Section 33 of the Act, but by that prescribed by Section 30, namely, "one year from the date of the accruing of the cause of action." *Beelasmonee and others* v. *Nusseeboolam*, Marsh., 410.

By Section 33 of Act X of 1859, "suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent." *Held*, where an agent was dismissed, and after such dismissal rendered an account showing a balance due to the landholder, that a suit for such money might be maintained notwithstanding the lapse of more than a year from the dismissal of the agent before the suit was commenced, because a cause of action arose out of the admitted balance of account.

Semble,—That a suit may be maintained upon such account stated, in which the period of limitation would be regulated, not by Act X of 1859, but by Act XIV of 1859.

Semble,—If the account so rendered were fraudulent, then the latter clause of the 33rd Section of Act X of 1859, that "if any fraudulent account shall have been rendered by the agent the suit may be brought within one year from the time when the fraud shall have been first known to such person," would apply to extend the time. *Chowdhry Chatterpaul Singh* v. *Foujdar Roy*, Marsh., 405.

If a principal suspends an agent, the agency must be held to have been determined within the meaning of Section 33, Act X of 1859. *Muddun Mohun Roy* v. *Gopee Mohun Roy*, W. R., Act X R., 8.

The receipt by a decree-holder of a portion of the surplus sale proceeds lying in deposit in the Collector's Court, without opposition on the part of the judgment-debtor, is not such a receipt as is contemplated by Section 33. *Mohabeer Pershad Singh* v. *The Collector of Tirhoot*, 13 S. W. R., C. R., 433.

Section 54.

A suit for arrears of rent was dismissed by the Deputy Collector for default under Section 54, Act X of 1859. Thereupon a fresh suit was brought by the same plaintiff for the recovery of the said arrears, and a decree was obtained. On appeal the Judge reversed the decision of the Deputy Collector, and dismissed the suit. The plaintiff then applied, under Section 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application. On appeal the Judge held that the suit might be revived, and remanded the case for trial.

The High Court, under its general power of superintendence, set aside the order of the Judge, as passed without jurisdiction, holding that although the Deputy Collector had formerly struck off the case under Section 54, yet it was in fact an order under Section 55; and therefore under Section 58, Act X of 1859, no appeal lay to the Judge. *Mir Habib Sobhan* v. *Mahendro Nath Roy*, 2 B. L. R., Ap., 32; 11 W. R., 129.

The first Court having struck a case off its file under Section 54, Act X of 1859, on the alleged ground that there was no appearance on the part of the plaintiff or defendant, the lower Appellate Court considered an appeal barred by Section 58.

Held that Section 54 was erroneously cited by the first Court, whose view of the case, as well as the order it passed, would be covered by Section 68; and that as the contention was that no default had been committed, but that plaintiff had appeared by his constituted agent, an appeal lay from the order of the first Court, which the lower Appellate Court had jurisdiction to entertain. *Kalee Chunder Chowdhry* v. *Kristo Chunder Biswas and others*, 12 W. R., C. R., 169.

Section 54 precludes plaintiff from again instituting a suit struck off under that section, if barred by limitation. *Okoor Chunder Mitter* v. *Bhagirath Saha*, W. R., 1864, Act X R., 123.

Section 54, Act X of 1859, does not apply to a case in which (both parties being present) the Court held that, in the absence of documentary evidence, the plaintiff's claim must be dismissed. The decision being a dismissal of the suit after adjudication of the merits, the matter must be considered *res adjudicata*. *Mohanund Chowdhry* v. *H. A. Eglinton*, 1 W. R., 343.

Section 58.

On an application under Section 58, Act X of 1859, for the revival of a suit decreed *ex-parte*, a Deputy Collector acts contrary to law if he cancels the original decree before the defendant has satisfied him that there are good and sufficient reasons for granting the application. *Dunkoo Dutt* v. *Goluck Mohun Chowdhry*, 2 W. R., Act X R., 77.

The revival of a suit under Section 58, Act X of 1859, does not re-open the case as regards all the defendants, but only as regards the party who has applied to have his particular case revived and heard on the merits. *Brojonath Surma Chuckerbutty and another* v. *Anund Moyee Debia Chowdhrain*, 7 W. R., 237.

On application by a defendant for the review of

an *ex-parte* judgment by a Deputy Collector on the ground of non-service of notice, the suit was ordered to be replaced on the file, and a notice was issued to the plaintiff that a day had been fixed for the re-hearing of the case, and intimating that if he had any objections he might make them on that day. The plaintiff appeared on the day fixed, but failed to show that the notice had been served on the defendant.

Held that the admission of the review was not a contravention of Section 58, Act X of 1859. *Ali Azim* v. *Rammanick Roy*, 12 W. R., 195.

The order of a Collector, complying with an application made more than 15 days after any process for enforcing the judgment has been executed, for the revival of an *ex-parte* decree, is not final under Section 58, Act X of 1859, because it is null and void for want of jurisdiction. *Kanye Doss* v. *Nobin Chunder Chowdhry and others*, 6 W. R., Act X R., 54.

A Judge has no authority to order a Deputy Collector to determine whether there are sufficient grounds for admitting to a re-hearing a case which has been decreed by the Appellate Court. Section 58, Act X of 1859, applies to Courts of first instance, not to Appellate Courts. *Sreenath Dutt and others* v. *Ramgopal Chatterjee and others*, 11 W. R., 108.

A Collector does not act without jurisdiction in reviving, under Section 58, Act X of 1859, an *ex-parte* decree passed by a Deputy Collector upon an application made within fifteen days from the sale in execution of that decree. *Jotendro Mohun Tagore* v. *Kinkuree Debee*, W. R., 1864, Act X R., 57.

Held that there is no appeal from a judgment or order of the Revenue Court against a plaintiff by default for non-appearance, such being the express provisions of Section 58, Act X of 1859. *Bluck Rai* v. *Ajoodhya Rai and others*, 1 Agra Rep., F. B., 160.

Section 58, Act X of 1859, does not extend to take away the right of appeal in a case where the defendant, having once appeared, is absent on the day of trial. *R. Watson and others* v. *Porandhon Tehsildar*, W. R., 1864, Act X R., 18.

A Deputy Collector has no right to entertain a petition for review of judgment under Section 58, Act X of 1859, after his decree has been modified by the Judge in appeal. *Soobul Chunder Gooho* v. *Tumeesoodeen Chowdry*, 14 S. W. R., C. R.. 414.

Section 64.

The right of appeal is not lost to a plaintiff whose suit is dismissed for default by reason of non-appearance as a witness, or when the appellant wants to prove that he should not have been summoned at all.

The prohibition under Section 64, Act X of 1859, against appeals from decision of dismissal for default applies only to cases of dismissal before the settlement of issues.

When a defendant does not allege the plaintiff's knowledge as to the amount of deductions claimed by the defendant, and the plaintiff sufficiently admits the class and description of the deductions, the plaintiff need not be summoned under Section 64, Act X of 1859, but the *onus* is on the defendant to prove the amount. *Lekhraj Roy* v. *W. Buckland*, 5 W. R., Act X R., 65.

When the agent of a plaintiff is unable to give sufficient evidence the Court should, under Section 64, Act X of 1859, require the attendance of the principal, and not dismiss the suit by a reference to Section 35, which refers to an earlier stage, and has nothing to do with a case after it has once proceeded to a hearing. *Baboo Lekhraj Roy* v. *W. H. Buckland*, W. R., 1864, Act X R., 51.

Section 69.

A newly-appointed tehsildar stands in the same position in respect to arrears of rent which accrued during the time of his predecessor as in respect to rents accruing during his own time, and may take advantage of Section 69, Act X of 1859, in respect of one as well as the other.

Held (by Markby, J.) that no one can be plaintiff in a suit for rent except the person who has the right to recover; the only effect of Section 69 being to enable the person who is employed in the collection of rents to sue as agent.

Held also (by Markby, J.) that though it has been decided that a general authority to collect rents and to sue for them must be stamped, it has not yet been decided whether such authority must be in writing. *Madhoosoodun Singh* v. *William Moran and Co.*, 11 W. R., 43.

Section 71.

The property in suit had been sub-let to defendant on the stipulation that if the rent was in arrear for three kists, the lease would be liable to cancelment. Plaintiff sued to eject the lessee, on the allegation that the lease was forfeited. *Held* that as the only ground given for cancelment was non-payment of arrears of rent, the case fell under Section 71, Act X of 1859; and as the amount due had been paid into Court, defendant was entitled to the protection afforded by the latter portion of that section. *Kumola Sahuy* v. *Ram Ruttun Neogy*, 11 W. R., 201.

Section 77.

The intervention contemplated by Section 77, Act X of 1859, is not that of a party claiming to be the tenant, but that of a party who claims the right to receive the rent. *Rajkristo Bhuttacharjee* v. *Nobin Chung and another*, 10 W. R., 23.

Section 77, Act X of 1859, does not allow an intervenor to set up an allegation of receipt of rent against a recent declaration of title. *Umbica Churn Nag* v. *Mussamut Shibosoondery Dabea*, 10 W. R., 320.

Suit for possession of meheteran lands purchased by the plaintiff, in execution of a decree against certain ghatwals, and from which he had been illegally ejected by the ghatwals, after having been formally put into possession of the same. *Held* that the Government could not, as an intervenor in such a suit, and in special appeal, ask the Court to determine whether the sale was illegal or collusive as between the plaintiff and the zemindar. *The Government* v. *Khetoo Dutt and another*, 6 W. R., 169.

An intervenor under Section 77, Act X of 1859, is bound to prove not only actual receipt of rent, but receipt in good faith; where he admits his signature to a farming lease purporting to have been granted by him, but pleads that in granting it he was deceived, he is bound to prove this special

plea of fraud. *Bhyrub Chunder Chund* v. *Sheikh Khulul and others*, 8 W. R., 493.

Section 77, Act X of 1859, provides for intervention only by one who claims the right to receive the rents, not by one who merely contends that they had been assigned to him under a special agreement. *Gridharee Singh* v. *M. Collis*, 8 W. R., 497.

The procedure of the Revenue Courts does not admit of third parties being introduced into the record, excepting under the circumstances prescribed by Section 77, Act X of 1859. *Doorga Narain Roy Chowdhry* v. *Kishen Mohun Doss and others*, 10 W. R., 54.

The only point at issue in a proceeding before the Collector under Section 77, Act X of 1859, is whether the intervenor has actually and in good faith received and enjoyed the rents of the lands in suit before and up to the time of the commencement of the suit, without reference to either registration or title. *G. R. Barry* v. *Dwarkanath Biswas*, 1 W. R., 113.

An intervenor, under Section 77, Act X of 1859, must not only show that he received rent, but that his receipt was *bonâ fide*. *Woomesh Chunder Dutt* v. *Bhogoban Chunder Roy*, 9 W. R., 305.

When an intervenor in a suit to recover rent is made a party at the request of the plaintiff, the latter cannot afterwards, by special appeal, get rid of the effect of his own act. *Sham Chund Ghose Mundul* v. *Dayamoyee Mundulnee*, 9 W. R., 338.

An attachment having been made in execution of a decree for rent, an intervenor claimed the land as mortgaged to himself, but his application was rejected, and he was directed by the Collector to bring his objection, if he had any, under Section 269, Act VIII of 1859.

Held that he was not bound to do so, and his omission did not bar his right to bring a suit to establish the validity of the mortgages under which he claimed, provided it was brought within the period permitted by Act XIV of 1859. *Deen Dyal Burmo Doss* v. *Poran Doss*, 9 W. R., 474.

In a suit by a tenant to recover possession of a tenure from which he had been illegally ejected by the person entitled to receive rents for the same, it was held that a third party who intervened on the ground of being in possession of the land in question was not entitled to be heard; Act X of 1859 containing no provision (except in the case provided for in Section 77) by which the Court of a Collector is enabled to bring in as parties to the suit persons other than plaintiff and defendant. *Leelachul Mundul* v. *Soondery Bewa*, 9 W. R., 519.

Where an intervenor claimed a portion of the subject-matter of the suit, it was held that it would be most inconvenient and contrary to all principle if every person claiming a title adverse to those set up by the plaintiff and defendant in the suit should intervene and be introduced into the suit, so that as soon as the plaintiff's title is determined against him the intervenor might take up the case as a fresh claimant. *Joy Gobind Doss* v. *Gour Persaud Shaha and others*, 7 W. R., 201.

A butwarra award is no absolute proof of title, and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the butwarra. *Sreenath Ghossal* v. *Joy Narain Kavar*, 3 W. R., Act X R., 11.

An intervention by a lessee is not the intervention contemplated by Section 77, Act X of 1859. *Goordyal Paureh* v. *Hurdyal Doss*, 3 W. R., Act X R., 16.

An under-tenant may sue to recover his under-tenure sold by his zemindar for arrears of rent. He may also prefer his claim in the Civil Court, although he did not previously intervene in the Collector's Court, under Section 106, Act X of 1859. *Mooktokashee Dassia* v. *Brojander Coomar Roy*, 3 W. R., Act X R., 156.

Suit for enhancement of rent on certain howala tenures in which third parties intervened as auction-purchasers and as tenants in possession. *Held* that there is nothing in Act X of 1859 restricting the right of third parties to intervene, until a tenure is put up for sale; but that when it appears that their rights and interests will be affected by the Collector's decision, they are entitled to assert those rights before that decision is given.

Held also that the landlord was not bound to serve notice of enhancement on the intervenors, unless on proof of his recognition of them as his tenants, and that registration and receipt of rent are not the only proof of such recognition; but that possession for 14 years, under a public transfer, and the payment of rent to the landlord's co-sharer, are indisputable evidence of the intervenors' right to be the tenants. *Issur Chunder Bhuttacharjee* v. *Bhyrub Chunder Shaha*, 3 W. R., Act X R., 166.

The defendant applied for the revival of a suit decreed *ex parte*, and notice was served on the plaintiff to appear. On the day appointed neither party appeared, and the Deputy-Collector, refusing to enter into the claim of an intervenor, struck off the case, and declared the original decree cancelled. *Held* that he was right in not going into the claim of an intervenor at that stage, but wrong in cancelling the original decree. *Dunkoo Dutt* v. *Goluck Mohun Chowdhry*, 2 W. R., Act X R., 77.

Section 77, Act X of 1859, does not permit a stranger to intervene; the intervenor must claim for himself by some title, direct or derivative, that which the plaintiff is seeking. *Mohesh Chunder Sircar* v. *Augumunissa Beebee*, 4 W. R., Act X R., 29.

Third parties may intervene in a suit for rent otherwise than under Section 77, when their rights and interests are manifestly put in jeopardy. *Ram Jebun Chowdhry* v. *Peary Lall Mundle*, 4 W R., Act X R., 30.

In a suit for rent in which a claimant intervenes, under Section 77, Act X of 1859, the mere failure of the intervenor to establish his claim does not entitle the plaintiff to a decree. *Nawab Nazim of Bengal* v. *Ruddo Lochun Mundul*, 5 W. R., Act X R., 26.

An intervenor, under Section 77, Act X of 1859, who has never been in receipt of rent prior to the commencement of the suit, has no *locus standi* in Court. *Showdaminee Dossee* v. *Ram Roodro Gangooly and others*, 8 W. R., 367.

In a suit for arrears of rent at enhanced rate, defendant pleaded that he had sold the holding to a third party, who thereupon asked to be added as a defendant. *Held* that such intervenor could not be made a party to the suit. *Kalinath Roy* v. *Iswar Chunder Ghosal*, 2 B. L. R., F. B., 89.

In a suit for rent in which the ryot admits

tenancy, but a third person intervenes, the only question to be tried as between the plaintiff and the intervenor is who has been in the enjoyment of rent before and up to the time of suit. If the intervenor does not show that he is in the enjoyment of the rent, and if there has been no legal determination of the plaintiff's lease, the intervenor should be directed to establish her title in a separate suit. *Nundokishore Chuckerbutty* v. *Aleemuddee Putwaree*, 1 W. R., 289.

A ryot's admitted payment of rent to an intervenor in a suit brought against the ryot is not sufficient evidence to impugn the Judge's finding that the intervenor has given no proof of receipt and enjoyment by him of the rent claimed. *Rajah Enaet Hossein* v. *Rajah Syud Ahmed Rezah*, 1 W. R., 292.

An intervention by a minor, and not through his guardian or some friend, is not allowable. *Bama Soonduree Dabee* v. *Greesh Chunder Banerjee*, 4 W. R., 106.

In a suit for rent, if a third party intervene under Act X of 1859, Section 77, and the Court find that he, and not the plaintiff in the suit, is entitled to the rent, the proper course is to dismiss the suit, notwithstanding the intervenor admits that he is liable to pay rent to the plaintiff. *Kally Churn Dey* v. *Tarra Chund Byragee*, Marsh., 258.

It is not sufficient for an intervenor, under Section 77, Act X of 1859, to prove mere receipt of rents; he must also prove enjoyment thereof. *Doyal Kishen Deb* v. *Kallee Nath Kur*, 10 W. R., 67.

In a suit for rent of lands held by defendants as tenants in plaintiff's zemindary, in which it was pleaded that the rent was not due solely to plaintiff, as a moiety was payable to a third party who had given defendants a farm of her share,—*Held* that such party could not be allowed to appear as an intervenor in the case, as she had made over to the defendants her right to collect the rents. *Watson and Co.* v. *Nilcant Sircar and another*, 10 W. R., 331.

Persons not likely to be affected by the result of a suit have no right to intervene and to be made parties to the suit. *Ahmed Hossein* v. *Mussamut Khodeja and others*, 10 W. R., 368.

In a suit for a kubuleut on account of lands which were found to belong to plaintiff's talook, and of which plaintiff was in possession, a Judge was held not to have been wrong in refusing to infer, from the mere fact of an intervenor's having come in and taken the rents, that he had taken them in good faith. *Hurrish Chunder Roy* v. *Radha Kishore Talookdar*, 11 W. R., 371.

In a suit by a dur-mokurrureedar against ryots for some portion of the rent of one year (1273) and the full rent of the next year (1274), the defendants contested the claim for the year 1274, on the ground that the rights of the mokurrureedar having been sold in execution under Act VIII (B. C.) of 1865, the right of the dur-mokurrureedar had been extinguished by operation of Section 16, and that they had paid the rents for that year to one D., who intervened and was made a party.

Held that the issues to be framed would be in the first instance between the plaintiff and the intervenor, whether the one or the other had been in the actual receipt and enjoyment of the rent before and up to the time of the commencement of the suit. *Wooma Soondery Dossee* v. *Beerbul Mundul and others*, 11 W. R., 560.

Section 77, Act X of 1859, prescribes a limitation of one year from the date of the Collector's decision. That being so, it is not necessary to look to any other law of limitation. Besides, Act XIV of 1859 (Clause 5, Section 1 of which was relied on by the defendant) does not contemplate decisions before Collectors. *Nutto Nushyo* v. *Soodh Bewa*, 1 W. R., 131.

The limitation prescribed by Sections 77 and 140 of Act X of 1859 does not apply to a suit brought in the Civil Court for confirmation of possession of certain lands which formed the subject of a previous suit before the Collector, in which the same plaintiffs (after redeeming certain paddy crops on the same land in their occupation, distrained for alleged arrears of rent) unsuccessfully sued to establish that no rent was due from them, and that the land in question was their own rent-free land. *Sheikh Khairoollah* v. *Rajkishen Mookerjee*, 2 W. R., Act X R., 95.

A., having a certificate under Act XX of 1841 (to collect debts due to the estate of his uncle), sued two of the tenants of the landed property belonging to the estate, and his claim was dismissed under Section 77, Act X of 1859. More than a year after this decision, under Section 77, A. brought a suit for possession of the whole estate. *Held* that his subsequent claim was not barred by the limitation of one year mentioned in Section 77, but only his right to demand the particular amount of rent for which his claim against the two tenants was dismissed under that section. *Chunder Sheeker Roy* v. *Nobin Soonder Roy*, 2 W. R., 197.

The time allowed to contest a decision under Section 77, Act X of 1859, is one year from the date of the Collector's decision, and not from that of the Judge, although the Collector's decision may have been favourable and the Judge's adverse to the plaintiff. *Neemye Joogy* v. *Afsurooddeen Mahomed Chowdhry*, 3 W. R., Act X R., 155.

The limitation to a suit in the Civil Court to try a question of title after a decision by the revenue authorities, under Section 77, Act X of 1859, counts from the date of the decision of the Collector in appeal. *Sreemutty Janokee* v. *Tahbun Singh*, 4 W. R., Act X R., 21.

In computing the period of limitation prescribed by Section 77, Act X of 1859, the date of the decision must be excluded. *Radha Monee Chowdhrinee* v. *Baungshee Mohun Doss*, 4 W. R., Act X R., 30.

A person whose right to rent has been refused under Section 77, Act X of 1859, is not bound to sue on his general title within one year. *Shatto Ram Mozoomdar* v. *Anund Chunder Chatterjea*, 5 W. R., Act X R., 87.

Section 77 does not bar a suit by a plaintiff who has been shown not to have been in the actual receipt and enjoyment of rent. A suit for recovery of possession founded upon title may be brought by a person against whom a decision of the Revenue Court has been passed under the above section, subject to the ordinary Law of Limitation. *Baro Bebee* v. *Mahomed Ali Kazi*, 5 W. R., Act X R., 92.

When a suit is brought in a Civil Court (under Section 77, Act X of 1859) to establish a title against which an adverse decision has been passed on ap-

peal from an order of a Collector or Deputy Collector, the period of limitation for the suit in the Civil Court runs from the date of the decision on the appeal, and not from the original order of the Collector or Deputy Collector. *Denonath Bose* v. *Kally Coomar Roy*, 5 W. R., Act X R., 23.

The limitation prescribed by the proviso to Section 77, Act X of 1859, is applicable only to suits by persons having the legal right or title to the rent which formed the subject of the suit in the Revenue Court, to establish their title to such rent. It was not the object of that section to prevent the party who has the right to the land from bringing his action to try his title to the land within twelve years from the date of dispossession. *Hurronath Roy and others* v. *Sreesteedhur Doss*, 7 W. R., 153.

When the object of a suit is directly to set aside an order passed under Section 77, Act X of 1859, the limitation of one year applies; but when a party sues on a general right to real property twelve years' limitation applies. *Prosunno Monee* v. *Ram Komul Sein and others*, 8 W. R., 294.

When a Deputy Collector in trying a claim under Section 77, Act X of 1859, in a suit for rent below Rs. 100, goes beyond the scope of the law, and instead of merely deciding who is in the *bonâ-fide* receipt of the rent, goes also into questions of title and decides the right to receive rent as between the plaintiff and intervenor, the appeal lies to the Judge, and not to the Collector. In such a case the Judge is bound to determine the case finally, if the evidence on record is sufficient, and not to remand it to the Deputy Collector for trial of the right issue. *Punchanun Koonwar* v. *Luckhee Prea Debia*, 3 W. R., Act X R., 154.

In a suit for rent below Rs. 100, where a third party intervenes, under Section 77, Act X of 1859, if the Deputy Collector decides on the title of the parties, and not on their receipt of rent, the appeal will lie to the Judge, and the Judge is competent to determine the whole case, including the question of the receipt of rent, notwithstanding that the law bars an appeal to the Judge on that point. *Bibee Jameerun* v. *Bhichuk Thakoor*, 3 W. R., Act X R., 27.

A decree of the High Court deciding that a party who has obtained a kubuleut from a farmer can sue the farmer on the contract made by him, and that a third party cannot claim in such a case, does not affect the jurisdiction of the Revenue Courts to enquire and decree who is actually and *bonâ fide* in receipt of the rent and entitled to a decree under Section 77, Act X of 1859.

Whatever may be the legal title to the property, the decision under Section 77 must be in favour of the person who is in actual and *bonâ-fide* receipt of the rent. *The Nawab Nazim of Bengal* v. *Mehdee Ali*, 5 W. R., Act X R., 25.

Section 77, Act X of 1859, does not apply to a suit for rent below Rs. 100, where the ryot and the intervenors deny the title of the plaintiff and his vendor. In such a case the appeal lies from the Deputy Collector to the Judge, and not to the Collector.

Quære,—Whether, even if the appeal lay to the Collector, the defendant, after having appealed to the Judge, could appeal specially to the High Court against the decision of the Judge, on the ground that the Judge had no jurisdiction. *Gour Doss Byragee* v. *Juggernath Roy Chowdhry*, 7 W. R., 25.

A jotedar or ryot having a right of occupancy, evicted by the judgment of a Collector in favour of the person entitled to receive rent from him, upon an intervention by such person under Section 77 of Act X of 1859, may, under the latter clause of that section, sue in the Civil Court to establish his title to be restored to possession. *Taranath Bhuttacharjee* v. *Obhoy Churn Haldar and others*, 7 W. R., 471.

Where a Deputy Collector rejects an application from a third party to intervene under Section 77, Act X of 1859, a Judge has no jurisdiction on that party's appeal to remand the case to the Deputy Collector for re-trial, with directions to make the intervenor a party. *Khondkar Kefaetoollah* v. *Mahomed Kaleel*, 9 W. R., 345.

In a suit for arrears of rent, in which an intervenor opposed plaintiff's claim, and the Deputy Collector, collaterally and incidentally to guiding his mind to a conclusion on the issue which arises under Section 77, Act X of 1859, thinks proper to enquire into and state his opinion as on matters of title between the plaintiff and the intervenor, he cannot be said, in the sense of Section 153, to determine a question of title between the parties by his judgment. *Drobo Moyee Dabee* v. *Bipin Mundul and another*, 10 W. R., 6.

The only question which an intervenor, under Section 77, Act X of 1859, is entitled to raise, either before the Collector or in appeal, is one relating to the fact of previous receipt and enjoyment of rent. The legal title, if any, of the losing party is saved for determination in the Civil Court. *Markoond Mytee* v. *Ununt Mohapattur and others*, 12 W. R., 157.

A. and B., putneedars, each held a moiety of an estate. C., a ryot, paying rent to both, sold his tenure to D., who also obtained a farming lease of B.'s share in the putnee. A. sued C. for the whole rent of the estate. *Held* that D. was entitled as B.'s lessor to be made a party to the suit under Section 77 of Act X of 1859. *Juramat Mandu* v. *Nilkunt Sircâr; Manoharn Dasi* v. *Nilkunt Sircar*, 1 B. L. R., A. C., 74; 10 W. R., 110.

Plaintiff sued for rent of land alleged to be a 3 annas 15 gundahs share held by him on a defined right. Defendant admitted the claim. An intervenor appeared, alleging that the land was situate in the 7-annas share of the talook, and that he had purchased 3 annas 15 gundahs of this share, for which a decree had been given to him, and that he held it as a joint co-parcener.

Held that as the decree did not state patently the subject-matter to be that of this suit, the principle laid down in the case of *Syud Ahmed Reza* (1 Wyman's Journal, 49) did not apply, and that as it did not clearly adjudicate against the plaintiff's right, the principle laid down in the case of *Mussamut Tarinee* (1 W. R., 331) had no bearing. Accordingly the intervenor was bound to show actual and *bonâ-fide* receipt of rent as required by Section 77, Act X of 1859. *Gugun Chunder Chuckerbutty* v. *Sheikh Ajmul Aly*, 11 W. R., 91.

In a suit for arrears of rent the defendant set up in defence that the relation of landlord and tenant did not exist, as the tenure of the plaintiff's superior landlord had been sold for arrears of rent; and that under Section 16, Act VIII of 1865, the

plaintiff's tenure had lapsed, and that he had paid rent to the purchaser of the rights of the superior landlord. Under Section 77, Act X of 1859, the purchaser intervened.

Held that the issue to be tried in the case was "the actual and *bona-fide* receipt of rent by the intervenor up to the time of the suit."

The meaning of the words "the receipt and enjoyment of the rent before and up to the time of the commencement of the suit" (Section 77, Act X of 1859) explained.

Held that the sale of a tenure, under Section 16, Act VIII of 1865, does not *ipso facto* annul all incumbrances, but certain incumbrances are recognized by this section to survive such sale. *Mussamut Umasundari Dasi* v. *Birbul Mandal*, 3 B. L. R., A. C., 183; 11 W. R., 563.

A suit is not maintainable under Act X of 1859, to recover a sum due under a decree for rent obtained under Regulation VII of 1799, and remaining unsatisfied after sale of the tenure. *Maharajah Deeraj Mohatabchund* v. *Dinno Nauth Roy and others*, Marsh., 340.

In a suit for rent claimed to be due to the plaintiff by inheritance from his wife S. B., the defendant pleaded that one M. H. was heir to S. B.; and that since her death he had paid rents to him. M. H. intervened, and pleaded that he had succeeded S. B., and was entitled to the rents. *Held* that as between the plaintiff and the third party the Judge was bound, under Act X of 1859, Section 77, to enquire into "the question of the actual receipt and enjoyment of the rent by such third person," and to decide the suit according to the result of such enquiry, and that he could not therefore simply dismiss the suit on the mere ground that the plaintiff had failed in establishing his claim. *Mirzah Thad Ali* v. *Mirzah Hingun*, Marsh., 50.

Suit against a ryot by the tenant of an ijaradar, whose rights had lapsed, and who had been ejected by due course of law. *Held* that in such a case neither the plaintiff nor the ijaradar could be considered, under Section 77, Act X of 1859, to have been *bonâ fide* in the receipt and enjoyment of the rents. *Ram Narain Singh* v. *Hurreeprea Chowdhrain*, 2 W. R., Act X R., 67.

Where a suit by the purchaser of an alleged lakheraj tenure for rent from his under-tenant was thrown out by the intervention of the superior landlord, under Section 77, Act X of 1859,—*Held* that all the plaintiff had to do in a regular suit brought by him in consequence, was to prove that he was entitled to the rent from the under-tenant. It was not necessary for him to prove that his land was valid lakheraj. *Raj Chunder Ghose* v. *Joy Chunder Dutt*, 12 W. R., 197.

A Judge has not jurisdiction in an appeal from the decision of a Deputy Collector under Section 77, Act X of 1859, in a suit for rent below Rs. 100, involving no question of title. *Poddomonee Dassee* v. *Krishnendro Roy Chowdhry*, W. R., Act X R., 94.

When a third party intervenes in a suit for rent according to Section 77, Act X of 1859, the *onus* of proving actual receipt and enjoyment of rent is on the intervenor and not on the landlord. *Kishen Chunder Doss* v. *Buratee Sheikh*, 2 W. R., Act X R., 36.

An appeal lies to the Judge in a suit for rent below Rs. 100, in which a third party intervenes under Section 77, Act X of 1859, if the Deputy Collector does not confine his enquiries to the mere fact of the receipt and enjoyment of rent, but enters upon the consideration of and decides various questions of title. *Moha Moya Chowdhrain* v. *Ramnath Chowdhry and others*, 6 W. R., Act X R., 1.

In a suit for recovery of arrears of rent a third party intervened, claiming a share of the rent, alleging that he had acquired a right under a decree of the Civil Court. A predecessor of the intervenor had been in possession of a share of the property; and after her death, which took place four years ago, no rent had been actually received and enjoyed by the intervenor.

Held that under Section 77, Act X of 1859, the claim of the intervenor could not be entertained; and that under this section the Court has no jurisdiction to decide the question of title. *Modhoosoodun Bagchi* v. *Rajah Mohes Chundra Singh*, 3 B. L. R., A. C., 202; 12 W. R., 62.

Rent paid to a third party, at the instance of the landlord, is not recoverable by the landlord a second time. Section 77, Act X of 1859, does not apply. *J. Smith* v. *Sheo Persad Singh*, 1 W. R., 254.

Where, in a suit for rent instituted under Act X of 1859, a third person to whom the defendant has in good faith paid the rents up to the commencement of the suit intervenes, under Section 77, the suit ought to be dismissed, notwithstanding the existence of an ikrar, by which the defendant agreed to pay the rents to the plaintiff. If the plaintiff is entitled to the rents he must establish such title in the Civil Court. *Prollad Singh and others* v. *Dhuroop Singh*, Marsh., 365.

Where tenants who are sued for rent plead payment to third parties who had always theretofore made collections, it is incumbent on the Revenue Court to proceed under Section 77, Act X of 1859, making such third parties parties to the suit, and determining whether rent has been paid in good faith to such third parties. *Jawahir and others* v. *Mussamut Lado and others*, 4 Agra Rep., 302.

When a plaintiff and the zemindar claim rent for the same land from the same tenant, the case comes under Section 77; and the point to be decided is, who was in *bonâ-fide* receipt and enjoyment of the rent up to the commencement of the suit.

In a case under Section 77, Act X of 1859, when the Deputy Collector wrongly goes into and decides questions of title which do not arise on the pleadings the appeal lies to the Judge. *Syud Jeshan Hossein* v. *Narain Doss*, 5 W. R., Act X R., 56.

The fact of an intervention under Section 77, Act X of 1859, having been disallowed in a former suit cannot exclude the party from intervening in a subsequent suit, if he can show that he had been in the *bonâ-fide* enjoyment of the rent previous to the institution of the suit. *Bhairo* v. *Sheikh Uzirali*, 3 B. L. R., A. C., 373.

Section 77, Act X of 1859, refers to cases in which two parties claim to receive the rent from the same ryot, not to cases in which the intervenor claims the rent from a ryot other than the ryot sued by the plaintiff. *Dhurm Lall Chowdhry* v. *Shumbhoo Chowdhry*, 12 W. R., 81.

Where parties have conflicting interests, Section 77, Act X of 1859, does not allow the title to receive rents to be tried in a rent suit, but reserves such

questions to be determined in a regular suit. *Ram Chunder Banerjee* v. *Sheikh Ekramollah*, 12 W. R., 153.

A mere order of dismissal for default of prosecution is not a decision within the meaning of the provision of Section 77, Act X of 1859. *Sheikh Mouzzum Ally* v. *Sheo Lall Jha*, 4 W. R., Act X R., 45.

No appeal lies from an order refusing to make an intervenor, under Section 77, Act X of 1859, a defendant in a rent suit. *Ajmeet Pattuck* v. *Ram Lugun Ajhee*, 12 W. R., 355.

In a suit to obtain a kubuleut the defendant admitted the plaintiff's title. A third party intervened (under Section 77, Act X of 1859), alleging that he was in the actual receipt and enjoyment of the rent.

Held that the *onus* was upon the intervenor to prove that he was *bonâ fide* in actual receipt and enjoyment of the rent, and not on the plaintiff to prove his possession. *Sheikh Baharulla* v. *Sheikh Magan*, 3 B. L. R., Ap., 61.

Section 77 of Act X of 1859 does not bar a right of appeal to the Judge in a suit for a kubuleut. *Golab Bebee* v. *Ruhmutoollah Manee*, 1 W. R., 33.

An intervenor under Section 77, Act X of 1859, has a right of appeal to the Judge in a suit for rent under Rs. 100 in which a question of title was determined by the Deputy Collector. *Chunder Kant Sircar* v. *Beerbul Puramanick*, 5 W. R., Act X R., 70.

In a suit for arrears of rent where plaintiff alleged himself to be proprietor of an 8-annas share, and a third party intervened, claiming to have been in possession and enjoyment of the rents of 4 annas out of the 8 annas, the Judge, in appeal, finding that neither plaintiff nor intervenor had been in possession and enjoyment of the 4 annas of the rent in dispute, dismissed plaintiff's suit.

Held that the Judge, having found against the intervenor as between him and the plaintiff, was bound, under Section 77, Act X of 1859, to decree for the plaintiff. *Phoolabutty Kooer* v. *Gossain Luchmun Doss and another*, 10 W. R., 81.

The words "the actual receipt and enjoyment of the rent" in the second part of Section 77, Act X of 1859, cannot mean the actual receipt irrespectively of the question of *bona fides* alluded to in the first part of the section. *Hurronath Roy* v. *Prannath Roy*, 7 W. R., 85.

In a suit for rent where the defendant pleads payment of rent to a third party as rightful heir and as in possession, and the third party intervenes and pleads to the same effect,—*Held* that, according to Section 77, Act X of 1859, the question of the actual receipt and enjoyment of the rent by the third party should alone be enquired into, and the suit decided according to the result of such enquiry. *Mirzah Zahid Ali* v. *Mirza Henjun*, W. R., F. B., 14.

No appeal lies to the Judge from a decision passed under Section 77 of Act X of 1859 in a suit for rent less than Rs. 100. *Syed Hameedooddeen* v. *Syed Moulvie Razeooddeen Ahmed*, 3 W. R., Act X R., 21.

A party who may fail in a case under Section 77 to show enjoyment and receipt of rent at the time of suit, may still have a good right and title to possession, capable of being duly declared by an independent action in a Civil Court for declaration of title and possession.

Under Section 77, Act X of 1859, limitation bars a civil action not brought within a year to set aside a decision under that section on a suit within the competency of a Revenue Court to decide; but it does not apply to suits which are alone cognizable by the Civil Court. *Kishen Coomar Shaha* v. *Jeebun Singh*, 5 W. R., Act X R., 85.

Section 77, Act X of 1859, does not apply to a suit for rent below Rs. 100, where the plaintiff's right to receive the rent is not disputed merely on the ground that the intervenors had actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, but where the ryot and the intervenors denied the title of the plaintiff and his vendor, and the ryot denied that he gave the kubuleut upon which the plaintiff was suing. *Gourdass Byragee* v. *Juggernath Roy Chowdhry*, 7 W. R., 25.

Act X of 1859 does not provide for an intervention by a third party under any other circumstances than those contemplated in Section 77, *i.e.*, only where the title to receive the rent is disputed. *Jogender Chunder Ghose* v. *Lukhee Ureea Dassee*, 8 W. R., 78.

When the right to receive the rent is not disputed in a suit between the landlord and the tenant, the event upon which Section 77 gives a third party the right to intervene does not arise. *Syed Mehdee Ali Khan* v. *Doorga Dass Shidanto*, W. R., 1864, Act X R., 72.

According to Section 77, Act X of 1859, in a suit for rent in which a third party intervenes, the only question for decision is whether the plaintiff or the intervenor is in the actual receipt and enjoyment of the rent. *Bebee Noor Jahan* v. *Mutty Lall Sahoo*, W. R., 1864, Act X R., 73.

Where an intervenor in a rent suit applies to be made a party under Section 77 of Act X of 1859, distinctly relying upon that section, it must be inferred that his case is that he has been in receipt and enjoyment of the rent before and up to the time of the commencement of the suit, and his petition should not be rejected because it does not contain the words "that he claimed to occupy and receive the rent." *Lachmi Narayan Puri* v. *Pukruj Singh*, 2 B. L. R., Ap., 16.

In a suit against ryots for arrears of rent of certain lands the appellant intervened, seeking to be added as a party under Section 77 of Act X of 1859, on the ground that his title to the lands in question had been declared by the decree of a Civil Court. *Held* (reversing the decision of the Collector) that the Deputy-Collector was right in limiting his enquiry to the question whether the lands in dispute were covered by the decree. *Bir Chandra Juburaj* v. *Madhut Kaibartu*, 2 B. L. R., A. C., 160.

Though the decision of a Deputy-Collector cannot under Section 77 determine a question of title, yet if no suit to determine the question of title be instituted in the Civil Court within a year, the decision of the Revenue Courts is not final beyond the extent of the rents sued for. *Sreemutty Jonokee* v. *Tukbun Singh*, 4 W. R., Act X R., 21.

Section 77 is applicable to decide who last received rents, and not when there is a conflict of title. *Mushentoollah* v. *Nassim Nusio*, 4 W. R., Act X R., 35.

In a suit to set aside as spurious a hibbanamah by which property otherwise the property of plaintiff would become the property of another,—*Held* that as there was no question of recovery of rent or mesne profits or anything else which could bring the case under Section 77, Act X of 1859, no plea of limitation either special or general could be taken. *Aratoonissa* v. *Akram Ali*, 14 S. W. R., C. R., 454.

In deciding a case under Section 77 of Act X of 1859 a Deputy-Collector determined a question relating to an interest in land as between parties having conflicting claims thereto.

Held (Turner, J., doubting) that an appeal lay under Section 153 of Act X of 1859 to the Zillah Judge. *Shunkur Lall* v. *Nunney*, 1, 7 N. W. R., 130.

The specific object of Section 77 of Act X of 1859 is to protect tenants from the expense and hardship of being impleaded in suits where the real issue is a question between rival claimants of the proprietary right.

The circumstance of a Court having jurisdiction to entertain a suit or an appeal does not give it jurisdiction to try and to determine in such suit or appeal a question which it is not competent to try at all. *Brooke* v. *Surubjeet*, 1 N. W. R., Par. 1, p. 30.

Section 78.

In calculating the fifteen days allowed for payment of arrears of rent by Section 78 of Act X of 1859, the day on which the decree was passed should be excluded from the computation. *Sheopalaul Singh* v. *Nabee Ashruf Khan*, 3 N. W. R., 342.

It is not necessary to declare in a decree given under Section 78 of Act X of 1859 that fifteen days' time should be allowed to the tenant. But the decree must specify the amount of the arrear, and payment of this, with costs and interest as decreed, within fifteen days, *ipso facto* stays execution. *Seetul Singh* v. *Thakoor Tewary*, 1 N. W. R., Par. 2, p. 31.

The provisions of the last clause of Section 78, Act X of 1859, apply to every suit in which ejectment of a ryot is sought on the ground that he has failed to pay rent. *Mahomed Hossein Khan* v. *Khusroo Fakeer*, 1 N. W. R., Par. 1, p. 44.

Where a plaintiff sued for arrears of rent, praying that if they were not paid defendant should be ejected, and the Deputy-Collector gave him a decree setting forth that the prayer was a proceeding under Section 78, Act X of 1859, and ordering that there should be such a proceeding to execute, the order was held to be an order for ejectment. *Shaik Gunnee Mahomed* v. *Bahooroollah*, 13 S. W. R., C. R., 240.

Where a judgment-debtor fails to invoke the protection of Section 78, Act X of 1859, against a decree-holder, he cannot afterwards in special appeal claim the fifteen days' time allowed under that section. *Choonee Mundur* v. *Chunder Lall Dass*, 14 S. W. R., C. R., 178.

Section 78 of Act X of 1859 contains a positive direction of law by which the Revenue Courts are required, in all suits for ejectment for non-payment of rent, clearly to specify in the decree the amount of rent default in payment of which has conferred a right of re-entry on the landlord, and to stay execution of their decrees if the amount found due, with interest and costs, be paid into Court within the time therein specified.

This overrides all private agreement to the contrary, or rather renders their enforcement by suit in the Revenue Court impossible. *Lulloo Singh* v. *Thakoor Pershad*, 2 N. W. R., 249.

A decree under Section 78 of Act X of 1859 not specifying the amount of the arrears of rent will be set aside. *Shah Ali Hossein* v. *Nandar Khan*, 2 N. W. R., 62.

Plaintiff sued defendant under Clause 5, Section 23, Act X of 1859, for direct or khas possession of a farm (for which the latter had paid a bonus), stating that the contract between them was that, on default in payment of the farming rent as per kistbundee, a suit was to be instituted for the arrears, and in execution of the decree the lease was to be forfeited, and the plaintiff, the lessor, entitled to enter upon khas possession, unless the amount was paid within 15 days. It was further urged that defendants, the lessees, had defaulted; that plaintiff had obtained decrees; and that defendants, having failed to pay within 15 days, had violated the lease, and were liable to be ejected. *Held* that the terms of the contract were in strict accordance with the provisions of Section 78, Act X of 1859, and that plaintiff ought to have brought his suit under that section, and obtained a decree for ejectment. From the date of such decree, specifying the amount of arrear, the lessors would have 15 days for payment. *Kashee Nath Roy Chowdhry and others* v. *Sabitree Soonderee Dossia and others*, 10 W. R., 156.

Under Section 78, Act X of 1859, a decree for ejectment must be conditional on the defendant not paying the decreed rent within 15 days. *Lauder* v. *Benode Lal Ghose*, 6 W. R., Act X R., 37.

Where a se-putneedar, under Section 78, Act X of 1859, dispossessed his ijaradar under a decree for arrears of rent, previous possession by a durijaradar, claiming under the defaulting ijaradar, was held to be no bar to the claim of the se-putneedar to obtain rents or kubuleuts direct from the cultivators of the lands of his se-putnee. *Aghore Chunder Mookerjee* v. *Nund Moochee and others*, 6 W. R., Act X R., 51.

After execution has once been taken out against a ryot, under Section 78, Act X of 1859, a Collector has no power to review his judgment, or put the ryot back into possession of his land. *Ram Jeebun Doss and another* v. *Doyallee Dossee*, 11 W. R., 246.

Where a Deputy Collector, who had decreed a suit for ejectment on proof of arrears due, held afterwards in execution that as the arrear had been paid up within 15 days, the tenant could not be ejected in accordance with Section 78, Act X of 1859, his order in execution was declared to be *ultra vires* and illegal. *Deen Dyal Poramanic* v. *Ramcoomar Chowdhry and others*, 10 W. R., 345.

The latter part of Act X of 1859, Section 78, which enacts that "in all cases of suits for the ejectment of a ryot, or cancelment of a lease, the decree shall specify the amount of arrears; and if such amount, together with interest and cost of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed," applies not only to suits for ejectment of the ryot, or cancelment of the lease, on account of the non-payment of arrears of rent, but to all suits for eject-

ment brought by the lessor on account of a breach of the conditions of his lease by the defendant. *Fitzpatrick* v. *Gowan*, 1 Ind. Jur., N. S., 420; S. C., 6 W. R., Act X R., 64.

Where in a suit for the rent of the current year and for ejectment under Section 78, Act X of 1859, supported by a previous unsatisfied decree, a decree was passed for the rent of the current year without including the amount claimed under the previous unsatisfied decree, and the plaintiff neither applied to the lower Court to amend its decree nor appealed against that part of it,—*Held* that the defendant, having paid the amount of arrear specified in the decree had saved himself from ejectment. *R. Savi* v. *Mohesh Chunder Bose*, W. R., Act X R. (1864), 29.

A tenant who has not wilfully broken any of the essential stipulations of his covenant, or has not injured his lessor's property, may be entitled to the benefit of Section 78, Act X of 1859, and allowed to bar forfeiture of his tenure by paying in the amount of arrears decreed against him within 15 days of the date of the decree. *Dulli Chand and others* v. *Meher Chand Sahoo and others*, 8 W. R., 138.

Section 78, Act X of 1859, applies equally whether the ryot's liability to be ejected arises under Section 21 of that Act, or under special stipulation in the contract between him and his landlord. *Sheikh Mahomed Hossein and another* v. *Boodhun Singh, alias Roopnarain Singh*, 7 W. R., 374.

Execution may be stayed on a decree for arrears of rent by payment of the amount, under Section 78, Act X of 1859, by a purchaser from the tenant of his interest in the terms. *Sarodapersad Roy Chowdhry* v. *Nobinchunder Dutt*, Marsh., 417.

Section 78 of Act X of 1859 authorizes the joinder of a claim for rent in an ejectment for non-payment of rent. *Held* that the section does not empower a landlord to eject his tenant for non-payment of rent due in the middle of the Bengalee year, but that an ejectment for such defendant is maintainable only for arrears due at the end of the year under Section 21. *Sadi* v. *Chaund Sickdar*, Marsh., 348.

In a suit under Act X of 1859, Section 78, for ejectment against A., on the ground of non-payment of rent, B. has no right to intervene and be made a defendant on the allegation that he is really tenant of the land in question. *Mills* v. *Sheikh Shalim*, Marsh., 374.

An eviction by the Collector in consequence of a suit brought by the zemindar under Section 82, Act X of 1859, if it be proved to have been fraudulent and collusive, is illegal and remediable under that Act. *Amrit Lall Banerjee* v. *Bhoobun Mohinee Dassee and others*, 7 W. R., 24.

Section 92.

A rule having been issued calling on a judgment-debtor to show cause why an order of the Collector in appeal, reversing an order made by a Deputy Collector in execution, should not be set aside, the rule was discharged with costs, inasmuch as although the Collector had no jurisdiction to make the order which he made, the Deputy Collector's order was wrong, being a violation of the provisions of Section 92 of Act X of 1859, and could not be upheld. *Tarachaund Mundle* v. *Bhyrub Chunder Chuckerbutty*, 15 S. W. R., C. R., 551.

The meaning of Section 92, Act X of 1859, is that no execution shall issue upon a decree, unless a proper application for execution be made within three years from the date of decree. *Heralall Seal and others* v. *Pooran Matteah and others*, 6 W. R., Act X R., 84.

Under Section 92 of Act X of 1859 no process of execution for a sum not exceeding Rs. 500 can issue after the lapse of three years from the date of judgment. *Prosunno Coomar Surma Chowdhry* v. *Ram Mohun Sircar*, 3 W. R., Act X R., 131; *Chooramun Singh* v. *Chotoorsal Singh*, 4 W. R., Act X R., 27.

An application for the execution of a decree under Act X of 1859 cannot be complied with under Section 92 after the expiry of three years from the date of the decree, on the ground of intermediate applications and proceedings in execution. *Bimola Debia Chowdhrain* v. *Nilkunt Sein*, 3 W. R., Act X R., 157.

Sections 103—110.

Sections 103 of Act X and 209 of Act VIII of 1859 give no authority to a Judge to receive an appeal from an order passed by a Collector in execution of a decree under Act X. *Chunder Koomar Roy* v. *H. Mackenzie*, 3 W. R., Act X R., 10.

A person making voluntary payments in his own name to stay a sale in execution of a decree against others cannot sue under Section 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. *Mirza Hahim Abdool Wahab* v. *G. Drummond*, 2 W. R., Act X R., 48.

Section 104, Act X of 1859, does not enact that the decree-holder is to pay damages whenever it may be found that there has been an irregularity in publishing the sale processes, wholly irrespective of the question whether such irregularity was caused by his acts or omissions. *Ramchunder Surma* v. *Rajah Kallychurn Singh and others*, 7 W. R., 307.

In a sale for arrears of rent under Section 105, Act X of 1859 (not affected by Section 16; Act VIII of 1865, B. C.), the sale is not free of encumbrances created by the defaulter before the sale, unless the right of selling or bringing to sale the tenure for an arrear of rent has been especially reserved by stipulation in the engagements interchanged on the creation of the tenure. *Shahabooddeen* v. *Futteh Ali and another*, 7 W. R., 260.

Where a decree-holder was only a sharer in a joint undivided estate, and the property sold was a share in a gantee tenure, the sale did not take place under Section 105, Act X of 1859, but under Section 108, under which latter section only the rights and interests of a defaulter can pass. *Meertoonjoy Chowdhry* v. *Khettur Nath Roy*, 5 W. R., Act X R., 71.

No appeal lies from an order under Section 105, Act X of 1859, directing the sale of the judgment-debtor's tenure in execution of a decree for rent. *Bhagiruttee Dassee* v. *Ranee Surnomoye*, W. R., 1864, Act X R., 131.

In sales under Section 105, Act X of 1859, the tenure itself is held free of all encumbrances, whereas in sales under Section 110 only the rights and interests of the defaulter are sold. *Ramjeebun*

Chowdhry v. *Peary Lall Mundle*, 4 W. R., Act X R., 30.

The right to make payments to preserve an interest, and to recover the sums paid, is not given in the case of gantee jummas and other transferable tenures sold for arrears of rent under Section 105, Act X of 1859; when such payments are neither expressly nor impliedly authorized, they must be regarded as voluntary payments, for the recovery of which no action will lie. *Sreenath Haldar* v. *Ram Soondur Chuckerbutty*, 4 W. R., S. C. C. Ref., 4.

The Full Bench Ruling that a sale for arrears of rent, under Section 105, Act X of 1859, is not free of encumbrances created by the defaulter before the sale, unless the right of selling has been finally reserved, does not apply to a case where the tenure itself was not sold. *Doorga Soondery Debee* v. *Dinobundhoo Kyburto Doss and others*, 8 W. R., 475.

In sales under Section 105, the tenure itself is held free of all encumbrances, whereas in sales under Section 110 only the rights and interests of the defaulter are sold. *Ramjeebun Chowdhry* v. *Pearyloll Mundul*, 4 W. R., Act X R., 30.

When the tenure of a tenant admittedly in possession is sold under Section 105, Act X of 1859, he has no right to sue for the reversal of the sale; but when a party alleges that he is the tenant, and that the person against whom the Act X suit was brought was not the tenant in possession, he has a right to bring his action in the Civil Court to set aside the sale alleged to have been procured by fraud, or to restrain the defendants from availing themselves of rights acquired by such sale. *Gungadass Dutt* v. *Ramnarain Ghose and others*, 7 W. R., 183.

Under Section 105, Act X of 1859, an under-tenure may be sold in execution of decree, provided there be an arrear of rent adjudged. *Maharajah Sutteeschunder Roy Bahadoor* v. *Modhoosoodun Paul Chowdhry*, W. R., 1864, Act X R., 91.

A sale of an under-tenure for arrears of rent under Section 105 of Act X of 1859,—*Held* that a sale is free from encumbrances only where a right of sale for arrears of rent has been specially reserved in the engagements interchanged on the creation of the tenure. Section 16 of Act VIII of 1865 of the Bengal Council applies only to purchasers of under-tenures sold under that Act. *Shahabooddeen* v. *Futteh Ali and others*, 2 Ind. Jur., N. S., 135.

A zemindar who has obtained a decree against a registered tenant for arrears of rent is fully justified in proceeding to sale under Section 105 of Act X of 1859, notwithstanding the tenure was purchased subsequently to the date of the above decree at a sale in execution of a decree of the Civil Court. *Mussamut Sufuroonissa* v. *Saru Dhoopee*, 8 W. R., 384.

A. let an under-tenure to B., which under-tenure was sold for arrears of rent under Section 105, Act X of 1859, and bought in by A. On proceeding to take possession A. found that C. had trespassed upon the under-tenure during B.'s tenure, and had held possession for more than twelve years. A. sued to recover possession of the under-tenure, and it was held by the Senior Judge of the Division Bench (Bayley, J.) that A.'s cause of action was the act of dispossession by C., and that the suit was barred, more than twelve years having elapsed; and that A.'s right to sue was not affected by the fact that B.'s tenure was still running. The Junior Judge (Phear, J.) held that the suit was not barred; that the cause of action to A. accrued when he obtained back the property at the auction sale; and that during the period of encroachment the cause of action did not arise to B., and pass from B. to A. during the time the putnee lasted, the putnee entirely disappearing in the superior title of zemindar vendee. *Held* by the Appellate Court, in confirmation of the view of Phear, J., that the cause of action to A., who was a purchaser of an estate free from incumbrances against C., who was a trespasser, and had encroached on B., the defaulter, must be taken to accrue at the same time as his, A.'s, right to turn out under-tenants of the defaulter —*viz.*, from the time of the purchase of the tenure of the defaulter; and the fact that A. was both talookdar and purchaser did not prevent him from exercising the same rights as any other purchaser would be entitled to. *Woomesh Chundra Goopto* v. *Rajnarain Roy*, 10 W. R., 15.

A Civil Court has jurisdiction to entertain a suit by a tenant to recover possession of a tenure from an auction-purchaser at a sale for arrears of rent, under Section 105 of Act X of 1859, although there is no allegation of fraud, the tenant not having been a party to the decree for arrears of rent.

In a sale under Section 105, Act X of 1859, only the judgment-debtor's property can pass. A zemindar is bound to sue the actual tenant when known to him, though the tenant's name has not been registered in his sherista. There can be a legal and valid recognition by a landlord of the vendee of a saleable under-tenure as tenant, notwithstanding that no mutation of names has taken place in his books. *Meah Jan Munshi* v. *Kurruna Mayi Debi*, 8 B. L. R., 1.

In executing a decree for arrears of rent a Court, under Section 105, Act X of 1859, has power only to seize and sell that which at the time is the property of the judgment-debtor. Where therefore a decree was obtained against persons who were originally part proprietors of the land, but who at the time of the decree and subsequent sale had ceased to have any interest therein, the purchaser at the sale in execution of such decree took nothing. *Dowlut Gazee Chowdry* v. *Moonshee Munwar*, 15 S. W. R., C. R., 341.

A person who did not appear as a third party in a rent suit is not debarred from all remedy under Section 106, Act X of 1859, if he has been really wronged. *Fukeer Chund Aych* v. *Rokeemunissa*, 5 W. R., Act X R., 50.

Sections 106 and 107, Act X of 1859, apply only to cases in which the existence of the under-tenure and the decree-holder's right as landlord are admitted, not where they are denied and an adverse proprietary title is set up by the claimant as owner of the land.

The remedy open to the owner of the land in such a case is under Section 77 before the decree is made, but after he allows it to be made he cannot have it set aside in execution. *Golam Chunder Dey* v. *Nuddiar Chand Adhakara*, 16 S. W. R., C. R., 1.

Where an under-tenure was sold in execution for arrears of rent due in respect of such under-tenure, and A. did not before the sale appear, under Section 106 of Act X of 1859, to urge his claim before

the Collector,—*Held* that A.'s right to bring an action in the Civil Court to set aside the sale was not affected by the provisions of Section 107. *Gungadhur Dutt* v. *Ram Narain Ghose*, 1 Ind. Jur., N. S., 111.

In the sale of a putnee tenure for arrears of rent, effected under Section 108, Act X of 1859, the tenure passes free of incumbrances, or not, according as it would have passed had the sale been effected under the provisions of any law in force at the time of passing of Act X. *Brindabun Chunder Chowdhry and others* v. *Brindabun Chunder Sircar Chowdhry and others*, 8 W. R., 507.

The owner of an under-tenure may sue in the Civil Court for a declaration that the sale of his under-tenure under Act X of 1859 was illegal and void under Section 108 of that Act, and that he is entitled to possession of the land in suit notwithstanding such illegal sale. *Shuroop Chunder Bhuttacharjee* v. *Kasheeshuree Dossia and others*, 6 W. R., Act X R., 55.

When a purchaser of a house sold under Section 110, Act X of 1859, is referred by a Collector to a regular suit to obtain possession, and the value of the property exceeds Rs. 100, the appeal from the Collector's order lies to the Judge. *R. Solano* v. *Bulbhudhur Singh*, W. R., 1864, Act X R., 51.

A suit to set aside a sale in execution of a Civil Court's decree of a saleable under-tenure other than that from which the arrears of the rent were due, is not barred by Section 151, Act X of 1859. The provisions of Section 110, Act X of 1859, are applicable in such a case; and a party whose objection under Section 111 is overruled has a right to bring a suit in the Civil Court. *Juggessur Suhye* v. *Gopal Lall and another*, 11 W. R., p. 260.

Section 110, Act X of 1859, does not apply to the procedure by which parties obtain a remedy for an improper sale, and has no reference to Section 256, Act VIII of 1859. *Anund Mohun Surmah* v. *Grija Kant Lahoory*, 13 S. W. R., C. R., 222.

Sections 140--163.

The word "Collector," as used in the proviso of Section 140, Act X of 1859, must be taken to mean the Collector or Deputy-Collector who makes the final decision, from which the limitation of one year for suing in the Civil Court to establish title will begun to run. *Gooroodoss Gangooly* v. *Gobind Chunder Bhooya and others*, 6 W. R., Act X R., 102.

No appeal lies to the Judge from the decision of a Deputy-Collector in a suit brought to contest the right to distrain for arrears of rent property valued below Rs. 100, in which a third party intervened under Section 140, Act X of 1859, and claimed the right to distrain, on the ground that he had been actually and in good faith in the receipt and enjoyment of the rent of the land up to the time of the commencement of the suit, and in which any remarks which the Deputy-Collector may have made on the evidence of title which one of the parties chose to lay before him, are in no sense whatever a determination of a question of title. *Shadhoo Churn Burah Surburakar* v. *Brojo Satra and others*, 7 W. R., 108.

When a zemindar distrains the crop of a piece of land, and two different parties each claim to be the tenant of it, neither of them is barred by the limitation laid down in Section 140, Act X of 1859, which only applies to the case of two rival zemindars claiming the rent of the same piece of land. *Prankissen Roy* v. *Kistomonee Debea*, W. R., 1864, Act X R., 70.

When a suit has been brought under Section 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court is not competent to award damages for vexatious distraint. Such damages are properly awarded by the Collector under Section 138, in a suit to contest the distrainer's demand. *Nonkoo Ram* v. *Woojogur Roy*, 5 W. R., Act X R., 68.

The Sections of Act X of 1859 (Sections 139, 142, and 143) which relate to distraint, and the power to distrain, discussed. *Joyloll Sheikh* v. *Brojonath Pal Chowdhry*, 9 W. R., 162.

Certain sub-lessees sued in the Collector's Court the zemindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. The Collector gave plaintiff a decree, which was upheld by the Judge. The defendants appealed only on the point of jurisdiction.

Held that the suit was properly brought in the Collector's Court; that Sections 142 and 143 of Act X of 1859 applied to the case. Section 143 contemplates not only the case of a person who professes to follow the provisions of the law, though he has no power to distrain; but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons are considered by that section as trespassers, and are liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. *Radha Mohan Naskar* v. *Jadunath Dass*, 3 B. L. R., A. C., 261.

A suit for recovery of damages, by reason of wrongful distraint, is not cognizable by the Civil Court, but is cognizable by the Collector under Section 143, Act X of 1859. *Ram Chundra Chowdhry* v. *Subal Patro*, 3 B. L. R., Ap., 74; 11 W. R., 539.

Section 143 will not apply when a distrainer acts without the authority of the superior holder. *Sheikh Roushun* v. *Bholanath Doss*, 5 W. R., Act X R., 67.

A. distrained the paddy of B., alleging that it belonged to C., who was A.'s ryot. It was found that there was no relation of landlord and tenant between A. and B., and that C. was acting in collusion with A. B. attempted, under Section 139, Act X of 1859, to get possession of the distrained paddy from D. and E., to whose custody it had been made over under Section 118 of Act X of 1859, but was unsuccessful. B. now sues A., C., D., and E. for damages in the Small Cause Court.

Held that this suit is one falling either under Section 139 or Section 143 of Act X of 1859, and comes under Section 23 of that Act, and is not cognizable in a Small Cause Court, but only by a Revenue Court. *Joy Lall Sheikh* v. *Brojonath Paul Chowdhry*, 9 W. R., 162.

Where a distrainer acts without the authority of the superior holder, Section 143, Act X of 1859, will not apply, but the acts of the distrainer are those

of a trespasser, for which he may be sued for damages in the Civil Court. Nor will Act X apply in a case where the distrainer is the agent of a person between whom and the defaulting tenant the relation of landlord and tenant does not subsist. *Sheikh Roushun* v. *Bholanath Dass*, 5 W. R., Act X R., 67.

In order to maintain a suit under Section 143, Act X of 1859, the plaintiff must prove that the defendant in making the distress was acting not only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. *Raye Kumal Dossee* v. *Jhoroo Mollah*, 15 S. W. R., C. R., 543.

A complaint under Section 145 of Act X of 1859 is not a suit, and does not fall within the description of the suit in which, under Section 160, an appeal is given to the Zillah Judge. *Amanutullah, in the matter of the petition of*, 6 B. L. R., 569, and 15 S. W. R., C. R., 136.

The time limited by Act X of 1859, Section 144, for suing in respect of distraints for rent, "namely three months from the date of the occurrence of the cause of action," is to be reckoned, in the case of a suit for a wrongful distress afterwards abandoned, from the abandonment of the distress, and not merely from the date of the original seizure. *Thukree Roy* v. *Heeramun Singh*, Marsh., 470.

Section 151, Act X of 1859, bars a regular suit by a judgment-debtor to set aside a sale in execution of a decree for arrears of rent. No appeal lies from an order of a Collector passed after decree and relating to the execution thereof. *Ruttunmonee Dassee* v. *Kallekishen Chuckerbutty*, W. R., F. B., 147.

A suit by an unregistered holder will lie in a Civil Court to set aside the sale of a tenure sold in execution of a decree for rent under Act X of 1859, after the money due upon the decree was deposited, Section 151 of that Act notwithstanding. *Sheikh Afzul Ali* v. *Lalla Gurnarain and others*, 6 W. R., Act X R., 59.

According to Section 152, Act X of 1859, the appeal from an order of a Deputy Collector must be presented within 15 days. The Collector has no power to extend the time for appeal, as provided by Section 333, Act VIII of 1859. *Kalee Kishore Paul* v. *Monee Ram Singh*, 5 W. R., Act X R., 46.

The proper construction of the word "revision" in Section 151 is not review, but such revision as the Board of Revenue and Commissioners as superior officers exercise over the proceedings of the Collectors and Deputy Collectors, or the High Court over the lower Courts under Section 404 and 405, Criminal Procedure Code. *Radha Pershad Singh* v. *Sansur Roy*, 14 S. W. R., C. R., 27.

In a suit for arrears of rent a question arose respecting the right to convert a money rent into a rent payable in kind. *Held* that such a suit is one in which a question of the right to vary the rent of tenant is to be determined in the sense of Section 153 of Act X of 1859, and as such, if heard by the Deputy Collector, is appealable to the Zillah Judge, and not to the Collector. *Elahee Buksh* v. *Syud Jaffur Aly*, 1, 5 N. W. R., 109.

No appeal is given by Section 153, Act X of 1859 in a case in which a landlord sues a person as tenant who repudiates the tenancy without denying the landlord's title. *Eshan Chunder Ghossal* v. *Burno Moyee Dassee*, 16 S. W. R., C. R., 233.

The words "otherwise vary" in Section 153, Act X of 1859, are meant to include abatement claimable by the ryot; and this reservation is made in respect of questions of right to vary the rent, whether raised by the landlord or by the tenant. *Anund Chunder Deghee* v. *Nubocoomar Chatterjee*, 8 W. R., 192.

In a suit for arrears of rent, and for ejectment and damages, in which the agent of the plaintiff amplified the claim by stating specifically that the suit for ejectment was brought under Section 78 of Act X of 1859, and no question was raised as to jurisdiction by the defendants, who lost the case,—*Held* that the suit involved a claim under Section 78, and that an appeal would lie under Section 153. *Trilochun Chunder Roy* v. *Kemul Manjhee*, 12 W. R., 213.

Section 153 does not apply merely to questions of proprietary title and interest in land accruing from that title, but applies also to conflicting claims of ryots, *e.g.*, as to which of two ryots is the cultivator or has jotedaree right. *Juggeshur Bhuttacharjee* v. *Juggobundo Nundee*, 3 W. R., Act X R., 14.

Sections 153 and 160 do not apply so as to affect the right of appeal to the Judge in a suit for a kubuleut under Clause 1, Section 23. *Bamasoonduree Debia* v. *Grishchunder Banerjee*, 3 W. R., Act X R., 138, and *Sheikh Ali Buksh* v. *Rubjee Mundul*, 4 W. R., Act X R., 32.

When a se-putneedar sues a ryot for rent, and the dur-putneedar intervenes, alleging that he only is entitled to collect the rent, the decision will be on a question of right to land between parties having conflicting claims thereto; and consequently, under Section 153, Act X of 1859, an appeal will lie to the Judge. *Ramjeebun Chowdhry* v. *Peary Lall Mundle*, 4 W. R., Act X R., 30.

Held that where a proprietary title is pleaded in respect to land whereof rent is claimed, it can be adjudicated upon by the revenue authorities, who, so far from being prevented by law from taking cognizance of such pleas are competent to dispose of all such pleas when raised in bar of a claim for rent, as is evident from Section 153, Act X of 1859. *Kashee Ram* v. *Mendee Singh*, 2 Agra Rep., R. A., 8.

Held that the Judge has no jurisdiction to hear an appeal from a decision passed by the Collector in regular appeal.

Held, further, that the Collector had no jurisdiction to hear an appeal from the decision of the Deputy-Collector, in reference to the provisions of Section 153, Act X of 1859. The High Court has, under Section 35, Act XXIII of 1861, power to cancel such decisions as are passed without jurisdiction. *Mohesh Pandey* v. *Baldut Pandey*, 4 Agra Rep., R. A., 11.

An appeal lies under Section 155, Act X of 1859, to a Collector from the decision of a Deputy-Collector under Clause 4, Section 23. *G. R. Barry* v. *Dwarkanath Biswas*, 3 W. R., Act X R., 4.

In a suit for ejectment, whether under Clause 5, Section 23, or under Section 78 of Act X of 1859, an appeal lies to the Judge under Section 160. *Kaleebur Opadyah* v. *Aynoodeen Mundul*, W. R., 1864, Act X R., 83.

Under Section 161, Act X of 1859, when read together with Section 333 of Act VIII, it is in the discretion of a Judge to allow an appellant a deduction for the time during which the appeal was before a Court without jurisdiction.

In computing the period of limitation as to suits under Act X of 1859, no deduction is allowed for pendency of suit in a Court without jurisdiction. *Modhoosoodun Mojoomdar* v. *Brojonath Koond Chowdhry*, 5 W. R., Act X R., 44.

The words "revenue office of the district or subdivision," used in Section 162 of Act X of 1859, as the place where a suit for rent is to be instituted, mean, not the office where the revenue is paid, but the office of the revenue officer of the district or subdivision where the greater part of the lands, in respect of which the rent is claimed, is situate. *Kazee Abdool Huq* v. *Azeemoonnissa*, 3 W. R., Act X R., 12.

A suit for enhancement is liable to be dismissed if brought in Jessore in respect of lands situated in Fureedpore. Under Section 163, Act X of 1859, a Collector cannot issue a notice of enhancement in respect of lands not situate within his jurisdiction. *Mothoora Nath Koondoo* v. *R. C. Bell*, 2 W. R., Act X R., 71.

XXII.

JOINT INTERESTS IN LAND AND EASEMENTS.

I.—JOINT AND MISCELLANEOUS INTERESTS IN LAND.

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1.—RIGHTS OF CO-SHARERS.

Where at the time of settlement it was arranged that one co-sharer should make the collections and other co-sharers should receive money allowance, and such arrangement was to last for the term of settlement only,—*Held* that after the expiry of the settlement such co-sharers were, if the revenue authorities thought fit, entitled to be allowed to engage for their shares. *Koonwer Singh* v. *Shib Dyal and others*, 3 Agra Rep., 297.

If by arrangement the shares of certain co-sharers are left in the possession of other co-sharers during the period of the current settlement, the fact that the former have not received profits for 12 years during which the settlement continues is not sufficient to debar them from asserting their claim when the settlement expires. *Toolseeram and others* v. *Nahur Singh and others*, 3 Agra Rep., 271.

The Government revenue payable by each co-sharer's portion of a mehal held by several persons may not be separate and specifically defined, yet one co-sharer may be entitled to recover from the others an ascertainable portion of the total jumma which he was obliged to pay to Government for the whole mehal. *Bhoop Narain Sahoo* v. *Meer Mahomed Hossein*, 4 W. R., 60.

If a co-sharer pays the Government revenue in respect of another share, and sues and obtains a decree against one of several persons interested in that share, and sells the share in execution of that decree, the interests of the other persons not sued are not affected by a decree to which they were not parties, or by a sale which did not profess to bind their interests. *Sath Buthee Dossee* v. *Mutthungeenee Dossee*, 2 W. R., 38.

When co-sharers who have paid their share of revenue assessments are made defendants in a suit for contribution, together with other co-sharers, whose proportion was paid by the plaintiff, the defendants who have paid are entitled to their costs of appearing, &c., notwithstanding that the plaintiff may have made no claim against them, but has joined them merely for the sake of conformity. *Golam Ahmed Shah* v. *Behary Lall*, Marsh., 239.

If one of two or more joint partners refuses to sue

jointly with his co-sharers he may be made a defendant; and when once all concerned on both sides are parties to the suit the Court has power to do full justice between them. *Juggodumba Dossee* v. *Haran Chunder Dutt and others*, 10 W. R., 101.

Long possession under an authentic pottah from one sharer, without interference or disturbance from the others, legally warrants the inference that the grantor had authority to bind his co-sharers. *A. Hills* v. *Aradhun Mundul*, 10 W. R., 389.

The Court laid down what was considered a fair principle in assessing a co-sharer's share of the Government revenue paid for the whole estate to save it from sale. *Juggobundoo Roy* v. *Fyz Buksh Chowdhry*, 8 W. R., 166.

The purchaser of a fractional part of an entire estate, subject to a charge, is liable singly to satisfy that charge out of the portion of the property in his possession. *Prosonno Coomar Mozoomdar* v. *The Rev. B. F. X. Barbosa*, 6 W. R., 253.

Plaintiffs sued all their co-sharers, several of whom absented and allowed judgment to go by default. *Held* that the question for the Court to try was whether the plaintiffs had proved their title to the shares they claimed, and not as to the share of one of the defendant co-sharers as between him and the remaining co-sharers, several of whom did not prefer any claim at all. *Chowdhry Kumaloodeen Jha and others* v. *Sreekishen Thacoor and others*, 6 W. R., 94.

When a plaintiff claims over-payments from his co-sharers, and they plead other payments by themselves, the Court ought to go into the whole account between the parties, strike a balance, and decree accordingly. *Gooradharee Singh* v. *Honooman Singh*, W. R., 1864, 93.

The legal position of co-sharers in an estate occupying separate portions in it is that each possesses and holds, in respect of his several right, to enjoy that which is his own.

If one holds a portion larger than his share the inequality may be rectified by a partition, or if a dispute arise on a division of the annual profits it may be adjusted in a suit for an account, but such a suit is not cognizable under Act X of 1859. *Kalee Persaud* v. *Shah Lutafut Hossein*, 12 W. R., 418.

A co-sharer can only sue such persons in the Revenue Court, under Clause 2, Section 1, Act XIV of 1863, as are appointed or entitled by custom to make the collections of rent on behalf of the proprietary body of the estate or any part thereof, and who are bound to pay the revenue and village expenses, and to account to co-parceners for receipts and expenditure as their representatives. *Sree Kishen and others* v. *Eshree Purtaub Rai and others*, 2 Agra Rep., 299.

Section 23, Act X of 1859, is not applicable to a suit in which the plaintiff claims as entitled to a moiety of the rent of certain land in the possession of his co-sharer. *Mittunlal Sahoo* v. *Sheikh Nadun*, 1 W. R., 53.

An owner of a fractional share of an undivided estate, as to whose share there is no doubt, can sue for his share of the rents. *Mohammed Singh* v. *Mussamut Mughy Chowdhrain*, 1 W. R., 253.

Until a partition takes place a co-proprietor of a talook is entitled to partake in the joint possession of all the land which was held khas by the co-sharers, or which would be now so held by them if they had not granted a lease. *Bromo Moyee Debia* v. *Raj Chunder Roy*, 5 W. R., Mis., 15.

Where a village was in arrear through the deficiency of a former lumberdar, and the plaintiff, having purchased at auction the share of the lumberdar, and not his right and liabilities, had to pay the revenue to save the estate,—*Held* that the plaintiff has a right to call upon his co-sharers to contribute their quota of Government revenue, the co-sharers' remedy being against the defaulting lumberdar. *Fuzul Ali and others* v. *Jumna Doss and others*, 1 Agra Rep., A. C., 229.

A. sued B. for possession of certain land on which B. had erected a building, on the allegation that it belonged jointly to them, as well as for removal of the building from the land. It was found, as a fact, that the land was held jointly by A. and B.

Held that B. had no right to do anything which altered the condition of the joint property without the consent of his co-sharer, and it was rightly ordered that B. should remove the building from the land. *Guru Dass Dhar* v. *Bijaya Gobinda Bural*, 1 B. L. R., A. C., 108; 10 W. R., 171.

Payment to one of several joint proprietors is a payment to all. *Oodit Narain Singh* v. *H. Hudson*, 2 W. R., Act X R., 15.

A temporary arrangement among joint owners by which one of their number is allowed to hold a portion of the joint property on payment of a certain sum of money, does not convert the occupier into a ryot holding at a fixed rent, or entitle him to the benefit of the presumption under Section 4, Act X of 1859. *Roghoobun Tewaree* v. *Bishen Dutt Dobey*, 2 W. R., Act X R., 92.

From the mere fact of an old factory being allowed to remain joint at the time when the rest of the joint property was partitioned, it is not to be inferred that the shareholders agreed to continue to work that old factory, or that they agreed never to raise any new factories. *Mussamut Rambuddun Koer* v. *Gopal Singh*, 8 W. R., 86.

A shareholder in a joint family house has an absolute right to the extent of allowing him to partition off his own specific share in every single part of the premises. *Isshan Chunder Banerjee and others* v. *Nund Coomar Banerjee and others*, 8 W. R., 239.

The fact of joint property standing on the Collector's register in the name of the elder brother is no slur on the younger, and no ground for a suit on the part of the latter for declaration of title. *Gopee Lall* v. *Mohunt Bhugwan Doss and others*, 12 W. R., 7.

Although in the case of joint family property, it may not be necessary for the lender of money upon zur-i-peshgee, or for the purchaser of an estate which is actually sold, to see to the application of the purchase-money, it is necessary for him to make due enquiry as to the necessity to borrow or sell. *Mussamut Nowruttun Cooer* v. *Gouree Dutt Singh and others*, 6 W. R., 193.

Where a joint family property was sold in order to raise money to redeem other property which had been mortgaged, and was about to be foreclosed, and there was nothing to show that the transaction was not for the benefit of the family, the sale was declared to be good and it was held that as

a large sum was due on the mortgage, the purchaser was not bound to enquire into the original necessity for giving the mortgage.

The rule that only so much of the property should be sold as will meet the necessity does not apply to cases where the excess is small, or where the money really required cannot otherwise be raised. *Luchmeedur Singh* v. *Ekbal Ali and others*, 8 W. R., 75.

In a sale of the rights and interests of one member in a joint family property, the purchaser obtains no more than that member's share in the property. *Sreepershad Surmah Bhuttacharjee* v. *Shuroopa Dossia and others*, 9 W. R., 452.

Held by the majority of the Court (Jackson, J., dissenting) that the existence of joint family property being admitted, the presumption was that all acquired property belonged to the family, and that the *onus* was on the defendant in this case, who set up a plea of self-acquisition, to prove that the joint estate was so small that, after providing for the maintenance of the family, nothing remained to form a fund for the purchase of other properties for the benefit of the joint family. *Tarachurn Mookerjee* v. *Joy Narain Mookerjee*, 8 W. R., 226.

Where rent, whether payable in money or in kind, to one person or several, is rendered under an entire contract or obligation, it is not competent for one of several co-sharers to bring a suit to enhance his portion of such rent.

The fact of the claimant making the other co-sharers parties, defendants, in the suit cannot alter his rights, and there being a common interest in all the co-sharers one of the number cannot proceed as if his rights were separate and distinct. *Mahomed Said-ood-deen* v. *Mahomed Hossein*, 2 N. W. R., 438.

Where land is held jointly and there is no partition, one part-owner cannot insist on the ejectment of a person who has been holding under the other part-owner for 16 or 17 years. *Bissessur Kurmoker* v. *Juggobundoo Kurmoker*, 14 S. W. R., C. R., 183.

Although one co-sharer cannot eject a tenant from a holding in an undivided estate in which the tenants are tenants of the whole body of co-sharers, yet a co-sharer is entitled to sue to set aside an alienation made by a tenant to a stranger without consent of the zemindars. *Sobha Ram* v. *Gunga Pershad*, 2 N. W. R., 260.

In a suit to recover a share of a holding, the whole of which had been sold in execution of a decree for arrears of rent, the plaintiff who claimed to hold a divided portion of the tenure was held bound to prove either that such division had been recognized and ratified by the zemindar or that the latter received rent from him, *i.e.*, he would have to prove his *status* as tenant in respect of the share in question. *Hurhur Singh* v. *Mussamut Ooma Kooer*, 16 S. W. R., C. R., 93.

A co-sharer in landed property has no right to do anything which alters the condition of the joint-property without the consent of the other co-sharers.

To build a factory on such property only upon a title derived from one co-sharer without the consent of the others, involves an infringement of the rights of those co-sharers, and this infringement involves an injury. *F. H. Holloway* v. *Mahomed Ali*, 16 S. W. R., C. R., 140.

A tenant's liability to pay his jumma to the party entitled cannot be split up without his consent, so as to make him liable to pay fractional portions of rent to different sharers in the zemindary. *Indromoney Burmonee* v. *Suroop Chunder Paul*, 15 S. W. R., C. R., 395.

Possession of ancestral property is good evidence of title against a co-sharer if shown to be exclusive, and to be inconsistent with the co-sharers having any right in the portion claimed. *Tekait Hurro Narain Singh* v. *Beycunt Narain Singh*, 14 S. W. R., C. R., 51.

Where members of a joint family reside on different portions of the family property, one taking charge of one shop and another of another, one member cannot be allowed to set up the law of limitation and exclude his brother from participation of profits. *Sookh Lall Bhoojwalla* v. *Goolzar Bhoojwalla*, 14 S. W. R., C. R., 228.

Where a sharer in an undivided talook, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the rights of the judgment-debtor are sold. *Nund Lall Roy* v. *Gooroo Churn Bose*, 15 S. W. R., C. R., 6.

Where the rents of a share with certain specified boundaries have been assigned by one shareholder absolutely, by an arrangement (*e.g.*, partition) between that shareholder and his co-sharers, without the assent of the assignee, can the rights of the assignee to collect rents under the assignment be in any way affected? *Bhoobun Moye Dassee* v. *Ruffick Mundul*, 17 S. W. R., C. R., 17.

A suit for rent by the 15 annas 6 pie shareholders was held to be maintainable where there is no dispute as to the extent of plaintiffs' share, but they set forth distinctly in their plaint the extent of their shares and that of their co-sharer, where the co-sharer was made a defendant and no objection made by him as to the extent of their respective shares, nor did the ryot defendant contend in his written statement that the plaintiffs' share was not what it was said to be, namely, 15 annas and 6 pies, and where there was a clear finding by the first Court that the 6-pie shareholder had collected and enjoyed the rents of his share separately, and that the ryot defendant had paid the rents separately for this 6-pie share. *Tulchoonissa Khatoon* v. *Monesde Chunder Roy*, 17 S. W. R., C. R., 452.

A single co-sharer cannot sue for his share of the rent, much less for enhanced rent. *Bhyrub Mundle and others* v. *Gogaram Banerjee*, 17 S. W. R., C. R., 401.

A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rents, unless the tenant has paid or agreed to pay to him separately. Consequently a suit for enhancement by such co-sharer will not lie. *Haradhun Gossama and others* v. *Ram Newaz Missry*, 17 S. W. R., C. R., 414.

Although one co-sharer cannot give a good lease of the whole 16 annas of property which belongs to himself and his co-sharers, yet one co-sharer may give a lease of his own share which would be binding

against himself at least. *Ram Debul Lall* v. *Mitterjeet Singh*, 17 S. W. R., C. R., 420.

A joint tenant is not entitled to khas possession of any portion of a joint and undivided property without a butwarrah. *Huree Dyal Gooho Mojoomdar* v. *Gobind Chunder Pal*, 17 S. W. R., C. R., 387.

Held that the right of the plaintiff as a joint owner of the land in dispute could not be questioned unless it could be shown that he was barred from enforcing that right by the Law of Limitation, or by any right of easement which the defendants enjoyed; and that the defendants, as joint proprietors with the plaintiff, could not by the use of the land with the tacit assent of the plaintiff create a right contrary to his interest, nor would their use of it before they became co-proprietors operate to create any such right.

In giving the plaintiff a decree for partition the Court declined to make any decree permitting him to build a house upon his own land, but left him to do what he pleased with his own land provided he did not interfere with the legal rights of others. *Jahanoby Deo Narain Singh* v. *Umbica Pershad Narain Singh*, 17 S. W. R., C. R., 74.

A co-parcener in respect of ijmalee land is entitled to the use of every part thereof; and if by erecting a building he takes possession of more land than he would be entitled to on a partition, the proper remedy is to sue for a division of the land, and not for a demolition of the building. *Dwarkanauth Bhooeah* v. *Gopeenauth Bhooeah*, 16 S. W. R., C. R., 10.

The order of a Commissioner requiring proprietors having separate jummas to pay for the convenience of the Collector their shares of revenue through one of their number, cannot override their legal right of separate proprietorship allowed under the Settlement Law and preserved by express record, or transform such right into a joint tenancy. *Ram Gobind Roy* v. *Syud Kushuffudozee*, 15 S. W. R., C. R., 141.

A Collector's declaration of the title of a party to an entire share of an estate and his action in dividing the share for such party, are an injury to and a slur upon another party claiming a fraction of the share, and give him a sufficient cause of action. *Sheo Pershad Sookool* v. *Shunkur Sahoy*, 16 S. W. R., C. R., 190.

A sharer in a joint estate not partitioned, although he may collect separately his share of rent, cannot enhance the rent without the concurrence of his co-parceners.

The report of an Ameen under Section 73, Act X of 1859, is receivable as evidence, and a decision can be legally based upon it. *Sujam Kooer* v. *Heithoo*, 1, 11 N. W. R., 165.

The consent of all the sharers to a joint holding being necessary to give validity to any agreement regarding the same, certain sharers in a joint holding cannot by the device of deducting from their claim a portion of the holding representing the share of some of their co-sharers, non-consenting parties to an agreement, sue to enforce such agreement, all the sharers having an undivided share in every biswa of the joint holding. *Shibba and others* v. *Ram Lal and others*, 3 N. W. R., 216.

The defendant was in possession of land under a pottah granted by the ijaradars of the proprietors, and thereon commenced to build a house and plant a garden. The plaintiff, who had bought the right, title, and interest of one of the proprietors sued to restrain him. He did not allege any injury. *Held* that such suit would not lie. *Srichand* v. *Nim Chand Sahee*, 5 B. L. R., Ap., 25; 13 S. W. R., C. R., 337.

Several persons jointly held lands which were not divided by metes and bounds but in specified shares. One of the shareholders leased out his share or interest in the lands. The lessee sowed indigo in the joint lands. The other shareholders brought a suit to restrain the lessee of their co-sharer from growing indigo on the land. *Held* that a co-sharer cannot use ijmalee lands so as to alter the condition of the property as regards the other shareholders without their consent, that indigo as a crop being valueless for purposes of distraint, the lessee must be restrained from growing it without the consent of all the proprietors. *L. G. Crowder* v. *Bhukdhari Singh*, 8 B. L. R., Ap., 45; 16 S. W. R., C. R., 41.

Where persons jointly interested in an estate arranged that the rents should be received by an agent, and they themselves sometimes collected direct from the tenants, such collection being treated as a receipt by the agent or by some one on his behalf, and not as a collection antagonistic to the rights of the other joint tenants, the Law of Limitation is no bar to taking the back accounts.

Where one tenant in common receives rents and then relinquishes his interest in the estate to another that other is not answerable to the third tenant in common for any claim he may have against the first for having received more than his share. *Rani Khajurinissa* v. *Rajah Enayet Hossein*, 8 B. L. R., 93, and 16 S. W. R., P. C., 1.

The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliat will lie." Norman, J., was of opinion that as a general rule the holder of a tenure cannot be sued by owners of fractional shares in the superior tenure for separate kabuliats according to the proportions to which they allege themselves to be entitled in the superior tenure. A tenure is an entire thing, and cannot be subdivided against the will of the tenant. Loch, Bayley, Macpherson, and Mitter, JJ., did not answer the question, on the ground that it did not arise in the suit. *Judar Chandra Dugar* v. *Bindabun Bihara*, 8 B. L. R., 251, and 15 S. W. R., F. B., 21.

A., B., C., D., and E. were joint lessees without specification of shares under Government of a certain mehal. The estate was sold for arrears of revenue. A., B., C., D., and E. each brought a suit separately to set aside the sale. *Held* that as the estate was single and indivisible, and the cause of action and relief sought in each case was the same, the claim of the lessees could not be split into five distinct suits. *Biswanath Bhuttacharjee* v. *The Collector of Mymensing*, 7 B. L. R., Ap., 42.

A sharer of an undivided talook may be entitled to recover his share of the rent due from the talook generally, but it does not follow that he is entitled to recover from the jotedar of a particular jote in the talook unless there is an agreement to that effect. *Shama Soonduree Debia* v. *Kristo Chunder Roy*, 13 S. W. R., C. R., 316.

If one co-proprietor chooses to accept the service

of his tenants instead of rent or to remit the rent, another co-proprietor is not affected as regards his share of the profits of the land. *Rajah Syad Ahmed Rezza* v. *Rajah Enaet Hossein*, 1 W. R., 330.

A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-shareholder who has a separate account, before the share of such defaulter has been put up for sale under the provisions of Section 13, Act XI of 1859, cannot claim to be reimbursed by such defaulter, nor is the defaulter under any legal obligation to repay the amount advanced. *Kishen Chunder Ghose and another* v. *Mudden Mohun Mojoomdar*, 7 W. R., 365.

2.—Liabilities of Co-sharers.

The co-sharers in a house who continued to occupy the whole house to the exclusion of one co-sharer after notice that he would charge them rent for his share of the house, were declared just as liable to pay rent to the co-sharer as they would be for rents of any other species of property. *Chunderkant Roy and others* v. *Gopeemee Debia and others*, 6 W. R., 17.

In a suit against co-tenants to recover rent paid by plaintiff on their behalf, a joint decree declaring the defendants collectively liable ought not to be passed. The Court should determine what portion of the whole rent ought to be repaid by each one of the defendants, and whether each defendant is under any liability to pay the plaintiff at all. *Krist Monee Debia* v. *Buroda Dossia Chowdrain*, 14 S. W. R., C. R., 143.

Where a co-sharer occupies a larger portion than his own share, or the whole estate, by renting the land he occupies from one or more of his co-sharers, he may be sued for the rent under Act X of 1859 by the person or persons with whom he engaged. *Kalee Pershad* v. *Shah Lutafut Hossein*, 12 W. R., 418.

A suit by one of two shareholders to recover certain accounts and papers alleged to have been kept by her agents stands upon different grounds from a suit by one of several joint landowners suing separately for his rent. *Puddomonee Dossee* v. *Banee Kant Ghose*, 9 W. R., 344.

The portion of an estate for which a separate account is opened under Sections 10 and 11 of Act XI of 1859, and the portion from which it is separated, are equally "shares" within the meaning of Section 10. The latter (though it may for convenience' sake be termed the parent estate) cannot be considered an *entire* estate within the meaning of Section 37, but is still a share and liable to all the incidents of a share. *Monohur Mookerjee* v. *Huromohun Mookerjee*, 1 W. R., 27.

A suit will lie for the separate possession of a share of an estate in proportion to the plaintiff's share. *Goloke Chunder Chuckerbutty*, 1 W. R., 164.

The mere division of a ryot's holding among his heirs (each one paying his share of the old rent separately) does not destroy the continuity of the old holding. The default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement. *J. Hills* v. *Beshanath Meer*, 1 W. R., 10.

A co-sharer who cannot prove that he holds in his own right (by purchase of the proprietary right of the other co-sharers) a portion of a joint estate occupied exclusively by him, can only hold the same as a tenant liable to pay rent for it to the proprietors jointly. *Gooroo Prosunno Roy* v. *Gobind Pershad Doss*, 1 W. R., 34.

A co-sharer sued for a kubuleut after determination of rent. It was proved that a custom existed by which each co-sharer had his own tenants; but as there was no proof that the defendants ever paid rent to the plaintiff, it was held that a tenancy had not been established, and that the case was therefore not cognizable under Act X of 1859. *Joynath Nag* v. *Gobind Pershad Doss*, 1 W. R., 42.

The acts of the majority of sharers are not binding on the other sharers as to their own share of the property. *Kartick Sirdar* v. *Neeranjun Juleea*, 4 W. R., 106.

Shareholders whose shares are clearly ascertained may sue for their respective shares of the rent payable to them without waiting for the other parties entitled to rent joining the suit, or without adding them as parties. *Umrit Chowdhry* v. *Syud Hyder Ali*, W, R., 1864, Act X R., 63.

3.—Wajib-ul-urz.

Where the lumberdar had clearly admitted in the wajib-ul-urz that there were shareholders paying the Government revenue through him, who cultivated seer land, although at the time he, the lumberdar, had sole right to the profit and loss,—*Held* that the claim of the shareholders to definition of their shares was not lost. *Mehtab Singh* v. *Purma and others*, 3 Agra Rep., 241.

Where it was stipulated in the wajib-ul-urz that trees could only be planted by cultivators on the common land, with the consent of the proprietors, —*Held* that one out of several co-proprietors (unless he was properly authorized to manage the joint estate) was not competent to give an ijazutnamah to a cultivator to plant a bagh, and could not by his single consent dispense with the performance of a condition of which the other sharers have a right to call for the fulfilment. If such an ijazutnamah was given without their consent express or implied they have a right to have it set aside. *Ghazeeoodeen Hyder* v. *Bhoolun and another*, 2 Agra Rep., 344.

Held that mere recognition of right to resume contained in the wajib-ul-urz, where the grant existed many years previous to the date of that document, does not re-grant to a maâfedar so as to give plaintiff a new starting-point from which his right to resume should date. *Dayum Khan* v. *Tunsookh Rai*, 2 Agra Rep., A. C., 189.

Held that an entry in the wajib-ul-urz is only good for what it may be worth as evidence, and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument. *Bhohla Singh* v. *Bulraj Singh*, 1 Agra Rep., A. C., 233.

Held that the original proprietors are not bound by a condition in the wajib-ul-urz which has been signed and attested by a third party then in possession, not as authorized agent on behalf of the proprietors, but as a mortgagee. Subsequent acquiescence by the mortgagor or his representative might be only an acquiescence in the mortgagee's act to the extent

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and in the qualified way in which his consent was given. *Bhageeruth and others* v. *Moheem and others*, 2 Agra Rep., A. C., 129.

A co-sharer is not bound by the terms of a wajib-ul-urz to which he was no party, merely because it was consented to by the majority of sharers, unless he consented to it through some representatives impliedly, or unless it was consented to by the person under whom he now holds. A co-sharer claiming re-partition of his share is not entitled to mesne profits unless so provided by the wajib-ul-urz. *Chunder Singh and others* v. *Mussamut Nirto and others*, 4 Agra Rep., A. C., 11.

Where the terms of the wajib-ul-urz recognize the right of each sharer to sell without the consent of the others, but limit that right so far as to give preference or right of refusal to the co-sharers, the sale to a stranger can only be good and valid on proof of offer being made and refused by the co-sharers. *Permeshree Doss* v. *Raikoondun Singh and others*, 4 Agra Rep., A. C., 3.

Held that a provision in the wajib-ul-urz securing a right of pre-emption to the sharers in cases of sale or mortgage was not applicable to transfer by lease, which was not such an alienation as was contemplated by the terms of the wajib-ul-urz, *viz.*, alienation or transfer of proprietary right. *Raj Manik Chand* v. *Rai Bishesher Buksh Singh and others*, 2 Agra Rep., A. C., 99.

Held that the conditions of the wajib-ul-urz do in no way confer on any person under disability a right of alienation which he does not otherwise enjoy. *Radhey Pandey* v. *Munsaram and others*, 2 Agra Rep., A. C., 85.

A wajib-ul-urz is not a mere contract, it is a record of rights made by a public servant; and therefore, without attestation or execution by the proprietors of the mouzah, it is entitled to weight as evidence of village custom. *Dobee Dut and others* v. *Sheikh Enait Ali*, 2 N. W. R., 395.

Held that conditions with respect to rent in a wajib-ul-urz are generally intended to have effect only during the period of the settlement being made at the date of such wajib-ul-urz. *Buichoo Ram* v. *Dowlut Ram*, 2 N. W. R., 8.

Where a wajib-ul-urz was destroyed in the mutiny, and the plaintiff tendered in evidence a book obtained from the tehseel office, which purported to contain a copy of such wajib-ul-urz and of the signatures of the persons signing the original, and the name of the official in whose presence the instrument was executed, and the Court below was satisfied that there was no reason to doubt its being a genuine copy,—*Held* that such copy was evidence, not of a contemplated wajib-ul-urz, but of one which had been executed and completed. *Dabee Dutt* v. *Shaik Enait Ali*, 2 N. W. R., 395.

Where the terms of a wajib-ul-urz are that the property before sale to a stranger must be offered to the co-sharers, such offer must be made to each and every one of such co-sharers. *Dowlut and others* v. *Netram and others*, 3 N. W. R., 42.

The mere signature by an agent of a wajib-ul-urz from which the record of an important interest in property was omitted, cannot be construed as a waiver of such right or claim. Still less can the imperfection or inaccuracy of settlement proceedings operate to extinguish or disallow existing rights. *Musst. Imambundee* v. *Bhugaran Dass*, 1 N. W. R., Par. 1, p. 41.

4.—PARTITION.

The proprietors of a certain lot having obtained a separation of their shares under Section 11 of Act XI of 1859, there remained one share (comprising one village and one-third of three other villages) which was sold for arrears of revenue, and purchased by W. Of this share W. sold one village to P., who agreed to pay a certain sum as his share of the Government jumma, and then applied to the Collector to open a separate account at the rate which had been agreed upon. The shareholders having objected, the Collector referred the parties to the Civil Court under Section 12. P. then brought a suit in the Civil Court for a separate account. *Held* that there was no legal objection to plaintiff's having his separate share opened at the rate he mentioned, even if the jumma on the share which remained in W.'s possession was excessive; for if the whole estate were put up to sale for arrears on account of that remaining share, the other shareholders could always protect themselves by paying the sum due. *Poorno Chunder Banerjee* v. *Ram Kanye Ghose*, 12 W. R., 242.

Co-parceners may on partition retain possession severally of such joint lands as they may have taken separate possession of, with the consent of at least a majority of the co-parceners. *Sreenath Dutt* v. *Nandkishore Doss*, 5 W. R., 208.

In effecting a partition account must be taken of any joint property in possession of any sharer; and before transfer of share provision should be made for the protection of other sharers from an undue liability on account of debts. *Mirza Ally Hossein* v. *Mirza Ally Hossein, alias Chotey Mirza*, 2 Agra Rep., A. C., 96.

Where a person obtained a decree from the Civil Court, declaring his right to certain shares in the village, and directing a partition, but did not execute his decree within the prescribed period of limitation,—*Held* that he was not entitled to partition under Section 47, Act XIX of 1863. *Kishen Singh* v. *Dabeer Singh*, 2 Agra Rep., A. C., 272.

The allotment of land to defendant by partition extinguished plaintiff's right altogether; his subsequent possession was either that of a trespasser or a tenant-at-will; his dispossession was not illegal, and he had no legal right of suit for recovery of possession. *Mussamut Nowab Begum* v. *Rustum Khan*, 2 Agra Rep., A. C., 149.

Where a co-sharer in a joint undivided estate sued to have his rights ascertained, and partition made in respect of an orchard which formed part of the joint estate,—*Held* that the Civil Court was not entitled to decree partition or give possession of a separate share in the orchard, and there is no law which entitles a shareholder to obtain partition of a portion of an undivided estate against the will of the other co-sharers. *Millhoo Lall* v. *Golam Nuseer-ood-deen and others*, 4 Agra Rep., 276.

Where plaintiff sued for certain land in dispute as his own, and the lower Court found that it was his share, and that defendant held his separately, no further formal partition was held to be necessary. *Modhoosoodun Chatterjee* v. *Juddooputty Chuckerbutty*, 9 W. R., 115.

There is no statutory bar against a ryot's right to partition as between himself and his co-parcener where he does not ask for such a distribution of the putnee rent as would bind the zemindar, or limit the latter's right over the whole tenure as a joint one. *Gouree Sunkur Roy* v. *Anund Mohun Moitro and others*, 9 W. R., 487.

Butwarra proceedings under Section 20, Regulation XIX of 1814, are only final as to lands which are the subject of partition. *Baboo Hurree Mohun Thakoor* v. *David Andrews*, W. R., 1864, 30.

The purchaser of a specific portion of the land of an estate separately registered with a separate jumma under Section 11, Act XI of 1859, is not entitled to claim a butwarra of the whole estate, and to obtain a share of the whole land proportioned to the amount of the sudder jumma paid by him. *Fukeer Chunder Shaha* v. *Nobodeep Chunder Shaha*, W. R., 1864, 59.

A butwarra does not extinguish rights of tenants; and the mere circumstance that one of the proprietors of the estate was himself the tenant does not destroy his tenant right, because another of the proprietors has had the land allotted as part of his share of the divided estate. *Nuthoo Lall Chowdhry* v. *Saadat Lall*, W. R., 1864, 271.

A private partition, though not sanctioned by official authority, will, if full and final as among the parties to it, have the same effect as the most formal partition on the right of pre-emption. *Gopal Sahi* v. *Ojoodhea Pershad*, 2 W. R., 47.

A suit which is in the nature of a partition suit cannot be properly dealt with unless all who are admittedly shareholders in the joint property are before the Court. *Pahaladh Singh* v. *Mussamut Luchmunbutty*, 12 W. R., 256.

A deed of partition between two brothers based on a compromise of suit, ratified by a decree of the Sudder Court, and putting an end to litigation previously entered into by their father, cannot be set aside without strict proof of haste and precipitancy of the settlement, inequality, restraint, coercion, or fraud. *Maharajah Hetnarain Singh* v. *Modnerain Singh*, 3 W. R., P. C., 51.

Where a partition of an estate under Regulation XIX of 1814 has been carried out, and confirmed by the revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings. *Ramsahaya Singh and others* v. *Syud Muzhur Aly and others*, 2 B. L. R., Ap., 40.

When an estate was divided by private agreement more than 50 years ago, and the division was subsequently maintained in a judicial decision, since which the co-sharers have for many years exercised rights of ownership independently of each other, a butwarra of the whole estate cannot now be demanded, even though a regular separation of one share has been intermediately obtained by a suit in a Civil Court. *Permessur Dutt Sahee* v. *Andh Sahajeé*, 5 W. R., 40.

Before a purchaser in execution of a share of a specific mehal in an estate is entitled to a butwarra of his purchase, its nature and extent must be clearly defined in the Civil Courts. *Nilmonee Doss Chund* v. *Sreekant Doss Chund*, 5 W. R., 49.

In a suit for contribution of Government revenue the previous paid and recognized quotas must be taken as the proper *data* for distribution until a regular butwarra is made and sanctioned under Regulation XIX of 1814. *Poornochunder Gangooly* v. *Kishen Chunder Ghose*, 5 W. R., 112.

When an estate is held in separate possession, a butwarra of the whole, for the purpose of apportioning land according to the jummas of the shareholders, who had severally entered into engagements with the Government, cannot be insisted upon by one of the proprietors under Section 30, Regulation XIX of 1814. *Bujrungee Lall* v. *Syud Velaet Hossein Khan*, 5 W. R., 186.

When a purchaser from one of several shareholders of a joint property sues for the share of his vendor, but, for the sake of valuing the case, represents that his claim is for that quantity of land which, by a division of it, would fall to his share, and obtains a decree, the decree is only for joint possession. *Muknoo Jan Bibee* v. *Gholam Ruhman Mollah*, 5 W. R., 187.

The mere fact of one of several co-sharers alienating his share of the property is no proof of separation in estate. *Treelochun Roy* v. *Rajkishen Roy*, 5 W. R., 214.

A butwarra is necessary before separate possession can be held in a joint property. *Modoosoodun Mookerjee* v. *J. Beckwith*, 1 W. R., 206.

A butwarra by revenue authorities under Regulation XIX of 1814 is final. *Sheikh Zaker Ali Chowdhry* v. *Jugdessuree, widow of Nynsook Mundul*, 1 W. R., 323.

A butwarra is only conclusive between the shareholders themselves, but not between them and other parties holding under-tenures at the time. *Womesh Chunder Mojoomdar* v. *Dwarkanath Roy*, 4 W. R., 80.

Butwarra papers are only evidence of the proportionate assessment of Government revenue payable by proprietors after partition, not evidence binding ryots as to what holdings are theirs, or what their arrears, rates, or periods of occupancy. *Drobo Moyee Gosmanee* v. *Dhurmo Doss Koondoo*, 10 W. R., 197.

The Civil Court decreed partition (butwarra) of an estate upon a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon the defendants, the other co-sharers, to pay a portion of the fees to the Ameen who effected the partition, namely, in proportion to the shares allotted to them by the decree; and in default of payment of the whole of such portion he sold the defendants' shares in the estate. *Held* that the Collector acted *ultra vires*, and a suit was maintainable in a Civil Court to set aside the sale and for recovery of the property. *Baij Nath Sahu and others* v. *Lalla Sital Prasad and others*, 2 B. L. R., F. B., 1; S. C., 10 W. R., F. B., 66.

The decision of a Collector under the butwarra law, dividing a zemindaree, and finding that rent was payable by an occupier of part of the land after a particular rate, is not an award binding upon such occupier, he being no party to the proceedings; he may therefore contest the amount of such rate in a suit subsequently brought for enhancement of rent, and is not bound to appeal under Act XIII of 1848 from the decision of the Collector, that Act having no application to such a case. *Greedharee Singh* v. *Pultoo Roy*, Marsh., 37.

A butwarra award is no absolute proof of title, and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the butwarra. *Sreenath Ghossal* v. *Joynarain Kavar*, 3 W. R., Act X R., 11.

In a suit by the purchaser of one estate to recover certain lands alleged to belong to his estate, which the defendants held as a part of another estate, the plaintiff needlessly prayed that a certain order passed in the cause of the butwarra of the defendant's estate should be set aside. As the defendant failed to show that the Collector, in laying down the boundaries of the estate then under butwarra, was proceeding under Regulation VII of 1822,—*Held* that the map made by him in carrying out the butwarra of another estate was not an award binding on the defendant, and that the case therefore was not barred by limitation under Clause 6, Section 1, Act XIV of 1859. *Rughoobur Singh and others* v. *Hurree Pershad and others*, 6 W. R., 75.

Defendant having obtained from the Collector an order for a butwarra of his share in a mouzah in the vicinity of plaintiff's estate, the latter, after applying in vain to the revenue authorities for a declaration that his own estate (Sheopore) had nothing to do with defendant's mouzah, which was found to be recorded on the towji with an *alias* of Sheopore, brought a civil suit for a declaration of his own right to Sheopore. *Held* that as the two estates were separately recorded in the towji with distinct areas and sudder jummas, and as plaintiff's ownership of Sheopore was not disputed, and there was no allegation of his lands being incorporated by the partition in the defendant's estate, plaintiff had no cause of action. *Foolbashee Kowar* v. *Arzun Sahoo*, 12 W. R., 134.

The dispossession of a party from land assigned to him under a legal butwarra, though a wrongful act, is no ground for a suit for restoration to the old state of things as they existed before the butwarra was made. *Hurro Persaud Roy* v. *Mohunt Ram Churn Singh*, 6 W. R., 314.

A suit for contribution for the fees of an Ameen who was deputed to make a butwarra will lie against another proprietor of the estate who joined with the plaintiff in applying for the butwarra, and is not affected by the fact that the butwarra was, for certain reasons, not carried out. The Collector having called upon the proprietors to pay the fees of the Ameen, the plaintiff's payment of the whole amount was not a voluntary payment, as the Collector could have sold the whole estate to realize the fees. Such suit is governed by Act XI of 1838. *Greesh Chunder Lahoory* v. *Asudoonissa Bebee*, 8 W. R., 333.

Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the butwarra laws. *Doorga Kant Lahoory* v. *Radha Mohun Gooho Neogy and others*, 7 W. R., 51.

In a suit brought by a son against his father to compel a division of moveable and immoveable property inherited by the latter from his paternal cousin,—*Held* that as regards the jewels of which plaintiff required an account the plaintiff had no right of complaint, although his father, the defendant, had made an unjust and partial distribution of them. *Held* also that the suit to enforce a division of the immoveable property could not be maintained inasmuch as neither the plaintiff nor the defendant acquired any right of such property by birth. *Rayadur Nallatambi Chetti* v. *Rayadur Mokunda Chetti*, 3 Mad. Rep., O. J., 455.

According to Regulation XV of 1816 of the Madras Code, in a suit for possession of joint family property, in which the title of the plaintiff depended on the fact of a division having taken place in the family, a distinct averment of division must be made in the cause, and a direction given by the Court for the production of evidence in proof of such an averment. *Gooroo Swamy Perria Woodia Taver* v. *Bany Anga Mootoo Natchiar*, 6 W. R., P. C., 50.

Courts in their judgments should bear in mind the very distinct character of the several kinds of partition, and until it has been ascertained with what description of partition they have to deal the question of the sufficiency of the sanction or confirmation given to it cannot be determined.

In certain cases the Commissioners' sanction is required, in others that of the Collector.

There are partitions known as imperfect partitions depending upon the conduct of the parties, and effected from first to last only with their consent. *Mirza Muhumdu Beg* v. *Meer Hossein Ali*, 2 N. W. R., 26.

Act XIX of 1863 contains no provision for the judicial decision by the Collector of objections raising questions of title arising after the partition-order in the course of partition. *Chowdhry Zalim Salingh and others* v. *Seetloo*, 2 N. W. R., 404.

A suit to set aside a mokurruree lease granted by a co-sharer was held to be premature as having been brought before completion of a butwarra, which was in course of being effected, the plaintiff having no *locus standi* to bring a suit in respect of a mokurruree by which he might never be injuriously affected. *Bhekdharee Singh* v. *Kishen Pershad Singh*, 15 S. W. R., C. R., 106.

Parties holding separate portions of an estate according to private arrangement previously made, are not in a condition to apply to the Collector for butwarra when unable afterwards to agree among themselves. *Ajoodhya Pershad* v. *Kristo Dyal*, 15 S. W. R., C. R., 165.

A Collector's butwarra proceedings, though final for the purpose of fixing the proportionate area and assessment, are not to preclude parties from coming into Court for enforcement of their civil right under Section 1, Act VIII of 1859. *Koonj Beharee Singh* v. *Neervo Singh*, 15 S. W. R., C. R., 291.

Where parties by agreement in a butwarra restricted their rights by the condition that one of their number was to have full use of the water in a reservoir, the others were held not to be at liberty to set up, even on their own lands, an embankment round the reservoir so as to diminish materially the flow of water into it. *Gour Sahoy Singh* v. *Sheo Sahoy Singh*, 15 S. W. R., C. R., 94.

In a suit for rent of a share alleged by plaintiff to have fallen to him consequent on a butwarra effected by the Collector under Regulation XIX, 1814, the lower Appellate Court dismissed the suit because plaintiff could not file any jumma-wasilbakee or any kubuleut either before or after the

butwarra. *Held* in special appeal that, before dismissing the suit, the lower Appellate Court was bound to put the intervenor to the proof that the land appertained to the share which he got from his vendor, who obtained it by inheritance from one of the shareholders, and to have noticed plaintiff's evidence that the share fell to him under the butwarra, and the defendant had paid rent to the shareholders before the butwarra; it being no defence to the intervenor that he was not invited to attend the butwarra. *Hur Chunder Chuckerbutty* v. *Meer Mukram Ali*, 17 S. W. R., C. R., 143.

Though a partition of a lakheraj tenure cannot be effected under the provisions of Regulation XIX of 1814, yet a Civil Court in effecting such a partition may well be guided by the rules laid down in that Regulation so far as they are applicable. *Janika Bibee* v. *Luchmun Pershad*, 17 S. W. R., C. R., 137.

To constitute property separate property, it is not necessary that a division should be made by a revenue officer, nor is it necessary that the estate itself should be partitioned in accordance with a private agreement of the co-sharers by metes and bounds. It is sufficient that the co-sharers hold recognized shares, the profits of which shares they severally enjoy and appropriate. *Mussamut Jemee and another* v. *Mussamut Dhurum Kooer*, 3 N. W. R., 108.

When by a specific arrangement the sharers in an undivided mehal had divided the cultivated land, assigning definite portions to the shareholders severally; the rents of which they would be entitled to receive from the cultivators cultivating such plots respectively,—*Held* that such sharers stand to such cultivators in the relation of landlord and tenant, and are competent alone to bring suits against their cultivators. *Jankee Dass* v. *Syud Mahomed*, 1 N. W. R., Par. 2, p. 16.

Where a zemindar himself put up a tenure for sale in separate lots, and took rents from two of the purchasers separately, it was held that no written consent was necessary in order to his being bound to recognize the partition. *Nubo Kishen Mookerjee* v. *Sreeram Roy*, 15 S. W. R., C. R., 255.

Where the Collector directs that a separate account should be opened with the co-sharer of an estate on his application, and his share is found not to be such as he states it to be, the co-sharers are at liberty to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector under the butwarra law rejecting their application for a division of their specific shares. *Khedoo Thakoor* v. *Bhugwat Lall*, 16 S. W. R., C. R., 9.

In a suit for declaration of title in which plaintiff also claimed an allotment of his share which had been refused him by the Collector in a butwarra then in progress,—*Held* that as it was found that plaintiff's title was established he was also entitled, under Section 5, Regulation XIX of 1814, to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title. *Dewan Abdool Reza* v. *Jebunnissa Bibee*, 16 S. W. R., C. R., 34.

In a suit for a butwarra on the allegation that defendant had encroached upon certain ijmalee lands, the latter urged that the said lands were not ijmalee but the self-acquired lands of his (defendant's) son, who ought to be made a party. *Held* on review of a previous decision that as the son's interest was not adverse both to himself and defendant, unless the point raised was cleared up the butwarra could not stand, and the son must therefore be made a party under Section 73, Act VIII of 1859. *Joy Kissen Mookerjee* v. *Raj Kissen Mookerjee*, 16 S. W. R., C. R., 101.

Where a butwarra is effected under Regulation XIX of 1814, the fact that certain bits of land, either through omission, neglect, or for convenience, have in making the partition been left in joint occupation, does not give the proprietor of one estate any interest in the other, even in the case of a family place of worship. *Shaikh Bundey Hossein* v. *Lalla Puriag Dutt*, 16 S. W. R., C. R., 110.

A butwarra proceeding under Regulation XIX of 1814 may be final for fiscal purposes, but it cannot take away the right of suit conferred by Act VIII of 1859. *Sheo Pershad Sookool* v. *Shunkur Sahoy*, 16 S. W. R., C. R., 190.

There is nothing in the law which makes the order of a Collector in a butwarra proceeding final as regards questions of title. *Ooday Singh* v. *Paluck Singh*, 16 S. W. R., C. R., 271.

Section 20, Regulation XIX of 1814, which says, "the determination of the Board of Revenue or Board of Commissioners on the paper of partition shall be final," refers to those questions only which can be legally determined by the revenue authorities, and will not prevent a regular suit being instituted to establish a right and title to the land which a party has lost by a butwarra, notwithstanding that the plaintiff may have failed to make his objection before the Collector within fifteen days, as required by Clause 2, Section 4, Regulation XIX of 1814. There is nothing in the butwarra law or in any other regulation to prevent the Civil Court from entertaining a suit for the declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition.

An objection urged by the respondents, for the first time, in special appeal, that inasmuch as it was the plaintiff's own fault that he did not appear before the Collector and make his objection in time, his suit, which is one merely for declaration of title, and therefore is in the discretion vested in the Court by the 15th Section of Act VIII of 1859, ought not to be entertained, was not allowed.

Where a butwarra had been made, and the plaintiff had had a specific share allotted to him, but which share was less than his proper share in the estate, and the plaintiff brought his suit against the co-sharers generally, without specifying in whose share the quantity he had lost was included, held the Court could in such suit declare the plaintiff's title to the same, treating him as a shareholder to that extent only in the patti in which it may have been included. *Spencer* v. *Puhul Chowdry*; *Spencer* v. *Sheikh Kadir Buksh*, 6 B. L. R., 658, and 15 S. W. R., C. R., 471.

When in the preparation of a butwarra under Regulation XIX of 1854 it is ascertained that the parties are at variance on a question of title, the Collector's proper course is to stay proceedings until all such questions are decided by a competent Court, the revenue authorities not having authority under the law to decide them finally. *Maddun Mo-*

hun v. *Kartick Nath Pandey*, 14 S. W. R., C. R., 335.

Plaintiffs sued their co-heirs to recover huq-ela-gaun,—that is, the half share of the produce of trees planted on a portion of the land by their ancestor before his death,—on the ground that although by a butwarra entered into by the heirs the trees fell to the share of the defendants, plaintiffs were entitled as succeeding to the ryotee rights of the person who planted them.

Held that as the ancestor was the only proprietor his heirs were co-proprietors, and the butwarra was a division of the proprietary right, and that no ryotee right existed. *Mussamut Ameerun and another* v. *Mussamut Sunjeeda and another*, 11 W. R., 226.

The cause of action against a co-sharer for partition first arises when he gets possession of the whole property under a survey award. *Kally Chunder Chowdhry* v. *Rajah Jogendro Narain Roy*, W. R., 1864, 323.

On 12th June, 1867, some of the proprietors of an estate applied to the Collector for a partition under Regulation XIX of 1814. On the same day the Collector issued a notice to all the shareholders, including the plaintiffs in this suit, calling upon them to come in within one month and show such cause, and offer such objections, &c., as they should think fit. It did not appear that the plaintiffs did come in or did anything upon this. Similar applications were made by other shareholders. On the 19th August, 1867, the Collector drew out a tabular statement, purporting to be in pursuance of Section 4, Regulation XIX of 1814. In it was a column giving the shares into which the expenses of the partition were to be divided. On the same day a notice was issued to the proprietors, ordering them to pay their respective quotas of the expenses accordingly. It was said by the defendants that the apportionment was confirmed by the Commissioner on the 20th January, 1868. On the 6th March, 1868, it was ordered by the Collector that a proclamation should be issued in accordance with paragraph 4 of Section 5 of Act XI of 1859, directing the plaintiffs, as defaulters in two sums of Rs. 252-3-2 and 9-9-6, to pay the Government revenue. On the 28th March such proclamation was issued accordingly. Subsequently one of the plaintiffs came in, and offered to pay all that was then due and outstanding. His application was rejected, and on the same day, the 8th April, the sale proceeded, and the whole interest of the plaintiffs was sold for Rs. 16,900. The plaintiffs appealed to the Commissioner, but their appeal was dismissed. The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancelment of the sale.

Held that the sale was void. There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859, Section 5. There could be no arrear until demand after sanction by the Board of Revenue and by the Lieutenant-Governor of the estimate of expenses prepared by the Collector, and fixed by the Commissioner. The Board must give its sanction in each case, and the defendants failed to show that it had done so. But even if the Commissioner had power finally to determine the amount and date of payment, it was not shown that he had done so, or supposing that he had, that any fresh demand had been made upon the parties liable.

Per Bayley, J.—The completion of the partition is not necessary under Act XI of 1838 before the amount of unpaid expenses can become an arrear realizable by sale.

Semble,— The Government need not give its sanction in each case, but a "general" sanction will be sufficient. *Hur Gopal Dass* v. *Ram Golam Sahi*, 5 B. L. R., 135; 13 S. W. R., C. R., 381.

The purchaser of a share in an undivided lakheraj estate can sue his co-parceners for a partition of his share, and the Civil Court has jurisdiction to carry out the partition. *Fattch Bahadur* v. *Janki Bibi*, 4 B. L. R., Ap., 55; 13 S. W. R., C. R., 74.

A., one of the shareholders of a talook, consisting of several mouzas, mortgaged his share in one of the mouzas named Kishoopore to B. Upon a partition being made under Regulation XIX of 1814, the mouza Kishoopore was allotted to C. and D., co-parceners in the talook, and other mouzas were allotted to A. In a suit by C. against B. for obtaining possession of his share in Kishoopore,—*Held* that there was no cause of action. That upon a partition of a joint property a co-parcener is bound by the incumbrances created by another co-parcener in respect of a portion of the property, if such portion be allotted to him upon a partition between the co-parceners. *Baboo Nishan Singh* v. *Baboo Jugdeo Singh*, 4 B. L. R., Ap., 97.

A joint and undivided estate having been subjected to private partition, four beegahs which were in the portion held by A. were granted by him in mokurruree. Subsequently, on the application of the parties, the Collector made a regular partition, by which two beegahs of the mokurruree land were allotted to the other sharers, who refused to recognize the grantee's mokurruree rights for that portion of the land, contending that as under the private partition all the four beegahs were in the share of the grantor the loss of rent should be on him, and that the Collector's butwarra could not transfer two beegahs with the mokurruree or smaller rental to the other sharers.

Held that the grantor's mokurruree title could not be got rid of by the butwarra, and that he was entitled to recognition by the other sharers. *Sheikh Ahmedoollah* v. *Shah Ashruff Hossein*, 13 S. W. R., C. R., 447.

Where two or more proprietors of a joint estate held in common tenancy, desirous of having separate possession of their respective shares, apply each and all to have that estate divided in exactly the same proportionate shares, and no other sharers oppose the butwarra, the Collector may at once comply with the application, and if no objection is raised when the parties have opportunity of raising objection, the shares cannot again be reunited by a suit in a Civil Court. But if the Collector has judicial notice of a dispute with regard to a share, it is questionable whether he has jurisdiction to make a partition of that share. In any suit, however, to do away the partition as regards that share the Collector must be made a party. *Joymonee Debea* v *Imam Buksh Talookdar*, 13 S. W. R., C. R., 471.

5.—Contribution.

A co-sharer in an estate paying revenue to Go-

vernment, who has paid the revenue due upon the whole estate, cannot sue his co-sharers for contribution as on an implied contract in a Small Cause Court under Act XI of 1865, Section 6.

The duty of contributing is caused, not by any convention or agreement between the shareholders, but arises from principles of equity. *Rambux Chatterjee and another* v. *Madhoo Soodun Chowdhry and another*, 2 Ind. Jur., N. S., 155; 7 W. R., 377.

A co-owner is liable to contribute to the payment of all sums necessarily expended by another co-owner in maintaining the common property. But he cannot be called upon to contribute in respect of money expended on improvements to which he has not assented. *Syud Mahomed Khan* v. *Nawab Shaista Khan*, 2 N. W. R., 248.

In execution of a decree for an enhanced rent against the holders of a jote jumma, the landlord put up for sale, and caused to be sold, a talook which was also the joint property of the same parties. One of these parties accordingly sued others of them, on the allegation that his share of the property sold exceeded the lands occupied by him in the jote jumma, and asked the Court to give him a joint and several decree against all the defendants for the entire amount of the difference.

Held that plaintiff could not be entitled to such a decree, but should have asked that the defendants might be directed to contribute to him in proportion to their respective shares, if his complaint was well founded. But as defendants alleged that, although plaintiff held that small quantity, it was compensated for in other ways, it was for plaintiff to show that he did not derive from, or by virtue of his share in, the jote jumma a profit or interest equivalent to the interest he held in it. *Annoda Pershad Acharjee and others* v. *Surbosoonderee Dabea and others*, 11 W. R., 453.

When one person jointly interested with others in land is compelled to pay Government revenue in excess of his proper share, each co-sharer is bound to refund so much as he ought himself to have paid, and this objection is to be enforced by a suit against all the co-sharers in which the amount of their several liabilities is to be declared by the Court. *Khema Debia and others* v. *Kumolakant Bukshee and others*, 10 W. R., 10.

In a suit by one shareholder against his co-shareholders, for contribution in respect of Government revenue paid for the estate, it is not necessary for plaintiff to prove that he paid the whole amount of the revenue; it is sufficient for him to prove that he has paid more than his share, and that his co-sharers have paid less than theirs. *Hemanginee Dossea* v. *Ram Nidhee Koondoo and another*, 10 W. R., 158.

A decree-holder for arrears of rent against three persons jointly placed certain sums of money in Court to the credit of one of them, *viz.*, the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew those sums in execution of the joint-decree. Thereupon the plaintiff sued the other two joint-debtors for contribution, as he had repaid to her minor son the sum of money so taken away. *Held* that the payment by the plaintiff to her minor son was a voluntary payment, and was not therefore such a payment as entitled her to sue her joint-debtors for contribution. *Rajlakhi Debi* v. *Taramonee Chowdhrain and another*, 2 B. L. R., A. C., 281; S. C., 11 W. R., 218.

When parties are bound by a joint liability, and one of them discharges the whole debt due to the creditor, he may bring an action against his co-debtors for a contribution by each of them for his share of the sum due to the original creditor. The plaintiff in such a case can only sue each of the co-debtors for his share of the amount paid, and a decree should not be given jointly and severally, but severally against each of the defendants for the contribution due by each. *H. A. Eglinton* v. *Koylashnath Mozoomdar*, W. R., 1864, 303.

In a suit for contribution on account of Government revenue, which was decreed by the first Court but dismissed by the lower Appellate Court, because the plaint did not specify the shares of the different shareholders,—*Held* that the lower Appellate Court was bound to adjudicate upon the evidence. *Bhono Bibee* v. *Pallan Gazee and others*, 11 W. R., 131.

In a suit for contribution, a decree cannot and ought not to pass jointly against all the defaulters. The decree should specify the particular sums to be paid by each person. *Shaikh Otioollah* v. *Mussamut Aseerun and others*, 7 W. R., 194.

In a suit to recover as contribution a sum paid by plaintiff on account of arrears due on a farming lease, the test of plaintiff's title to recover was held to be whether there was any legal necessity arising to him from reasonable probability of any injury resulting to him in case he did not make the payment. *Kistokisore Poddar* v. *Koylash Chunder Mookerjee*, 12 W. R., 128.

In decreeing a suit for contribution against co-sharers liable for separate and defined jummas, it is the duty of a Court to apportion the separate liabilities. *Nobin Mohul Ghossal* v. *Gopal Chunder Mookerjee*, 11 W. R., 538.

In a suit to recover contribution on the allegation that plaintiff and defendant were joint-tenants, and that there was an arrear of rent due from them, for which the zemindar was about to sue when the plaintiff paid it, together with several other cesses and expenses, it was held that as there had been no demand upon the defendant, nor any suit nor other effectual proceeding for the recovery of the rent, the payment by the plaintiff was voluntary and officious, and that as the demand with which plaintiff complied was an excessive demand, his compliance with it would not bind the defendant to pay the amount of contribution sued for. *Luckhee Kant Doss* v. *Shibchunder Chuckerbutty*, 12 W. R., 462.

A payment made by a judgment-debtor to the assignee of a decree-holder was held to be a voluntary payment, which could not defeat the rights of the decree-holder. *Kanoongoe Backteshur* v. *Rajah Chunder Seekhur*, W. R., 1864, Mis., 8.

Plaintiff purchased a jote jumma at a sale in execution of a decree against defendant. After it came into plaintiff's possession the putneedar under whom the jote was held obtained a decree against the defendant for arrears of rent which had become due before the above purchase, and attached the tenure with a view to selling it under an order passed by the Collector. At this stage plaintiff, to save the tenure from sale, paid the amount of the decree against the defendant.

Held that the payment was a voluntary one,

made without legal necessity, and was not recoverable by suit against the defendant. *Ram Buksh Chutlangea and another* v. *Hridoy Monee Debia*, 10 W. R., 446.

Plaintiff's ancestor had purchased in execution the right, title, and interest of R., one of the defendants. Antecedently to that sale the right, title, and interest of R., and those of two others, had been attached in execution of a decree against D. (the uncle of R. and father of the two others), and a sale having been ordered after purchase by plaintiff's ancestor, the latter, whose objections did not avail, finally prevented the sale by paying in the amount due. *Held* that as R. was not legally bound to pay the amount due under the decree against D., and the payment was in every sense voluntary, plaintiff could not recover from her and the sons of D. *The Collector of Shahabad* v. *Ram Buddun Singh and others*, 10 W. R., 400.

A. was in possession of certain lands in lieu of dower. B. put up to sale, in execution of a decree against C. (A.'s husband), C.'s rights and interests in those lands. A., under protest, deposited in Court the amount claimed, in order to stop the sale, and consented that it should be paid over to B. until the rights of the parties could be settled in a regular suit. A. then sued B. for a refund of the money on the ground that at the time of B.'s attaching the property his decree against C. had been already satisfied. The Zillah Court gave a decree for A. upon the merits. The High Court on appeal held that the payment into Court was a voluntary payment, and therefore A. had no right of action against B. *Held* (reversing the decision of the High Court) that the payment was not a voluntary payment. Decree of the lower Court affirmed. *Fatim Khatun and another* v. *Mahomed Jan Chowdry and another*, 1 B. L. R., P. C., 21; 10 W. R., P. C., 29.

Held that plaintiff, who held partly as zemindar and partly as dur-putneedar, was entitled to look to his co-sharers in the zemindaree for contribution of Government revenue paid by him to save the entire estate from sale, and that the fact of his being a sharer in the dur-putnee could not bind him to recover his over-payments from the putneedars. *Radha Madhub Dutt* v. *Ram Runjun Chuckerbutty*, 17 S. W. R., C. R., 461.

The land of a jote jumma belonging to plaintiff and one P. having been attached in satisfaction of a joint decree for arrears of rent, plaintiff deposited the entire amount of the decree. He then sued M., who had obtained D's share of the jote, for contribution on the ground that M. was in use and occupation. *Held* that the case against M. was not met by the plea that he was not a party to the suit in which the decree was obtained. *Gudadhur Chowdry* v. *Shama Churn Mitter*, 16 S. W. R., C. R., 8.

Any debtor paying more than his share is entitled to sue his co-debtors for contribution whether a release has been granted or not. *Sheo Churn Lall* v. *Ram Surun Sahoo*, 16 S. W. R., C. R., 49.

Parties are liable for contribution according to their respective interests in a property, and not simply *per capitâ*. *Shaikh Murdan Ali* v. *Shaikh Tufuzzul Hossein*, 16 S. W. R., C. R., 78.

6.—Trespass.

Where the defendants without leave quarried on the land of the plaintiff and removed a large quantity of stone therefrom, it was held that the plaintiff was entitled to recover by way of damages the value of the stone after it was quarried, and that the defendants were not entitled to a deduction therefrom of the cost they had incurred in quarrying the stone. *Dájibá Anandráv* v. *The B. B. and C. I. Railway Company*, 6 Bom. Rep., A. C. J., 235.

In a suit to compel the filling up of a pyne which ran over plaintiff's land and conveyed water to defendant's estate, when defendant denied having done anything beyond his own rights or anything which was injurious to the plaintiff, plaintiff obtained a decree. *Held* that before giving judgment for plaintiff the Court ought to have shown in what manner his right had been infringed, and then to have given a definite decree as to what defendant was bound to do. *Nund Kishore Singh* v. *Lalla Burgun Lall*, 15 S. W. R., C. R., 154.

The Collector of Bombay *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff "for the purpose (the Collector stated in his evidence) of preserving the land for Government, as land from which revenue might in future be collected."

In an action for trespass brought against him by the plaintiff, it was held that the act of the Collector was not "a matter concerning revenue" within the meaning of Section 25 of Act IX of 1850, and that the jurisdiction of the Small Cause Court was therefore not included. *Held* also upon the facts stated in the case that the possession of the plaintiff of the land in question was sufficient to entitle him to maintain an action of trespass against the Collector.

The Revenue Court, under Section 2 of Regulation XIX of 1827, has not exclusive jurisdiction over the Collector of Bombay for all acts done by him in his official capacity.

Semble,—Section 1 of Act VII of 1836 was retrospective only in its operation, and is now obsolete. *Náráyan Krishna Land* v. *Gerard Norman*, 5 Bom. Rep., O. C., 1.

7.—Lands taken for Public Purposes.

Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zemindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest.

In a suit to recover the proportion of money paid into Court as compensation of land taken for a railway, to which the plaintiff, a dur-putneedar, may be entitled, and in which suit the zemindar and putneedar are defendants, the plaintiff cannot claim abatement of rent under Act X of 1859, Section 18, since such a claim is cognizable only in a suit instituted under that Act. *Gordon, Stuart, & Co.* v. *Maharajah Mahatab Chand Bahadoor and others*, Marsh., 490.

The plaintiff, as ijaradar, claimed a sum of

money as compensation for land taken compulsorily for the purpose of a railway, and which had been awarded and was lying in deposit. A farmer of the lands under him claimed a portion of the same sum as compensation for the residue of his lease. *Held* that the farmer was entitled to such compensation, and that, in apportioning the costs of a suit brought to try the question, in which the ijaradar was plaintiff and the Government and the farmer defendants, the farmer was entitled to receive from the ijaradar the costs of his demand to the extent to which it was established, and the plaintiff to receive of the farmer the costs applicable to an excess in the demand of the farmer beyond that which he succeeded in establishing; and that Government was entitled to receive the costs which it had incurred from both parties, in the proportion in which each had failed in establishing his claim. *Nusseroodeen Ahmed* v. *The Railway Commissioners and others*, Marsh., 91.

A putneedar is entitled to compensation on account of lands in his putnee taken for public purposes, although there was no agreement to that effect. *Joy Kishen Mookerjee* v. *Reazoonissa Beebee*, 4 W. R., 40.

Held that the principle laid down in the case published at page 328 of the Sudder Decisions for 1860 (*vide* foot-note) to regulate compensation for land taken for public purposes, is not applicable to the division of compensation in every case. It would not provide for the case of several putnees where the land is taken from the holder of the lost enure, and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant. *Maharajah Mahatab Chund Bahadoor* v. *The Bengal Coal Company and others*, 10 W. R., 391.

In a suit to recover compensation for certain lands taken by the magistrate for roads, where plaintiff had applied for compensation in the usual course, but, after various delays on the part of Government, had been refused compensation, and referred to the Civil Court after the period of limitation had expired,—*Held* that plaintiff was not entitled to any consideration for his delay in instituting a suit, which was the best remedy prescribed by law, and that the mere fact of Government receiving revenue for the estate in which the lands are situated did not prevent the Law of Limitation operating in its favour, as it would in the case of any private individual in adverse possession. *James Hills* v. *The Magistrate of Nuddea*, 11 W. R., 1.

A portion of the area of two villages having been taken under Act VI of 1857, and compensation deposited in the Collectorate, the dur-putneedar sued for the same, contending that the zemindar was entitled to twenty times the rental payable by the dur-putneedar, less expenses of collection. The zemindar claimed twenty times the profits he derived from the putneedar, less revenue paid to Government.

Held that as the plaintiff's calculation secured to the zemindar a more favourable result than that for which the latter himself contended, it was sufficient to decree the suit without determining the proper principle on which compensation should be allowed. *Bengal Coal Co.* v. *Muhtah Chund Bahadoor*, 12 W. R., 340.

Government took for public purposes a quantity of land, which included four cottahs leased by M. to plaintiff as the site of an iron foundry. Proceedings with a view to compensation were duly laid, pursuant to Act VI of 1857, and the arbitrators awarded a sum for the whole land and premises, of which sum they gave plaintiff a small part, and the rest to M. Plaintiff, who did not appear before the arbitrators, brings a suit to reimburse himself for loss sustained by having been turned out of his holding, and deprived of the machinery, &c., of his foundry. *Held* that M. as lessor is not answerable for plaintiff's eviction, or for damages on any other ground. *William Minto* v. *Kalee Churn Doss*, 8 W. R., 327.

When land was taken by Government for public purposes, and in consequence of the claim of the defendant the amount of compensation was invested by the Collector, under Section 29, Act VI of 1857, in Government securities, the plaintiff was declared not entitled, over and above the principal of the sum of compensation and its accruing interest in the hands of the Collector, to demand interest from the defendant at the rate of 12 per cent. per annum upon the principal sum from the date it might have been payable to him, but for the counter-claim of the defendant. *Syud Keramut Ali Mutwalee* v. *Rajah Suttochurn Ghosal*, W. R., 1864, 329.

When the railway company takes lands for public purposes, the party in possession at the time is *primâ facie* entitled to the money paid for it, until some one else establishes a prior claim. *Chundee Churn Chatterjee* v. *Biddoo Bodone Banerjee*, 10 W. R., 48.

When land is taken by the Government, under Act VI of 1857, the land is absolutely vested in the Government under Section 8, free from any right of way previously enjoyed by the public over such land. *Fenwick, H. B., in the matter of the petition of*, 6 B. L. R., Ap., 47, and 14 S. W. R., Cr. R., 72.

When land is taken up for a railway company, under Act VI of 1857, the owner should claim for all damages likely to be caused to his adjoining lands by the works of the company; and no suit will lie for damages so caused if they could reasonably have been foreseen at the time of the fixing of compensation.

Whether such damages could reasonably have been foreseen or not is a question of fact to be determined by the lower Court. *Tapidas Govindbhai* v. *The B. B. and C. I. Railway Company; B. B. and C. I. Railway Company* v. *Tapidas Govindbhai*, 6 Bom. Rep., A. C. J., 116.

A Collector who, after making proper enquiries, pays compensation-money for land taken under Act VI of 1857 to the person "deemed by him to be in possession as owner" (the amount of such compensation having been settled under Section 5), is not liable to be sued by the real owner of such land for the amount of such compensation-money.

It is in the discretion of the Collector whether he will take advantage of the provisions of Section 29 or not. *Yesoba Dumodhur* v. *Secretary of State for India in Council*, 7 Bom. Rep., O. C. J., 12.

By a Government notification of the 3rd of June, 1863, published in the *Gazette*, it was declared, under the provision of Act VI of 1857, that a certain strip of land passing by the mill of the de-

fendants was required for a public purpose, the B. B. and C. I. Railway, a plan of which land was to be seen in the Collector's office.

On the 4th of November following the secretary of the defendants' company received a notice signed by the Collector, requiring the owner of the mill to call at the Collector's office to signify his acceptance or otherwise of the compensation for the land required.

The secretary went to the Collector's office, and there saw a plan, from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken, but no compensation for the well or land required was then agreed upon.

On the 28th of November a notice was served upon the defendants, signed by the Collector, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint a second arbitrator to determine the amount of compensation for the land (describing it) required by the B. B. and C. I. Railway Company.

The defendants' secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for their land required for the B. B. and C. I. Railway Company.

Semble,—That a contract was entered into by the last-mentioned notice and letter of reply to it, of which specific performance could be enforced.

Held that the defendants had, by appointing their arbitrator to determine the compensation for the land required, waived any irregularity in the previous proceedings, and precluded themselves from claiming to have the whole manufactory taken under Section 32, Act VI of 1857, though no proceedings were taken in the arbitration for nearly twelve months subsequently, and the defendants had shortly before such proceedings made such a claim.

A well in a mill compound, from which the mill's engine is by means of a pipe supplied with water, is part of a manufactory within the meaning of Act VI of 1857, Section 32. *Kharshedji Násarvanji* v. *The Secretary of State in Council of India*, 5 Bom. Rep., O. C., p. 98.

II.—EASEMENTS.

8.—Generally.

A user "all along" or "from before" does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained. *Mooktaram Bhuttacharjee* v. *Hurro Chundra Roy and others*, 7 W. R., 1.

A user for four or five years is not sufficient to show a right by prescription. *Hurro Soondery Debia and others* v. *Ramdhon Bhuttacharjee*, 7 W. R., 276.

A wrongful interruption of right of water does not necessarily destroy the right of user, unless such interruption has been acquiesced in by the party wronged. *Roy Luchmee Persaud* v. *Mussamut Fuzeelutoonissa Bibee and others*, 7 W. R., 367.

Where a right of user of a drain or passage is incidental to a house, that right is not affected by the owner of the house letting the house to a tenant. *Mussamut Amjudee Begum and others* v. *Syud Ahmed Hossein and another*, 6 W. R., 314.

The law of easements in England, being derived from the civil law, has no peculiarities to debar its being applied to British subjects in India. *Culliandoss Kirparam* v. *H. Cleveland*, 2 Ind. Jur., O. S., 15.

A grant, either express or implied in prescription, is necessary to establish an easement. Conclusive evidence is required to prove an easement the result of which is great damage to the servient tenement. Without an uninterrupted user there can be no claim to an easement. *Moonshee Zumeer Ali* v. *Mussamut Doorgabun*, 1 W. R., 230.

A finding by the lower Appellate Court that the special appellant had failed to prove his user as of right of an easement on the special respondent's land, cannot be interfered with in special appeal. *Moonshee Zumeer Ali* v. *Mussamut Doorgahim*, 2 W. R., 212.

Where the house, the right of easement to which was claimed, was not and had not been in existence for several years, nor was the intention shown of rebuilding it within a reasonable time,—*Held* that the right of easement which is acquired by prescription and enjoyment, and continues so long as the person enjoying it continues the enjoyment, and shows an intention to continue it, has thus been lost by discontinuance; and that by the destruction of the tenement the servitude has been extinguished, and the plaintiff has no right to maintain the suit for the right of easement. *Teeka Ram* v. *Doorga Pershad*, 1 Agra Rep., A. C., 196.

If the plaintiff's privacy was invaded, and the defendant could not establish his right by long usage, the former was entitled to have the windows closed, and the latter cannot be allowed to open new windows, merely because the comfort and ventilation of his own building would be increased. *Goor Dass* v. *Monohur Dass*, 2 Agra Rep., A. C., 269.

If a party has ancient right to the discharge of water from his roof on a certain piece of land, it is not competent for a purchaser of the land to exercise his right thereto in such a manner as to interfere with the easement, and impose the trouble and expense on the owner of the easement of procuring some new mode of discharge. *Sheo Nauth Singh* v. *Bishonath Singh*, 2 Agra Rep., 191.

Held that uninterrupted enjoyment for a period of more than thirty years was necessary in order to acquire a title by prescription to an easement in the mofussil of the Bombay Presidency; the law applicable to such cases being Regulation V of 1827, Section 1, Clause 1, and that Act XIV of 1859 had made no alteration in this respect. *Anaji Dattushet* v. *Morushet Bapushet*, 2 Bom. Rep., 354.

In a suit to remove an obstruction to the enjoyment of light and air and for damages,—*Held* by Markby, J., that, in cases where English law is applicable, the Law of Prescription is that existing in England prior to the passing of the Prescription Act. Although the enjoyment of light and air as of right for upwards of thirty years is evidence from which an enjoyment from time immemorial may be presumed, yet inasmuch as the period of legal memory is about 700 years, the claim by prescription in this country is defeated by the fact

that English law has only been introduced here for about 200 years. Where an easement has been enjoyed for upwards of twenty years, the presumption of a grant is a question of fact, and not of law. Distinction drawn between positive and negative servitudes.

Held by Peacock, C. J.—A right to air may be acquired by express grant, but it cannot be acquired merely by presumption arising from user, whether the presumption is a presumption of prescription or not. The only amount of light which can be claimed by prescription or by length of enjoyment, without an actual grant, is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house. The uninterrupted enjoyment of light for twenty years acquiesced in by the owner of the servient tenement raises a presumption of right which, in the absence of any evidence to rebut it, ought to be acted upon by those who have to determine the facts. Such presumption is one of law, and not of fact.

Held by Norman J.—Servitudes are known and recognized both in Hindu and Mahometan law. A right to the unobstructed access of light is not a property or interest in the light itself, nor a right to be enjoyed in or over the soil of the adjacent owner. By analogy to the Law of Limitation, an adverse and uninterrupted use of an easement for twenty years confers a right to it: therefore where the access of light and air, through the windows of a house, has been enjoyed for twenty years, and there is nothing to rebut the presumption of title, the law implies an obligation on the part of an adjoining owner not to interrupt the free access of necessary light and air through such windows. *Bagram* v. *Khettranath Karformah*, 3 B. L. R., O. C., 18.

A party claiming the right of user by prescription over the property of another must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. *Mullik Jawad-ul-huq* v. *Ram Prasad Das*, 3 B. L. R., A. C., 281.

No period has been definitely fixed to create a right of prescription.

There is no decision which says either that a finding that the user has lasted for at least 12 years is necessary, or that such a finding of a user for 12 years would be conclusive. *Rupchandra Ghose* v. *Rupmanjari Dassi*, 3 B. L. R., A. C., 325.

In a suit to recover possession of a piece of land on which defendant had erected a stall for the sale of commodities on market days, it was held that defendant's right of resort to the market as a member of the public did not warrant his having a stall located in a particular spot, and that the latter right could only be acquired either by grant or by prescription. *Ram Manick Roy and others* v. *Sheikh Asgur*, 11 W. R., 112.

A suit to close doors recently opened in the house of a neighbour, on the ground that such doors overlook the Zenana, or female apartments, of the plaintiff, does not lie. *Sheikh Golam Ali* v. *Kuzi Mahomed Zahur Alam*, 6 B. L. R., Ap., 76.

When in Gujerat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominant and the servient tenements. *Mani Shankur Hargovan* v. *Tri Ram Narsi* followed. *Kuvarji Premchand et al.* v. *Bai Javer*, 6 Bom. Rep., A. C. J., 143.

Held that in accordance with the usage of Gujerat, an invasion of privacy is an actionable wrong, and that a man may not open new doors or windows in his house, or make any new apertures, or enlarge old ones, in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation, and so intrude upon his privacy.

The doctrine of English Law, which has been followed by the High Court of Madras, is different. *Mani Shankur Hargovan* v. *Tri Ram Narsi et al.*, 5 Bom. Rep., A. C., 42.

Where a house-owner in a street changed the arrangement or construction of the upper part of his house, so that the alteration gave him a wider range of vision than before, but in a manner otherwise consistent with his rights of enjoyment, no legal right of suit is given to a neighbour living on the other side of the road complaining of loss of privacy. *Joogul Lal* v. *Mussamut Jadsodu Bibee*, 3 N. W. R., 311.

A person claiming a right of easement over another's property is bound to prove continuous enjoyment without interruption not merely by presumption but as of right. *Heeralall Kooer* v. *Purmessur Kooer*, 15 S. W. R., C. R., 401.

In a suit for the removal of a pucca building recently erected by defendant upon land lying between the premises of the two parties to the dispute, where plaintiff's claim to use the land had been put upon his title as owner,—*Held* that having failed to make out the case originally set forth in the plaint, plaintiff had no right to fall back upon a title by prescription. *Held* that plaintiff's claim must stand or fall upon the strength of his own right, not upon any such finding as that defendant was not entitled to the exclusive use of the land. *Bhoobun Mohun Mundle* v. *Rush Beharee Paul*, 15 S. W. R., C. R., 84.

No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction.

An objection as to the plaintiff having no cause of action may be taken at any stage of the suit. *Parbati Charun Mukhopadhya* v. *Kali Nath Mukhopadhya*, 6 B. L. R., Ap., 73.

Water falling on A.'s land and collected in a reservoir there used to flow into B.'s land. *Held* that B. had no right to the use of the water, and that A. was entitled to erect on his own land a bund to prevent the water flowing on to B.'s land. *Bunsee Saboo* v. *Kalee Persaud*, 13 S. W. R., C. R., 414.

The mere fact of user for any number of years will not be sufficient to confer a right, if the user be from time to time interrupted by the owner resuming as occasion may require the exclusive use of his land. In such a case the user will be treated as permissive merely, and not as the exercise of a right. *Aukhoy Coomar Chuckerbutty* v. *Mollah Nobee Nowzu*, 13 S. W. R., C. R., 449.

9.—Right of Light and Air.

Ancient lights cannot be obstructed by the owner of the adjacent land building on it, so as to obscure the light and air always enjoyed. Whether the

party has or has not other windows on another side of his premises is immaterial. *Puran Mudduck* v. *Ooday Chand Mullick*, 3 W. R., 29.

To acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building in respect of which the right is claimed has assumed the appearance and outward aspect of a dwelling-house for more than twenty years before the time of the commencement of the suit, though not completed or used as a dwelling-house for the full period of twenty years before that time.

When a building is so far completed as to show an intention to use it as a dwelling-house, with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows, to take steps to challenge and hinder the acquisition of such right.

When an injunction has been granted restraining a person from interrupting the access of light and air to certain windows, and the Court considers that the injunction has been infringed, an attachment will issue, even though the defendant has proceeded according to the advice of his surveyor and legal adviser in constructing the building complained of as a breach of the injunction. The Court in such cases does not consider itself bound by the opinion of surveyors, but will form its own judgment as to the probable effect of the structure complained of. *Pranjivandas Hurjivandas* v. *Myaram Salmaldus and others*, 1 Bom. Rep., 148.

A. having built on his own ground a wall which blocked up the apertures in B.'s house for the egress of smoke and ingress of air, A. was required to make corresponding apertures in his wall, and the pulling down of the wall was not considered necessary. *Beharee Sahoo* v. *Mussamut Ajnus Koonwar*, 6 W. R., 86.

A person cannot be allowed to maintain a wall to the injury of his neighbour.

A. built an upper story to his house overlooking B.'s inner apartments, whereupon B. built a wall which A. complained deprived him of light and air. *Held* that as A. was the first and greater wrongdoer, he was entitled to no relief even if he proved that B.'s wall deprived him of light and air. *Sreenath Dutt* v. *Nund Kishore Bose*, 5 W. R., 208.

A person is entitled to the free use of his ancient light and air. When any person wilfully and intentionally obstructs that light and air he is liable for the removal of the obstruction. Money damages will be no compensation for the injury. *Syud Mahomed Hossein* v. *Syud Jafur Ali*, 4 W. R., 23.

The invasion of property by opening windows is not treated by the law as a wrong for which any remedy is given. *Komathi* v. *Gurunada Pillai*, 3 Mad. Rep., A. J., 141.

The defendants having opened certain windows and erected a verandah in their house which commanded a view of the plaintiffs' female apartments, the plaintiffs brought a suit against them to have the windows closed and the verandah removed. *Held* that no such suit was maintainable. *Mahomed Abdur Rahim* v. *Birju Saha*, 5 B. L. R., 676; 14 S. W. R., C. R., 103.

In a suit for enforcing the removal of an obstruction to the alleged right of the plaintiffs to the light and air through certain windows in a room of a house, contiguous to the house of the defendants, it was proved that the plaintiffs had purchased the premises in 1847, and that the building of the room in which the windows in question were had been subsequently commenced in 1849; and the Judge of the Court below found on the evidence that the room and windows had been completed and in use for a period of twenty years prior to the date of suit, May 18th, 1870; that the plaintiffs had enjoyed the light and air through the windows for a period of twenty years without any interruption by the defendants; and it being proved that the defendants had by buildings obstructed the light and air coming to the plaintiffs' windows, he granted an injunction commanding the defendants to take down so much of the wall as rose to the height of more than five feet above the level of the plaintiffs' floor, and restraining them, the defendants, from continuing their building above the height of five feet.

Held, on appeal, per Couch, C. J.—By the English law before the Prescription Act (which is the law governing the case), the presumption of a grant, in the case of a claim to the access and use of light for a building, was a presumption of fact, the presumption being founded on the consent or acquiescence of the owner of the servient tenement. Acquiescence implies knowledge, and knowledge may be presumed where the owner is in possession. There must be knowledge for twenty years, at any rate; if the knowledge were for a lesser period, whether there was a grant would be a question of fact, and no presumption could arise. The question of whether or not there was knowledge is one preliminary to the consideration whether or not a grant is to be presumed. *Held* on the evidence that there had been no knowledge on the part of the defendants during the whole time, and therefore there had not been a twenty years' enjoyment of the light and air with their acquiescence.

Held per Markby, J.—The presumption of a lost grant is one of fact. An uninterrupted user for twenty years would be evidence from which, taken with other circumstances, it might be inferred that a grant had existed. No "patientia," or "submission" on the part of the defendants being shown so as to constitute an acknowledgment of the existence of the right of the plaintiffs to the light and air, the defendants were entitled to succeed. *Bhuban Mohan Banerjee* v. *Elliot, J. S.*, 6 B. L. R., 85.

10.—Right of Water.

No proprietor can lawfully pen back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent. *Becharam Chowdhry* v. *Puhubnath Jha*, 2 B. L. R., A. C., 53.

The owner of two properties may conduct through troughs the rain-water accumulating on one property over a watercourse to the other property before it reaches another watercourse into which the rain-water, unless diverted, would naturally flow. *Ramruttun Neogee* v. *Phool Singh*, W. R., 1864, 147.

A person has no right to tap another's canal and abstract the water therefrom for his own land, unless he has acquired that right by grant or prescription *Run Bahadoor* v. *Poodhee Roy*, W. R., 1864, 319.

No presumptions of law in regard to rights of water are known in this country, but proof of ancient reasonable user by particular recognized means is sufficient to give the right. *Sreemutty Bundhoo Sookoolany* v. *Maharajah Joy Prokash Singh Bahadoor*, W. R., 1864, 367.

The right which a riparian proprietor has, under certain restrictions, to the use of the water of a natural watercourse has no application to a watercourse artificially constructed; and the mere fact of riparian proprietorship gives no rights whatever over such a stream. *Bhoop Narain Singh and another* v. *Kazee Syud Keramut Ali*, 6 W. R., 99.

Exposition of the right of discharging the rainfall on one's land through a watercourse over another's, and of the abandonment of such right. *Khettur Nath Ghose* v. *Prosono Ghose Gowalah*, 7 W. R., 498.

The right to take water is governed by established use. No one can open a new conduit to take additional water to the injury of his neighbours. *Athur Ali Khan* v. *Sekundar Ali Khan*, 4 W. R., 29.

A proprietor who by erecting a bund in his own land impedes the flow of surface drainage water from the higher land of another proprietor, is liable to pay damages on proof of actual substantial resulting loss. *Hameedoonissa* v. *Anundmoyee Dossee*, W. R., F. B., 25.

The plaintiff claimed a prescriptive right to the flow of the surface drainage water from the land of the defendant into his land. *Held* that such an easement can be acquired only where the water flows in a definite channel.

In a suit for interrupting the flow of water from the land of the defendant to the land of the plaintiff it appeared that, eight years before suit, the defendant had diverted the water, and that it had been diverted ever since. *Held* that the right if acquired would not necessarily be lost by the interruption, but that if the plaintiff acquiesced during that time in the interruption it might be some evidence of an abandonment of the right. *Kena Mahomed* v. *Mohutoo Sircar*, Marsh., 506.

The defendant closed up the outlets of a bank upon his own land, whereby the surface drainage water had immemorially flowed from the plaintiff's land into and over the defendant's land, and so escaped. By reason of the closing of these outlets the water was unable to escape, and the plaintiff's land became flooded and the crops therein damaged. *Held* that the plaintiff was entitled to maintain a suit to recover from the defendant the amount of damages he had sustained by reason of the ancient flow of the water from his land being thus impeded. *Held* also that in a suit for damages sustained by such an act done on the defendant's own land, actual damage to the plaintiff must be shown in order to sustain an action; and that the liability of the plaintiff to remit the rents of ryots whose crops were spoiled was sufficient damage. *Mussamut Anundmoye Dassee and others* v. *Mussamut Hurroodonissa and others*, Marsh., 85.

When a tenant by his lessor's permission erected a dam upon his holding, and thereby obstructed the natural flow of the water to other lands of the lessor,—*Held* that the mere permission did not amount to a grant.

Held also that there was no implied grant of the right to use water so as to derogate from the rights of those through whose lands the stream would otherwise flow.

Held also that the right under the permission might be terminated by revocation of the latter, but that such revocation would only be permitted on the terms of the landlord paying to the tenant the expenses which that permission had led him to incur.

Even when the dominant and servient tenements are the property of different persons, a man may license an act in its inception, and yet be entitled to relief when the act is found to have injurious consequences which he could not have contemplated at the time of the license. *Kesava Pillai* v. *Peddu Reddi*, 1 Mad. Rep., A. C., 258.

A suit for a declaration of prescriptive right to the use and enjoyment of the water of a watercourse can be maintained without the specification of any particular amount of damage sustained by the plaintiff.

The general rule of law in a case of this description is that, although proprietors of an estate through which a watercourse passes have the right to make use of the water for irrigating purposes, they must do so only to such extent as will not interfere with similar rights possessed by parties holding land lower down on the same watercourse. *W. Sardawan and others* v. *Hurbuns Singh*, 11 W. R., 254.

Where a party suing for the use of a water-way was found to have allowed it to be filled up without objection, and another of the same description to be constructed, which he had used for a year or two, he was held to have abandoned his right of user to the former water-way. *Jugutbundoo Chuckerbutty* v. *Jugut Chowdhry*, 12 W. R., 519.

In a suit to close up an outlet of water opened by the defendant, the lower Appellate Court found that the "outlet or *sench* (ছেঁচ)" was used *barabar* (বরাবর) all along, and that therefore the defendant had a right of user.

Held that an enjoyment for at least twelve years is necessary to create a right by user, and that user by the defendant for that period, at least, had been found. *Kartik Chandra Sirkar* v. *Kartik Chandra Dey*, 3 B. L. R., A. C., 166; 11 W. R., 522.

The proprietor of a pyne has a right to allow or to deny the use of water flowing through it to other persons, unless they have also a clearly defined right enabling them to control the water and convert it to their own use, a right clearly found to have originated in some grant or valid contract, or to have been exercised for so long a period that such title may be presumed. *Maharanee Indurjeet Kooer* v. *Luchmee Kooer*, 14 S. W. R., C. R., 349.

A suit may lie for damages for obstruction in the exercise of a right of *usucapio* over water, &c., although no property in the tank, &c., be asserted.

And Section 197 of the Code of Civil Procedure does not apply to suits for damages of this nature, and consequently the question of the amount of damages must be determined at the trial, and cannot be reserved for determination in execution of the decree. *Ram Juheel Lall* v. *Baboo Sheo Nath Singh*, 1 N. W. R., Par. 1, p. 24.

In a suit to establish a right of water and for damages for interruption of the same the facts were as follow: Plaintiff and defendant by agreement between them constructed a dam across a main channel, and from thence a smaller channel was made through the land of the defendant to the plaintiff's land, by means of which it was agreed that the plaintiff should be at liberty to irrigate the fields. The agreement was acted upon for a long course of years. *Held* that the agreement was not a mere parol license revocable at the pleasure of the defendant, but an agreement which created a right of easement, unlimited in point of time, to the use of the water by the plaintiff, and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow. A mere license differs in its effects from a license coupled with the creation of an interest. The former is revocable, but the latter is subject to the same incidents, and is as binding and irrevocable as any other contract, gift, or grant. *Krishna* v. *Rujappa Shunthiga*, 4 Mad. Rep., 98.

The plaintiff brought a suit to establish his right to an uninterrupted flow of water through a channel which ran into a tank in a village which was the plaintiff's property, and to compel the removal of sluices erected across the said channel by the first defendant's predecessor in office, and used for the purpose of diverting the flow of the water. *Held* that acquiescence in the sense of mere submission to the interruption of the enjoyment does not destroy or impair an easement. To be effectual for that purpose it must be attributable to an intention on the part of the owner to abandon the benefit before enjoyed. *Held* also that the diversion of the water was a continuing injury down to the time of the institution of the suit, and that the plaintiff's suit was not barred. *Held* also that it must appear from the circumstances in evidence in such case that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of injunction. *Held* also that the right to an easement in the flow of water through an artificial watercourse is as valid against the Government as it is against a private owner of land. *Held, per* Scotland, C. J.—That the grant of an easement may be presumed from mere continued user of the privilege openly enjoyed by the occupiers of the dominant tenement as of right throughout any long period of time without interruption on the part of the proprietor of the servient tenement, but with this qualification, that the user should be for at least the period of adverse possession which is prescribed by Section 1, Clause 12 of the Act of Limitations, as a bar to the enforcing of title to corporeal property.

Per Innes, J.—That no precise period of uninterrupted enjoyment can be fixed as sufficient of itself to establish a right to an easement. *Ponnusawmi Tevar* v. *The Collector of Madura*, 5 Mad. Rep., 6.

The Magistrate had, on the complaint of the defendant, passed an order, under Section 320 of the Criminal Procedure Code, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public, until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession.

The plaintiff accordingly brought his suit in the Moonsiff's Court to recover possession of the land. The Moonsiff gave him a decree for exclusive possession of the land. On appeal the Judge held that the Moonsiff had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed in special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. Rooke *v.* Pyari Lall distinguished. *Mahes Chundra Mookerjee* v. *Ramutum Palit*, 5 B. L. R., Ap., 68; 14 S. W. R., C. R., 163.

II.—Right of Way.

By the terms of an arrangement come to by the parties in the proceedings before the Commissioner in a suit for partition of real property it was agreed that "T. (one of the parties) is to be paid the price of a privy which is to be pulled down for the purpose of the new pathway to be opened on the west side of the premises, which price is to be ascertained (by the Commissioner) on inspection, and paid by all parties, T. being at liberty to take over the materials at a valuation."

In a suit by the purchaser from one of the parties to the partition suit against T., charging that he obstructed the pathway, &c., such obstruction being the not removing the privy,—*Held* (reversing the decision of the Court below) that the payment to T. of the price of the removal was a condition precedent to the obligation on T. to remove the privy. *Tarruck Nauth Ghose and others* v. *Kalee Pershad Khettry*, 2 Ind. Jur., N. S., 210.

In cases of obstruction the Court will hold that the words "lanes, walks, gangways, or other thoroughfares," must be restricted to mean those spaces over which the public, by consent or dedication of the owner, enjoy the right of passing and repassing for market purposes. *In re the Justices of the Peace for the Town of Calcutta* v. *The Maharanee of Burdwan*, 1 Ind. Jur., N. S., 102.

It is necessary to show that the owner of a bazar in Calcutta actually permitted an obstruction in the paths of the bazar, in order that a conviction may be sustained against him under Act VI of 1863 (B. C.), Bye-law VII. *In the matter of the Justices of the Peace for the Town of Calcutta* v. *Heralall Seal*, Bourke's Rep., O. C., 412.

Where a person for having repaired a public road without having previously asked for leave to repair it was, on simple petition, charged with having obstructed the road, and the complainant never appeared,—*Held* that the Deputy-Magistrate ought to have dismissed the complaint. *Queen* v. *Bhola Nath Banerjee*, 7 W. R., Cr., 31.

The obstruction of a drain into which the sewage of complainant's premises fell does not fall either under Section 308 or 320 of the Code of Criminal Procedure, but is matter for a civil suit and injunction. *In re Troylaknath Bose*, 5 W. R., Cr., 58.

Where a jury is appointed under Section 310 of the Code of Criminal Procedure to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury. *The Queen* v. *Poholee Mullick and others*, 12 W. R., Cr., 28.

Where A. complained merely to the Magistrate

that "a certain road had been obstructed by B. and others,"—*Held* that the Magistrate was not bound to enquire into the matter under Section 320 of Act XXV of 1861. *The Queen* v. *Rassul Nusby and others*, 2 B. L. R., Ap., 9.

Held, in concurrence with a former decision, that no one has a right to institute a civil suit for the removal of an obstruction to a public road without showing that he has sustained some particular inconvenience beyond that which is sustained by any other member of the public in consequence of that obstruction. *Raj Luckee Debia* v. *Chunder Kant Chowdry*, 14 S. W. R., C. R., 173.

The owner of the land over which there is right of way by an ancient pathway cannot, without the consent of the parties entitled to the right, substitute another path and shut up the ancient pathway. *Tarineechurn Chuckerbutty* v. *Tarineechurn Chuckerbutty and others*, 1 Ind. Jur., N. S., 6.

In a suit for declaration of a right of way over the land of another, the plaintiff must prove the particular line over which he claims the right. Mere proof of a right to pass over the land without proving the particular route will not entitle a plaintiff to a decree. *Radhanath Sugracharji* v. *Baidonath Seal Kabiraj*, 3 B. L. R., Ap., 118.

The finding that a right of way had been "formerly" exercised is not a sufficient finding to indicate the length of time for which the right had been exercised, and is therefore insufficient to prove a right of user. *Krishna Chundra Chuckerbutty* v. *Kishna Chundra Banik*, 3 B. L. R., A. C., 211; 12 W. R., 76.

A plaintiff claiming a right of way over land taken possession of in execution of a decree cannot intervene under Section 230, Act VIII of 1859, but must bring a regular suit to establish his right. *Nobin Chunder Mozoomdar* v. *Jutadharee Haldar*, 2 W. R., 289.

A right of way cannot by the provisions of Act VI of 1867 continue to exist over land acquired by a railway company under that Act with the aid of Government. If however the railway company by their representations and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. *Collector of the 24-Pergunnahs* v. *Nobin Chunder Ghose*, 3 W. R., 27.

A. had a right of way over B.'s land. He allowed B. to erect a house on the pathway and enjoy it for seven years. He then brought a suit to have the pathway re-opened by pulling down B.'s house. *Held* that A. must be taken to have acquiesced in the interruption of his right of way, and his claim was one that a Court of equity and good conscience would not enforce. *Beni Madhub Das* v. *Ram Joy Rokh*, 1 B. L. R., A. C., 213; 10 W. R., 316.

A right of way by sufferance over another's land cannot create a permanent right. *Ashootosh Chuckerbutty* v. *Teetoo Haldar*, W. R., 1864, 293.

On a dispute taking place before a Magistrate as to right of way, if he repairs to the spot, and, with express consent, alters an existing path to one more convenient to the public generally, the party who gives the consent is bound by the Magistrate's act, and has no right of adverse action. *Muddon Mohun Mookerjee and others* v. *Nilmoney Banerjee and others*, 11 W. R., 304.

Whether in India or England time and user create a right of easement over the property of others. A.'s right of way over B.'s homestead is not affected by the fact of there being another pathway by which access to the main road may be obtained by A. *Sham Bagdee* v. *Fukeer Chand Bagdee*, 6 W. R., 222.

User during previous ownership is no evidence of a right of way which relates to the land of another. *Abhoy Churn Dutt* v. *Nobin Chundra Dutt and others*, 10 W. R., 298.

A right of way may be created by use continued for many successive years, even though use is limited to one particular season of the year alone. *Oomer Shah* v. *Ramzun Aly and others*, 10 W. R., 363.

Where defendant was occupying a plot on which stood his house, and had all along used (without any objection on the part of the plaintiff) a pathway which was the only mode of access to his house, and where it was found, by the lower Courts in a suit of which the subject-matter was the pathway, that the user of the defendant and of the persons who preceded him in the enjoyment of the plot had covered a period of considerably more than twelve years, it was held that defendant had a right of way as against the owner, the plaintiff. *Quære*,—Ought a Court to infer from user alone that a right of way has been conferred by the owner of the land upon the person exercising the user, unless that user has extended over a period as long as that which the law would allow to the owner for bringing an action of ejectment, if absolutely excluded from possession? *Mohim Chunder Chuckerbutty* v. *Chundee Churn Gooho and another*, 10 W. R., 452.

In a case of dispute concerning a right of way, the Magistrate, instead of deciding against the complainant, on the ground that he has another way of approach to his house, ought to enquire whether or not the disputed road has been in the use and occupation of the complainant, and for how long; and if he holds him to be in possession to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court. *Queen* v. *Toyluckonath Sircar*, 2 W. R., Cr., 64.

Held that enjoyment without interruption for a period of more than thirty years was required in order to establish a right of way by prescription in the mofussil of the Bombay Presidency. *Rambhan Bopushet* v. *Bhai Babushet*, 2 Bom. Rep., 352.

A right of way is ordinarily a right of passing, and not a general right to pass from one point to another point. *Goluck Chunder Chowdhry* v. *Tarinee Churn Chuckerbutty*, 4 W. R., 49.

A right of way in this country need not be proved by user for a definite period of twenty years in order to give a right by prescription or presumption of a grant. Proof of well-established and fixed user will be sufficient. *Bhugwan Chundra Chowdhry* v. *Sheikh Khosal and others*, 7 W. R., 271.

The relinquishment of all rights and interests in land exchanged does not necessarily involve loss of right of way over the land. *Kalee Kishore Roy* v. *Deen Doyal Singh*, 4 W. R., 83.

The owner of a piece of land between a village and the public road, who allows his neighbour's cows to pass over it on the way to pasture, does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultiva-

tion impossible. *Gooroochurn Goon and others* v. *Gungagobind Chatterjee*, 8 W. R., 267.

Suit by members of a joint family to enforce their right to a pathway through a door (which had been blocked up) leading to a joint thakoorbarree. *Held* that this was not a case in which the plaintiffs claimed the right of user, but only complained of the obstruction of a passage belonging to them jointly with the defendants. *Chunder Kant Chowdry* v. *Nund Lall Chowdry*, 16 S. W. R., C. R., 277.

A right of way need not have its origin in an express grant, but may be established by continued user for a certain period constituting adverse possession. *Ram Gunga Dass* v. *Gobind Chunder Dass*, 16 S. W. R., C. R., 284.

A right of way may be created either by grant or by immemorial custom or by necessity, and it is necessary for a party seeking to establish a right of this kind to prove its existence, and that it is ancient and has been exercised without interruption. No specific time is sufficient to establish a right of user. The determination of the existence of the right is a question depending on the evidence in each case, the right being inferred from the evidence. *Imambundee Begum* v. *Sheo Dyal Ram*, 14 S. W. R., C. R., 199.

The purchaser of a house acquires the right to the use of a way to a road which has been enjoyed with the house by the vendor if it is not merely a right to a way of necessity, but a particular right over a defined path. *Nubeen Chunder Bullub* v. *Bhoobun Chunder Mundle*, 15 S. W. R., C. R., 526.

If a person has a right of way from one place to another over a particular line he cannot be compelled to use a different and substituted way. But where the right is simply to pass from one point to another the party desiring to exercise the right cannot claim to pass in a particular tortuous and indirect course between the two points. *Syud Hamid Hossein* v. *C. Gervain*, 15 S. W. R., C. R., 496.

In order to establish a right of way the person claiming must prove uninterrupted user for a certain length of time, and if his right is interrupted must go into Court at once. No length of time can give a party such a right as destroys all the ordinary uses of the servient property, *e.g.*, a general right to the promiscuous use of a whole property for the purpose of driving cattle over it. *Joy Doorga Dassee* v. *Juggernauth Roy*, 15 S. W. R., C. R., 295.

A general right of thoroughfare includes a right of way for marriage or other processions of the like nature, unless at the time of the first inception of the right it was restricted to a right of passage and such processions were interdicted. *Raj Manick Singh* v. *Ruttun Manick Bose*, 15 S. W. R., C. R., 46.

To constitute a right of way there must have been an uninterrupted user as of right, and not one exercised at the mere will and favour of the other party. *Futteh Ali* v. *Asgur Ali*, 17 S. W. R., 11.

A right of way over the land of another must be kept up by constant use. After a discontinuance of such use for a period of six years no suit can be brought to re-establish it. *Huridas Nandi* v. *Jadunath Dutt*, 5 B. L. R., Ap., 66; 14 S. W. R., C. R., 79.

Right of way.—Question of fact. *Mahomed Ali* v. *Jugal Ram Chundra*, 5 B. L. R., Ap., 84; 14 S. W. R., C. R., 124.

There is no rule of law that a certain period of enjoyment is required to establish the right of user. *Mullick Kurim Buksh* v. *Harrikar Mandar*, 5 B. L. R., 174; 13 S. W. R., C. R., 440.

A suit for declaration of right of way by a public road will not lie where there is no allegation of special injury or inconvenience to the plaintiff. *Ramtarak Karati* v. *Dinanath Mundle*, 7 B. L. R., 184.

XXIII.

POSSESSION AND MESNE PROFITS.

I.—POSSESSION.

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1.—EFFECT OF POSSESSION.

Semble,—That Reg. XVII of 1827, and Bombay Act I of 1865, were not applicable to building-sites in towns and cities, until Bombay Act I of 1865 was expressly made applicable to such sites by Bombay Act IV of 1868.

The law obtaining in India requires that in actions of ejectment the Courts should always enforce the rule that a plaintiff must recover by the strength of his own title; and a party who might have shifted the burden of proof, if he had proceeded under Sec. 15 of Act XIV of 1859, cannot, if he let slip that opportunity, obtain the same advantage in an action of ejectment.

Semble,—Mere possession as a trespasser is not sufficient to entitle a plaintiff to recover in a suit brought under Sec. 15 of Act XIV of 1859. There must be in the plaintiff juridical as opposed to mere physical possession. *Dádábhái Narsidá* v. *The Sub-Collector of Broach*, 7 Bom. Rep., A. C. J., 82.

If the plaintiff does not show possession within twelve years of suit it does not follow that defendant must have a verdict. Possession must be weighed with other evidence for the party proving it, and with reference to the tendency to rebut it, as the evidence adduced by the opposite party.

The plea of adverse possession for more than twelve years is another point for adjudication in bar. *Goopeenath Mookerjee* v. *Issur Chunder Banerjee*, 9 W. R., 365.

When lands which are not in their nature capable of actual occupation (such as a khal) appertain to lands which are occupied, the possession of the former in point of law necessarily follows that of the latter; but when a khal dries up and becomes culturable, if any one to whom it does not belong takes actual possession of it, a cause of action accrues to the person in possession of the land to which the khal appertains from the time of the wrongful possession, and not from the time of the khal becoming culturable or cultivated. *Sunnud Ali* v. *Mussamut Kuroofunissa*, 9 W. R., 124.

Where property purchased benamee at a sale for arrears of revenue remains for more than twelve years from the date of the sale in the adverse and undisturbed possession of the beneficial purchaser, such possession is not only sufficient to extinguish the title of the nominal purchaser, but it creates a title in the former capable of devolving upon his legal heirs and representatives.

Held (by Mitter, J.) that Section 21, Act I of 1845, and Section 36, Act XI of 1859, do not apply to a purchaser under Act XII of 1841. *Booa Russoole and others* v. *The Nawab Nazim of Bengal*, 11 W. R., 382.

Long adverse possession by defendant in the face of a powerful zemindar, without any opposition on the part of the latter, was held in the absence of any evidence to prove plaintiff's possession within twelve years, to establish clearly the fact that defendant had an independent title. *Dino Bundhoo*

Suhaye and others v. *The Court of Wards*, 11 W. R., 347.

A suit for a portion of land granted in trust for purposes connected with the preservation of a Mahometan saint's tomb, where plaintiff claimed as son of the last mutwallee, on the allegation that he (plaintiff) had been dispossessed during his minority, defendant's case being that the grant had never been in the possession of mutwallees, but had been divided among the original grantee's heirs, from one of whom the portion in dispute had come into the possession of his (defendant's) vendor. *Held* that the material point to try was whether plaintiff's ancestors had from the time of the grant been in possession, or whether the land had been inherited according to the ordinary rules of Mahometan inheritance by the heirs of the grantees. *Reasut Ali* v. *J. C. Abbott and others*, 12 W. R., 132.

A person in possession of land is *primâ facie* entitled to it, and to all increments to it. *Mothooranath Mozoomdar and others* v. *Tarinee Churn Singh*, 8 W. R., 164.

Where a plaintiff sued to recover certain property as wuqf, on the ground that the mutwalee and his ancestor (a former mutwalee) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment, and where it appeared that the plaintiff lay by for nearly twelve years from the time when the vendees purchased and were put into possession, it was held that he was not entitled to the assistance of the Court. *Bhurruck Chundra Sahoo and others* v. *Golam Shureeff*, 10 W. R., 453.

Where a party who, partly with his own funds and partly with Rs. 100 subscribed by the village, erected a building for a school, never gave the property to the school, and never even acquiesced in the managers of the school entering upon it,—*Held* that the managers entered upon it as trespassers, and that although the proprietor acquiesced in their having taken possession he did not thereby convey every property in the school to the subscribers, and was not bound to repay that portion of the money which he expended himself in building the house, or to do more than return that portion of the funds which were subscribed by the village. *Sreehurry Roy* v. *James Hills*, 7 W. R., 476.

A long possession would not confer any title on the occupant if it be proved that the possession was a permissive one. *Gunga Deen Chowdhry and others* v. *Hur Sahai Singh*, 4 Agra Rep., 261.

The mere possession of one person of another's land does not render the former liable to account for the profits. For these he is liable only where he has held tortiously, or under an agreement, express or implied, to make them good. *Mahammad Ali Bává Labbi and another* v. *Mohiadin Nainair and others*, 1 Mad. Rep., 107.

In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held* that a previous possession for twelve years of the property sought to be recovered did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property, without regard to any right which may be alleged by the defendant. *Lakhi Kumar* v. *Ram Dutt Chowdry*, 3 B. L. R., Ap., 44.

In a suit brought to recover a share in land alleged to be joint family property, where the defendants pleaded possession as proprietors for more than thirty years,—*Held* that it was not necessary that actual separation should be proved; but that it was enough to show that the defendants had been in uninterrupted possession for more than thirty years. *Guravi* v. *Guravi*, 4 Bom. Rep., A. C. J., 170.

In a suit brought for a share in an hereditary family allowance, where the defendants pleaded possession for more than thirty years,—*Held* that the lower Appellate Court was in error in holding that "if a claimant is proved to be one of the sharers of the defendants, no lapse of time, since the active enjoyment of the privileges, would bar his claim to such a share as he would be entitled to." S. A., No. 4268, 7 Bom. S. D., 372, followed. *Raw* v. *Raw*, 4 Bom. Rep., A. C. J., 173.

A party recovering possession of land in virtue of a decree under Section 15, Act XIV of 1859, recovers the land with the crop growing upon it, and is fully entitled to cut the same. *Shirajdee Poramanick* v. *Emam Buksh Biswas*, 13 S. W. R., C. R., 104.

A. got a decree for possession, but before she obtained possession B. obtained a decree declaring him jointly entitled with A. to a particular share of the same property. *Held* that when A. got possession that possession inured to the benefit of B. as well as to herself, and B.'s cause of action in a suit against A. in respect of the same property dated from the time when A. obtained possession. *Gooroo Churn Sircar* v. *Goluckmonee Dassee*, 13 S. W. R., C. R., 188.

The mere fact of possession, as tenants for a certain number of years, cannot create any right to retain possession as against a person to whom the proprietor has granted a lease. *Na Zir Lushkur* v. *Golapoodeen Lushkur*, 14 S. W. R., C. R., 410.

For the purposes of settling actual possession, Section 18 of Act XIX of 1841 declares the Judge's decision to be final; but when questions arise in the execution of a decree or order passed upon an application under the Act such section does not apply. *Dhunput Ojha and another* v. *Musamut Ondha Kooer*, 3 N. W. R., 151.

The possession of a tenant is in the eye of the law the possession of his landlord. *Grish Chunder Roy* v. *Bhugwan Chunder Roy*, 13 S. W. R., C. R., 191.

In a suit to recover from the minor son of the late possessor of a polliem, of which the guardians of the minor were in possession by virtue of a fresh grant made by the Government to the minor after the death of his father, the late possessor, money lent to the father of the minor to pay off arrears of peishcush for which the polliem was about to be attached, and for reproductive work done upon the land,—*Held* that the income of the polliem was not liable for the debt. *Arbuthnot* v. *Ooluguppa Chetty*, 5 Mad. Rep., 303.

Zemindars and poligars and others in a like position, and occupying tenants, possessed different proprietary rights in land by recognition of the Government before the passing of Regulation XXV of 1802. By it the Government declared with the

force of law their acknowledgment and confirmation of such rights as they were then enjoying, and in order to quiet all uncertainty and disquietude respecting them, and to establish general certainty of tenure in the holders of the same, provided for the permanent assessment of all lands liable to pay revenue to Government; and for the issuing thereupon of express hereditary grants to every zemindar and other intermediate proprietors, and written engagements between them and their tenants: and therefore the Regulation does not operate to exclude or disfavour the maintenance of a claim against the Government to an hereditary or other estate in land which has not been secured the benefits of a settled title under the Regulation, because, for political reasons, the Government has thought it inexpedient to give full effect to its enactments. But claims of title to such estates are merely left without the conclusive proof of hereditary title afforded by an istimrari sannad. It was never intended that the Government, by delaying to do in regard to some estates what the Regulation enacts should be done in regard to all lands, for the purpose of setting at rest all uncertainty as to titles, should secure the power to treat all such estates as held by no permanent title whatever. The existence of a proprietary estate in polliems or other lands not permanently assessed, and the tenure by which it has been held, are therefore matters judicially determinable on legal evidence, just as the right to any other property. *Lekkumani* v. *Srimut Runga Kristna Mutta Vira Puchaya Naikur*, 6 Mad. Rep., 208.

2.—Effect of Dispossession.

When a person forcibly dispossessed sues to recover possession, the burden of proving title is on the party by whom he was forcibly dispossessed. *Shama Soonduree Debia* v. *The Collector of Maldha and others*, 12 W. R., 164.

The plaintiff sued to set aside certain survey proceedings by means of which he had been dispossessed of land by the defendant. It was found he had been dispossessed by the defendant, but not by means of the survey proceedings. *Held* that the manner of dispossession was immaterial so long as the fact was proved. *Rajah Joy Mungul Singh* v. *Rajah Mohendur Narain Singh*, 2 W. R., 154.

A tenant dispossessed by order of a Magistrate, under Section 318 of the Code of Criminal Procedure, is not bound to sue for the reversal of that order in order to recover possession. *Sreemutty Luckhee Debea Chowdhrain* v. *Gooroo Doss Sein*, W. R., 1864, Act X R., 54.

Plaintiff having sued under Section 15, Act XIV of 1859, for possession of a parcel of land of which he alleged himself to have been dispossessed by defendants building a hut upon it, the Court of first instance determined that as the land was part of a village, and plaintiff had not sued for possession of the village, it could neither declare his possession of the entire village nor of the particular parcel.

Held that there was no reason why the Court should not try whether the plaintiff was dispossessed as alleged, and whether he should not have possession. *Omarchand Mohata* v. *The Nawab Nazim of Bengal*, 11 W. R., 229.

A plaintiff can sue for the profits of property from which he has been dispossessed by the defendant, without being obliged to sue for possession. *Dyamoyee Dassee* v. *Modhoo Moodun Mytee*, 3 W. R., 147.

Where in a suit to recover possession of land the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendants, the lower Appellate Court threw upon the defendant the burthen of proving his title, and on his failing to do so, decreed the case. *Held* that this was a fair inference of title, and of a right to be replaced in possession, without going further into the title, that is, to the mode of its acquisition. *Trilochan Ghose* v. *Kailas Nath Sidhanto Bhowmik Bhuttacharjee*, 3 B. L. R., A. C., 291; 12 W. R., 175.

Where plaintiff alleges forcible ouster in a certain year, he is bound to prove such ouster before defendant need be called upon to prove anything. *Rajaram Kalita* v. *Roopa Kagatee Kalita*, 13 S. W. R., C. R., 113.

Where the decree-holder in execution took khas possession, and then a purchaser from the judgment-debtor tendered payment of the arrears of rent due under the decree, it was held that there was no equity established between the two which would warrant the dispossession of the decree-holder. *Sheikh Gunnee Mahomed* v. *Baharoollah*, 13 S. W. R., C. R., 240.

Where a zemindar so interferes with the possession of a tenant not personally occupying the land as to induce the under-tenants to pay rent to him (the zemindar), his interference amounts to dispossession. *Mussamut Heymobutty Dassee* v. *Sreekissen Nundee*, 14 S. W. R., C. R., 58.

3.—Title by Possession.

Following a decision of the Privy Council, it was held that possession of land without payment of rent for twelve years is sufficient to establish lakheraj title. *Bissonath Komilla and others* v. *Brojomohun Chuckerbutty and others*, 10 W. R., 61.

A person in possession of property ought to be presumed to be in lawful possession until the contrary be shown. Beyond this possession is only evidence to be taken conjointly with other evidence to establish or impugn a title. *Selam Sheikh* v. *Boidonath Ghattak*, 3 B. L. R., A. C., 312; 12 S. W. R., 217.

Possession is evidence of title, and if a plaintiff proves that he had possession and that the possession has been forcibly disturbed by defendant, he makes out a *primâ-facie* title which it is for defendant to rebut. *Ayesha Beebee and others* v. *Kanhye Mollah and others*, 12 W. R., 146.

Possession need not be long in order to be some evidence of title. *Puran Chunder Mookerjee* v. *Protap Narain Paul*, 9 W. R., 120.

Plaintiffs cannot reasonably be required to prove the specific source (whether from their own funds or not) from which they acquired properties which were admittedly acquired about a century ago; long possession being not only evidence of title, but a good and valid title by itself. *Rung Lall Misser* v. *Roghoobur Singh and others*, 9 W. R., 169.

Possession, except where it is of such a length and character as of itself to constitute title, is merely evidence of title, and is so only because

undisturbed possession without anything more is presumed to be referable to rightful title and to absolute ownership: it is open to the other side to show that such *primâ-facie* presumption is ill-founded. *Kalee Churn Scin* v. *Adoo Sheikh*, 9 W. R., 602.

A person in possession with a bad title is entitled to remain in possession until another person can disclose a better title. *Gopee Nath Doss and others* v. *Dyanidhee Sundoora Mohapatur*, 7 W. R., 485.

A zemindar has no right to restrain the persons of his officers. If he does so he is liable to more than merely nominal damages. Nor can the zemindar eject his officers from their house of which they have had long possession without clear proof of title on his part. In India the title of possession must prevail until a good title is shown to the contrary. *Raja Pedda Vencatapa Neddoo Bahadur* v. *Anoovala Soodrapa Naidoo and another*, 6 W. R., P. C., 13.

A decision in an Act IV of 1840 case is no evidence of title one way or the other. *Gudadhur Koondoo and others* v. *Ramcoomar Bose and others*, 6 W. R., 155.

Long and undisturbed user or possession confers title by prescription, because it is presumed to be founded on title. *Gooroo Persaud Roy and others* v. *Bykunto Chunder Roy and others*, 6 W. R., 82.

In a case for recovery of possession after ouster in which the plaintiff is held to have a bad title, whilst the title of the defendant in possession has not been enquired into, the plaintiff cannot oust the defendant in possession simply by proving anterior possession, but must prove title. A possessory suit, under Section 15, Act XIV of 1859, should in such a case be brought within the proper time. *Mussamut Tukroonissa Begum and others* v. *Mussamut Mogul Jan Bebee*, 8 W. R., 370.

A. originally owned two zemindaries between which lay a bil, or marsh, of which he also owned the fisheries. One of the zemindaries was sold and purchased by B., but the bil fisheries still continued with the remaining zemindary held by A. After the sale, certain lands reclaimed from the bil were for some years held by B. as part of his purchased zemindary. A. instituted a summary suit under Act IV of 1840, and was by an order of the Magistrate put in possession of these lands. B. brought a regular suit against A. to recover the lands and set aside his order. *Held* (reversing the decisions of the Courts below) that it was necessary for B. to show a better title to the land than A. could produce. It was not enough for him to prove possession anterior to the Magistrate's order under Act IV of 1840. The presumption was that the land of the bil belonged to A., who had admittedly owned both estates before, and had retained the fisheries of the bil after the auction-sale. B. ought to have shown when and how, if at all, the right to the fisheries and the right to the soil were severed. *Baroda Kanto Roy* v. *Chundra Coomar Roy and others*, 2 B. L. R., P. C., 1; 11 W. R., P. C., 1.

Where a plaintiff seeks to recover possession upon a title recently acquired, he is not invariably required to prove the origin of his vendor's title. Long and undisturbed possession on the part of the vendor, when positive evidence of title cannot be had, may in many cases constitute proof of title. *Joykishen Mookerjee* v. *Raj Kishen Mookerjee*, 12 W. R., 315.

Possession is evidence of title, and gives a good title as against a wrong-doer; but a person who has not had possession cannot without proof of title turn another out of possession, even though that other may have no title; for possession is a good title against every one who cannot prove a better.

In a suit to recover the possession of land, the petitions of alleged owners, through whom the plaintiff claimed title, presented to the Collector and to the Principal Sudder Ameen, and which respectively stated the conveyance from the one to the other, and from the last supposed owner to the plaintiff, were tendered as evidence of the plaintiff's title, without production of the deeds, or even evidence that such alleged owners had ever been in possession of the property. *Held* that the petitions were not admissible in evidence. *Clarke* v. *Bindabun Chunder Sircar and others*, Marsh., 75.

Where a party, originally a mortgagee out of possession, has been put into possession by the act and permission of the mortgagors, he has really (inasmuch as a parol contract is sufficient in this country to pass immoveable property) obtained a new title altogether different from that which he possessed before, and having its foundation in the act of the parties themselves when they put him into possession. *Runjeet Naran Singh and others* v. *Mussamut Shurefoonissa and others*, 10 W. R., 478.

There may be such possession of waste lands as to protect a suit from being barred by limitation, and where the question of possession is doubtful a presumption will arise in favour of the party who proves title. *Mahomed Busir and others* v. *Kureem Buksh and others*, 11 W. R., 268.

4.—What Constitutes Possession.

Occasionally visiting and making use of a house is ample evidence of possession, unless shown to have been done by the claimant in the capacity of a visitor, and not in his own right. *Unonto Ram Seal* v. *Brojo Bullub Seal*, 11 W. R., 136.

A witness's statement that a party "is in possession" is no evidence of the fact. The question of possession is a mixed one of law and fact; and the evidence produced must give the various acts of ownership which go to constitute possession, so that the Court may arrive at its own conclusion. *Ishan Chunder Behara* v. *Ram Lochun Behara*, 9 W. R., 79.

Possession obtained and continued by fraud is not possession within the meaning of Act X of 1859. *Bhoobunjoy Acharjee* v. *Ram Narain Chowdhry*, 9 W. R., 449.

At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung, (situated in Mymensingh, at the foot of the Garrow hills) was not defined by Government. From before that time, and certainly for more than sixty years, the zemindars of the pergunnah have always, but in an irregular and uncertain manner, exercised certain rights in the Garrow hills and over the inhabitants, who are half savages, such as hunting elephants, cutting wood, levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut), and

exacting occasional services from them. Government held a survey, and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zemindar thereupon sued to set aside the survey, and for a declaration that the northern boundary lay many miles further north, and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung.

Held, per Macpherson, J. (Seton-Karr, J., *contra*), that the acts of possession proved by the zemindar were not sufficient to entitle him to a decree, being acts of mere easement independent of possession. *The Government* v. *Rajah Raj Kishen Singh Surmona Bahadoor*, 8 W. R., 343.

So long as the relation of landlord and tenant exists, the omission by the tenant to pay his rent does not constitute an adverse possession so as to make limitation applicable. *Troylukho Tariny Dossea* v. *Mahimma Chunder Mutluck and others*, 7 W. R., 400.

Possession as a trustee for a brother's widow is not adverse possession against her. *Chunder Kant Surmah and others* v. *Bungshee Deb Surmah*, 6 W. R., 61.

The possession of a manager for the rest of the family is not adverse. *Mahomed Muddun* v. *Khodezunissa*, 2 W. R., 181.

Possession must be presumed to be of right and adverse, until that presumption is rebutted by evidence. *Biressur Banerjee* v. *Onoda Churn Banerjee*, 3 W. R., 12.

In a suit for possession of certain lands purchased by plaintiff at a sale, in execution of a decree of the Sudder Ameen's Court, the lower Court held that "possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court," and that the suit being brought within twelve years of that proclamation was in time. *Held*, on appeal, that such imaginary possession was no possession at all, and that the suit was barred by limitation. *Jowher Aly* v. *Ram Chand and others*, 2 B. L. R., Ap., 29.

Where certain sharers took in lieu of their proportion of profits a piece of land rent free, with an agreement that on relinquishing the land they might claim their share of the profits, it was held that they could not be said to have been at any time out of possession of their shares so long as they held the land, and that on relinquishing the land they might sue for profits. *Sutul Singh* v. *Luchnun Singh*, 3 N. W. R., 23.

5.—Suits for Confirmation of Possession.

In a suit for confirmation of possession and declaration of title a decree cannot be given to the plaintiff without a clear finding that the plaintiff was in possession of the land in dispute. *Shibchunder Bhuttacharjee* v. *Juggut Tara Chowdhrain*, 6 W. R., 64.

There can be no decree for the plaintiff in a suit for confirmation of possession without proof of his actual possession. *Agum Misra* v. *Pullukdharee Misra*, W. R., 1864, 187.

A suit based upon an allegation of possession must be at once dismissed if the plaintiff be shown to be out of possession. *Sukram* v. *Kala Kahar*, 3 B. L. R., A. C., 105.

A plaintiff who sues only for declaration of title and confirmation of possession has no right if he obtains such declaration to turn the defendant who was found to be in possession out of possession, but must bring a fresh suit for that purpose under Act X of 1859. *Gugun Chunder Ghose* v. *Raj Chunder Kur and others*, 8 W. R., 281.

A suit for confirmation of possession must be dismissed if the allegation of possession is found to be wholly unfounded, but not if the plaintiff is found to be in possession of a part of the land in dispute. *Roopa Koonwar* v. *Juggolall Oopadhya and others*, 11 W. R., 257.

A decree for confirmation of possession cannot be executed so as to give the decree-holder possession of anything of which he is not already in possession. *Umbica Churn Banerjee* v. *Digamburee Dabee*, 12 W. R., 429.

In a suit for confirmation of possession where it was found that plaintiff had executed a fraudulent mokurruree conveyance, under which however possession did not pass but continued with her for three years, after which there was some disturbance by the plaintiff's husband of the possession by an Act X decision,—*Held* that as the intention of the conveyance was not carried out by actual transfer of possession to defendant there was a *locus penitentiæ* left to plaintiff, who was consequently entitled to ask to be quieted in possession, which had either been prejudicially affected or even invaded by the fictitious decision obtained under Act X by her husband for his own ends, and not by reason of the carrying out of the original fraud. *Lall Mahomed* v. *Bibee Furhutonissa*, 15 S. W. R., C. R., 312.

The legal principle which holds that no suit for confirmation of possession will lie if possession at the time of the institution of the suit is not shown, refers to cases where no possession of any kind is shown within a reasonable time before suit, and not (as in this case) where legal possession under a decree has been found. *Beejoo Roy* v. *Bal Mokund Misser*, 17 S. W. R., C. R., 421.

Where a plaintiff in form seeks for confirmation of possession treating himself as being in possession, yet sets out and states circumstances which are in themselves a dispossession, namely, that a suit in which he intervened under Section 77, Act X of 1859, had been decided against him and the rent adjudged to defendant, the suit should be treated as one really for recovery of possession. A suit for confirmation of possession in adjudication of a particular and specific title distinctly alleged, where defendant also puts forward a pedigree supported by evidence at variance with pedigrees put forward by plaintiffs, is not sufficiently disposed of by the trial of the mere question of possession for twelve or twenty years before the suit. *Moulvie Abdoollah* v. *Shaha Mujusooden*, 16 S. W. R., C. R., 27.

6.—Adverse Possession.

Held that the mere fact of the property being settled with defendants, by reason of their paying up the arrears of revenue, does not constitute adverse possession so as to reckon limitation. *Bheema* v. *Pahlad and others*, 2 Agra Rep., 38.

Held that as the settlement of rent-free land be-

longing to plaintiff's ancestor was made with the defendant in the character of mortgagee, his (defendant's) possession of the land was not adverse to the plaintiffs, the mortgagors. *Ram Dial* v. *Shah Baz Khan*, 1 Agra Rep., 15.

Suit for reversal of a survey award demarcating certain land as ghatwalee, and as held under the Government. *Held* that in such a suit adverse possession and limitation can be pleaded by the Government and the ghatwals (*dissentientibus* Trevor, J., and Norman, J.)

Adverse possession may be pleaded to bar a claim as regards uncultivated lands in the same manner and to the same extent as regards cultivated lands. *R. Watson and others* v. *The Government*, 3 W. R., 73.

A widow (a life-tenant of an ancestral estate) having executed an ikrar transferring a share to N., her granddaughters afterwards sued to set it aside on the ground that N. had not conformed to its terms. While the suit was in the appeal stage the widow died, and her reversioner applied to be made and was admitted as her kaem mukam to carry on the appeal on her behalf. He afterwards sued to recover possession of the share as reversioner, alleging that the succession opened out to him on the death of the widow. *Held* that the life-tenancy having been made over to N. with the widow's consent to share during the grantor's life-time, N.'s possession was not adverse to the reversioner. *Deonanel Koowar* v. *Mussamut Inderjeet Koowar*, 12 W. R., 234.

When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property and a refusal by the trustee to give up the property. The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession. *Rakhaldas Madak* v. *Moodoosoodhun Madak*, 3 B. L. R., A. C., 409; S. C., 12 W. R., 319.

Adverse possession for more than twelve years not only bars remedy but extinguishes right, and confers title on the party holding such adverse possession. *Rajah Baradakant Roy Bahadur* v. *Prankrishna Paroi*, 3 B. L. R., A. C., 343.

A daughter succeeded to a share of her father's estate, and transferred it in full property by a formal instrument or ikrarnamah, dated March, 1849, to her granddaughter, expressly naming her and treating her as her heiress; the transfer being in the nature of a release, reserving maintenance and other advantages to the donor.

Upon the application of the granddaughter before the Collector for the mutation of names according to the terms of the ikrarnamah, the reversioners (collateral heirs of the father) affected to contest the unauthorized nature of the alienation, but dropped their opposition. In 1857 the diaras, or alluvial lands attached to the estate, were perpetually settled with the granddaughter.

The alienor quarrelled with her granddaughter, and in 1857 brought a suit against her to set aside the ikrarnamah, upon the ground of the non-performance of a condition subsequent. The plaintiff succeeded in the first Court, but the judgment was reversed (October, 1858) on appeal to the Zillah Judge. Pending the appeal the plaintiff died (February, 1858), and the reversioners applied to be, and were, admitted as her heirs, to conduct the appeal.

The granddaughter remained in possession from the date of transfer until 1866, when she died.

In April, 1867, the present suit was brought by the surviving reversioner, who claimed to be entitled to recover possession of the property by right of inheritance from the alienor's father. He was one of the reversioners who had been admitted to conduct the appeal in the former suit upon the death of the alienor.

Held (on special appeal and review) there had been no adverse possession, the instrument enured as a transfer of the donor's life-interest only; the judgment in the former suit brought to set it aside did not bind or affect the reversioners, who in that suit merely represented the interest of their predecessor, the life-tenant.

In the first Court an issue was raised whether or no the hearing of this suit was barred by the Law of Limitation. One of the grounds of appeal to the Judge was that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated in the special appeal to the High Court, but that Court refused to entertain it for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. On application for review it was urged that the Court ought to have listened to this ground, but the Court adhered to its former decision.

Counsel should not be heard to re-argue a case on review upon the same points as were argued in special appeal. *Mussamut Raj Kunwar* v. *Mussamut Indirjit Kunwar*, 5 B. L. R., 585; 13 S. W. R., C. R., 52.

Mere entry in the Collector's records of the names of absentees cannot of itself avail to alter the character of an otherwise adverse holding. *Doorjun* v. *Chaina*, 2 N. W. R., 43.

Where occupation was originally permissible its conversion into an occupation of a wholly adverse nature is not to be presumed in the absence of evidence to establish this change.

To make out a complete legal bar the occupation should be proved to be adverse during the whole of the twelve years before suit, and it should be ascertained with what persons the actual possession has been during that time. *Wahee-ood-deen* v. *Thungoree and others*, 2 N. W. R., 16.

Where widows' possession was *primâ facie* not adverse, such possession until shown to be otherwise, will be presumed to have continued a possession of that character. *Ammur Singh* v. *Murdun Singh*, 2 N. W. R., 31.

7.—Suits for Recovery of Possession.

A suit to recover possession of land on the ground of forcible dispossession, in which it was pleaded by defendant and found as a fact that the defendant's holding was of a permissive character, should be dismissed at once, the defendant's possession not being a wrongful one of the kind alleged by plaintiff. The right mode of action in such a case would have been for plaintiff to serve the de-

fendant with notice to quit the land, and thereby put an end to the permission relied upon by him. *C. J. Phillips* v. *Nundcoomar Banerjee*, 8 W. R., 385.

A suit to be restored to possession does not involve questions of valid lakheraj title or enhancement of rent. *Rajah Pertaub Chunder Singh* v. *Sheeb Doss Kayet*, 1 W. R., 111.

A suit for possession with wasilat is cognizable in the Civil Court, and need not be split into two suits, *viz.*, one for possession under Act X of 1859, and one for wasilat in the Civil Courts. *Ram Chand* v. *Chundee Churn Doss*, 1 W. R., 161.

A suit will lie for the separate possession of a share of an estate in proportion to the plaintiff's share. *Goloke Chunder Chuckerbutty* v. *Kallee Kinker Chuckerbutty*, 1 W. R., 164.

Suit for land land lying between the plaintiff's homestead and the defendant's tank. The Court having omitted to decide the question of title and having decreed on other grounds, the decree was held defective. *Gobind Chunder* v. *Khossaul Chunder*, 1 W. R., 205.

Section 25, Act X of 1859, does not prevent a suit being brought in the Civil Court for possession with mesne profits. *Roy Oodit Narain Singh* v. *Ram Surun Roy*, 1 W. R., 221.

In a suit for possession by two ryots claiming under different pottahs from the same zemindar, when the defendant's pottah fails, he still has a right to have a judicial determination of his claim to occupancy. *Bydnath Shaha* v. *Jaduh Chunder Shaha*, W. R., 1864, 208.

A suit for possession of land will not lie against a single shareholder for a particular portion of a joint estate held separately under an existing arrangement acquiesced in by the plaintiffs and agreed to by the other co-sharers, nor can the plaintiffs let to a tenant the property in the lawful possession of such shareholder. *Chowdhry Nil Kant Pershad Singh* v. *Ahlad Singh*, 5 W. R., 287.

The purchaser of a house sold under Section 110, Act X of 1859, is not bound to bring a regular suit to obtain possession. *R. Solano* v. *Bulbhudhur Singh*, W. R., 1864, Act X R., 51.

Where, under colour of buying A.'s rights and interests sold in execution, the purchaser usurps the shares of A.'s partners, they need not sue to reverse the sale but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution. *Bibee Athuroonissa* v. *Rughoonath Banerjee*, W. R., 1864, 322.

In a suit to recover possession of land, where plaintiff alleged that he had entered into possession under a lease, and had been dispossessed by defendant, the first Court, finding that the plaintiff had been dispossessed, and that the defendants had no valid title to the land, gave the plaintiff a decree. The lower Appellate Court remarking that the lease had not been registered under Act XX of 1866, held that it was not admissible as evidence, and dismissed the suit.

Held that it was not necessary for the lower Appellate Court to go into the plaintiff's title until it found that there were grounds for believing that the case set up by the defendants was a good one. *Dabjee Sahoo and others* v. *Sheikh Tumezoodeen and others*, 10 W. R., 102.

In a suit for immoveable property under a kobala more than twelve years old, where defendant pleads that plaintiff was only a benameedar and was never in possession, plaintiff must prove not only title but also possession within twelve years of the filing of the suit. *Kedarnath Mehata* v. *Kadumbinee Dabea*, 10 W. R., 239.

Where a plaintiff sued to recover possession of certain lands under a mourosee pottah which had been lost, and proved ten years' possession,—*Held* that such possession alone would not entitle him to recover possession of the land, but that he must prove the specific title set up by him. *Bholai Mundal* v. *Jarif Gazi*, 3 B. L. R., Ap., 93.

The plaintiff sued for possession of one-third share of certain land after demolition of the buildings erected thereon by the defendants who were her co-sharers.

Held that the plaintiff was not entitled to a decree for demolition of the buildings, as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property. She could only get a decree for possession of an undivided one-third share. *Bindabasini Debi* v. *Patit Paban Chattapadhya*, 3 B. L. R., A. C., 267.

D. sued R. for an arrear of rent, but R. denied his tenancy and D.'s title to the land, and was successful in that defence. D. then sued in the Civil Court to recover possession with wasilat, which he estimated at the rate of the rent previously claimed, and obtained a decree for possession without wasilat.

Held that the second suit was not for the same thing as the first under a different name, and that plaintiff was entitled to wasilat as well as possession. *Dataram* v. *Ram Kristo and others*, 9 W. R., 594.

No suit for possession will lie against a zemindar, or any one holding a title under the zemindar, until the plaintiff has been recognized by the zemindar as tenant, or has been registered as such in the zemindar's sherista. *Mooktakeshee Dossee and others* v. *Peary Chowdhrain and others*, 7 W. R., 158.

In a suit to recover possession under Clause 6, Section 23, Act X of 1859, the plaintiff must prove when his cause of action commenced, when and how he was dispossessed, and whether he has sued within time. *Ram Narain Singh* v. *Sheo Parsun Lal*, 4 W. R., Act X R., 24.

A. had sued alleging that he was in possession of the estate of his uncle from the time of the death of his uncle's widow, and that he had since been dispossessed on a particular date. *Held* that the suit being for possession within twelve years of the death of the widow, he was entitled on proof of his title to succeed to his uncle to recover possession, though he had failed to prove his alleged previous possession. *Chundro Sheekur Roy* v. *Nobin Soondur Roy*, 2 W. R., 197.

In a suit to recover possession it was proved that plaintiffs had purchased shares in a joint property and had held possession. The lower Appellate Court, thinking they had done so separately, without being at the time aware of their ijmali rights, held that it could not decree to them the joint possession sought for.

Held that it matters not what position plaintiffs considered themselves to have occupied originally whilst in possession. If they can establish their right they are entitled to recover possession, whether that possession were originally joint or separate. *Rajbullub Shammee and others* v. *Waris Mahomed and others*, 8 W. R., 450.

A plaintiff who has not a present right to possession cannot sue to eject. Where plaintiffs, divided members of the family of defendant's husband, sued the defendant, a widow, for possession of property which she had received from her husband on the ground that she was improperly alienating it,—*Held* that the Court could not grant the relief asked for. *D. Bangaraiya* v. *D. Balabhadra Raja and others*, 2 Mad. Rep., 386.

In a suit for possession of land which had once formed the bed of a nullah of which defendants held a julkur settlement, but which was situated within plaintiff's settled estate,—*Held* that as defendants had failed to show that their settlement extended beyond the fishery rights, plaintiff was entitled to recover possession. *Monohur Chowdhry and others* v. *Nursing Chowdhry and others*, 11 W. R., 272.

A person whose suit for khas possession is dismissed is not entitled to a declaration of his right to receive possession of the proprietary title, *i.e.*, to receive rent from those who admit tenancy. *Gopee Mohun Gossain* v. *Issur Chunder Banerjee*, 2 W. R., 237.

Where certain zemindars sued to recover khas possession of certain shares of land, alleging that defendants were wrongfully in possession, it was held that, though bound to prove their right to khas possession, yet whether they proved themselves to have been recently in khas possession or not, they had a right to a decision as to the alleged wrongful possession of the defendants. *Joykisto Mookerjee* v. *Hurreehur Mookerjee*, 12 W. R., 365.

In a suit to recover possession on the allegation that the plaintiff, having been in possession, was suddenly and recently ejected, the sole question for decision is the right to possession, apart from any question of the validity or otherwise of the lakheraj title under which the plaintiff claims. *Boodha Mirdha* v. *Sheikh Khyrut Ali*, 5 W. R., 269.

In a suit for recovery of possession of certain land which the plaintiff claimed under and by virtue of a sunnud (grant) from the zemindar, and from which he had been dispossessed by the defendants, the lower Appellate Court held that the execution of the sunnud was not satisfactorily proved, but that it was not a forgery, and that there was the corroborative evidence (such as the dakhilas produced before it) to prove the case of the plaintiff. *Held* that when a claim is based upon a sunnud, and the plaintiff fails to prove the execution of the sunnud itself, he may prove his claim by other means. In a suit for mere possession it is unnecessary to state or prove a particular title. The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal. *Rajah Rash Behari Lall Singh* v. *Nabyi Poddar*, 3 B. L. R., A. C., 99; 11 W. R., 465.

In a suit to recover possession, the plaintiff alleging that the land in dispute from which he had been ousted had been settled with him by Government in 1833 as part of his zemindary, and the defendant alleging that the land was part of his lakheraj garden land, which had been released by Government from assessment, the Courts below found that the lands in dispute were part of those which had been settled with the plaintiff. On appeal to the Privy Council, the defendant attempted to show that, assuming the lands in question to have been part of those settled with the plaintiff, that settlement had been improperly made.

Held that this contention was not open to the defendant upon the record, never having been taken in the Courts below. *Srimati Dassi* v. *Rani Lusunmani*, 2 B. L. R., P. C., 64.

The plaintiff purchased a mauza from the proprietor in 1869, and now sued to obtain possession from the defendant, who was proved to have held under a ticca lease down to 1856, and who now claimed to hold under a mokurruree lease, which he said was granted by the former proprietor in 1859. The plaintiff failed to prove possession by his vendor within twelve years of suit brought, and therefore the Courts below dismissed his suit. On special appeal it was held that the defendant, before succeeding on the question of limitation, ought to have shown that the plaintiff had notice of the mokurruree title set up. The case was sent back to the Court below to try the validity of that title. *Dhanuk Dhari Singh* v. *Gupi Singh*, 6 B. L. R., Ap., 151, and 15 S. W. R., C. R., 191.

In a suit to recover possession of land plaintiff's failure to prove his allegation of wrongful dispossession from an anterior date cannot deprive him of a decree for possession if he proves he is entitled to it at the time of bringing the suit. *Meer Mobaruck Khan* v. *Lookba Sindhoo Banerjee*, 13 S. W. R., C. R., 111.

In a suit to recover possession on the allegation that plaintiff had been illegally ousted though holding under a lease from defendant, the latter urged that though plaintiff had been allowed to hold the tenure as a tehsildar or collector of rents, he had never been the ijaradar or farmer in possession. The Judge found that the estate was really let out in ijara to the plaintiffs by the defendant, who had recovered rents and granted him receipts on account of the ijara mehal. *Held* that this was a complete finding in favour of the plaintiff's title, and that it was not necessary for him to sue for the pottah which had been wrongfully denied him by defendant. *Joheerooddeen Mahomed* v. *Dabee Pershad Singh*, 13 S. W. R., C. R., 21.

In a suit to recover possession of the beds of tanks which, though gradually reclaimed and made fit for cultivation by defendants, were situate within plaintiff's mâl estate, and had been measured and recorded in the zemindary chittahs as the khas khamar and unfit for cultivation,—*Held* that plaintiffs being unable from the nature of the ground to show any direct acts of ownership, the presumption was that until the act of defendant dispossessing them they were sufficiently in possession to enable them to maintain their right of suit. *Rufautoollah Chowdry* v. *Shushee Shikur Banerjee*, 14 S. W. R., C. R., 57.

In an ordinary civil suit not brought under Clause 6, Section 23, Act X of 1859, or under Section 15,

Act XIV of 1859, a plaintiff cannot recover possession as against the undisputed owner merely by proving his previous possession and dispossession. But he may claim damages for the value of crops taken away which had been raised by him on the land, whereof he was at the time in lawful possession. *Ram Mohun Doss* v. *Jhupproo Dass*, 14 S. W. R., C. R., 41.

A suit by a sharer to set aside a sale having been dismissed on the ground that plaintiff being a defaulter the suit would not lie, plaintiff brought a second suit to claim possession of his share of the dur-putnee talook, on the ground that the sale must be inoperative inasmuch as the purchaser, a co-sharer, was also a defaulter. *Held* that until the sale was set aside plaintiff was not in a position to claim possession of his share. *Gouree Komul Bhuttacharjee* v. *Raj Kristo Nath*, 14 S. W. R., C. R., 369.

In a suit to recover possession of land alleged to have been purchased from two parties (R. and D.), one of whom (D.) had appeared before the Registrar, admitted the sale, and allowed the deed to be registered so far as her interest was concerned, but the other (K.) when he appeared before the Registrar had denied the deed and subsequently sold his share to the defendant by a registered kobala,—*Held* that as there was no evidence of fraud on the part of the defendant purchaser, or that he had purchased with notice, plaintiff was not entitled to a decree for K.'s share. *Srcenath Churn Dass* v. *Dwarkanath Ghose*, 14 S. W. R., C. R., 318.

A plaintiff's failure to prove dispossession on the particular date mentioned in the plaint is not a sufficient ground for the dismissal of the suit. *Huro Chunder Chowdry* v. *Gobind Chunder Moitro*, 15 S. W. R., C. R., 178.

In a suit to recover possession of property from which plaintiffs have been ousted by defendants who have no title at all, the latter cannot set up the claim of a third party so as to defeat that of the plaintiffs, whose rights moreover are not in any way affected by the fact of the suit not having been brought within the time limited by Section 15, Act XIV of 1859. *Kumul Dutt* v. *Mohun Mullee*, 15 S. W. R., C. R., 278.

A claim to occupy a building cannot be maintained on the ground of a previous tenant's long occupancy of the land as against a landlord who has since the death of such tenant exercised rights of ownership over the land. *Sufdur Ali Khan* v. *Jeo Narain Singh*, 16 S. W. R., C. R., 161.

Plaintiff sued for possession of a tenure on the allegation that his father had held it on a mokurruree pottah of 1857 till his death in 1864, when plaintiff, a minor, and his mother, a widow, were ousted by defendant, the present lessee of the zemindar, both of whom put forward a common defence to the effect that on plaintiff's father's death and plaintiff's inability to pay rent plaintiff abandoned the tenure. Though plaintiff's mokurruree pottah was found to be inadmissible and invalid, yet plaintiff was held entitled to possession of the tenure which admittedly was his father's, and which it had not been proved the son ever abandoned. *Kalee Coomar Pattur* v. *Khetter Nath Bang*, 17 S. W. R., C. R., 47.

If a tenant in a suit to recover possession of land from which he has been ejected finds it necessary to implead a person other than the person entitled to receive the rent of the land, he must sue in the Civil not in the Revenue Court.

Suits by ryots for confirmation of possession in a tenure which is threatened are cognizable in the Civil Courts.

The same rule applies to claims by ryots for mesne profits of the nature of damages for dispossession. *Rittoo Raj Rae* v. *Juggeshur Rae*, 1 N. W. R., Par. 2, p. 40.

8.—Decree for Possession.

For the restoration of possession with mesne profits of lands made over in execution of a decree subsequently reversed on appeal, a specific order is not necessary to be inserted in the decree of the Appellate Court. *Gooroochurn Bose* v. *Bykuntnath Acharjee*, 5 W. R., Mis., 38.

A Deputy Magistrate's order awarding absolute possession of the land to the plaintiff was quashed because the Deputy Magistrate was bound, under Section 318 of the Code of Criminal Procedure to enquire into the fact of possession and decide accordingly, and according to his own statement the possession was found in the defendant; and because the plaintiff only claimed a right of way over the land, and not the possession of it. *Queen* v. *Sager Mahomed*, 1 W. R., Cr., 25.

Held by Macpherson, J. (Jackson, J., *contra*), that a decree for possession does not necessarily involve a right to mesne profits, and that the plaintiff suing for mesne profits must prove his title. *Zumurudoonissa* v. *Radha Churn Ghuttuck*, 9 W. R., 590.

A. and B. had a dispute about possession of a certain muth. A. was declared by the Magistrate, under Section 318 of the Criminal Procedure Code, to be in possession. Subsequently B. got a certificate under Act XXVII of 1860, and applied to the Magistrate for possession, which was given to him.

Held that the Magistrate's order giving possession to B. was irregular, and must be set aside. *Mahunt Dhunrajgiri Goswami* v. *Sripoti Giri Goswami*, 2 B. L. R., A. Cr., 27; 11 W. R., Cr., 23.

In two suits in which the prayer was substantially to have certain property which had been included in a butwarra before the Collector excluded from such butwarra, it was held that as plaintiff's possession was admitted, and defendant had failed to prove his plea that such possession was in the quality of tenant under him, plaintiff was entitled to a decree. *Bepin Behary Luskhur* v. *Sheikh Ghasoo and others*, 11 W. R., 16.

To entitle a plaintiff to a decree for possession of a julkur, as part of a julkur estate settled with him, but of which the defendant has obtained possession under an Act IV award, the plaintiff must show not only the original boundaries of his estate, but also modern possession. *Ranee Radha Chowdhry* v. *Kishen Soondery Dossia*, 2 W. R., 304.

When a Collector, by order of the Board of Revenue, sells a khas mehal as of a specified area and jumma, and borne on the towjee under a certain number and name, it is the duty of the Collector to point out and give possession of that

which he has professed to sell. *R. Watson and Co.* v. *Ranee Shurnomoyee*, 9 W. R., 259.

In a suit for possession, where plaintiff came into Court upon his mourosee jote, leased on a pottah at a fixed jumma which was not proved, the lower Appellate Court was held to have erred in law in decreeing to him a statutory right of occupancy under Section 6, Act X of 1859. *Jannobee Chowdhrain* v. *Genda Turrufdar*, 12 W. R., 203.

When a tenant sues to recover possession of his holding, from which he alleges he has been illegally dispossessed by his zemindar in favour of a new tenant, and the landlord acknowledges the genuineness of the old tenant's pottah and dakhilas, the plaintiff is entitled to a decree against the landlord, and is not bound to produce evidence to refute the new tenant's statement that the pottah and dakhilas are forgeries. *Suttrooghun Doss* v. *Narain Sahoo*, W. R., 1864, Act X R., 134.

Unless a plaintiff can prove the particular title set up by him he is not entitled to a decree for possession. *Ramdhan Chuckerbutty* v. *Srimati Komaltara*, 3 B. L. R., A. C., 99; S. C., 11 W. R., 301.

In a suit by one of several shareholders to recover possession of land, the defendant, even though he be in wrongful possession, may object to the decree extending beyond the plaintiff's share. *Urjoon Sahoo* v. *Kishen Dyal Singh*, W. R., 1864, 246.

A Court has no power summarily to deprive a decree-holder of possession of lands which have been decreed in his favour, and of which he has been put into possession under his decrees, and to which the parties seeking possession of the lands in question laid no claim when the decree-holder took possession, though they claimed other lands. *Rajah Leelanund Singh Bahadoor* v. *Motee Singh and others*, 6 W. R., Mis., 107.

The original plaint claimed less land than was shown to exist between the boundaries, and a supplemental plaint was put in for the correct quantity. *Held* that it was not improper or irregular to give a decree for that larger quantity. *Rajah Joy Mungul Singh* v. *Rajah Mohendur Narain Singh*, 2 W. R., 154.

A decree restoring possession of a share of property held in joint possession does not necessarily confer separate possession. *Modhoosoodun Mookerjee* v. *J. Beckwith*, 1 W. R., 206.

Plaintiff obtained a decree for possession, which was reversed by the High Court on appeal, and restitution of the property was ordered. Plaintiff having appealed to the Privy Council, applied to be allowed to remain in possession of the property upon the security which he had already given. *Held* that the High Court had no power, under Section 4, Regulation XVI of 1797, to suspend the restitution, and that the defendant was entitled to enforce restitution without giving security. *Rajkissen Singh* v. *Baroda Debee and another*, 6 W. R., Mis., 111.

9.—Re-entry.

It is not absolutely necessary for a lessor to take legal measures for obtaining possession of the demised property on accrual of right of re-entry for breach of covenant. He may (if he can do so peaceably and quietly) take possession thereof without having recourse to civil proceedings (which are only necessary in case he apprehends resistance) and if he does so re-enter he cannot be sued for trespass, inasmuch as the interest of the lessee becomes forfeited, and the lessor enters on what is in fact his own property. The requirements of the Common Law of England cannot, unless made applicable by legislation or sanctioned by well-established judicial usage, be imported into the construction of the contract that the parties at the time they entered into it had such requirements in view, and intended that the contract should be controlled by them.

The mere fact of demanding rent in one year is not sufficient to create an obligation to make such a demand in subsequent years, or on failure thereof to debar the right of re-entry.

Relief may be granted by the Courts in India against forfeiture for non-payment of rent. A lessor who has re-entered on the demised property for breach of a particular condition can, when called upon to defend his position, plead other breaches which might have justified the re-entry, and cannot be restricted to prove only that under which he originally claimed re-entry. *The Eastern Hotel Company* v. *The Collector of Allahabad*, 2 Agra Rep., O. C., 1.

10.—Ejectment.

Dependent talookdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements. *Hurogobindo Doss and others* v. *Kala Chand Shaha and others*, 6 W. R., Act X R., 26.

To bring a case of ejectment within the jurisdiction of the Collector's Court there must be some direct act on the part of the person entitled to receive the rent, either by ejecting the tenant personally or by his servants, or by joining with those who actually do so. *J. P. Wise* v. *Huro Chunder Shaha*, 6 W. R., Act X R., 90.

The act of digging a well or planting trees may not necessarily imply or assert a proprietary right in the land in which the well is dug or the trees are planted; yet by the general law of the North-West Provinces a ryot, even having a right of occupancy, being prohibited from doing certain acts, such as planting of trees or digging wells, without his landlord's consent, makes himself liable to ejectment, unless protected by local usages, from his holding if he were to dig a well or plant trees without the landlord's consent. Section 6, Act X of 1859, which provides that a ryot who has held or cultivated the land for more than 12 years acquires a right of occupancy in it so long as he pays rent for the same, must be read consistently with Clause 5, Section 23 of that enactment, which provides that a ryot is liable to ejectment from his holding for breach of contract, and not as importing that a ryot having a right of occupancy, so long as he pays the rent claimable from him, is at liberty to use and deal with the land as he pleases. The useful or beneficial nature of an act is not a justification of it if it be a breach of contract. A condition, not expressly made between the parties to a contract, may nevertheless be attached to such contract by custom. The general rule that a ryot is liable to ejectment

on the digging of a well without the consent of the zemindar, may be varied by particular local usage or express contract. *Koonj Behary Patuck* v. *Shiva Balunk Singh*, 1 Agra Rep., F. B., 119.

In a suit to eject the special appellant from a portion of a house which he claimed to be in possession of as part owner,—*Held* that the lower Appellate Court was wrong in laying down that it was not called upon to decide whether the defendant was entitled to share in the house, as the *onus* of proving an exclusive title to the property lay on the plaintiff. *Isubji* v. *Khatiza*, 2 Bom. Rep., 189.

A plaintiff who has not a present right to possession cannot sue to eject. *D. Baugaeaiya* v. *D. Balahhadra Ruju*, 2 Mad. Rep., 386.

A suit of ejectment for arrears of rent will not lie if brought before the close of the Bengal year. Where the rent is under Rs. 100 the Judge cannot exercise any jurisdiction, and consequently the Appellate Court has no jurisdiction either. *Sreeram Biswas* v. *Juggernath Doss Mohunt*, 1 Ind. Jur., N. S., 187.

Held that, unless it be proved that by express contract or local custom an alienation by the tenant by way of sale or mortgage renders the holding liable to be forfeited, a suit in the Revenue Court for ejectment on such ground will not lie, but that the remedy of the zemindar is by suit in the Civil Court to have the transaction set aside. *Ramdyal* v. *Jankey Dobey*, 3 Agra Rep., 274.

One of the several joint proprietors who is not a lumberdar, or otherwise authorized to sue on behalf of the other joint proprietors, cannot sue to eject a ryot. *Mussamut Balashee Begum* v. *Khooshal*, 3 Agra Rep., 221.

Proprietors are not entitled to oust their co-proprietors from lands which the latter have, as tenants, brought into cultivation. *Pran Kishore Gossain* v. *Dinobundhoo Chatterjee*, 9 W. R., 291.

A party in legal possession under a lease from a lakherajdar cannot be summarily evicted by the zemindar without the intervention of the Court, even if the zemindar is entitled to resume the land as invalid lakheraj, or as lands which have lapsed on non-performance of stipulated service. *Indrabutty Koonwaree* v. *F. Holloway and others*, 9 W. R., 168.

A lessee of only one of several co-parceners cannot be legally ejected by any of the others as a trespasser. *Luchmun Sahae Chowdhry* v. *Seami Jha*, 5 W. R., Act X R., 93.

In a case of ejectment (even though the dispute be merely as to which of the two parties the land belongs) the plaintiff must succeed by the strength of his title only, and not by the weakness of the defence. *Rajah Sutto Surn Ghosal* v. *Dhone Kristno Sircar*, 1 W. R., 88.

A tenant is liable to ejectment if he has been admitted to possession by some only of the co-parceners of a joint property without the consent of the others, unless there is some special custom giving some of the co-parceners authority to make such admission. *Ghunshyam Singh* v. *Runjeet Singh*, 4 W. R., Act X R., 39.

No act of temporary dispossession by a third party can take away the right of a part owner of an estate to her share of the rent from the tenant. *Mussamut Woolatun* v. *Jeetun Lall*, 1 W. R., 325.

An ouster by the zemindar of a defaulting owner of a tenure, transferable by sale without application to any Court, is illegal under Clause 7, Section 15, Regulation VII of 1799. The proper course is for the zemindar to apply to the Dewanny Adawlut to have the tenure sold in satisfaction of the arrears. *Narayunee Dossee* v. *Rajnarain Ghose*, 2 W. R., 154.

One of several joint lessors can eject a lessee after expiry of the lease. *Mudun Singh* v. *Nurput Singh*, 2 W. R., 291.

Where a tenant has been admitted to possession by all the co-partners in an estate, a suit for ejectment cannot be brought against him, unless all the partners join in the action. *Gouree Sunkur Surmah* v. *Tirtho Monee and others*, 12 W. R., 452.

When all the co-sharers have allowed a tenant to enter and occupy land the tenant cannot be ejected without the consent of all. *Held* further that one or more co-sharers cannot allow a stranger to occupy a portion of the mouzah without the consent of the other co-sharers, unless they are authorized to act on behalf of the other co-sharers, and the dissentient co-sharers may sue to eject him. *Lutchmun Pershad and others* v. *Dabee Deen*, 4 Agra Rep., 264.

II.—MESNE PROFITS.

11.—MISCELLANEOUS.

A decree of 1854 for possession and mesne profits having been confirmed in appeal, in February, 1855, was duly executed in part up to 1861, when the decree-holder applied for execution as for mesne profits to the extent of Rs. 81. Failing in the Court of first instance, the applicant was declared by the Appellate Court, in 1863, entitled to the amount, with interest, by virtue of his decree. The judgment-debtor contested the case in the Civil Court, but his suit was dismissed on the 12th August, 1865, and on the 12th July, 1866, the decree-holder applied for execution of the decree for Rs. 81, the balance of mesne profits. This application was disallowed, on the ground that there was no provision in the original decree awarding mesne profits, and that an agreement to which that decree-holder had referred was not forthcoming.

Held that as the original decree of 1854 evidently intended to give mesne profits of some kind, the Courts in 1862 and 1863 had jurisdiction, under Section 11, Act XXIII of 1861, to determine what mesne profits were due; and that as the decree-holder was seeking to maintain the order in the Civil Courts in 1864 and 1865, his application of July, 1866, was in time, and he was entitled under an order of a competent Court to receive the mesne profits claimed. *Huro Soondery Dossee* v. *Noroodeen and others*, 11 W. R., 325.

The sale by a decree-holder of the right to recover possession under one decree does not affect his right to recover under another decree mesne profits collected during the time of the judgment-debtor's illegal occupancy. *Seetul Chunder Shaha* v. *Brojo Soondery Dossee*, 4 W. R., 12.

A Court executing a decree has no power to assess mesne profits, unless it is ordered by the decree that the mesne profits are to be assessed in execution, and it is an essential part of a decree which orders mesne profits to be assessed in execution

to fix the period in respect of which such mesne profits are to be assessed. *J. P. Wise* v. *Jagendro Coomar Roy and others*, 11 W. R., 200.

A set-off is not admissible in a suit for mesne profits, which is not a suit for a debt within the meaning of Section 121, Act VIII of 1859. *Rotee Romun Oopadhya* v. *Greeja Nund Oopadhya*, 5 W. R., 160.

A decree for lands with wasilat (the lands having been held and claimed by the defendant as shebait of an endowment, and the profits of the lands having wrongly gone into the treasury of the shebait) is not a decree against the defendant personally, but against the defendant as shebait. *Ranee Shibshuree Debia* v. *Mothooranath Acharjee*, 5 W. R., 202.

Section 11, Act XXIII of 1861, does not bar a separate suit for mesne profits when there was no adjudication whatever in the matter of mesne profits in the former suit for possession. *Issur Dutt Singh and others* v. *Alluk Misser and others*, 7 W. R., 429.

Before the plaintiff can succeed in a suit for mesne profits against the defendant, on the ground of the defendant's wrongful appropriation of the profits of howalas and neem howalas, it must either be admitted or proved that the plaintiff holds them. If he holds them as subordinate tenures in the ousut talook of a third party the owner of the ousut talook should be made a party, and the plaintiff's claim to the mesne profits should be decided in his presence, whether he denies or admits the existence within his ousut talook of the plaintiff's alleged howalas and neem howalas (*dissentiente* Steer, J., who held that if the owner of the ousut talook denied the existence as above, the plaintiff's suit should be dismissed at once, for in a suit simply for mesne profits against a stranger for wrongful possession, the title of the plaintiff and of the owner of the ousut talook cannot be tried). *Mahomed Kadur* v. *Puddomala*, 2 W. R., 185.

Where execution is ordered to be taken out against the estate of a deceased judgment-debtor, and the property is sold, the representative of the debtor cannot be called to account in execution for the mesne profits of the property while in his hands. *Muzhur Aly, alias Sat Cowrie Meah*, v. *The Nawab Nazim of Bengal*, 7 W. R., 308.

A suit by a ryot against another for damages on account of illegal appropriation of the produce of the land, including the ryot's profits, by the defendant during certain years, is not a suit for mesne profits, and is therefore unaffected by Section 11, Act XXIII of 1861. The question regarding amount cannot be settled in execution, but by separate suit. *Joy Kissen Mookerjee* v. *Jodoonath Ghose*, 3 W. R., 1.

A person made liable under a decree for mesne profits cannot get rid of the effect of that decree by bringing a fresh suit to set aside the compromise entered into by his legal guardian, when execution of that decree was taken out against him. *Bissessur Naran Mohunt* v. *Soobah Junnuk Lall Jha and others*, 7 W. R., 77.

A suit for mesne profits, alleged to be due upon land between the institution of a former suit and the execution of the decree, cannot be maintained. *Narayana Aiyan and others* v. *Srinivasa Aiyan*, 2 Mad. Rep., 435.

Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon. Act XXIII of 1861, Section 11, commented on. *Chennapa Nayudee* v. *Pitchi Reddi and another*, 1 Mad. Rep., 453.

Where a decree awarding possession of immoveable property is silent as to mesne profits accruing between the filing of the plaint and the execution of the decree, the Court executing the decree has no power to award such. The proper course for the plaintiff to adopt, under such circumstances, is to apply to the Court which passed the decree for a review, or else to file a separate suit. *Radhabai* v. *Radhabai*, 4 Bom. Rep., A. C., J., 181.

A defendant who, upon an enquiry into wasilat, absents himself at the time of enquiry by the Commissioner, and withholds his accounts and papers, and who lays before the lower Court no materials on which it can come to any decision as to the expenses at which he has been, is not entitled to invoke the assistance of the Court on appeal. *Jodoo Nath Roy* v. *Ram Buksh Chulungee*, 8 W. R., 203.

The cause of action in suits for mesne profits arises from the date when they became annually due. *Ram Chundra Roy* v. *Ambica Dossea, mother and guardian of Busonto Coomar Roy, minor, and others*, 7 W. R., 161.

A presumption arises against a claim for mesne profits from non-claim for seven years. *Modhoosoodun Sundyal* v. *Suroop Chunder Sircar Chowdhry*, 7 W. R., P. C., 73.

The recital in a deed of mortgage executed in 1845 cannot be taken in 1866 to be conclusive as to the amount of mesne profits which have accrued due subsequent to a decree for possession passed in 1859, and finally confirmed by the High Court in 1863. *Roy Mohun Lall Misser and others* v. *Mussamut Sheo Soondery Debia*, 6 W. R., 297.

The plea that wasilat cannot be recovered for more than six years, though not taken below, may be entertained at any stage of the case. *J. P. Wise* v. *Poornima Chowdhrain and others*, 6 W. R., 129.

Mesne profits can only be recovered for six years prior to the institution of suit. *Balum Bhutt, alias Rajah Ram Bhuth*, v. *Bhoobun Lall and others*, 6 W. R., 78; *Munseram Acharjee* v. *Sreemutty Surrunyo*, 7 W. R., 273.

Mesne profits for the period during which the decree-holder was executing the decree and was kept out of possession by the opposite party may be awarded by the Court under Section 2, Act XXIII of 1861. *Mussamut Hookum Bebee* v. *Kalah Mahomed Moosa Khan and others*, 6 W. R., Mis., 13.

A. obtained a decree declaring him entitled to possession under a mortgage of one-third of the property in dispute, with mesne profits. B. subsequently obtained a decree against A. and the other co-sharers for possession of the whole estate, with mesne profits, under another mortgage; but instead of taking full advantage of his decree he received from all the co-sharers the amount due to him on the original transaction, and restored the property to them. *Held* that A. was entitled to recover mesne profits due to him under the original decree.

Bisnoo Chunder Biswas v. *Toyluck Nath Banerjee*, 6 W. R., Mis., 28.

Under a decree which provided for possession with mesne profits from 8th Bysack, 1264, the plaintiff was held entitled to the rents of 1263, and whatever else was realized by the defendant after 8th Bysack, 1264, during the period of his wrongful possession. The decree simply gave mesne profits from a certain date anterior to the suit, but as it was silent as to the mesne profits accruing subsequently,—*Held* that this Court could not, under Section 11, Act XXIII of 1861, give mesne profits not expressly provided for by the decree, and that the proper course for the decree-holder was to apply to the Court which made the decree to amend its order regarding mesne profits. *Hurronath Roy and others* v. *Rajah Indoo Bhusun Deb Roy*, 6 W. R., Mis., 33.

A decree for mesne profits to be ascertained in execution is a decree for money within the meaning of Section 232, Act VIII of 1859; and there is no irregularity in the decree-holder applying for attachment of the judgment-debtor's property pending the ascertainment of the mesne profits. *Sharoda Moyee Burmonee* v. *Wooma Moyee Burmonee*, 8 W. R., 9.

Following a Full Bench decision (9 W. R., 407), it was held that a decree of the High Court technically for possession only, which reinstates a party in the position he was in when ousted, also gives a right to wasilat, on ascertainment in execution, under Section 11, Act XXIII of 1861. *Chowdhry Sib Narain Pohraj Mandhata and another* v. *Chowdhry Kishore Narain Pohraj Mandhata*, 10 W. R., 131.

A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to brother's grandsons. The daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit, and recovered possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865. *Held* that the plaintiffs were not entitled to mesne profits which had accrued due but were uncollected in the lifetime of her daughter; that such mesne profits would go to her heirs, who would alone be entitled to them. *Gooru Prasad Roy* v. *Nafar Dass Roy*, 3 B. L. R., A. C., 121.

It is well established that when a party obtains a decree for possession he may sue for the wasilat (of the estate decreed to him) for a period of twelve years prior to the decree, and he may delay to sue for it for twelve years after the decree for possession has given him the right to sue for wasilat.

The party in possession is the only person legally competent to sue for wasilat. *Khetturmonee Dossee* v. *Gopeemohun Roy*, 1 Ind. Jur., O. S., 83.

Wasilat or mesne profits cannot be recovered in a suit for the recovery of the possession of land instituted under Act X of 1859, Section 23, Clause 6. *Ruttunmoney Dassee* v. *Trilocho Chunder Chuckerbutty*, Marsh., 280.

In a suit for wasilat the stamp in the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendant may deny the title of the plaintiff to the land. *Kadir Buksh* v. *Wise*, Marsh., 165.

The plaintiff was possessed of an estate situate on the bank of a river, and of certain chur lands which had accreted thereto. The Collector took possession of the chur lands in 1818, upon the default of the proprietor to appear to answer a claim made by Government to assess the chur land. In 1824 a suit was filed by Government under Regulation II of 1819, for the resumption of these lands; the Government officers however continuing to hold possession and collect the rents. In 1847 the Collector, in conformity with a general order under Act IX of 1847, "for the abatement of all suits for the resumption of alluvial lands then pending," struck off the suit and restored the lands to the possession of the zemindar. The proprietor claimed the wasilat enjoyed by the Government during his dispossession; and the Government again dispossessed him, under the assumption that the lands were an island in the river, and that the plaintiff was not entitled to them as an accretion. The plaintiff having brought a suit in 1854 to establish his right to the lands in question,—*Held* that the Statute of Limitation was no answer to the suit, because the pendency of the suit for the resumption and assessment of the lands between 1824 and 1848 prevented the proprietor from commencing a suit during that period, and that during such period the limitation did not run; and further, after that period the necessity for a suit was obviated by the restoration of the lands to the proprietor. *Held* also that a fresh cause of action accrued under the second ouster. *Held* further, that the churs being accretions to an estate in respect of which engagements had been entered into by the proprietor with the Government at the time of the Decennial Settlement, the occupation of the Government was without title, and the plaintiff was entitled to an account of rents and profits during the period of his being kept out of possession. *Ranee Surnomoye* v. *The Collector of Rungpore*, Marsh., 13.

Plaintiff and defendant and certain others were co-sharers of an abad. Each agreed to cultivate certain portions and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 beegahs in excess of his share. Plaintiff sued him and got possession of the excess land on payment to the defendant of a compensation for the expense of cultivation, and then brought his suit for mesne profits. *Held* that he was not under the circumstances entitled to mesne profits. *Debnarayan Deb Mitter* v. *Kali Das*, 6 B. L. R., Ap., 70, and 14 S. W. R., C. R., 397.

Where the plaintiff is cultivator, or himself uses or wishes to use the land, the principle on which wasilat decreed to him ought to be calculated is what he would have made by himself holding possession. Any produce of the land of whatever kind that the wrongful possessor has appropriated to his own use in the course of his possession may be treated as mesne profits which the plaintiff is entitled to recover. *Soudaminee Dabee* v. *Anund Chander Haldee*, 13 S. W. R., C. R., 37.

The cause of action in respect to mesne profits accrues on the date on which, but for the fact of dispossession, the plaintiff would have been entitled

to receive them. *Lakhi Kant Das Chowdry* v. *Ram Dyal Das*, 5 B. L. R., Ap., 61 ; 14 S. W. R., C. R., 82.

Where, in a suit for land, the Court decreed to the plaintiff possession of the land, but made no decree in respect of mesne profits,—*Held* the plaintiff could not, under Section 11 of Act XXIII of 1861, obtain an order from the Court executing his decree declaring him entitled to any or what amount of mesne profits. Under Section 11 the question must relate to something comprised in the decree. *Ekouri Singh* v. *Bijaynath Chattapadhya*, 4 B. L. R., A. C., 111 ; 13 S. W. R., C. R., 11.

The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession without any mention of mesne profits ; and afterwards, in execution of the decree, he obtained possession of the land. *Held* the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit, exclusive of the period during which the plaintiff was in possession. Sections 2, 7, and 196 of Act VIII of 1859, and Section 11 of Act XXIII of 1861 were no bar to such suit. *Pratap Chundra Burua* v. *Rani Swarnamayi* ; *Rani Swarnamayi* v. *Pratap Chundra Burua*, 4 B. L. R., F. B. R., 113, 13 S. W. R, F. B. R., 15.

A plaintiff who obtains a decree for possession is not *ipso facto* entitled to wasilat. In a suit for wasilat, where the Ameen's enquiry was not completed on account of the *laches* of the plaintiff,—*Held* (Glover, J., dissenting) that there had been no local investigation at all, and that the defendant had no opportunity of producing his evidence. *Kalee Dass Mitter* v. *Deb Narain Deb*, 13 S. W. R., C. R., 412.

Where a decree awards mesne profits up to the date of the suit, the Court executing it has no power to give more. *Janokee Nauth Mookerjee* v. *Raj Kisto Singh*, 15 S. W. R., C. R., 292.

Where wasilat is decreed, the mode of ascertaining it is rightly reserved for the proceedings in execution. *M. H. Gule* v. *Maharanee Sreemutty*, 15 S. W. R., C. R., 133.

In this case the decree did not specify the period or the amount for which mesne profits were awarded, and it was contended (upon the authority of 11 W. R., 200), that plaintiff was not entitled to any mesne profits at all. *Held* that both the amount and period were left to be ascertained in execution, and that as the suit was instituted after Act XIV of 1859, the decree-holder was not entitled to mesne profits for more than six years prior to date of suit. *Hureehur Mookerjee* v. *Molla Abdoolbur*, 17 S. W. R., C. R., 209.

The jurisdiction in the case of a claim to mesne profits is in the Civil and not the Revenue Court.

The decision of this Court is against the maintenance of a separate suit for mesne profits accruing subsequently to the commencement of a suit. *Shunkur Lall* v. *Ram Lall*, 1, 11 N. W. R., 177.

Held that where the plaintiffs made over the management of their lands to their bankers, but did not part with the property in the lands, even for a temporary period, they were entitled to maintain a suit for mesne profits against the defendants who trespassed on and occupied the lands whilst the estate was under the management of the bankers. *Ramrutton Rul* v. *Dwarka Dass*, 2 N. W. R., 193.

A party holding a decree for possession has a right, under Section 10, Act VIII of 1859, to bring a separate suit for wasilat which accrued prior to his decree. Where a suit for possession by partition of kamut (nij-jote) lands and for wasilat is decreed, it is the duty of the Judge, in drawing up the final decree after the Ameen's report, to state the boundaries of the shares of the parties, the interest of each share, and the exact amount due as wasilat. *Chowdry Imdad Ali* v. *Boonyad Ali*, 14 S. W. R., C. R., 92.

12.—Amount of Mesne Profits.

Held that the amount of rent actually received together with that which might with reasonable diligence have been collected, form the amount of mesne profits to which a decree-holder is entitled. Evidence that the land was let for a certain amount is a *primâ-facie* proof of the amount of mesne profits, and may be accepted by the Court unless the contrary be proved. *Rugho Nath Dobey* v. *Huttee Dobey*, 1 Agra Rep., M. A., 17.

Mesne profits are in themselves simply damages which do not exist as an obligation to be discharged until they have been awarded by a Court competent to do so. Therefore, according to Section 11 of Act XXIII of 1861, mesne profits payable at the time of execution must mean "mesne profits which have been at that time directed to be paid by a decree of Court." The two portions of Section 11 of Act XXIII of 1861 are in direct connection with Sections 196 and 197 of Act VIII of 1859.

A. obtained a decree against B. for recovery of possession of certain property and for mesne profits up to the date of the suit, but the decree was silent as to mesne profits after that time. *Held* that A. was not barred by the provisions of Section 11 of Act XXIII of 1861 from bringing a suit against B. for mesne profits during the time that A. was kept out of possession after the decree. *Haromahini Chowdhrain* v. *Dhanmoni Chowdhrain*, 1 B. L. R., A. C., 138 ; S. C., 10 W. R., 62.

When a cultivating ryot is ejected by his zemindar, the mere rent of the land realized by the zemindar from another tenant is not necessarily the measure of the damage sustained by the ryot, and recoverable by him as mesne profits. *Bhiro Chandra Mozoomdar* v. *Bamundas Mookerjee*, 3 B. L. R., A. C., 88 ; S. C., 11 W. R., 461.

The principle upon which wasilat should be determined is that the party who may be found to have been wrongfully in possession shall refund to the party wrongfully ousted such sums as the party wrongfully in possession had collected, or might with due diligence have collected. *J. P. De Silva* v. *Syed Teharanee and others*, 9 W. R., 374.

The principle on which wasilat should be assessed where defendant has been compelled to relinquish possession is, that he should be made to pay that which plaintiff (decree-holder) would have enjoyed if he had not been kept out of possession by the wrongful act of defendant. *Erfoonissa Chowdhrain* v. *Mussamut Rukheeboonissa*, 9 W. R., 457.

Where a party is decreed entitled to mesne profits the trespasser cannot be allowed to urge that the

owner would not have realized as much from the land as he (the trespasser) did; but if he had obtained extraordinary profits by the expenditure of capital on the land, allowance should be made for such expenditure. *Sreenath Bose* v. *Nobin Chunder Bose*, 9 W. R., 473.

The mesne profits which, under the provisions of Section 11, Act XXIII of 1861, are assessable by the Court executing the decree, are only such as have been by the decree made payable in respect of the subject-matter of the suit between the date of the suit and the date of the execution of the decree. Any question of mesne profits not determined by the Court making the decree is not properly cognizable by the Court executing the decree. *Ram Lochan and others* v. *Munsoor Ali Chowdhry and others*, 11 W. R., 339.

Where the amount of mesne profits is not expressly admitted, the Court is bound to deal with it as if disputed, and either to determine the amount at the trial or to reserve it for assessment in execution. *Dhurm Narain Singh* v. *Bundoo Ram*, 12 W. R., 75.

The mesne profits payable in respect of the subject-matter of the suit under Section 11, Act XXIII of 1861, are only such as are made payable under an order of the Court which passed the decree. In respect to mesne profits due after the decision of the first suit, the decree-holder is entitled to institute a fresh suit. *In the matter of Shumboo Mohun Roy* v. *Tripoora Sunker Roy and others*, 12 W. R., 126; *Promothonath Roy* v. *Tripoora Soondery Dabee*, 10 W. R., 463.

Mesne profits should not be estimated on the gross produce of an estate except when all other means of ascertaining them fail. The rents due from the actual cultivators, or if he cultivate the land by his own servants, the value of the produce, should be taken as the amount of the mesne profits. *Khemon Kuree Debia* v. *Modhoomutty Debia*, 4 W. R., Mis., 23.

A decree-holder may recover as mesne profits such sums as may have been collected and appropriated by others in wrongful possession, or such sums as he himself would have collected had he been in possession, and which he was prevented from collecting by being kept wrongfully out of possession. *Bishessuree Debia* v. *Mohun Chunder Bose*, 5 W. R., Mis. 35.

A decree-holder is entitled as mesne profits to whatever the wrong-doer has collected, though it be more than the decree-holder himself might have ordinarily collected. *Chunder Coomar Roy* v. *Kasheenauth Roy Chowdhry*, 5 W. R., Mis., 37.

Mesne profits liable in execution of a decree are the rents of an estate, *minus* costs of collections, Government revenue, losses by desertion and death of ryots, by drought, &c. The proper means of ascertaining their amount is to require the party who has held possession, and against whom the decree has passed, to produce his accounts, and if necessary to compel him to do so. On him lies the *onus* of proving the actual amount of mesne profits, and if he fail to produce his accounts he will only have himself to blame if the amount awarded by the Court is larger than the actual mesne profits. *Dinobundhoo Nundee* v. *Keshub Chunder Ghose*, 3 W. R., Mis., 25.

On the appeal of the judgment-debtor and without a cross-appeal by the creditor, the Appellate Court should not increase the amount of mesne profits decreed by the first Court to the creditor. The rents which the party in possession might have realized with due care and diligence should be taken as the amount of mesne profits. *Ramnath Chowdhry* v. *Digumber Roy*, 3 W. R., Mis., 30.

Decree of Sudder Court estimating the amount of mesne profits from the average of two preceding years, as ascertained in a former suit (the evidence in the present suit being unsatisfactory on both sides), upheld. *Sooriah Row* v. *Rajah Enoogunty Sooriah*, 5 W. R., P. C., 125.

Where the custom of collecting rents from mustagirs prevails, the mustagiri jumma is to be the basis of account of mesne profits to be recovered from a judgment-debtor. *Syud Ahmed Rezah* v. *Rajah Syud Enaet Hossein*, 1 W. R., Mis., 20.

Mesne profits are not limited to the amount actually collected from an estate by the judgment-debtor, but must be calculated according to the assets which might have been realized with due diligence. *Mary Smith* v. *Sona Bibee*, 2 W. R., Mis., 10.

The value of trees cut down and appropriated by a judgment-debtor, against whom a decree with mesne profits has been given, may be included in the mesne profits for which the judgment-debtor whilst in wrongful possession is liable. *Buneead Singh* v. *Sudaseeb Dutt*, 2 W. R., Mis., 50.

The sum to be recovered in any case of a suit for mesne profits is of the nature of damages to be assessed by a proper exercise of the judicial discretion of the Court which is charged in the trial of the case on its merits; and it is impossible to lay down a rigid rule according to which those damages should always be calculated. *Charles Swinton Hogg* v. *Dinonath Sreemanee*, 8 W. R., 447.

The purchaser at a sale in execution of a decree obtained by a mortgagee in satisfaction of his mortgage debt, is not bound by leases executed by the mortgagor, after decree, unless he has recognized the leases after his purchase by receiving rent from the lessees as such.

When a party is declared entitled to a decree for mesne profits he is entitled to recover as those profits such sums as may have been collected and appropriated by others in wrongful possession, or such sums as he would have collected had he been in possession, and which he was prevented from collecting by having been kept wrongfully out of possession. *Hunooman Doss* v. *Koomeroonissa Begum*, W. R., F. B., 40.

Where a defendant had, with apparent right, occupied newly-formed lands from which the plaintiff ejected him by establishing in a civil suit his superior title, the *onus* was held to be on the defendant to account to the plaintiff for those profits which the defendant had derived from the lands, and which the plaintiff, if he had been in possession, would himself have received. *Abdool Kureem Biswas and others* v. *J. D. Campbell*, 8 W. R., 172.

In estimating the amount of mesne profits where a decree-holder could not give satisfactory evidence as to the rates at which he received rents and the collections he made, the judgment-debtor was held liable for the amount stated in the Collector's jummabundee, *minus* the cost of collection, leaving him to recover from Government what he has paid on

account of revenue, unless the sums so paid had already been refunded by Government to the decree-holder. *Charles Palmer* v. *Mohunt Bal Gobind Doss*, 7 W. R., 230.

Principle on which mesne profits should be calculated. *Ram Dhul Singh* v. *Pormessuree Persaud Narain Singh*, 7 W. R., 78.

In a suit for mesne profits, where the wrong-doer had prevented the plaintiff from cultivating the land, it was held that he was liable to pay for such lands as he cultivated himself or allowed to remain waste, what would have been a fair and reasonable rent if the land had been let to a tenant during the period of its unlawful occupation. *Tripoora Soondery Dabea* v. *Coomar Promotho Nath Roy*, 11 W. R., 533.

Where the Government and a farmer were both jointly liable for mesne profits as joint wrong-doers, it was ordered that they should in the first instance be severally charged with the amount of mesne profits which each had realized. *The Collector of Bograh, on behalf of Government* v. *Shama Shunker Mozoomdar and others*, 6 W. R., 230.

In a case of wrongful dispossession, the principle upon which wasilat should be assessed is to ascertain what the actual rents or proceeds of the estate were, and to make the wrong-doer account for them to the party dispossessed, everything being assumed against the wrong-doer. *Doorga Soondery Debia* v. *Maharanee Shibeshuree Debia*, 8 W. R., 101.

Mesne profits mean those profits which the person in actual wrongful possession of the land did actually receive, or might with ordinary and due diligence have received from that land. *Dwarkanath Mitter* v. *Ramdhun Biwas and others*, 8 W. R., 103.

Where one party illegally dispossesses another and lets his estate in farm, the amount of the rent which the party wrongfully ousted might have ordinarily received had he been in possession, and not the amount of the farm rents received during the wrongful possessor's incumbency, will, unless any special custom be proved, be the measure of mesne profits to be awarded. *Jugurnath Singh* v. *Sheikh Ahmedoollah*, 8 W. R., 132.

In estimating mesne profits, not merely the amount of rents actually received by the defendant, but also those which he might have received, and which can no longer be collected, ought to be charged against him. On the other hand, the reasonable expense of collecting the rents may be allowed to him; and if he has paid rent to the zemindar, allowance may be made for such payments. But he cannot be charged with payments of rent made by the plaintiff to the zemindar. *Mussamut Bessumessooree Dabea* v. *Mussamut Tarasoonderee Brahminee; Mahomed Hajra* v. *Tarasoonderee Brahminee*, Marsh., 201.

The proper principle applicable to a case in which the person liable to mesne profits has not let the land to tenants, but has himself occupied and cultivated it, growing on it indigo and other crops, is not to assess wasilat according to the value of the manufactured indigo or other crops, but according to what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation of the wrong-doer. *Ranee Asmed Kooer* v. *Maharanee Inderjeet Kooer*, 9 W. R., 145.

Where a suit is decreed as one for possession with mesne profits, the decree-holder is not barred from asking the Court, under Section 197, Civil Procedure Code, to enquire into the amount of mesne profits in execution. In decreeing mesne profits a Court has no right to disallow the costs of collection on the assumption that a large zemindar can collect rents without costs. *Gooroo Dass Roy* v. *Annund Moyee Debia*, 15 S. W. R., C. R., 203.

A superior holder who dispossesses a ryot is liable, not merely for the profit which he makes by letting out the land, but to make good the loss which the ryot sustains by being dispossessed. *Huruck Lall Saha* v. *Sreenibash Kurmokur*, 15 S. W. R., C. R., 428.

The rule for the assessment of mesne profits is, that the right of the true owner is to all the profits of the land, and not merely to the amount of the cash collections during the time that he is illegally kept out of possession, and the trespasser must be held responsible for all that he has realized and receive credit for everything for which he is entitled to credit, such as rents paid and charges for collection. He does not lessen his responsibility by remitting rent or neglecting to make collections. *Kalee Dabee* v. *Madoo Soodun Chowdry*, 16 S. W. R., C. R., 171.

Where the party recovering possession of land of which he was wrongfully dispossessed, and claiming wasilat, is himself the cultivator, he is entitled to recover the profits which he would have made out of the land by the cultivation, had he not been dispossessed. *Nur Singh Roy* v. *Anderson, J.*, 16 S. W. R., C. R., 21.

A decree for wasilat for a larger sum than that mentioned in the plaint was upheld in appeal, on the ground that the plaint did not profess to do more than give the approximate value of the produce of the land, and that the sum decreed had been found due after two careful local investigations. *Pearee Soonduree Dossee* v. *Eshan Chunder Bose*, 16 S. W. R., C. R., 302.

The mode of calculating mesne profits in cases of decrees for and against each of the parties, is to calculate and rateably divide them and then to allow a set-off to the extent of the profits actually received by each sharer, the deficit in each year being made good by the party who received in excess of his share. *Bijoy Gobind Naik* v. *Kalee Prossono Naik*, 16 S. W. R., C. R., 294.

In a suit for wasilat where it was decreed that the value of the produce of a julkur should be ascertained in execution, the Lower Appellate Court was held to have come to a right conclusion without any error of law in taking the nearest approximate value of the produce indicated by the evidence and the plaintiff's statement. *Shaik Enaet Ali* v. *Baboo Sobhneeth Misser*, 15 S. W. R., C. R., 258.

In calculating the six years' mesne profits which the decree-holder was entitled to recover in this case, the cause of action was held to have arisen at the end of the year in which the ouster took place.

In the case of endowed lands, the judgment-debtor is entitled to a deduction, from the amount of mesne profits ascertained to be due, of the expenses incurred by him in carrying on the worship of the idols. *Thacoor Doss Acharjee Chuckerbutty*

v. *Shosha Bhoosun Chatterjee*, 17 S. W. R., C. R., 208.

The loss of the party wrongfully kept out of possession must generally be measured by the actual profits arising from the usufruct of the land during that time, on an occupation of the same character as that of the party wrongfully kept out of possession at the date of his ouster or of the last legal occupant whom the plaintiff claims to succeed to, if the plaintiff himself never entered into possession.

As regards the produce and value of the lands in such cases, it is the duty of the judgment-debtor to produce his accounts and to prove what were the real assets of the property. *Mussamut Rookeemee Kooer* v. *Ram Tuhul Roy*, 17 S. W. R., C. R., 157.

Where application was made for execution of a decree for possession with mesne profits of five mouzahs situated within the Court's jurisdiction, and Government revenue was so assessed upon these five mouzahs and two other mouzahs situated in another district that the amount paid on account of the five mouzahs and the two mouzahs respectively could not be apportioned, the Court had no jurisdiction to determine and award mesne profits for the latter two mouzahs not within its jurisdiction but to have made an apportionment to the best of its ability.

Nor ought the Court to have assessed the mesne profits by relying upon certain jummabundee papers made by the Government revenue officers some thirty years ago, without enquiring into the actual rents or proceeds of the estate during the period of dispossession. *Puran Chunder Roy* v. *Juggessur Mookerjee*, 17 S. W. R., C. R., 298.

An ordinary cultivating ryot, recovering possession after ejectment, is entitled to get as mesne profits the net amount that he himself would have got from the land had it remained in his own cultivation. *Shistee Pershad Chuckerbutty* v. *Kumla Kant Roy*, 17 S. W. R., C. R., 348.

If a Court finds that a plaintiff has been dispossessed of property, he is *primâ facie* entitled to mesne profits in respect of the period during which he was dispossessed, and it is not necessary for him to prove the actual collections made during his dispossession. It is sufficient to show what is the annual profit which in ordinary years can be collected. Thus it is sufficient to show the profits for the years preceding or subsequent to the period of dispossession. *Bhawanee Deen Sahoo* v. *Mohun Sahoo*, 1 N. W. R., Par. 12, p. 188.

Held that the mode of estimating the amount of mesne profits in respect of a talook held by plaintiff under defendant was to ascertain the amount of profits which plaintiff could have realized from the talook if he had not been dispossessed therefrom by the wrongful act of defendant; and that as there was no necessary relation between those profits and the amount of revenue payable by the latter on account of the inferior holding, such revenue could not be treated as an element in the calculation; but that the amount of rent payable by plaintiff to defendant ought to be deducted from the gross calculation of the talook. *Held* also that there seemed no reason why the same rule should not be adopted in this case merely because the wrong-doer was the landlord. *Bhyrub Chunder Mojoomder* v. *Huro Prosunno Bhuttacharjee*, 17 S. W. R., C. R., 257.

The plaintiff brought a suit against the defendant to recover damages for the wrongful taking and detention by the defendant of a coffee estate and certain moveable property belonging to the plaintiff, and for the loss sustained partly by the destruction of the growing "supplemental crop" and partly by neglect of the proper cultivation of the estate. The possession of the estate had been in the first instance given in right of the defendant's claim as mortgagee, and afterwards retained mistakenly in the same right. The Civil Judge awarded the plaintiff Rs. 20,000, as compensation for the injury, privation, and suffering resulting to the plaintiff from the defendant's wrongful acts in obtaining and withholding possession of the estate. *Held* that the defendant should not have been adjudged to pay more than the value of the profits of the estate, and of any property removed from the estate, and compensation for any injury caused to the estate by the acts or neglect of the defendant or his agents. *McIvor, W. G.*, v. *Stainbank, W. H.*, 5 Mad. Rep., 70.

Where a purchaser of a four-annas' share was kept out of possession of a portion of the property sold, and having recovered judgment in a suit brought for possession and mesne profits against the vendor, an arrangement was come to pending appeal, that within a year the parties should appoint an arbitrator to fix on the shares and make a division, and in default of such appointment an application should be made to the hakim, but that if no such application was made within the year, and a suit should be subsequently brought, the party suing should lose his right to mesne profits,—*Held* that, under the circumstances, the defendant having prevented the plaintiff from making the necessary application within the year, and proceedings having gone on for years to carry out the partition, the plaintiff was, on the termination of those proceedings, entitled to sue for mesne profits.

Where proceedings were going on to effect a partition, the right to particular properties being in dispute,—*Held* that the right to mesne profits accrued at the termination of those proceedings, and that the party improperly kept out of possession was entitled to sue for all mesne profits during the period of his non-possession, subject to any grounds which the defendant could show which would entitle a Court of Equity to deprive the plaintiff of his rights.

In a suit brought in January, 1862, respecting property situated in Assam, mesne profits for twenty-eight years, prior to 1854, were decreed subject to any equitable claims for deducting any portion, Act XIV of 1859 not applying to Assam previous to July, 1862.

Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. *Nil Kamal Lahuri* v. *Srigunomani Debi and Sri Buroda Sundari Debi*, 7 B. L. R., 113, and 15 S. W. R., P. C., 38.

Where the plaintiff, who was a cultivator, sued for possession of certain land, of which he had been dispossessed by the defendant, with mesne profits, and the Judge gave him a decree for possession, and as to mesne profits decreed that the plaintiff should have the actual profits realized from

the land, and if that could not be ascertained (as to which the burden of proof, he said, should be on the defendant), then according to the capabilities of the soil in an average season, making the deductions necessary on account of the bad seasons, expense of cultivation, rise and fall of prices, and cost of seed; and in the case of indigo, the value of the raw produce and not of the manufactured article; it was held that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. *Watson* v. *Pyari Lal Shaha*, 7 B. L. R., 175.

In a suit for possession and wasilat where the plaintiff was the actual cultivator of the land and obtained a decree, it was held that the full Bench Ruling reported in 9 W. R., p. 446, and not in the case in 13 W. R., p. 37, was applicable, and that plaintiff was entitled to such fair and reasonable rent as the defendant might have derived from the land had he left it during the period of his wrongful occupation. *Madhub Chunder Dutt* v. *Haradhun Paul*, 14 S. W. R., C. R., 294.

13.—Liability for Mesne Profits.

Where in a former suit for possession the Court decreed possession and wasilat from date of suit to date of recovery of possession, a further suit for wasilat from the date of the plaintiff's dispossession to the date of the former suit was held not barred. *Sheikh Afzul Hossein* v. *Mussamut Misrun*, W. R., 1864, 297.

In a suit for wasilat in respect of mâl lands fraudulently included by the lakherajdar with lakheraj lands resumed by Government and afterwards settled with him,—*Held* that the lakherajdar, and not the Government, was liable; and that as the sum claimed was definite and required no further enquiry to ascertain the amount due, interest had been properly awarded from date of suit. *Shew Coomaree Dabee* v. *Maharajah Mahtab Chund Bahadoor*, W. R., 1864, 380.

A separate suit will not lie for mesne profits accruing between the date of decree and delivery of possession. *Ram Shunker* v. *Mussamut Lalee Baie Manick Ram*, 2 Agra Rep., A. C., 268.

A., in execution of a decree of the lower Court against B., obtained possession of certain land therein mentioned. On appeal by B. the High Court reversed the decree of the lower Court, and ordered restitution of the property to B., but no mention of mesne profits was made in the decree. B. then sued for recovery of mesne profits for a period during which A. had been in possession.

Held that such a suit would not lie. The question of mesne profits ought to have been decided in execution under Section 11 of Act XXIII of 1861. *Shib Narayan Pohraj* v. *Kishor Narayan Phoraj*, 1 B. L. R., A. C., 146.

Persons who purchase from one who they know has no legal right to sell, with full notice that the vendor is only a trustee for her minor sons, are liable to pay mesne profits. According to Clause 16, Section 1, Act XIV of 1859, no more than six years' mesne profits can be recovered. *Luchmun Singh* v. *Mussamut Bibee Miriam*, 5 W. R., 219.

About the time that judgment was given in plaintiff's favour for possession with wasilat, a third party, in satisfaction of some other claim against the defendant, attached and got possession of the land in dispute. A question consequently arose in executing plaintiff's decree as to the liability for wasilat of the year in which the defendant was put out of possession by the third party.

Held that as under Section 223, Code of Civil Procedure, plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had them not. Under these circumstances defendant could not be held liable for the profits. *Haradhon Dutt* v. *Joykisto Banerjee and others*, 11 W. R., 444.

A decree for possession in a suit under Section 15 of Act XIV of 1859 is *primâ-facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein mesne profits for the period of dispossession. *Radha Churn Ghatak and others* v. *Zamirunnisa Khanum*, 2 B. L. R., A. C., 67; S. C., 11 W. R., 83.

A person declared by a decree to be in wrongful possession is liable for mesne profits, which may be recovered from any property in his possession. *Beebee Pearun* v. *Ahmed Ali Khan*, 4 W. R., Mis., 7.

A party in wrongful possession of land is liable for mesne profits from the date he withheld possession from the rightful owner. *Hera Lall Thakoor* v. *Gridharee Lall and others*, 8 W. R., 450.

Held, dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bonâ-fide* possession without knowledge of the defect in his title. He would, if he bought with sufficient enquiry, have a remedy against his vendor. *Mugun Chunder Chuttoraj* v. *Surbessur Chuckerbutty and others*, 8 W. R., 479.

The liability of the several defendants in this case was assessed in proportion to the amount of profits which each had derived from his wrongful possession. *The Nawab Nazim of Bengal* v. *Raj Coomaree Debee*, 6 W. R., 113.

Held that the first auction-purchaser, whose purchase was found to be invalid, was liable to account for the profits of the estate during the time he remained in possession thereof to the second auction-purchaser, whose purchase was declared by the Court to be good and valid. *Joy Narain* v. *Sheikh Torabun*, 3 Agra Rep., 216.

A suit for mesne profits held to lie against a party who took an izárá pending litigation, though the decree for possession with profits was against the izárdár's landlord. *Bidyamayi Debia Chowdhrain* v. *Ram Lal Misser*, 8 B. L. R., Ap., 80; 17 S. W. R., C. R., 141.

When a suit is brought to recover possession of immoveable property, and the decree does not provide for the mesne profits that accrued during the suit, a separate suit may be maintained for them. Where however it can be shown that the omission in the decree to provide for mesne profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit. *Sitaram Amrut et al.* v. *Bhagvant Jagannuth*, 6 Bom. Rep., A. C. J., 109.

As a general rule a suit for wasilat will lie against parties who have been found in a previous suit for recovery of the land to have been in wrongful possession and against them only. If the plaintiff has

recovered a decree against several persons as joint wrong-doers, he is not at liberty to single out one or more of them only as defendants in the suit for wasilat. *Suttya Nundo Ghosaul* v. *Sureep Chunder Doss*, 14 S. W. R., C. R., 76.

Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for wasilat unless there has been dispossession, and the claimant has been prevented from enjoying rents and profits. *Churn Singh* v. *Runghoo Singh*, 15 S. W. R., C. R., 221.

14.—Interest on Mesne Profits.

The principle upon which mesne profits are calculated is that a party is entitled to receive from the person but for whose wrongful act he would have realized profits damages in such a shape and to such an extent as to cover his loss. Interest on mesne profits may therefore be awarded from the date of ascertainment thereof. *Mobaruk Aly* v. *Boistub Churn Chowdhry*, 11 W. R., 25.

Interest on the mesne profits cannot be awarded for the period previous to such ascertainment where the decree does not give interest on mesne profits. *Hurò Gobind Bhukut* v. *Degumburee Debia*, 9 W. R., 217.

Where a decree for mesne profits does not declare whether interest is or is not to be awarded, the Court which executes it is right in refusing to award interest. *Becheram Doss* v. *Brojonath Pal Chowdhry*, 9 W. R., 369.

Held that no difference should be made between wasilat paid in kind and wasilat paid in cash; both should be calculated in specie, and bear interest at the usual rate. *Sreemutty Baye Kishorree Dassee and another* v. *Bonomally Churn Mytee*, 10 W. R., 209.

In a suit for wasilat brought after a decree awarding possession to the plaintiff, the defendant cannot set up the title of a third person.

Interest on a sum awarded for mesne profits may properly be withheld until the date of the decree, since the amount is not ascertained before that time. *Bengal Coal Co.* v. *Mussamut Dureeonlah Debea and others*, Marsh., 105.

The right of action to a person who is restored to possession under a decree of the Privy Council, does not accrue before the decision of the Privy Council; and he is entitled to interest on mesne profits from the time of his ejectment up to one year after the decision of the Privy Council, that being held to be a reasonable time to be allowed to him for commencing his suit. *Ranee Asmoodh Kooer* v. *Joykurun Lall*, 5 W. R., 125.

Although the common practice is to make interest payable from the date on which the mesne profits are assessed, yet there is no rule of law by which a party is debarred from suing for the recovery of mesne profits with interest. *Sokhee Mara Debia* v. *Brijoraj Mookerjee*, 17 S. W. R., C. R., 228.

Although interest as such cannot strictly be allowed upon mesne profits previously to the institution of the suit, the Court in estimating what loss has been sustained by the plaintiff in being kept out of possession may take into consideration that if he had received the rents year by year he would have been able to make use of the same, and may thus calculate the interest in the damages to be awarded. *Protap Chunder Borooah* v. *Ranee Surno Moyee*, 14 S. W. R., C. R., 151.

Where a decree of the Privy Council ordered possession with mesne profits but without interest,—*Held* that the decree did not interfere with the power of the Judge who executes it to award interest under Section 10 of Act XXIII of 1861 on the aggregate sum adjudged, and costs from the date of decree to date of payment. *Rajah Ahmed Reza* v. *Mussamut Khujoorunnissa*, 15 S. W. R., C. R., 469.

XXIV.

THE LAW OF MORTGAGE.

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1.—MORTGAGE.

While a mortgagee was in possession of the mortgaged premises the lands were sold for arrears of Government revenue, and purchased by the mortgagee. *Held* that his possession as mortgagee was superseded by his possession as purchaser, and that the Statute of Limitation commenced to run from the beginning of his possession as such purchaser. *Bykant Dhur Singh* v. *Lallah Bhogobut Sahby*, Marsh., 3891.

The rule that the date of expiry of the year of grace is the date from which a mortagee's cause of action to obtain possession of the mortgaged estate is to be calculated, applies only when the mortgagor remains in peaceable and undisturbed possession of the estate. But when the mortgagor is dispossessed, and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause of action against the new holder will count from the date on which the latter obtained such adverse possession, unless when the mortgagor contests the title of the new holder, and litigation ensues between them, in which case the mortgagee is not bound to take action upon his mortgage until that litigation is decided. But if the mortgagor's title is rejected, and his possession is disturbed by an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor which has been confirmed by the Courts. *Ramcoomar Sein* v. *Prosonnocoomar Sein*, W. R., 1864, 375.

An agreement reciting that in consideration of the care which the plaintiff took of the defendant and her property during her infancy, and of the instruction given to her for which the plaintiff expended her own money, the defendant had mortgaged her house to the plaintiff; and stipulating that in the event of the defendant going to live with any man, and similarly after her death, the house would become the plaintiff's property.

Held good in law and in substance an account stated with a mortgage to secure the amount due; and the usual decree for redemption made, reversing the decrees of the Courts below which threw out the plaintiff's claim. *Heirs of Husen Reg Bin* v. *Akubai*, 2 Bom. Rep., 357.

A. mortgaged to his brother B. his twelfth share in the immoveable estate of the family. C. at B.'s request became surety for A. to Government. A. having become a defaulter, C. became liable to Government in respect of his defalcations. B., with a view to indemnify C., transferred to him A.'s mortgage, C. at the same time assigning to B. a debt due by D. to A., which had been previously assigned by A. to C. Government sold A.'s interest in the twelfth share, which was purchased at the sale by B.'s son, E.

In a suit brought by C. against B. to obtain possession of A.'s share,—*Held* that the assignment by C. to B. of D.'s debt was a sufficient consideration for the transfer by B. to C. of A.'s mortgage; that the sale by Government of A.'s

share was subject to such pre-existing valid charge, and that E., to whom the equity of redemption only passed by the purchase at the Government sale, was necessarily a party to the suit, which was accordingly remitted to the Court below, in order that he might be made a defendant, and a new decree passed upon the merits. *Yashavant S. Kulkarni S. Gopal* v. *Chandarkar*, 2 Bom. Rep., 202.

Held that though there may be a condition for repayment of mortgage debt in money, the mortgagee may bind himself to receive the payment in money's worth, and this orally, notwithstanding that the mortgage debt is created by a written obligation. The mode in which an obligation may be discharged and satisfied by payment is a distinct matter from the obligation itself. *Duraya and others* v. *Mohur Singh*, 2 Agra Rep., A. C., 163.

G. borrowed money on a mortgage bond, on which the mortgagees sued for and obtained a money decree which did not declare the mortgaged property liable to be sold in satisfaction. While the proceedings in the case were pending G. sold the property. *Held* that the property was virtually unburdened at the date of the sale; the mortgage lien having been rendered infructuous by the action of the mortgagees in waiving their right of sale and receiving a money decree. *Sawruth Singh* v. *Bheenuck Sahoo*, 12 W. R., 522.

Lands descended to three sisters. On a question whether a mortgage of a portion by one of the sisters, thirty years ago, was in her own right, or on behalf of the family, or how otherwise, it appeared that each sister had dealt with several portions as on her own behalf; that one was the family manager for joint interests, but who had not interfered in respect of the portion mortgaged. The mortgagee had held and enjoyed from the first, and had assigned absolutely, and the assignee had again assigned absolutely as owner. In execution for the debt of the widow of the mortgagor's son, her right and interest mortgaged in the premises were sold, and the sheriff's vendee sold to the mortgagee. The son of the surviving sister (not the mortgagor) sued for redemption and possession. *Held* that as his title accrued (on his showing) on his mother's death, at which time defendants' vendors held adversely, no mortgage relation had been established as between plaintiff and defendants; and more than twelve years having elapsed before suit the suit was not maintainable. *Sreemulmoney Bebee and others* v. *Goberdhone Bermono*, 2 Ind. Jur., N. S., 319.

The heirs of a deceased Mahometan mortgaged some property of their ancestor. After the mortgage a judgment-creditor, in respect of a debt due from the estate of their ancestor, attached and sold the mortgaged property in execution of his decree. *Held* that the sale was subject to the mortgage. *Held* also that the question with respect to the powers of the heirs, and the rights acquired by the mortgagee and the purchaser under the execution, in a suit between the latter, was to be determined, not by Mahometan law, but by the principles of "justice, equity, and good conscience."

Semble,—That even if the Mahometan law applied, the sale in execution would be subject to the mortgage. *Campbell* v. *Delaney*, Marsh., 509.

A mortgage created by a defaulting undertenant, on account of a debt contracted by him, cannot continue to the prejudice of the auction-purchasers of the tenure sold for arrears of rent under Section 105, Act X of 1859. *Kalee Kant Chowdhry* v. *Romonee Kant Bhuttacharjee*, 3 W. R., 217.

A mortgage made by way of security for money advanced remains a mortgage until the debt is satisfied, and the mortgagee-creditor has every right to sue to obtain a decree and sell that which is held by him as security for his money, without any regard to the proceeding of any other subsequent mortgagee or purchaser. A purchaser at a sale in execution of such a decree, under a prior mortgage, as well as the original holder of a prior mortgage, has rights far superior to those of any other mortgagee or purchaser of a subsequent date. A subsequent purchaser, by payment of an earlier mortgage, and obtaining a decree for the money so paid, does not acquire any rights belonging to that mortgage. His payment was a voluntary act, and his decree against his vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. *Dhone Roy* v. *Buldeb Narain Singh*, W. R., 1864, 345.

The plaintiff had a lien on three estates belonging to his debtor, and a third party having obtained a decree for money due from the same debtor, recovered his money by the sale of one of the three estates mortgaged to the plaintiff. *Held* that the sale did not release that estate from the mortgage, but that it forced the plaintiff to take measures in the first place to recover the amount due to him from the remaining estates included in his mortgage-deed; and that if a balance remained after he had realized all he could from these two remaining estates, he could then return to the third estate to recover the balance. *Mussamut Nowa Koowar* v. *Sheikh Abdool Ruheem*, W. R., 1864, 374.

An estate was bought benamee in the name of A. by the father of A. After the father's death a sum of money was raised by conditional bill of sale signed by A. as proprietor and by his brother B. as motullah. Afterwards, and after the death of B., and after B.'s heirs had separated from A., A. raised a further sum by a bill of sale, reciting the former conditional bill of sale, and that the additional sum was raised to discharge the same. *Held* that if the grantee took with notice that he was entitled to a half-share only of the estate the additional charge would operate as a mortgage of such half-share only; but that portion of the money for which the original bill of sale was given was a charge on B.'s share as well as on the possession of his heirs. *Kishen Chunder Ghose* v. *Nundo Kishore Singh*, Marsh., 651.

Plaintiff borrowed a sum of money for defendant, and executed what he called a "usufructuary mortgage," taking from defendant a lease for nine years, under which the lessee, after paying the Government revenue and a certain rent (claiming no abatement), was to retain the rest of the jumma as interest and principal of the loan until the term of the lease expired, when the balance was to be repaid in a lump sum, the lessor not being at liberty to alienate the property until the debt was paid. The present suit was brought to redeem the property by payment of the principal and in-

terest due, although the term of the lease had not expired.

Held that the document leasing the property was partly "ticca" and partly "zur-i-peshgee," and the plaintiff was not entitled to enter into possession before the expiry of the term of the lease, nor could he then enter even if the transaction were viewed as a zur-i-peshgee. *Rajah Lotf Aly and another* v. *Gugraj Thakoor and another*, 11 W. R., 408.

A finding by a Court that a mortgage-deed has been attested by the Registrar of Deeds and proved by witnesses, is a sufficiently distinct finding on the *bona fides* of the deed. *Moorul Singh* v. *Mohun Kooer*, 9 W. R., 167.

Where a mortgage is a charge on the whole of an estate, before the mortgage can be removed from any part of the estate the whole mortgage-debt must be paid off. *Moodhoo Singh* v. *Kishen Chunder Ghose*, 3 W. R., Mis., 4.

A mortgage of the revenues of a village was executed by a firm, and the deed stipulated that the mortgagees should station a mehta or clerk of their own in the village to make the collections, who was to receive his monthly salary and daily food from the mortgagors whilst the property remained in mortgage. A mehta was accordingly appointed, who received the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them for four or five years. The respondent, who was one of the partners of the firm, did not execute the mortgage, but was cognizant afterwards of the execution of it, and he sued his co-partners, and obtained a decree for his share of the assets of the firm. In execution of his decree an attachment issued against the estate. The mortgagee sues for the removal of the attachment.

Held that the mortgage was valid up to the time of the notice of the respondent's claim (*i.e.*, when he proceeded to enforce that claim by attachment and when he became in the situation of a second incumbrancer); and that if after that time he permitted the mortgagors to receive any portion of the produce of the estate he ought, with respect to the moneys so received, to be postponed to the subsequent incumbrancer. *Jugjeewan Das Keeka Shaha* v. *Ram Das Brijbookun Das*, 6 W. R., P. C., 10.

Where a mortgage is found to be genuine, and the receipt of consideration admitted, the Court is bound to assume, unless it be shown to the contrary, that the transaction was a real one, and that the consideration-money was paid. *Radhanath Banerjee* v. *Judunath Singh and others*, 7 W. R., 441.

Certain words in a mortgage-deed stipulating that in the event of the property mortgaged being sold in execution of a decree, or otherwise alienated, the mortgagee should recover from any other property in the possession of the mortgagor, whose person should also be liable for debt, were construed as merely intended to give some supposed further security to the mortgagee, but not to take away his right to issue notice of foreclosure and obtain possession by a suit, even though the mortgaged property were sold away. *Achumbit Misser and others* v. *Lala Nund Ram and others*, 11 W. R., 544.

A mortgagor stipulated that he would not sell the property mortgaged during the subsistence of the mortgage-term; but that if he did sell he would sell to the mortgagee at a fixed price. He subsequently alienated a moiety of the property to his wife in lieu of dower; a suit was instituted by the mortgagee to set aside the alienation. *Held*, on the construction of the mortgage-deed, that the condition did not absolutely prohibit alienation but simply conferred on the mortgagee a pre-emption right to purchase, and that the mortgagee could not sue for avoidance of the alienation to the wife, without claiming or expressing a willingness to purchase. *Shiva Churn Doss* v. *Sheikh Roostum and Mussamut Nujeemoonnissa*, 1 Agra Rep., F. B., 69.

The principle that a party cannot both approbate and reprobate the same transaction is applicable to Indian cases.

Where a mortgage-deed stipulates for interest at 9 per cent., but other and collateral deeds, forming part of the same transaction, provide for further profits to the mortgagee—*Held* that the mortgagor cannot, unless there be a positive legal enactment to that effect, be heard to plead that the written engagement, though not extending to the whole profit stipulated, must be adhered to as against the mortgagee, though the mortgagor may go beyond it to show the full extent of the profit, and so to be relieved from the consequences of his actual contract.

Interference with the rate of interest in India was a thing of positive law, and cannot be extended beyond the provisions of the Regulation (XV of 1793). Section 9 of the Regulation does not declare that where an attempt has been made to elude the usury laws the contract is itself void, nor does it direct the return of the pledge without redemption. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by Section 10 of the Regulation.

In a suit for redemption, on the ground that the debt has been satisfied with interest, the *onus* is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profits as his mortgagor was able to raise. Hence an estimate of the rental preceding mortgagor's possession is not sufficient proof of the profits in his time.

The nature of the accounts which a mortgagor may call for from mortgagee explained. The mortgagee need not personally attest the accounts if he has no personal knowledge of them.

Presumptions against mortgagees for non-production of accounts must have reasonable limits, and not be mere conjectures or based on inexact data. *Shah Makhan Lall and others* v. *Srikrishna Singh and others*, 2 B. L. R., P. C., 44; S. C., 12 W. R., P. C., 19.

By an agreement reciting that A. had executed a bond in favour of B. for a certain sum of money, A., "in order to repay the bond-money in the terms in the bond contained," declared that "until the repayment of the money covered by the bond he should not from the date of the agreement convey the property mentioned therein to any one, by deed of sale, or deed of conditional sale, or mokurruree pottah, or deed of mortgage, or zur-i-peshgi ticca potta. Should he make all these transactions in respect of the

said lands, the instrument relating thereto shall be deemed invalid, and as executed in favour of nominal parties for evading payment of the money covered by the said lands."

Held (Markby, J., doubting) that the instrument operated as a mortgage to A. of the lands comprised therein.

No precise form is required to create a mortgage. *Raj Kumar Ramgopal Narayan Singh* v. *Ram Dutt Chowdry*, 5 B. L. R., 264; 13 S. W. R., F. B., 82.

The defendants mortgaged certain property in the mofussil to the plaintiffs in April, 1863, and at the same time, as a collateral security to the mortgagee, executed a bond in favour of the plaintiffs, and a warrant of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon, soon after the bond was executed. In accordance with a covenant in the mortgage-deed, the mortgagees entered into possession and receipt of the rents and profits of the estate which they were authorized to receive for five years from the date of the mortgage. They remained in possession for six years, and then, more than one year having elapsed since any proceedings in execution had been taken they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held* that if the application were granted the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to show that the parties had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. *Semble*,—An equity of redemption cannot be taken in execution of a decree for a money-debt under the attachment clauses of Act VIII of 1859. *Braja Nath Kundee Chowdry* v. *S. M. Gobindmani Dasi*, 4 B. L. R., O. C., 83.

The following terms in a deed, "that for the security of the payment of the debt the lands mentioned in this deed are pledged by me; and that until the principal money and the interest recited in this deed are paid off, I would not on any account transfer the property pledged to anybody by sale or hibabilawaz, or gift, or mortgage, or in any other way," were held to amount to a mortgage. *Lala Ramdhari Lal* v. *Janessur Das*, 6 B. L. R., Ap., 14.

A member of a joint Hindu family granted a usufructuary mortgage, and subsequently, without the knowledge of the co-partners, released the equity of redemption; on hearing of this the co-partners contested the validity of the release. *Held* that the parties claiming from the person to whom the release was made took, so far as the co-partners were concerned, a title only as mortgagees.

Act XIV of 1859, Section 1, Clause 13, is intended to apply to suits between members of a joint family, not to a case where a mortgage having been made by one member on behalf of all to a stranger, that member afterwards, against the will of his co-partners, releases the equity of redemption.

To entitle a purchaser to claim the benefit of Act XIV of 1859, Section 5, he must prove, 1st, that he is a purchaser of what is represented to him and what he fully believes to be not a mortgage, but an absolute title; 2nd, that he purchased *bonâ fide*, that is to say, without a knowledge of the title having been originally a mortgage, and of a doubt existing as to the mortgage having ceased; and 3rd, that he is a purchaser for valuable considerations.

A pleading setting up as a defence a purchase for valuable consideration should aver the seisin of the vendor and the sale of his absolute title for good consideration.

Where an estate having been originally mortgaged by K., a member of a joint Hindu family, he subsequently, without the knowledge of the other members, released the equity of redemption to R., who afterwards sold to H., the owner of a factory, who afterwards sold to G. and Co. the factory with the lands appertaining thereto, amongst which was the property so released, and proceedings had for many years been taken by the other members to assert their rights,—*Held*, reversing the decision of the High Court, that G. and Co. were not purchasers entitled to the protection of Act XIV of 1859, Section 5. *Held* also that Section 10 does not apply in such a case, although R. acted fraudulently. *Radanath Das* v. *J. S. Elliot*, 6 B. L. R., 530, and 15 S. W. R., P. C., 24.

A. executed a bond in favour of B., hypothecating certain immoveable property. B. recovered a money-decree against A., and caused the mortgaged property to be sold. B. became the purchaser at the sale in execution, and was put in possession. C., who held possession of the property under a decree for foreclosure under a subsequent mortgage of the same property to him by A., brought a suit against B. for recovery of possession, and obtained a decree. B. then brought a suit against C. to enforce his lien under the mortgage-bond, but it was held that the suit was not maintainable. *Kasimannissa Bibi* v. *Hurnissa Bibee*, 7 B. L. R., Ap., 8, and 15 S. W. R., C. R., 195.

This was a dispute which arose in 1823 between two branches of a family respecting a Mahratta village. The plaintiffs (appellants) claimed the property on the allegation that the respondents held it as mortgagees, and that they (appellants) were entitled to redeem. The respondents claimed to have held the village in question as an enam free from the payment of Government revenue, and as they had held it on this title since 1824 up to the commencement of the suit, the Privy Council refused to disturb their title, thus fortified by long enjoyment, without clear and unmistakable proof of the alleged mortgage. *Ramrudugowda* v. *Dessai Saheb*, 17 S. W. R., C. R., 8.

2.—KANAM-MORTGAGE.

A kanam-mortgagee does not forfeit his right to hold for twelve years from the date of the kanam by allowing the porapad to fall into arrear. *Shaikh Rautan* v. *Kadangot Shupan*, 1 Mad. Rep., 112.

A kanam-mortgage cannot be redeemed before the lapse of twelve years from the date of its execution (1 Mad. Rep., 262). A mel-kanamdar cannot eject a kanamdar or his assignee before the expiration of twelve years from the date of the kanam. *Pramatan Tupen Nambudripad* v. *Madatil Ramen*, 1 Mad. Rep., 296.

Where a first kanam-holder in his answer to a redemption suit by a second kanam-holder, for the first time denied his own kanam, and alleged

an independent janmam right,—*Held* that he had not thereby forfeited his right to rely upon the option to make a further advance, to which as kanamholder he was entitled, though the denial and allegation were false, and though his documents in support of such allegation were forged. *Paidal Kidavee* v. *Parakal Imbrichary Kidavi*, 1 Mad. Rep., 13.

A kanam-holder who denies his janmi's title forfeits his right to hold for twelve years. *Ramen Nayar* v. *Kandapuni Nayar*, 1 Mad. Rep., 445.

When the urâlans of a devasvam were four tarawâds,—*Held* that a sale of the ûrâyama right by one tarawad, without the consent of the others, was altogether invalid, and that the vendee could not redeem a kanam-mortgage of the devasvam land, though the mortgagor was karanavan of the tarawad which assumed to sell the ûrâyama right. *Ukanda Varriyar* v. *Ramen Nambudiri*, 1 Mad. Rep., 262.

When the demisor of land under a kanam-agreement is unable to give possession the demisee may repudiate the contract, and recover the amount advanced. *Vayalil Pudia Madathemmil Moidin Kutti Ayipa and others* v. *Udaya Varura Valia Rajah*, 2 Mad. Rep., 315.

A kanamdar's right to hold for twelve years depends on his acting conformably to usage and the janmi's interest, and is lost if he repudiates the janmi's title. It makes no difference when this is first done in his answer. *Mayavanjari Chumaren* v. *Nimini Mayuran*, 2 Mad. Rep., 109.

Third defendant, purchaser of the interest of first and second defendants, held certain lands under the terms of a permanent kánam (A), which contained the following condition: "And (I have also agreed) that on failure to pay the said quantity of paddy the kanam-amount of 550 fanams shall be received by me, and the land restored." In a suit by the kanamdar to recover possession for non-payment of rent,—*Held* that this condition of redemption was intended as a penalty to secure regular payments of the rent, and that, such being the original intention of the parties, the penalty was one which ought to be relieved against. *Kattal Upi* v. *Edavaluth Thaltram Nambudiri*, 6 Mad. Rep., 258.

3.—Usufructuary Mortgage.

When the original transaction is an usufructuary mortgage, the mortgagee is entitled to nothing beyond the repayment of his principal and interest from the usufruct of the property. The Court will not allow additional advantages to be obtained through the necessity of the debtor, by the conversion of a mortgage into a transaction of a different nature. Once a mortgage always a mortgage, is a principle not to be departed from. Consequently an estate mortgaged is always redeemable. *Kasseenath and others* v. *Bheekaree Lall and others*, W. R., F. B., 79.

A suit to cancel a zur-i-peshgee, by which the lessee was to receive the usufruct as interest for his advance, and to repay the principal by the rent reserved, is of the nature of an usufructuary mortgage, and as such cannot be brought under Act X of 1859, but is cognizable only by the Civil Courts. *Rutton Singh and others* v. *Greedharee Lall*, 8 W. R., 310.

When a deed is essentially in the nature of an usufructuary mortgage, the reservation of huk ajori to the proprietor, and any other arrangement between him and his lessee cannot alter the essential character of the deed, nor relieve the mortgagee from the liability of rendering an account. *Sheikh Hyder Buksh* v. *Hossein Buksh*, 4 W. R., 103.

When an usufructuary mortgagee has compromised his claim to mesne profits from the mortgagor's estate (which was taken into management by Government), by accepting in lieu a money payment from Government, he cannot again claim from the lessees the rents paid by the latter to Government. *R. Solano* v. *Doolhin Umri Koer*, W. R., 1864, Act X R., 65.

An usufructuary mortgagee, to whom was pledged as lakheraj land which was not valid lakheraj, and which has since been assessed with revenue, is entitled to a lien against the mortgagor for sums of money paid by the former in discharge of the public revenue. *Nuerjoon Sahoo* v. *Shah Moojeeroodeen*, 3 W. R., 6.

A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment.

Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits. *Bonoololl* v. *Beet Bhoobun Singh and others*, 6 W. R., 283.

An estate was mortgaged for Rs. 100; the mortgagee was put in possession, and it was stipulated that he was to enjoy the usufruct in lieu of interest, the mortgagor being entitled to redeem at any time on repayment of the principal. When the mortgagor deposited the principal, the mortgagee set up a false claim upon absolute sale, and forced the plaintiffs into a regular suit, on which possession was decreed to them on payment of the principal. *Held* that they were entitled to mesne profits for such period as may not be barred by the Statute of Limitation. *Held* also that plaintiffs were entitled to interest from the date of suit. *Luleet Singh and others* v. *Mirza Ali Reza and others*, 8 W. R., 322.

In the case of an usufructuary mortgage executed prior to Act XXVIII of 1855, where the mortgagor sues for redemption on the ground that the usufruct had paid off the debt, and claims mesne profits on the allegation that the mortgagee in possession has already collected more than his legal dues, the mortgagee is bound to produce the accounts of actual collections made by him during his possession. On the failure of the mortgagee in this respect, the mortgagor is expected to adduce some proof to justify a decree in his favour for redemption, as well as for mesne profits. *Syud Hossein Ally* v. *Ramdharee Singh and others*, 7 W. R., 82.

If the usufruct of mortgaged property was to be enjoyed in lieu of interest, the mortgagees having had possession is no ground for the inference that any portion of the debt, save the interest, was paid off from the usufruct. *Bama Soondery Dossee* v. *Bama Soondery Dossee*, 10 W. R., 301.

A plaintiff in possession under an usufructuary mortgage, and suing for the balance due, is bound to prove that he has not realized the amount due

under the conditions of the lease from the usufruct. *Chuttar Dharee Singh* v. *Sheikh Sureer Hossein*, 1 W. R., 28.

Held that an usufructuary mortgagee in possession is liable to account for the profits, whether such possession be by himself or by his agent, and that the suit should not be dismissed merely because the mortgagee refused to give the account, but that the Court should give proper directions for the mortgagee's account to be taken, charging the mortgagee with the amount of the ordinary annual profits if received by him or his agent, but not so charging him if the profits were received by the agent of the mortgagor. *Mussamut Nawak Jaffree Begum and others* v. *Mussamut Ujlee Begum*, 4 Agra Rep., 153.

An entire mouzah had been mortgaged by way of usufructuary mortgage. The plaintiff subsequently purchased a four-annas' share from the heirs of some of the mortgagors, and sued for possession of his purchased share on the averment that the whole of the mortgage debt and interest had been satisfied. *Held* that he was not precluded from suing on the ground that he claimed only a portion of the mortgaged property. *Held* also, that inasmuch as the mortgage was effected many years ago, and the mortgage-deed was not forthcoming, and the parties to it were dead, his suit ought not to be dismissed on the ground that in his plaint he had misstated the date at which the mortgage was made. *Lalla Dabee Pershad* v. *Beharee Lall and others*, 4 Agra Rep., A. C., 33.

Held that although defendant, usufructuary mortgagee of a share in a joint estate, would not acquire any right to the trees planted by him in his mortgage term, yet, as co-parcener in the estate, he would be sharer in the trees. *Bahadoor Khan* v. *Kora Mull*, 1 Agra Rep., A. C., 281.

In an usufructuary mortgage where there is no stipulation for interest the mortgagee is not entitled to it, the usufruct going in lieu of interest. *Gunga Pershad Roy* v. *Bibee Enaet Zahera*, 16 S. W. R., C. R., 251.

Where a mortgagee under an usufructuary mortgage has realized a sum of money in excess of the amount due to him, it is an equitable practice to allow to the mortgagor interest on such sum at the same rate at which interest has been allowed to the mortgagee on his mortgage debt. *Bechoo Singh* v. *Roy Sheo Sahoy*, 1, 3 N. W. R., 56.

A party who by paying off a mortgage becomes an usufructuary mortgagee in place of the original zur-i-peshgadar does not need to sue for the amount due, but is entitled to remain in possession until the whole debt has been discharged by the usufruct. *Shaikh Fyezoollah* v. *Syud Kuzim Hossein*, 14 S. W. R., C. R., 29.

4.—Hypothecation.

A bond which hypothecates property for money advanced is a deed of simple mortgage. *Nazina Bibee* v. *Juggomohun Dutt*, 14 S. W. R., C. R., 461.

Where an instrument whereby certain persons describing themselves therein as zemindars and shareholders of a certain named mouzah, declared that for the consideration therein expressed they mortgaged their "respective zemindaree shares," and all other moveable and immoveable property owned and possessed by them, to secure the payment of the debt therein mentioned,—*Held* to be such an hypothecation as to create an interest in favour of the mortgagees which could not be defeated by a subsequent *bonâ-fide* purchaser for value. *Rae Manick Chund* v. *Beharee Lal*, 2 N. W. R., 263.

It is only when a tenure is sold for its own arrears that there is an hypothecation of the tenure itself. *Umurt Lal Bose* v. *Soorubee Dossee*, 2 W. R., Act X R., 86.

Held that the hypothecation of the property to which the judgment-debtor had not acquired absolute title was incomplete and insufficient to create a valid and perfect lien in favour of the hypothecate enforceable by law against actual possessor. *Herchund Singh* v. *Ram Singh*, 1 Agra Rep., A. C., 286.

Formal words of hypothecation are not necessary to make an hypothecation valid, if the intention of the parties is sufficiently expressed. *W. Martin* v. *Pursram*, 2 Agra Rep., A. C., 124.

Hypothecation creates an interest in immoveable property such as is mentioned in Clause 12, Section 1 of Act XIV of 1859, and therefore the period of limitation for suits arising out of documents of hypothecation is twelve years. *Chetti Kaundan* v. *Sundaram Pillai* (2 Mad. H. C. Rep., 51) followed. *Rajah Kaundan* v. *Muttammal*, 3 Mad. Rep., A. C., 92.

An instrument of hypothecation is a mortgage instrument, and may as such be registered under Regulation XVII of 1802, Section 3; and a suit for the recovery of the money lent must be brought within three years, pursuant to Act XIV of 1859, Section 1, Clause 10. *Kadarsa Rautan* v. *Raviah Bibee*, 2 Mad. Rep., 108.

When land is hypothecated, the contract gives the creditor an interest in immoveable property, and the period of limitation for actions on such a contract is twelve years under Clause 12 of Section 1 of Act XIV of 1859.

A creditor suing under such a contract must prove that there was an actual pledge, and that the land was part of the debtor's estate at the time of pledge.

The decree will then be for sale of the property hypothecated, unless the debtor pay the amount due with interest within a period to be framed by the Court. *Chetti Gaundan* v. *Shondaram Pillai*, 2 Mad. Rep., 51.

An ikbaldawah, containing the stipulation that the debtor shall not alienate certain property till the satisfaction of the decree, does not amount to hypothecation giving the decree-holder a lien on the property. The decree-holder may sue for damages on the breach of contract by the judgment-debtors, but he cannot sue to enforce his lien on the property against a purchaser. *Chonee Lall* v. *Puhulwan Singh and others*, 3 Agra Rep., 270.

5.—Otti Mortgage.

A karanavan singly may make an otti mortgage. *Edalhil Itti and others* v. *Kopashon Nayar*, 1 Mad. Rep., 122.

During the continuance of a first otti mortgage, the janmi is in the same position as regards his right to make a second otti mortgage to a stranger

after, as he was before, the lapse of twelve years from the date of the first mortgage.

Where a janmi made an otti mortgage, and more than twelve years after made a second otti mortgage to a stranger, without having given notice to the first mortgagees, so as to admit of the exercise of their option to advance the further sum required by the janmi,—*Held* that the second mortgagee could not redeem the lands comprised in the first mortgage. *Ali Hussan and others* v. *Nillakanden Nambudiri*, 1 Mad. Rep., 356.

An otti mortgagee has the option to make the further advance (if any) required by the mortgagor. *Paidal Kidavee* v. *Parakal Imbricbin Kedavee*, 1 Mad. Rep., 15.

An otti, like a kanam mortgage, cannot be redeemed before the lapse of twelve years from its date.

An otti differs from a kanam mortgage, first, in respect of the right of pre-emption which the otti-holder possesses; secondly, in being of so large a sum that practically the janmi's right is merely to receive a peppercorn rent. *Kumini Ama* v. *Parkam Kolusheri*, 1 Mad. Rep., 261; *Edathil Itti* v. *Koparhon Wayar*, 1 Mad. Rep., 122.

6.—Equitable Deposit.

The Courts of this country being Courts both of law and equity, it is immaterial for the determination of claims to attached property whether a mortgage is a legal or equitable one.

Where goods are mortgaged and left in the possession of the original owner, the circumstance that they are so left is not to be held as a fraud *per se* rendering the mortgage liable to be defeated as between the mortgagor and third parties, such as *bonâ-fide* purchasers or judgment-creditors.

But when possession is left with the mortgagor, this is a circumstance of which the Court should take notice when determining whether the mortgage is *bonâ fide* or fraudulent.

A mortgagee is not bound to take possession immediately default is made. *Deans, Manager Allahabad Bank* v. *Richardson*, 3 N. W. R., 54.

7.—Mortgagee.

To entitle a person to claim as equitable mortgagee it is not sufficient to show that he paid off the original mortgage, but also that it was his own money that was paid, and that he was to stand in the position of the original mortgagee. *Pandoorung Buhal Pundit* v. *Balkrishen Hurbajee Mahajun*, 5 W. R., P. C., 124.

It is the mortgagee's duty to keep regular accounts, and the *onus* lies in the first instance upon him. If he has not kept proper accounts the presumption will be against him; but this does not mean that all statements of the mortgagor against him must therefore be taken as true. *Shah Gholam Nuzuf* v. *Mussamut Emanum and others*, 9 W. R., 275.

It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received; not only that all assets are realized and brought to account, but that the expenses are regulated with care.

One of several joint mortgagors can sue alone to redeem, there being no necessity to determine the extent of his share in the mortgaged property. *Mirza Ali Reza* v. *Tarasoonderee*, 2 W. R., 150.

The mortgage of certain property having been purchased by S., he sold it to G., who foreclosed, got a decree for possession, and sold to W. W.'s intervention having failed in a suit for arrears of rent by a party setting up a title intermediate between him and the ryot, on the ground of a miras pottah obtained from the mortgagor subsequently to the mortgage, he (W.) sued to have his right declared to the rents payable by that ryot. The suit was dismissed on certain issues in the Court of first instance, but decreed in appeal on the single issue as to the pottah having been granted subsequent to the conditionary sale. *Held* that this issue arose legitimately, and was one within the lower Appellate Court's discretion to allow and within its jurisdiction to determine. *Held* that it was not only necessary for plaintiff to prove possession, but the very ground he took was want of possession, his cause of action having been that he had been prevented from enjoying the usufruct. *Held* that plaintiff was entitled to get the property free from the lease, for a mortgagee taking possession under the terms of the mortgage is entitled to have the property in the same condition as it was in when it was mortgaged. *Gobind Chundra Banerjee* v. *J. P. Wise*, 12 W. R., 19.

Held that it was not necessary either that the mortgagee's demand should be for a specific sum ultimately ascertained to be due, or that the accounts of a mortgagee in possession should be produced in the preliminary proceedings in which they could not be investigated, but that the obligation to produce the accounts depends on the circumstances of the case and the nature of the issues raised.

That the Sudder Court's order remanding the plaintiff's suit for re-trial on the production of the accounts was an interlocutory one, and that plaintiff's omission to appeal against it did not preclude him from now insisting that the remand for the production of the accounts was erroneous, or that the cause should have been decided in his favour, notwithstanding the non-production of the accounts.

That the production of the accounts was not necessary in a case in which there was no plea, nor proof that the usufruct had liquidated principal and interest, and no deposit had been made to cover the balance admitted to be due.

That plaintiff was entitled to possession of the mortgaged premises as absolute owner by virtue of the conditional sale which had been duly made absolute, but not to mesne profits. *A. J. Forbes* v. *Ameeroonissa Begum*, 5 W. R., P. C., 47.

Where, by a proviso in a mortgage, it is agreed that, "in case of default in payment by the mortgagor of the principal sum, or any one instalment of interest thereon," &c., "then and in any such case the whole of the money so secured by these presents shall immediately thereupon become due and payable with a power of sale on such default," and where the principal sum and interest thereon was also secured by a bond and warrant of attorney to confess judgment thereon, the condition of which was in the same words as the covenant for re-pay-

ment in the mortgage,—*Held* that in an action on the covenant contained in the proviso, and on the bond, brought on default of payment of an instalment of interest, but before the date on which the principal was payable, the plaintiff could only recover on either the covenant or the bond in respect of the interest unpaid. *Fool Chund Johurry* v. *Ramkristo Bose and others*, 1 Ind. Jur., N. S., 425.

Certain property standing in the name of a wife was mortgaged by her. The mortgage debt was paid off. The mortgagee having a decree against the husband attached and sold the property. *Held* that though payment of the mortgage debt by the wife might have given her a lien on the property to the extent of any money paid by her out of her own fund, the mortgagee's acting on the wife's assertion of title did not prevent him, when he subsequently discovered that the property was really the deceased husband's, from making it available for the satisfaction of his decree against the husband. *Ameeroonissa Beebee* v. *Benode Ram Sein*, 2 W. R., 29.

In a suit for redemption the mortgagee cannot dispute the mortgagor's title to the land comprised in the mortgage, on the ground that a claim to it is asserted by other proprietors. *Mahomed Abdool Ruzzak* v. *Sadik Ali*, 4 Agra Rep., 142.

Under the terms of a zur-i-peshgee mortgage,—*Held* that the mortgagee was not entitled to demand the payment of so much of the balances as had become irrecoverable by reason of his own *laches*, but that he was entitled to retain possession of the mortgaged estate till the balances recoverable at the time of the commencement of the redemption suit were paid by the mortgagor.

Where there is no sufficient evidence before the Appellate Court for the disposal of an issue which is material to the determination of the suit, the proper course to be followed is to remit the case under Section 354, and not under Section 351. *Ram Pershad and others* v. *Mussamut Kishna*, 4 Agra Rep., 146.

The proper sum to be allowed a mortgagee for surinjamee is what he has actually spent as expenses of his management. No decree to be given against a person as being the real mortgagee without evidence of the benamee holding. A mortgagee is entitled to interest on account of the balance of putnee rents paid by him. *Brojonath Singh Roy* v. *Sreemutty Bhugobuttee Dossee*, 1 W. R., 133.

There is no law restricting a mortgagee to the receipt by way of interest of the amount of principal lent. The mode of calculation to be followed in such cases is every year to add the amount of interest to the principal sum, and then deduct the value of the usufruct. *Syed Enaet Ali* v. *Kuher Roy*, 2 W. R., 289.

A mortgagee in possession is not entitled to recover any share of the sale proceeds of the mortgaged property sold for arrears of Government revenue, except to the extent that he shows that the usufruct of the property, while he held the mortgage, has not satisfied his debt. *Hurdeo Narain Singh* v. *Fuzla Hossein*, 1 W. R., 270.

A mortgagee in possession should keep an account independent of the butwarra accounts, which may be used as a test of the accuracy of the accounts filed by the parties. The mortgagee's account must be prepared by himself or by his own agent, and must comprise the gross receipts realized from the tenantry, and the account must be full and complete. *Ram Kissen Singh* v. *Shah Kundun Lall*, W. R., 1864, 177.

In a suit for possession of mortgaged lands on the allegation of satisfaction of mortgage from the usufruct, the mortgagee is bound to furnish an account of the *bonâ-fide* proceeds of the estate while in his possession. Toujees, mehal melanee papers, jaidads, and jumma-wasil-bakee papers, are not *per se* such an account within the meaning of Section 3, Regulation I of 1798, but may corroborate such account. *Goluck Chunder Dutt* v. *Mohun Lall Sookul*, 5 W. R., 271.

A person who is both proprietor and mortgagee is not entitled as mortgagee to claim a deduction on account of Government revenue paid by him to save the estate from sale for arrears of revenue, when after resumption it ceased to be a lakheraj estate, which payment it was his duty to have made in his capacity of proprietor. *Doolar Chunder* v. *Damoodur Narain*, 3 W. R., 162.

To enable a Court to ascertain the amount received by the mortgagee whilst in possession, the mortgagee should file his jumma-wasil-bakee papers, and proceed generally in accordance with Section 11, Regulation XV of 1793. *Shah Ameerooddeen* v. *Ram Chund Sahoo*, 5 W. R., 53.

The mortgagee of the property sold subject to his mortgage is not entitled to have the surplus proceeds paid to him in satisfaction of the decree which he had obtained upon his mortgage, and upon which he had issued execution. *Mirza Futeh Ali, alias Nanna Meah* v. *A. A. Gregory*, 6 W. R., Mis., 13.

Under an English deed a mortgagee is entitled to possession before foreclosure immediately upon default, and he would hold possession subject to his own right to foreclose, and to the mortgagor's right to redeem. The decree in the foreclosure suit would not be binding on a party who purchased *bonâ fide* the rights of the mortgagor, or a portion of them, before the pendency of any suit against the mortgagor. *Khelut Chunder Ghose* v. *Tarachurn Koondoo and others*, 6 W. R., 269.

A mortgagee in possession is bound to give an account of all payments made towards the liquidation of his mortgage. On his refusal or neglect to furnish such account, every presumption will be made against him.

Total payment sufficient to cover all due on three mortgages is payment sufficient to cover what may be due on each or any of them. *Sirdar Golab Singh* v. *Rambuddun Singh*, 6 W. R., 127.

A mortgagee who once takes the mortgage-money as deposited by the mortgagor within time, cannot afterwards sue for possession, on the ground that the deposit was made after the expiry of the year of grace, and that he had applied for the money under wrong information from his agent. *Khondhar Nowazush Hossein* v. *Mussamut Woosuloonissa Beebee and others*, 6 W. R., 249.

Though a mortgage be not an usufructuary mortgage, the mortgagee in possession is bound to give an account of the profits realized by him from the mortgaged property so long as it was in his possession, whether he took possession with or without the consent of the mortgagor. *Nilkant Sein*

and another v. *Shaikh Jamooddeen and others*, 7 W. R., 30.

A mortgagee in possession of the mortgaged land, who, instead of letting it to ryots and realizing the rents in the ordinary way, cultivates it himself, is not responsible or liable to account for the whole of the profits arising to him by farming the land, but only for such profits as he would have realized had he let it to a tenant, or as the mortgagor would have realized had he let it. *Rughoonath Roy* v. *Baraik Greedharee Singh and others*, 7 W. R., 244.

A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair, and is at liberty to charge for the same with interest. *Jogendronath Mullick* v. *Raj Narain Pallooye*, 9 W. R., 489.

It is not necessary before instituting a suit against a third party to obtain possession as mortgagee, to first establish title under the deed of mortgage in a suit against the mortgagor. It is necessary that the mortgagee should show the extent of the rights and interests of the mortgagor in the property sued for. But it is sufficient for this purpose to make the mortgagor a defendant in the suit, and there is no necessity for a separate suit against such mortgagor. *Doolay Singh* v. *Goolam Hossein*, 2 N. W. R., 72.

A mortgagee in possession occupies a fiduciary position towards all the persons interested as proprietors in the mortgaged estate, and to all he is answerable for whatever mesne profits he may receive in excess of the amount which he is entitled to receive by law or agreement.

And when some of the proprietors assert claims, and assert such claims in behalf of themselves alone, he is entitled to require the claimants to establish the extent of their claims.

It is the practice of the Courts to accept the junmabundee papers which are filed by the putwarrees under the zemindar's supervision as *primâ-facie* evidence of the profits of the estate, it being open to the mortgagee in possession to show that the amounts entered could not with due diligence be collected. *Rajah Deonarain Singh* v. *Nuk Pershad*, 2 N. W. R., 217.

When in a redemption suit the lower Courts refused to allow to the mortgagee the expenses of repairs made by him on the mortgaged property (there being no provision as to repairs contained in the mortgage-deed), the case was remanded by the High Court, that it might be determined what sums had been expended by the mortgagee in the proper and necessary repairs of the mortgaged property, and that the mortgagee might be allowed in the decree such sums with interest. *Rágho Bágji* v. *Andji Manaji Pati*, 5 Bom. Rep., A. C., 116.

The right accruing to a lender of money under a mortgage bond is to have his mortgage lien on the land declared and the property sold in satisfaction; and if after sale the debt is not satisfied to proceed against the debtor for the balance. *Lloyd's Bank* v. *Rinchiden*, 14 S. W. R., C. R., 214.

A tenant who with the implied consent of his landlord has mortgaged his holding cannot resign it to the landlord. He may resign to him the equity of redemption. But till the mortgage has been redeemed the mortgagee is entitled to retain possession. *Sheoumar Rai* v. *Sheobhung Rai*, 1 N. W. R., Par. 1., p. 45.

The security to which a mortgagee becomes entitled under the ordinary form of mortgage in the mofussil is the right to sell the entire estate of the mortgagor as the same existed at the date of the mortgage, and he cannot be deprived of this security by any subsequent charges on the property or prior unregistered charges which the mortgagor may create or have created. When he brings the property to sale, the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in existence at that date, though such of the subsequent incumbrancers as may, at the time of the sale, have taken out execution may have a right to satisfy their claims from the surplus proceeds of the sale. In applying Section 259 of the Code of Civil Procedure to cases of the above description the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to be sold, *i.e.*, the right, title, and interest which the judgment-debtor had in the property at the time of the mortgage. *Kasandás Láldás et al.* v. *Pránjivau Ashú Rám*, 7 Bom. Rep., A. C. J., 146.

A suit can be brought for the declaration of a person's right to have a mortgaged property put up for sale, notwithstanding a money-decree has already been obtained upon the mortgage-bond, and the property has passed into other hands. *Radha Gobind Surmah* v. *Syud Umber Ali*, 15 S. W. R., C. R., 27.

Where a creditor sued upon a bond and got a decree declaring his debt leviable from certain landed property on which the bond gave him a mortgage-lien, as well as for any other property found in possession of the debtor, but having elected to satisfy his mortgage-lien and procured the sale of the landed property subject to that lien, —*Held* that he was bound to recoup himself from the mortgaged property, and that he could not get any part of the surplus sale proceeds, unless it were shown that the mortgaged land had not produced enough to satisfy his claim. *Kalee Dass Ghose* v. *Lall Mohun Ghose*, 16 S. W. R., C. R., 306.

When mortgaged lands are sold for arrears of Government revenue, not accrued through default of the mortgagee, any proceeds which may arise from the sale in excess of the arrears belong to the mortgagee, and he has a right of action for their recovery. *Heera Lall Chowdry* v. *Janokeenauth Mookerjee*, 16 S. W. R., C. R., 222.

When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands, he is bound to bring his action, not against the mortgagor alone but also against the parties in possession. *Ram Yad Singh* v. *Lalla Saligram Singh*, 16 S. W. R., C. R., 98.

Where money is lent upon the security of immoveable property of a nature incapable of division, and the mortgagee, on one of the instalments becoming due, has to sell the entire property, he does not thereby lose all lien over the surplus proceeds. *Ram Kant Chowdry* v. *Brindabun Chunder Dass*, 16 S. W. R., C. R., 246.

Where a decree under which mortgagors obtained possession of mortgaged property is reversed,

the mortgagees are entitled to be replaced in possession and to get complete restitution, and to be placed in the same position as they were in before the erroneous decree was made, even if the decree reversing the erroneous decree does not provide that the mortgagees should recover possession. *Shah Koondun Lall* v. *Ram Rucha Sing*, 14 S. W. R., C. R., 465.

Where a mortgagee brings a suit upon his bond and obtains a decree for the money due, which decree says that execution shall be had against the property pledged and then against the person, it is competent for him to waive his rights as mortgagor, and resting upon his money decree to seek to have a share in the surplus proceeds of sale under Section 271. *Fakeer Buksh* v. *Chatturdharee Chowdry*, 14 S. W. R., C. R., 209.

A mortgagee taking out a money decree is not bound to bring one suit for the whole of the property belonging to his judgment-debtor, if it has passed to different parties under separate title-deeds, but may follow the property upon which he has a lien into the hands first of one purchaser and then of another. *Huree Mohun Paramanick*, 15 S. W. R., C. R., 486.

Though a mortgagee without any agreement is not allowed to charge the mortgagor with all sums which he may think fit to expend in the repair or the improvement of the mortgaged property, whether such expenditure be made by him voluntarily or in pursuance of some official order which he was not legally bound to comply with, yet he may charge the mortgagor for necessary repairs, and the latter will also be liable for any expenditure which he may himself have sanctioned. *Ameerool-lah and others* v. *Ram Doss Doss*, 2 Agra Rep., A. C., 187.

If the holder of a simple mortgage obtains a mere money-decree for the amount due to him (without any declaration that the mortgaged property is liable for the debt), he cannot attach and sell the property to the prejudice of a *bonâ-fide* purchaser for valuable consideration. In such a case the mortgagee must enforce his lien by a separate suit against those in possession of the property. *Bindabun Chunder Shaha and others* v. *Janee Beebee*, 6 W. R., 312.

An estate mortgaged was about to be sold for arrears of Government revenue, when it was saved from sale by the mortgagee depositing a sum sufficient to discharge the revenue. The mortgagee brought a suit against the person in possession of the talook, the Hindu widow of the original mortgagor, seeking under Section 9, Act I of 1845, to obtain repayment from her personally of the money paid to save the sale of the talook, not making the reversioners defendants, and not praying that the talook in its entirety might be sold to pay the amount due. A decree was given in that suit to the mortgagee, and on execution of that decree the reversioners intervened.

Held that the mortgagee and those claiming under him have no charge on the estate, and are not entitled to have it sold in its entirety to pay the amount which was paid in to stop the sale of the estate. The action brought under Section 9, Act I of 1845, was only a personal action, and the decree gave no remedy against the land, the sale of which for arrears of revenue had been stopped by the deposit. In such a suit the question is not whether the person who pays the arrears acquires thereby a charge on the talook which he saves from sale, but whether he seeks to enforce that right: he must do so in a suit properly framed for that purpose, and not merely in a suit which is confined to a personal remedy against the person in possession of the talook. If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talooks, who has only a limited interest therein, and confines his suit to that object, the decree so obtained against the person in possession can only be made effectual against the property of that person, including such interest as he had in the talook. This ruling does not affect the general doctrine that, in a suit brought by a third person, the object of which is to recover, or to charge an estate of which a Hindu widow is the proprietress, she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest. *Nogendro Chundro Ghose* v. *Sreemutty Dossee and others*, 8 W. R., 17.

A. gave a mortgage to B. of certain property as a security for money lent, and covenanted not to alienate the property by gift, ijara, putnee, or otherwise, by which loss might be caused to the existing actual assets of the property. A. subsequently granted a putnee to C. B. obtained a decree against A. for the amount of the loan, and the property was sold in default of payment. D. was the purchaser at the auction-sale. *Held* that D. could maintain his suit against C. to set aside the putnee and for possession. *Brajaraj Kishori Dasi* v. *Mohammed Salem*, 1 B. L. R., A. C., 152; S. C., 10 W. R., 151.

The rule of Courts of Equity in England as to allowance to mortgagee in possession not applied, because the mortgagee was led into a belief by the course of decisions in the late Sudder Adawlut, and the general understanding caused by those decisions, that, upon the non-payment by the mortgagor of the money at the time fixed, he had, according to the terms of the mortgage instrument, become the absolute owner of the property.

Mortgagee allowed benefit for buildings erected, or permanent improvements made by him upon the mortgage premises. Directions for an account. *Anandrav et al.* v. *Ravji Dashrath*, 2 Bom. Rep., 214.

Held that a mortgagee in possession was entitled to be allowed for expenses incurred in connection with the revenue survey of the land mortgaged to him. *Bapessabin Sadashiv* v. *Ramji Bin Gopalji*, 2 Bom. Rep., 220.

A mortgagee can resort to all his remedies on the mortgage deed at the same time, and is not estopped, in an action on the covenant to pay the mortgage money, by the fact of his having obtained a decree for sale. *William Mackinnon and others* v. *Gunnes Chunder Dey and others*, 1 Ind. Jur., N. S., 470.

Held that a mortgagee whose bond was registered was entitled, under Section 230 of Act VIII of 1859, to recover possession of the mortgaged land of which he had been dispossessed under a decree obtained against his mortgagor by another mortgagee, whose mortgage bond had been subsequently registered, on condition that he satisfied

the claim of the decree-holder; otherwise the defendant to be entitled to possession on his satisfying the plaintiff's mortgage claim. *Bhikaji et al.* v. *Vallabhdas et al.*, 2 Bom. Rep., 209.

Held that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding. *Girjoji B. Samar* v. *Keshavero N. P. Henge*, 2 Bom. Rep., 211.

Held that a mortgagee in possession, who also became purchaser of the property for the amount secured by the mortgage under a deed of sale which was neither stamped nor registered, could fall back upon his mortgage and recover the amount thereof, in preference to a subsequent purchaser of the same property whose deed of sale was both stamped and registered. *Hirachand Bàbàji* v. *Bhaskar Ababhat Shende*, 2 Bom. Rep., 198.

Where a mortgage bond contained an agreement to repay the money with interest by a certain day, and proceeded thus: "If I, the mortgagor, fail to pay the amount, then I will put you in possession of the land, and you may enjoy it, and when I have the means I will redeem the land and pay the debt with interest, and take back the bond,"—*Held* that on the mortgagor's default the mortgagee might sue for the money, and that he was not bound to accept the land and forego his right of action. *Annasvami* v. *Narranyan*, 1 Mad. Rep., 114.

A mortgagee's rights being confiscated by Government for rebellion were given to defendants. *Held*, on plaintiff's claim for redemption, that the defendants must account for excess of profits over interest in the years when they were in possession. *Syud Mahomed Salamut Hossein* v. *Mussamut Sookh Dayee and others*, 2 Agra Rep., A. C., 116.

A mortgagee cannot be bound by a decision relating to the property mortgaged, in a suit instituted long after the date of his mortgage, to which he was not a party; nor can he be deprived of his right to enforce his lien by a subsequent sale of the mortgagor's right, title, and interest. *Dooma Sahoo* v. *Joonarain Loll*, 12 W. R., 362.

8.—MORTGAGOR.

Defendant lent plaintiff a sum of money to be paid off on the expiry of a zur-i-peshgee lease which he took from plaintiff, it being stipulated that the lessee (the lender) was to clear off principal and interest from the assets of the property leased; and that, on the borrowers paying a trifle expected to remain due after the period of the lease, the lender was to surrender possession without objection. Plaintiff came into Court with an allegation that he had tendered the money still due under the arrangement, and he asked for immediate possession although the term of the lease had not expired.

Held that he was not entitled to possession until that term expired. *Soorjun Chowdhry* v. *Imambundee Begum*, 12 W. R., 527.

Held that a mortgage contract, received as a security for a repayment of loan, does not incapacitate the mortgagor from any other dealing with the property, except in defeasance of the right of the mortgagee. Where therefore a zur-i-peshgee lease had been granted to Doohchore Rai for nine years, containing a stipulation that the mortgagor should not alienate or mortgage the land,—*Held* that a second zur-i-peshgee to Hedoyutoollah made after the expiration of the nine years' term, for the *bonâ-fide* purpose of paying off the debt due on the joint mortgage was not voidable as contravening the terms of the first mortgage lease, and Hedoyutoollah was entitled to sue to redeem the first mortgage. *Doohchore Rai* v. *Hajee Hedoyutoollah*, 1 Agra Rep., F. B., 7.

Held that a mortgage effected for a fixed period subsequent to Act XXVIII of 1855 coming into operation, is not redeemable until the period for which it was effected has expired, and that under the circumstances the mortgagors' remedy was to sue for the balance of the mortgage loan which had not been paid to them. *Mun Peary* v. *Shiva Deen and others*, 1 Agra Rep., 91.

When a mortgagor omitted to plead in the foreclosure suit that he did not obtain the whole of the consideration-money, he was not permitted to set up that plea for the first time in the subsequent suit for possession. *Afzul Khan* v. *Chytun Roy*, W. R., 1864, 206.

According to Section 10, Regulation XV of 1793, it is the duty of the Court to take an account of the receipts of the mortgagee in possession, and then to adjust the mortgage account of principal and interest. *Shumboonath Roy* v. *Monowar Ali*, W. R., 1864, 109.

A mortgagor cannot redeem a share of the mortgaged property. This rule is not affected by the sale of part of the mortgaged lands for arrears of revenue. *Syud Hashim* v. *Aujeet Singh*, W. R., 1864, 217.

The mortgagor under a zur-i-peshgee is entitled, under Section 2, Regulation I of 1798, to demand back his land immediately after making his deposit. If by mistake or otherwise he demands more land than is comprised in the mortgage, that is not a matter which can justify the mortgagee in keeping possession of land which is in fact comprised in it. *Mohun Lall* v. *Sheikh Ali Afzul*, W. R., 1864, 219.

When property granted in a zur-i-peshgee lease was originally rent free, but subsequently resumed and assessed by Government, the mortgagee was held bound either to make a fresh agreement to take the profits, *minus* the Government revenue as his security, or to call in his money. His not adopting either course for a long period was construed into assent on his part to receive the profits, *minus* the Government revenue, as security. *Joy Prokash Narain* v. *Radha Kishen*, W. R., 1864, 227.

A mortgagee who executes a lease in favour of a mortgagor, stipulating to pay him a certain amount annually as rent, is, as far as the payment of that sum is concerned, a tenant of the mortgagor, and must be sued for any arrears of such rent under Act X of 1859. *Bissoroop Dutt* v. *Binode Ram Sein*, W. R., 1864, Act X R., 93.

A dealing between the ticcadar of the mortgagee and the mortgagor, by which the former becomes the purchaser of the mortgagor's rights, does not of itself necessarily change the relative positions of the ticcadar and the mortgagee, and convert the former into a mortgagor in possession. *Syud Mahomed Wahed* v. *Syud Mahomed Luteef*, 2 W. R., 201.

If a mortgagor in possession who is entrusted with the dominion over the mortgaged property by the mortgagee (the mortgage being in the English

form) wilfully defaults and causes the property to be sold for arrears of Government revenue, for the purpose of defrauding the mortgagee, and purchases it benamee, he is liable to be punished for criminal misappropriation under Section 405 of the Penal Code. *Ram Manick Shah* v. *Brindabun Chunder Potdar*, 5 W. R., 230.

A Judge has no discretion to extend the time allowed to a mortgagor under Section 8, Regulation XVII of 1806. *Mahomed Gazee Chowdhry* v. *Abdool Mahomed Ameeroodeen*, 5 W. R., Mis., 31.

A suit for redemption does not bar the mortgagor for afterwards suing the mortgagee in possession for mesne profits payable between the date of suit and the execution of decree. *Gour Kissen Singh* v. *Sahay Fukeer Chand and others*, 7 W. R., 464.

The purchaser of the rights of a mortgagor who obtained possession of the property cannot be ousted summarily by a subsequent purchaser of a money decree against the mortgagor. *Gopee Mahtoon* v. *Jhugoo Mahtoon*, 9 W. R., 150.

The year of grace allowed to a mortgagor by Regulation XVII of 1806, to tender or deposit the amount due to the mortgagee, includes authorized holidays; the mortgagor not being entitled to the deduction of any holidays which may occur when that year expires. *Kumola Kant Mytee* v. *Sremutty Narainee Dossee*, 9 W. R., 583.

A. mortgaged land to B., the mortgage instrument providing that B. should be entitled to purchase the land if it were not redeemed by 12th July, 1843. In 1845 B. accepted from A. one pagoda in part payment of the mortgage-money. *Held* that this was a waiver by B. of his right to purchase. *Vankatchari* v. *Aananlachari and others*, 1 Mad. Rep., 69.

Where a mortgagee had assigned his interest, and agreed to pay rent to the assignee, and subsequently permitted the mortgagor to redeem,—*Held* that a suit for rent could not be maintained in the Revenue Courts by the assignee against the mortgagor, as the relation of landlord and tenant never existed between them, nor against the representatives of the mortgagee, after they ceased to be in occupation of the land, but that the assignee should proceed under the assignment in the Adawulut Courts. *Bhau Bahajit Gholap* v. *Gopal Kunji et al.*, 2 Bom. Rep., 183.

The mere settlement of a resumed maâfee estate with the mortgagee does not destroy the mortgagor's right to redeem, nor does it necessarily make the holding by the mortgagee a holding adverse to the mortgagor's right. *Mussamut Oomrao Begum* v. *Mussamut Nizamoonnissa and others*, 1 Agra Rep. A. C., 224.

A mortgagor stipulated by an instrument in writing that if he failed to repay the sum lent on mortgage within three years, the property mortgaged was to be held an absolute sale.

Held that the mortgagor was entitled to redeem although the amount lent had not been repaid within three years. *Nallana Gaundan* v. *Palani Gaundan*, 2 Mad. Rep., 420.

Where plaintiff's ancestors mortgaged land and the mortgagee obtained possession on condition that the produce should extinguish interest,—*Held* that the plaintiff's suit was not barred by the Law of Limitation, although the transaction took place twelve years before the passing of Regulation II of 1802.

Held also in such a case no cause of action could accrue until something was done to render the friendly possession hostile. *Vanneri Purushottaman Nambudri* v. *Patanattil Kunju Nenavan*, 2 Mad. Rep., 382.

A mortgagor is not bound to give notice to his mortgagee of a transfer of his rights. *Madhub Thakoor* v. *Jhoonuck Lall Doss*, 12 W. R., 105.

A mortgagor cannot ask for a decree for possession without tendering the whole of the mortgage debt. *Joy Gobind Roy* v. *Bundhoo Singh*, 17 S. W. R., C. R., 342.

The lands in suit having been mortgaged to plaintiff under a bond which covenanted that until the whole debt due under the bond was paid off, the mortgagor should not create any new incumbrance upon the mortgaged property,—*Held* that the mortgagor had no right, under the terms of the mortgage-deed, to grant a subsequent lease to the defendant in consideration of a loan upon a bond, the rents being assigned over in liquidation of the debt, and that plaintiff's prior mortgage must prevail over defendant's lease. *Gossain Mungle Dass* v. *Rughoonauth Sahay*, 17 S. W. R., C. R., 500.

The sale of mortgaged property by the heirs of a mortgagee after it has been held and enjoyed by them upwards of sixty years, does not give a fresh cause of action to the representatives of the mortgagor. *Ram Dhun Bhuggut* v. *Guneshee Mahtoon*, 16 S. W. R., C. R., 96.

The defendant mortgaged certain premises to the plaintiff by a deed of mortgage, which contained a condition that the mortgagor should remain in possession so long as the interest was regularly paid. Default in payment of the interest was made, and the mortgagee sued for possession of the mortgaged premises.

Held that the mortgagor was entitled to equitable relief against the entry of the mortgagee on payment of all arrears of rent, together with interest upon each instalment and costs; and three months' time was allowed to the mortgagor to make such payment. *Situram Dandekur* v. *Ganesk Goklen*, 6 Bom. Rep., A. C. J., 121.

9.—Indivisibility of Mortgage Debt.

A mortgaged property, burdened with the payment of an entire debt to two shareholders, is liable to sale at the instance of both creditors separately so long as their claims remain unsatisfied.

The act of one of two holders of a bond cannot destroy the lien of the other on property pledged to both as security for a joint debt. *Indurjeet Koonwar* v. *Brij Bilas Lall*, 3 W. R., 130.

Where sixteen villages were included in one mortgage and the equity of redemption in one village was sold to the plaintiffs,—*Held* that they were entitled to sue the mortgagee, who had purchased the equity of redemption in twelve of the villages, for redemption of their own and three other villages; a previous suit for redemption of their one village having been dismissed on the objection of the mortgagee that they were not en-

titled to sue to redeem their one village alone. *Nawab Ahmed Ali Khan* v. *Jawahir Singh and others*, 1 Agra Rep., A. C., 3.

Mortgage debts are indivisible except where there is a distinct notice on the face of the mortgage-deed of the separate shares of the mortgagors.

One co-mortgagor or his representative may redeem the entire estate, if joint and undivided, by payment of the whole of the mortgage-money. *Ram Kristo Manjhee and others* v. *Mussamut Ameroonissa Bebee*, 7 W. R., 314.

Where money is advanced on a mortgage the liability cannot be divided. *Mussamut Mujeedoonissa* v. *Syud Dildar Hossein*, 14 S. W. R., C. R., 216.

The rule that if the owner of different estates mortgage them to one person separately for distinct debts, or successively to secure the same debt, the mortgagee may insist that one security shall not be redeemed alone, applies to a Mahometan mortgage. In mortgage transactions in which the mortgage contracts have been entered into before Act XXVIII of 1855 came into operation, and to which Regulation V of 1827, Sections 11 and 12, applies, and in which an account of principal and interest on the one side, and of rents and profits on the other side, is not directed, the arrears of interest must be limited to six years. *Vithal Mahudeb et al.* v. *Dand Valad Mahommed Hossein et al.*, 6 Bom. Rep., A. C. J., 90.

10.—APPORTIONMENT.

In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had previous to the attachment executed a simple mortgage thereof to A., were sold; and B. and C. respectively purchased them at different prices.

A. sued the mortgagor and the purchasers B. and C. for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was "appeal decreed." A. entered into a compromise with B., and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against C., and compelled him to pay.

C. now sues B. for recovery of the proportion of the amount paid by him to A., but which, according to the valuation of the respective properties, should have fallen into the share of B.

Held that the proper decree in the suit of A. against the mortgagor and B. and C. would have been a money-decree against the mortgagor only, with a declaration that the two properties were liable to be sold, clear of subsequent incumbrances, in satisfaction of the mortgage-bond debt.

Held that debt due upon the mortgage-bond was a general burden upon the two properties, for which no portion of those two properties was more liable than the other.

Held that, as between the plaintiff and defendant, the liability was not joint, but several, in proportion to the respective values of the property; and that the plaintiff, having been compelled to pay money for which the property of defendant was legally liable, was entitled to recover the amount from the defendant.

Held that no arrangement between the decree-holder and one of the judgment-debtors would affect the interest of a co-judgment-debtor, unless by express consent. *Bhairab Chandra Madak* v. *Nadar Chand Pal*, 3 B. L. R., A. C., 357; S. C., 12 W. R., 291.

The entire village was mortgaged to the defendants, who subsequently obtained by purchase the equity of redemption as to a portion of it. The equity of redemption in another portion was sold to two other persons jointly, one of whom (the plaintiff) claimed to represent by purchase, the other by descent. The plaintiff having sued to redeem the whole share, the defendants questioned the validity of the sale to the persons through whom the plaintiff claimed, and impugned the plaintiff's right as heir. *Held* that the mortgagees who, on the occasion of the sale impugned, had sued to establish their claim to pre-emption, were not now entitled to question the sale; and, secondly, inasmuch as the estate, or the portion of it held by the persons whom the plaintiff claimed to represent, was a joint estate, the plaintiff having established his right to one moiety by purchase, was entitled to redeem the whole, whether his title to the other moiety by heirship was proved or not. *Bithal Nath and Pursotum Lall* v. *Toolsee Ram*, 1 Agra Rep., A. C., 125.

The equity of redemption in two mouzahs (the mortgage being joint) was sold in satisfaction of a decree by a third party, and purchased partly by plaintiff and partly by the mortgagee himself. *Held*, on plaintiff's claim for redemption of the part of the mortgaged property purchased by him, that under such circumstances the whole burden of the mortgage debt could not be thrown on a portion of the equity of redemption, and the plaintiff would be entitled to redeem the portion of the property purchased by him on payment, not of the whole, but of such portion of the debt as is proportionate to the relative value of the mortgaged properties. *Mahtab Singh and others* v. *Misree Lall and Mussamut Soonder*, 2 Agra Rep., A. C., 88.

The plaintiffs in this suit were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots, and they brought this suit against the mortgagees who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by the purchasers other than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the mortgage debt attributable to the said parcels. The mode of applying the whole of the mortgage debt between the different mouzahs of the mortgaged estate in such a case pointed out. The principle of construction, that when a creditor sues for his principal and interest (the latter being equal or more than equal at the time of the commencement of the suit to the principal) he is not debarred from charging subsequent interest for the period during which he is kept out of his money by his debtor's resistance of the demand, is not applicable to a case in which a mortgagee in possession is not a party suing for the money, but the party resisting by every means in his power a claim to redemption and the final

settlement of the account. *Nawab Ajimut Ali Khan* v. *Jawahir Singh*, 14 S. W. R., P. C., 17.

Where moneys were advanced to several mortgagors, who owned the mortgaged land in certain defined shares, and the mortgagee by purchasing the interest of some of the mortgagors in such land broke up the joint security, the remaining mortgagors are entitled to redeem on payment of a just proportion of the moneys advanced. *Kesree* v. *Seth Roshun Lal*, 2 N. W. R., 4.

11.—Sale of Mortgaged Property.

B. and Co., mortgagees with power to sell, sold the mortgaged property to the defendants. No deed was executed until some years afterwards, when the mortgagor was dead. The deed was in the form followed when a mortgagee is the vendor, and the mortgagees join in the conveyance; but the words of conveyance were by the mortgagees alone, and without any confirmation by the mortgagor. *Held* that the purchaser did not by the deed acquire an indefeasable estate. *T. R. Doucett* v. *J. P. Wise*, 3 W. R., 157.

A property was mortgaged in succession to two different persons. Under the latter of the two deeds a money decree was obtained, and the property sold. Subsequently the earlier mortgagee obtained a money decree, and caused the mortgagor's rights and interests to be again sold.

Held that the purchaser at the second sale purchased, not the estate, but the mortgagor's (extinct) right, title, and interest, and could not sue for possession of the property itself. *Durpo Narain Mahatah and another* v. *Nuleeta Soondery Dassee*, 11 W. R., 332.

When a plaintiff asks for the realization of a mortgage, and the judgment, although it does not in terms order the sale of the mortgaged property, yet directs that the plaintiff's claim should be granted, the sale which follows in execution of the decree passes to the plaintiff the actual property which was mortgaged. *Mussamut Soujharee Coomar* v. *Rameshur Panda*, 4 W. R., 32.

An objector who wishes to save mortgaged property from sale is bound to pay whatever the mortgagor is liable to pay under the decree. *Kishen Kishore Ghose* v. *Sreemutty Gaitree Debia*, 7 W. R., 493.

Plaintiff having asked for and obtained the residue of the sale proceeds after all the judgment-creditors had been fully satisfied, was held not to have abandoned his right as mortgagee. *Bolakee Lall and others* v. *Chowdhry Bungshee Singh and others*, 7 W. R., 309.

A purchaser, under a decree for sale obtained by a mortgagee under a simple mortgage, does not purchase subject to a conditional sale executed by the mortgagor, after the prior mortgagee had obtained a decree of sale but before the property was actually sold. *Rajnarain Singh* v. *Sheera Mean*, 7 W. R., 67.

Held that a mortgagee's right or lien is not affected by an auction sale of the mortgagor's right, and that the limitation of one year provided by Clause 3, Section 1, Act XIV of 1859, is not applicable to a mortgagee's suit seeking enforcement of his mortgage lien against the property. *Rai Purdimun Kishen* v. *Roushun Singh*, 1 Agra Rep., A. C., 111.

Suit to redeem against transferee, or (in alternative) to enforce terms of purchase. Usual indigo planter's mortgage, with power of sale. After heavy losses the agents (mortgagees) stop the factories, and sell them, informing the planter (mortgagor) of the sale, and suggesting his concurrence. He, in a written acknowledgment, gives reluctant assent: he is not called on for any formal confirmation or act; the mortgagees write off the greater part of the debt to profit and loss, credit the purchase-money, and close the account. Purchaser takes and retains possession. After two years mortgagor dies, leaving a will, in which he describes his property, but does not mention the mortgaged factories. Conveyance to purchaser produced, in which the mortgagor is made a party, but which is dated and executed after the mortgagor's death. It purports to be, not an exercise of the power of sale, but a transfer of the legal estate by the mortgagees at the request of the mortgagor: it is executed by the mortgagees and purchaser.

Held, firstly, that the mortgagor's heir is not entitled to redeem; also that, on dismissal of the redemption suit, no terms or conditions can be imposed on the defendant, who in this case holds under the original contract of sale to which the mortgagor assented.

Held, secondly, that even had the contract included (as argued for appellant) an undertaking to indemnify from liabilities, the payments sought to be reimbursed are beyond six years, and no fraud is proved; therefore as to these the suit is barred. *Thomas Robert Doucett* v. *Josiah Patrick Wise and others*, 2 Ind. Jur., N. S., 280.

Where in a mortgage-deed the mortgagee covenanted to re-convey on being paid principal and interest, and "all costs and charges as between attorney and client," and the mortgagee, in default of repayment of the mortgage-money, obtained an *ex-parte* decree for sale, the Court should award him costs as between attorney and client. *Chunder Coomar Chatterjee* v. *Essen Chunder Chatterjee and others*, 1 Ind. Jur., N. S., 222.

In a suit for moneys secured by a mortgage of landed property, the decree ordered the sale of that property in satisfaction. *Held* that the decree-holder was bound to bring that property to sale before he could sell any other property belonging to the judgment-debtor. *Bromomoyee Debia* v. *Boykunt Chunder Gungopadhya*, 5 W. R., Mis., 52.

Where a decree-holder sells a mortgagor's rights and interests in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. *Lalla Joogul Kishore Lall* v. *Bhukha Chowdhry and others*, 9 W. R., 243.

Where in a suit to make absolute a conditional sale, and to obtain a share in a certain village mortgaged to plaintiff (the usual year of grace having been given, and money been paid into Court in satisfaction considerably after the term allowed by law), there is no issue respecting the minority of some of the mortgagors, the case will not be sent back to the Appellate Court for enquiry whether certain of the mortgagors were minors, or whether the others mortgaged for such purposes as would

bind the minors, notwithstanding one of the lower Courts has found the fact of the minority of one of the mortgagors. *Subdul* v. *Buldeo*, 2 N. W. R., 23.

After appellant (mortgagor) had upon foreclosure of mortgage become absolute owner of certain talooks, and obtained a decree for possession, and been put into symbolical possession by the Zillah Court, the zemindar brought a summary suit for rent in the Collector's Court against the heirs of the mortgagee, who allowed judgment to go by default, and an *ex-parte* decree was made against them. In execution of that decree the talooks were sold to the zemindar's mookhtear at a grossly inadequate price. Both the zemindar and his mookhtear had the fullest notice of the appellant's title and claim to possession before the decree for sale. *Held* by the Privy Council (affirming in effect the authority of the Full Bench decision in 7 W. R., 260) that, under the Regulations in force at the time, and under the circumstances of this case, such a sale against the real owner was clearly invalid, and that no authority had been shown to satisfy their lordships that by any known law or usage zemindars had the power to sell tenures of this kind for arrears of rent as a right inherent in or incident to the tenure, or that any such power rightfully exists, unless by special stipulation, independently of the Regulations. *Forbes* v. *Luchmeeput Singh Dooghur*, 17 S. W. R., C. R., 197.

A mortgagor granted a ticca lease of the mortgaged land for ten years to B. R., and under an assignment executed by the mortgagor it was arranged between him and the mortgagee that the latter should pay himself off the ticca rents at a certain rate annually until the realization of the mortgage-debt with principal and interest. *Held* that until the mortgagee could prove that something had happened to disturb the arrangement made between him and the mortgagor under the terms of the deed of assignment, he could not, either according to law or the terms of the contract, call upon the mortgagor or his representatives to pay the balance of the mortgage-debt, or to have that balance realized from the sale of the mortgaged property. *Junessur Dass* v. *Lalla Ramdhanee Lall*, 17 S. W. R., C. R., 263.

The mortgagee without possession of certain lands in the Dakhan (under a mortgage-deed of the 1st of August, 1864) on the 16th of April, 1867, obtained a decree awarding to him possession of the mortgaged premises. On the 11th of July following the mortgagor sold the mortgaged premises to the plaintiff, who had distinct notice of the mortgage. The deed of sale was duly registered. The plaintiff thereupon claimed to hold the premises free from the mortgage.

Held that though a mortgage in the Dakhan must be accompanied by possession to give it validity against third parties, it is not absolutely void for want of such possession, and that the plaintiff, having notice of it, should not be allowed to hold the premises free from the mortgage. *Gopal Yadavrav Keskur* v. *Krishnappa bin Mahadappa*, 7 Bom. Rep., A. C., 60.

12.— Redemption.

In a suit instituted in 1853 to redeem a mortgage containing a clause making it an absolute sale in default of redemption by a certain date,—*Held* that in the Madras Presidency effect must be given to that clause, the Regulation XVII of 1806 not being applicable.

A party is not precluded from succeeding upon a title established by a genuine deed because he sets up a false deed, which if treated as a conveyance and not as a mere confirmation may be inconsistent with that title. *Pattabhiramier* v. *Vencaturow Naicken*, 7 B. L. R., 137, and 15 S. W. R., P. C., 35.

In a suit to redeem a mortgage it was proved that the mortgagees and their assignee had fraudulently destroyed the deed by which the property was mortgaged. *Held* that the mortgagees could not be permitted to prove the contents of the deed or the amount of mortgage-debt by secondary evidence, and that the representative of the mortgagor should be allowed to recover the lands without any payment. *Sheikh Abdulla Wullad Sheikhassdivekar* v. *Sheikh Mahomed Wullad Jaffer Gottye*, 1 Bom. Rep., 177.

The mortgagor having the option either of depositing the money in the Judge's Court or of tendering it, if there is sufficient excuse for not depositing in the Judge's Court, he is not bound to tender the money and prove that tender. *Dabee Rawoot and others* v. *Heramun Muhatoon and others*, 8 W. R., 223.

Where a mortgagee alienates the mortgaged property while the foreclosure suit brought by him is pending, such alienation cannot be allowed to stand between the mortgagor and those rights to redeem which that suit in its ultimate issue may have left open and affirmed to him. *Nowab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

Where a mortgage has not legally been put an end to the mortgagor (or his representatives) is entitled to come into Court and ask to be allowed to redeem, provided sixty years have not elapsed since the last recognition by the mortgagee of the plaintiff's title to the mortgaged property. *Runjeet Naran Singh and others* v. *Mussamut Shureefoonissa and others*, 10 W. R., 478.

When the time fixed for payment of a mortgage, in the nature of a bye-bil-wafa, was the end of 1802, and there was no allegation of tender or deposit of the money prior to that date,—*Held* that the mortgagor had, under Regulation I of 1798, lost his right of redemption, and that the benefit of Regulation XVII of 1806 could not be applied to mortgages made prior to the passing of that enactment. *Mussamut Beebee Ruhman* v. *Sheikh Shamshooddeen Hyder*, W. R., 1864, 183.

In a redemption under the old law, for the possession of land, the subject of an usufructuary mortgage, the plaintiff is entitled to an account, even though the terms of the original agreement exempt the defendant from his liability to an account, and although the principal sum advanced is very small. *Doorga Dabee* v. *Issur Chunder Chatterjee and others*, 10 W. R., 367.

Suit for redemption of mortgage. The Zillah Court declared the mortgagors (appellants) entitled to redemption, the mortgagees in possession (respondents) having fully paid themselves by receipt

of rents and profits. In special appeal, the Sudder Court reversed the Zillah Court's decisions, on the ground that certain proceedings, taken by the mortgagees with a view to foreclosure, had effectually barred the equity of redemption. *Held* by the Privy Council that the Sudder Court ought not to have decided the case on the question of foreclosure, because that question, though raised upon the pleadings, had not been made one of the issues settled in the Court of first instance, where alone evidence could be taken; that the Court was wrong in treating the proceedings as an effectual bar to the appellant's right of redemption; and that the question of foreclosure ought therefore to be further fully tried upon an issue to be regularly settled.

The Zillah Courts, in coming to a conclusion as to the state of the mortgage accounts, having proceeded not upon proof of the actual collections which were or ought to have been made by the mortgagees, but upon materials which were in a great measure speculative and conjectural, their decision was set aside. *Mohun Loll Sookool* v. *Goluck Chunder Dutt*, 1 W. R., P. C., 19.

The plaintiff executed an usufructuary mortgage of certain land for a term of 22 years to the first defendant, for the considerations stated in a written instrument of mortgage, dated the 21st of January, 1865. The mortgage instrument contained a stipulation that possession should be given to the plaintiff upon his paying the principal and interest due to the first defendant within two months from the date of the execution. *Held* that the plaintiff was entitled to redeem although the amount of principal and interest had not been paid or tendered within two months. *B. Dorappa* v. *Kundikuri Malljunedar*, 3 Mad. Rep., A. J., 363.

Where interest is not reserved by the mortgage-deed, but it provides for repayment of the principal only, a payment into Court within a year after the institution of a foreclosure suit of the principal only without interest satisfies the 7th Section of Regulation XVII of 1806, and entitles the mortgagor to the redemption of the property. *Roopnarain Singh* v. *Radho Singh*, Marsh., 617.

The lapse of more than twelve years from the year of grace bars the right of redemption. *Lotf Hossein and others* v. *Abdool Ali and others*, 8 W. R., 746.

The payment by order of the Judge into the Collector's treasury, before the expiration of the year of grace, of a debt due to a mortgagee was held to be a deposit in Court entitling the borrower to redeem. *Abdool Huq* v. *Mussamut Myah Bewah*, W. R., 1864, 184.

A mortgagee is entitled to hold possession till the mortgage debt is fully paid, and no person representing the original mortgagor, and claiming any portion of the mortgaged property, can sue to redeem his separate share, without proof of the satisfaction of the entire debt. *Razzeeooddeen* v. *Jhubboo Singh*, W. R., 1864, 75.

On a mortgage of land, with a proviso that in default of repayment of the money advanced the mortgage should be turned into a sale, a third party joined as surety, undertaking to repay the amount advanced if the mortgagor made default in payment at the stipulated time. Default was made and the surety paid the money, and took an assignment of the land from the mortgagee. *Held* that the heir of the mortgagor was entitled to redeem, and that as against him the surety could not claim to hold the lands as purchaser. *Gorakee Bin Canojee* v. *Nithoo Bin Appajee*, 1 Bom. Rep., 135.

A solemn and *bonâ-fide* acknowledgment in writing of the mortgage and right of mortgagor made by the mortgagee in 1820 and 1825, for the purpose of suit, through his vakeel, whose act and statement for the purpose of suit were within the scope of his authority according to the law then in force (Clause 1, Section 21, Regulation XXVII of 1814), and were to be considered as if his client were personally present, and consenting was a sufficient acknowledgment in writing of the mortgagor's right to redeem, as provided by Clause 5, Section 15.

Where, in a suit brought by a zemindar to eject a ryot, a person intervenes claiming to be a mortgagee of a portion of the ryot's tenure, the Judge is competent to try the mortgagee's right to oppose the ejectment. *Gopaul and others* v. *Ram Suroop Lall*, 1 Agra Rep., R. A., 51.

Where a decree for redemption is obtained, but is not executed within the prescribed period for execution, the mortgagee does not, by omission of the mortgagor to execute the decree, cease to be the mortgagee, but the mortgagor or his representative may still maintain a fresh suit for redemption. *Chaita and Oomrao* v. *Purum Sookh*, 2 Agra Rep., A. C., 256.

A zur-i-peshgee lease, being nothing but a simple mortgage, may be cancelled on proof of discharge of advance, with interest from the usufruct, or on payment of the money in cash. The purchaser of the proprietary rights in a zur-i-peshgee is not barred from suing to redeem, because he, or those through whom he claims, did not sue for an account within twelve years from expiry of term, or from discharge of the debt by the usufruct. *Pultun Singh* v. *Reshal Singh*, 1 W. R., 7.

Held that in cases of redemption of mortgage the mortgagee should not be charged with interest on the money collected by him, but that the money so collected should first be applied in payment of interest accruing due on the mortgage-debt; and if there is any surplus in reduction of the principal mortgage debt.

Held further that the mortgagee is entitled to commission on the gross amount of collection to cover the expenses of collection, &c., and this he is entitled to get at the rate of 10 per cent., unless there is any express stipulation to the contrary, or it is shown to be unreasonable. *Roghonath* v. *Luchmun Singh*, 1 Agra Rep., A. C., 132.

Held that any one of the mortgagors or his legal representatives is, if the mortgage debt has been repaid, entitled to sue for redemption, and to be put in possession of his own share of the estate, whatever his co-parceners may choose to do in the matter; and that the Judge should not have dismissed the suit merely on account of the majority of the mortgagors who disavowed their claim not being parties thereto, but should have proceeded to dispose of the case according to law. *Hurdeo and others* v. *Guneshee Lall*, 1 Agra Rep., A. C., 36.

In 1841 A. established her proprietary right to

lands as against B. and an otti mortgagee then in possession. In 1844 B. obtained a decree against the mortgagee in a suit to which A. was not a party, and assigned his rights under the mortgage to C., who continued to hold as B.'s assignee down to 1860. *Held* that unless A. was aware, or might by ordinary diligence have been aware, of the suit of 1844, her right to redeem the lands was not barred by the lapse of twelve years from the decree in that suit. *Pudiyakovilagalla* v. *Allunannalatta Kaduni*, 1 Mad. Rep., 146.

In a suit for redemption of mortgaged property it was held (by Bayley, J.) that the law only requires that the mortgagee's account of receipts and disbursements shall be made out, filed in Court, and then sworn to as correct by the mortgagee.

Held (by Phear, J.) that mortgagees are bound to exhibit the detailed items of all their actual receipts and disbursements to the time of accounting, verified by themselves, and accompanied by all vouchers.

Held (by Bayley, J.) to be a rule of law which had been followed in practice, and which this Court must follow, that no redemption can be decreed in such a suit as long as there is any balance found due.

Held (by Phear, J.) that plaintiff ought to obtain a decree for reconveyance on payment of the balance found to be due, with interest and costs of suits within a time specified, and that the Court is not bound by the previous practice, but has power to mould its decrees in such a way as to meet the exigencies of each case. *Mokund Lall Sookul* v. *Goluck Chunder Dutt*, 9 W. R., 572.

A mortgagor of lakheraj land subsequently assessed with Government revenue is not entitled to redeem, except on payment of the amount paid by the mortgagee to Government for revenue, with interest in addition to the money due under the mortgage. But in a suit for redemption, in which the mortgagor deposited before suit the amount of the principal sum borrowed by him, he is entitled to a decree on payment into Court of the further sum paid for Government revenue. *Joyprokash Roy* v. *Oorjlun Jha*, 3 W. R., 174.

A plaintiff suing for redemption, on the ground of holding in right of dower, cannot in special appeal claim to redeem on the ground of being heir to the mortgagor. *Mussamut Bibee Rohaman* v. *Mussamut Fuzuloonissa*, W. R., 1864, 326.

Where an assignee of land covenants with his assignors to repay all the moneys which they have at any time actually or constructively paid to Government for redemption, a suit against him, where money has not been actually paid, is premature, unless there is some definite agreement with Government as to the amount which Government can enforce. *Woodrow* v. *Schiller*, 1 Ind. Jur., N. S., 90.

Held that a suit for redemption is a suit for land; therefore if the land the subject of the mortgage is beyond the local limits, the High Court has no jurisdiction under the 12th Section of the Charter. An objection to jurisdiction cannot be waived by the parties. *Sreemutty Lallmoney Dassee* v. *Juddoo Nauth Shaw*, 1 Ind. Jur., N. S., 319.

In a suit for redemption of mortgage the mortgagee pleaded an absolute sale by virtue of a registered sale deed, and the mortgagors relied on certain ikrarnamahs of contemporaneous dates which were unregistered, showing the nature of the transaction to be that of a conditional mortgage. *Held* that the plaintiffs having succeeded in proving the ikrarnamahs to be genuine, the real nature of the transaction was not that of an absolute sale but that of a conditional mortgage, and that the mortgagors were consequently entitled to redeem if the mortgage debt was shown to have been paid from the usufruct. *Rai Asapal Singh* v. *Nunkoo Singh*, 4 Agra Rep., 205.

In a suit for redemption of mortgaged land, accounts must be made up before a decree is passed, that it may be ascertained whether or not the mortgage has been paid off, &c. *Muthra Dass* v. *Magh Singh*, 2 N. W. R., 207.

On a question of the right of a mortgagee to redeem by deposit of the principal sum due only, the length of possession by the mortgagee is immaterial. *Abdulla Khan* v. *Upendra Chandra*, 6 B. L. R., Ap., 53, and 14 S. W. R., C. R., 278.

A. executed an ikrar by way of mortgage, whereby it was stipulated that B., the mortgagee, was to remain in possession of the mortgaged premises for a period of eight years; that the amount due was to be paid off from the usufruct; and that if at the expiry of that period any sum should remain due under the ikrar, A. was to pay the same.

In a suit for redemption brought before the expiry of the period mentioned in the ikrar on deposit of the amount due thereunder,—*Held* that the suit would not lie. *Chundra Kumar Banerjee* v. *Iswar Chundra Newgi*, 6 B. L. R., 562; 14 S. W. R., C. R., 455.

Where a mortgagor brings a suit to redeem mortgaged land on payment of such sum as shall be found due to the mortgagee, the Court is not justified in decreeing possession without payment in favour of the mortgagor, merely because the mortgagee denies the existence of the mortgage.

Where a point is taken on appeal, the Appellate Court should consider and decide it, although the vakil may omit to argue it. *Dada Valad Valli* v. *Bavasha Valad Kasam*, 6 Bom. Rep., A. C. J. 9.

Though it would have been more satisfactory if the Lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insufficient to liquidate the mortgage debt, had made a decree in favour of plaintiffs, contingent upon their paying such sum as should be found due, yet the plaintiffs had no strict right to such a decree, and it cannot be said that the Lower Appellate Court had committed an error in law in refusing to make such a decree. *Boistub Doss Koondoo* v. *Huro Narain Haldar*, 17 S. W. R., C. R., 409.

In a suit to redeem, the plaintiff produced a mortgage, the genuineness of which the defendants denied, but they produced a mortgage from the plaintiff's ancestors to their ancestors. The Principal Sudder Ameen made a decree for the restoration of the lands according to the terms of the mortgage produced by the defendants. The Civil Judge reversed the decision.

Held in special appeal that the Principal Sudder Ameen was justified in making the decree which he gave. *Unicha Kandyile Kunhi Kutti Nair* v. *Valia Pidigail Kunhamed Rutty Maraccur*, 4 Mad. Rep., 319.

Where a decree declared plaintiffs' right to redeem a mortgage whenever within the month of Jeth they paid the mortgage-money, but did not direct that the money should be paid into Court, and plaintiffs brought the money into Court on the first day of the following month, the last day of Jeth falling on a Sunday; but did not, however, take out execution for some months, nor apprize the defendant that they had paid the money into Court, —*Held* that such payment was not a proper tender, and that to make it a proper tender the plaintiffs should not only have paid the money into Court in the month of Jeth, but were bound to see that the mortgagee in possession had due notice of such payment. *Nitia Nund* v. *Mya Run*, 3 N. W. R., 80.

A mortgagor's right to redeem what he has mortgaged is indefeasible, and cannot be interfered with by unauthorized acts of the mortgagees, *e.g.*, a butwarra entered into by the latter. *Shaikh Muzhur Hossein* v. *Hur Pershad Roy*, 15 S. W. R., C. R., 353.

The mortgagors of a talook, having succeeded in a suit for redemption against the mortgagees and persons to whom the latter had given a portion of the estate in putnee, were put in possession under the decree. They then brought a suit for a declaration of their right to receive rent from two under-tenants (F. and M.), who had given them a kubuleut, but against whom defendant had obtained a decree for rent in the Collector's Court. Defendant's case was that within the talook was a jumma formerly held by one B. who had sold it to him, and that he (defendant) had been paying rent to the mortgagee's putneedar, and had settled the under-tenants, F. and M., in B.'s dwelling-house at a certain rent. *Held* that the real question was whether the jote jumma gave defendant a right to possession as against mortgagors re-entering after redemption,—*i.e.*, what was its nature, whether mourosee, mokurrurce, or otherwise. *Moulvie Ahmed Ali* v. *Bhootun Mohun Dass*, 15 S. W. R., C. R., 517.

13.—Equity of Redemption.

T. had acted as trustee and agent for M., and F. had acted in the place of T. during T.'s temporary absence. T. and F., as attorneys in partnership, did solicitors' work for M. T., as trustee and agent for M., invested money on a mortgage. The equity of redemption was put up for sale at public auction in execution of a decree obtained by a third party against the mortgagors, and a portion was purchased by T. and F. as attorneys in partnership.

Held that there was no equity compelling T. and F. to hold the equity of redemption for the benefit of M.

Semble,—The agentship could not be separated from the attorneyship. *Mackintosh* v. *Nobimoney Dossee and others*, 2 Ind. Jur., N. S., 160.

A mortgage-deed of gatkuli land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was made, to give a razinamah of the mortgage land.

In accordance with this stipulation the mortgagor gave a razinamah to Government by which he gave up all claim to the land, which was then granted to the mortgagee.

Held that the equity of redemption of the mortgagor was thereby extinguished. The Government need not be made a party to a suit of this nature unless the interests of Government are affected. *Ránee Salad Avaji Mali* v. *Ramabai Kan Mahadu Mali*, 6 Bom. Rep., A. C. J., 265.

The purchaser of an equity of redemption sued to redeem and obtain possession of the land. *Held* that he was entitled to possession if, on taking the accounts, it appeared that the mortgage debt had been liquidated before the plaint was filed, or upon paying into Court within one month the balance remaining due, if, on taking the accounts, it should appear that anything still remained due. *Jokhee Lall and Beharee Lall* v. *Mussamut Huno Kooer*, 10 W. R., 167.

In 1819 A. mortgaged lands in the mofussil to B., and, as a collateral security, gave B. a bond and warrant of attorney to enter up judgment in the Supreme Court. In 1821 execution issued on this judgment; and under a *fi-fa* the property was seized and sold by the plaintiff. B. was declared the purchaser, and got a bill of sale, and was put in possession. B. having remained ever since in possession, A.'s representatives in 1865 sued to redeem on the ground that the mortgage debt was more than satisfied by the usufruct. *Held* that the right of redemption still subsisted; that at the time of the sheriff's sale in 1821 an equity of redemption could not be seized and sold under a *fi-fa*, and therefore no title passed to B. when he purchased; and that as B. had no right to possession, save as mortgagee, he must be deemed to have obtained and to have remained in possession in that capacity. *Hurropershad Ghoshal* v. *Hurromonee Debia and others*, 8 W. R., 210.

A purchaser of the right of redemption of a mortgagor may sue without tender out of Court of the mortgage debt to the mortgagee. The tender of the money out of Court only affects the purchaser's right to recover his costs. *Dinonath Butobyal* v. *Womachurn Roy*, 3 W. R., 128.

A deposit of the mortgage-money by a mortgagor, accompanied by a protest against the validity of the mortgage itself, and a threat to sue for its cancelment, imposes no condition upon the acceptance of the money so as to render the tender invalid.

A deposit being once duly made, the mortgagor's equity of redemption is saved, quite irrespective of whether the mortgagee has received notice of the deposit or not. *Hethan Singh* v. *Nurkoo Singh*, 3 W. R., 184.

The estate in dispute was mortgaged to the defendant in the form of a zur-i-peshgee lease to continue so long as the mortgage-money remained unpaid. The mortgagee, having been evicted by the mortgagor, sued for and obtained a decree for possession and wasilat (the latter to be assessed in execution). He never obtained possession under the decree, but recovered wasilat by execution. Two persons (the plaintiffs in these suits) claiming separate shares in the entire estate by purchases from the mortgagor, subsequent to the mortgage sued separately each to redeem his own share, upon payment of a proportional share of the mortgage-money.

Held that the plaintiffs, as representing the original mortgagor, were entitled to redeem; but that as the mortgage was an entire estate neither of

them could redeem upon payment of less than the full amount of the mortgage-money.

Held also that the defendant having been wrongfully dispossessed, was not bound to account for wasilat recovered under his decree, the wasilat or damages so recovered being different from the usufruct enjoyed by a mortgagee. *Raja Joymungul Singh* v. *Bibee Saeedun and others*, 6 W. R., 240.

14.—FORECLOSURE.

A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure.

Held that the purchaser could maintain his suit, although he had not been a party to the foreclosure proceedings for the recovery of the mortgaged property, which had been purchased by him. The foreclosure conferred an absolute title to the whole property mortgaged on the mortgagee and anybody claiming under him. *Raj Chandra Podder* v. *Srimati Manorama*, 3 B. L. R., Ap., 148; S. C., 12 W. R., 353.

When a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. *Radhanath Sein* v. *Bungo Chunder Sein*, W. R., 1864, 157.

Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these persons. *Held* that, under the circumstances, a notice of foreclosure confined to a one-half share only of the mortgage (issued by the mortgagee, who had no interest in the equity of redemption) was sufficient, and that the foreclosure proceedings were not bad, although they related only to a part and not to the whole of the mortgaged property. *Hunoomanpersaud Sahoo* v. *Kaleepersaud Sahoo*, W. R., 1864, 285.

Exposition of the law of foreclosure as established by the regulations and the practice of the Courts in Bengal.

The plaintiff purchased a property from the defendant's late husband under a deed of conditional sale and an ikrar. On the day before the date of the bill of sale, defendant's husband granted a beneficial lease of the mortgaged premises, benamee to the plaintiff's son, but really to the plaintiff, who, under colour of it, obtained possession of the mortgaged premises. Plaintiff, although in possession of the mortgaged premises, sues for possession and mesne profits.

Held that as the real object of the suit was to perfect the plaintiff's title as absolute owner of the property, he was not debarred from that relief, if he was otherwise entitled to it, because, under an erroneous view of the effect of the lease, he had asked for it by his plaint in a somewhat different form and with something to which he was not entitled. That, while the lease did not save the plaintiff from the liabilities, at the same time that it gave him the advantages of a mortgagee in possession, still less can it be taken to modify the terms of the conditional sale.

When mortgaged property is sold at auction subject to a mortgagor's right to redeem, the mortgagor's equities follow the property even when it turns out that the purchaser bought as agent, and not as principal. *Nawab Syed Munsoor Ali Khan Bahadoor* v. *Rajah Ojoodhya Ram Khan*, 8 W. R., 399.

Where several parties have an interest in a mortgage it is not competent for one of them to foreclose in respect of his fractional share. A party suing for possession of a share of mortgaged property (after its release has been effected by an arrangement made between the mortgagees and mortgagor) on the ground that he had an interest in the mortgage and in the funds advanced by the mortgagees, must show that the mortgagor had notice of such interest. *Bhora Roy and others* v. *Abilack Roy and others*, 10 W. R., 476.

According to Section 8, Regulation XVII of 1806, where mortgage-property is situate in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district.

The order of foreclosure having been served on the widow of the deceased mortgagor who had a life-interest, and also was the guardian of the minor adopted son and legal representative of the deceased, the service was held to be sufficient. *Rasmonee Debia* v. *Pran Kissen Das*, 7 W. R., P. C., 66.

Under Regulation XVII of 1806, the Zillah Judge is judicially required to see it proved before him that the notice of foreclosure has been duly served, and to record a proceeding certifying that the requirements of that Regulation have been duly carried out, and also any elucidating facts necessary to be recorded as occurring within the year of grace. *Meer Abbas Aly* v. *Vund Coomer Ghose and others*, 7 W. R., 123.

A mortgagee's "application" for foreclosure, as the term is used in Section 7, Regulation XVII of 1806, means the whole transaction contemplated in Section 8, ending with the notification to the mortgagor; thus the year of grace for payment, and the year necessary for completion of foreclosure, commence to run from the date of the notification. *Suroop Chunder Nag* v. *Bonomalee Pundit*, 9 W. R., 116.

Where, in proceedings held before the issue of Circular Order of 22nd July, 1813, a mortgagor had the opportunity in a Court competent to decide the matter, to contest as against the mortgagee all questions of fact necessary to give a good and absolute title to the mortgagees, and, though called upon, did not show that the mortgage was a bad one, but admitted that the mortgagees were not paid off, and that an extension of the year of grace had elapsed without his performing any of the conditions which would have saved the property from being foreclosed, it was held that even if the proceedings did not possess the character of a regular suit, they were sufficient in themselves to effect a foreclosure, if such was their purpose. *Kunjeet Haran Singh and others* v. *Mussamut Shurefoonissa and others*, 10 W. R., 478.

A foreclosure decree cannot give the mortgagee a title against a person who was not a party to the suit, or deprive such person of a right to redeem, acquired by purchase of a portion of the mortgaged property. *Khelut Chunder Ghose* v. *Tara Churn Koondoo Chowdhry*, 1 W. R., 175.

The omission of the Court to send with a notice

of foreclosure a copy of the mortgagee's petition as required by Section 8, Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the issue of the notice, the mortgagor continued to live in the neighbourhood of the property, and the mortgagee erected buildings on it, and used it as his own, without objection or claim on the part of the mortgagor. *Saligram Tewaree* v. *Beharee Misser*, W. R., 1864, 36.

The right of a mortgagee without possession to foreclose does not cease 12 years after his alleged mortgage. The possession of the mortgagor is not to be presumed to be adverse to, but may be perfectly reconcileable with, the subsisting lien of the mortgagee. The question of limitation depends on whether there is a mortgage actually subsisting and acknowledged by the acts and conduct of the parties within 12 years before suit. *Kali Coomar Dutt Roy* v. *Juggut Soondery Chowdhrain*, 1 W. R., 239.

The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus, is equivalent to a decree establishing proprietary right in the Mofussil Courts, in similar suits on the like instruments.

The mortgagee in possession and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mortgaged estate between them, including the fraudulent device of a sale by auction for arrears of revenue, such arrears being designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for possession instituted many years after the sale for arrears was not barred by Section 24 of Act I of 1845. If a mortgagee in possession fraudulently allows the Government revenue to fall into arrears, with a view to the land being put up for sale and his buying it in for himself, and he does in fact become the purchaser of it at the Government sale for arrears, such a purchase will not defeat the equity of redemption. *Nawab Sidhee Nazir Ali Khan* v. *Ojoodhyaram Khan*, 5 W. R., P. C., 83.

Where a mortgagee extended the time for payment to the 25th November, and the mortgagor was prevented by the closing of the Court from depositing the mortgage-money in the Judge's Court on that day,—*Held* that the mortgagor saved his estate from foreclosure by depositing the money in Court on the first day after the 25th November on which the Court was open. *Dabee Rawoot and others* v. *Heeramur Muhatoon*, 8 W. R., 223.

It is sufficient to bar a foreclosure suit that the principal money and interest due on the mortgage have been paid into Court within the year of grace, or an extended time agreed upon by the parties without costs incurred by the mortgagor in the matter of the mortgage. *Talem Roy and others* v. *Deb Shahee and others*, Marsh., 167.

Where the mortgagor covenanted to pay to the mortgagee the principal sum at a given date and interest in the meantime, and in default of payment of the principal on the date mentioned, interest on so much as should remain due at the same rate, the mortgagee covenanting to re-convey on payment on the given date, and in default of payment of principal or interest at their respective due dates the whole sum to become due,—*Held* that the assignee of the mortgagee had a right to foreclose on default of payment of an instalment of interest before the date on which the principal was made payable. *Prosaddoss Dutt* v. *Ramdhun Mullick and others*, 1 Ind. Jur., N. S., 255.

A mortgagee has the right of foreclosure. The decisions of the Sudder Court that no mortgagee could ever foreclose the mortgagor's equity of redemption overruled. *Venkatchellam Pillay* v. *Zimmalachary and others*, 2 Mad. Rep., 289.

The right of a mortgagee without possession to foreclose does not cease for twelve years after his alleged mortgage. The possession of the mortgagor is not to be presumed to be adverse to but may be perfectly reconcileable with the subsisting lien of the mortgagee. The question of limitation depends on whether there is a mortgage actually subsisting and acknowledged by the acts and conduct of the parties within twelve years before the suit. *Kali Coomar Dutt Roy* v. *Jugut Soonderee Chowdhrain*, 1 W. R., 239.

Suits for foreclosure may be dismissed with costs against disclaiming defendants. *Mackintosh* v. *Nobinmoney Dossee*, 2 Ind. Jur., N. S., 160.

The purchaser of the equity of redemption is not entitled to notice in a foreclosure suit, especially if the purchase has not been made until after the institution of the suit. *Gooroopersaud Junak* v. *Bipropersaud Berrah*, Marsh., 292.

The purchaser from the mortgagor of the equity of redemption in the mortgaged property is not entitled to notice of foreclosure previous to a foreclosure suit instituted by the mortgagee, but it is sufficient if such notice is given to the mortgagor. *Mussamut Kurmofool* v. *Bissessur Singh and another*, Marsh., 337.

The defendant in a foreclosure suit paid into Court the amount due in respect of principal and interest of the mortgage. This payment was made after the day on which, according to the mortgage, the sale was to become absolute, but within a few days of the expiration of the year of grace. The payment into Court was accompanied by a petition praying that the fund might be retained in Court, until the decision of certain objections made by the defendant, disputing the amount due under the mortgage-money. *Held* that such payment into Court was not a tender of the mortgage-money, and that the mortgagee was entitled to foreclosure. *Nubungo Moonjurree Dabia and others* v. *Goluckmonee Dabia and others*, Marsh., 45.

A conditional mortgage-deed was drawn out, stipulating for the repayment of the loan by annual instalments, in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due. *Held*, on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred, and not afterwards; but that the mortgagee was authorized in proceeding to foreclose if there were subsequent defaults, any previous default notwithstanding; in fact there is nothing in law to limit the time within which a mortgagee may foreclose, if, notwithstanding one or more default, the mortgagee's right is not repudiated but recognized. Mortgagee's right to sue for possession accrues upon such final foreclosure, and he can sue at any time within twelve years from that

date, under Clause 12, Section 1, Act XIV of 1859. *Buldeen and others* v. *Mussamut Golab Koonwer and others*, 1 Agra Rep., F. B., 102.

Held that a conditional sale may, by agreement and acts of the parties, become absolute without formal foreclosure proceedings taken under Regulation XVII of 1806. *Goordyal and others* v. *Mussamut Honskoonwer*, 2 Agra Rep., A. C., 176.

In a suit for foreclosure brought by a mortgagee under a bye-bil-wafa, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts; the language of Section 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. *A. J. Forbes* v. *Ameeroonissa Begum*, 1 Ind. Jur., N. S., 117.

T. had acted as trustee and agent for M., and F. had acted in the place of T. during T.'s temporary absence. T. and F., as attorneys in partnership, did solicitor's work for M. T., as trustee and agent for M., invested money on a mortgage. The equity of redemption was put up for sale at public auction in execution of a decree obtained by a third party against the mortgagors, and a portion was purchased by T. and F. as attorneys in partnership. *Held* that under the circumstances, there was no equity calling for a sale in substitution of the foreclosure claimed by M. *Mackintosh* v. *Nobinmoney Dossee*, 2 Ind. Jur., N. S., 160.

A suit by a mortgagee for foreclosure must be brought in the district where the land is.

In like manner a suit by a mortgagee who is entitled, not to a foreclosure, but to a decree to establish his charge and for the sale of the specific property charged, must be brought in the Court within the legal limits of whose jurisdiction the property is.

The remedy against the borrower personally under a mortgage-deed must be pursued in the district in which the cause of action arose.

But when the object of the lender is to proceed to enforce his charge against the property (such property being immoveable) his suit must be brought in the district where the property is situated. *Buldeo Doss* v. *Mussamut Mool Kooer*, 2 N. W. R., 19.

By a mortgage in the English form, the defendants conveyed certain property to the plaintiff, subject to the proviso that, in the event of the defendants paying to the plaintiff the principal sum on the 4th September, 1868, and in the meantime paying interest on that sum half-yearly, with annual rests, in case of default of such payment, then the plaintiff should re-convey the property. The defendants failed to pay the interest, and on the 4th December, 1866, the plaintiff applied to the Judge of Chittagong for foreclosure; thereupon notice under Section 8 of Regulation XVII of 1806 was issued, and served on the defendants. On the 15th April, 1868, this suit was instituted by the plaintiff for the establishment and confirmation of absolute purchase, and to obtain possession of the mortgaged premises.

Held that the suit was not maintainable; Regulation XVII of 1806 applied to this mortgage; and, under that Regulation the mortgagee could not apply for foreclosure until the time agreed upon for re-payment by the mortgagor, that is, the "stipulated period" referred to in Section 7, and the mortgagee is entitled to one year's grace from notification of the application for foreclosure made after that date. *Srimati Sarasibala Debi* v. *Nand Lal Sen*, 5 B. L. R., 389; 13 S. W. R., C. R., 364.

The mortgagors of certain landed property not having paid the money due on the mortgage within the stipulated period, the mortgagees considering it unnecessary to proceed under Section 8, Regulation XVII of 1806, *i.e.* without waiting to foreclose the mortgage, brought a suit, obtained a decree, and took possession.

Held that as the mortgagees took possession before final foreclosure, the mortgagors were in a position to redeem, and might do so by payment of the advance made on the mortgage, whether such payment was made in cash or realized by the mortgagees from the usufruct of the estate. *Ishan Chunder Bannerjee* v. *Juggut Chunder Doss*, 13 S. W. R., C. R., 44.

Where a party *bonâ fide* purchased from another, as his own property, land in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to that of the mortgagee.

Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser.

After a *bonâ-fide* purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage deed (which was in the English form) the mortgagor sued the purchaser to obtain possession of the property. *Held* the suit was barred.

Quære,—Whether in cases in the mofussil where the mortgagor continues in possession paying rent to the mortgagee, the law of limitation begins to run from the date of the right of entry. *Brajanath Kundu Chowdry* v. *Khilat Chundra Ghose*, 8 B. L. R., 104; and 16 S. W. R., P. C., 33.

The effect of a stipulation as to re-payment at a specified time is to entitle the mortgagee, if so minded, to foreclose at that time in the event of re-payment not being then made. *Gunga Pershad Roy* v. *Bibee Enayet Zahera*, 16 S. W. R., C. R., 251.

Bye-bil-wafas or kut-kubalas are redeemable like ordinary mortgages, and subject to foreclosure.

It cannot be laid down as a rule universally true, that under Section 14, Regulation III, 1793, a mortgagee's proceeding for a foreclosure under a mortgage of the class of bye-bil-wafa simply, cannot be preferred after 12 years from the expiration of the time which the instrument fixes as the period of redemption by payment, and on the expiration of which the conditional sale will become absolute, for this indiscriminating ground of decision would include alike adverse occupations and those which had not the semblance even of such a character, and would establish a bar arising from simple occupation, and not from the *laches* of the demandant or of others before him.

When a mortgagee not only seeks the assistance of a Court to give him possession of his pledge, but also to foreclose the mortgage, he must effect that object in the mode prescribed by Section 14, Regulation III of 1795; Section 3, Regulation II, 1805; and Section 8, Regulation XVII, 1806.

Mere words in the form of a protest which may accompany a tender will not defeat it when they can reasonably be regarded as idle words. But the

payment into Court of the mortgage money, accompanied by a petition disputing the mortgagee's title to foreclose, and expressing an intention amounting to a notice to sue the mortgagee to recover back the very money tendered, is not a valid tender. *Prannath Chowdhry* v. *Ramrutton Roy*, 4 W. R., H. C., 37.

The plaintiff sued after foreclosure for possession of property mortgaged to him. He in good faith advanced the consideration-money to discharge a debt contracted by the original owner, and his security was either wholly or in part a substitution for the original valid mortgage by the said owner. The mortgagor was not a stranger but a nephew of the original owner, and one who produced an apparently valid will, who had obtained a certificate of Court authorizing him to collect the debts of the deceased, who was actually in possession of the property, and to whom the mortgaged property belonged, if not as devisee at least as one of the heirs. *Held*, under these circumstances, that the plaintiff had a valid title as mortgagee, and having foreclosed his mortgage was now entitled to sue for possession.

Held also that the principal defendant now in possession having purchased at a sale in execution subsequent to the foreclosure proceedings (*i.e.*, after the year of grace), the rights and interests of the original owner and of the mortgagor as his representative, and having by such purchase acquired only such rights and interests as then remained in the judgment-debtor (*i. e.*, *nil*) was not entitled to withhold the estate from the plaintiff. *Madhub Anund Moitee* v. *Gunesh Persad*, 1 W. R., 92.

The legal position of a mortgagee after foreclosure is not impugnable except on clear proof of collusion and fraud. *Gooroo Doss Roy* v. *Romonee Soondury Dossee*, 1 W. R., 272.

15.—Notice of Foreclosure.

The prior foreclosure of a subsequent mortgagee does not relieve the property of the lien upon it under the first mortgagee.

Quære,—Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under Section 8, Regulation XVII of 1806.

When the first mortgagee had no knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the second mortgagee had no just ground of complaint that the notice of foreclosure was served, not on him, but on the mortgagor. *Kalee Kishore Chatterjee* v. *Tara Pershad Roy*, 4 W. R., 1.

In what cases notice of foreclosure should be given to the purchaser of a mortgagor's equity of redemption. *Bissonath Singh* v. *Brojonath Doss and others*, 6 W. R., 230.

Where the notice of foreclosure was duly served on the mortgagor, no subsequent transfer of the property, whether voluntary or involuntary, could affect the validity of the notice, or impose on the mortgagee any new obligation in the way of causing a fresh notice to be served on the purchaser. The notice having been duly served on the mortgagor, his right and interest were subsequently sold in execution and the mortgagee caused a second notice to be served on the purchaser. The foreclosure took place after the expiry of a year from the first, but within a year from the date of second notice. *Held* under the circumstances of the case that, as the second notice was merely for greater caution to bring to the knowledge of purchaser that notice had already been issued, and did not supersede the first notice, the foreclosure proceedings were regular, and the suit for possession was maintainable. *Zamin Ali* v. *Hossein Ali and others*, 3 Agra Rep., 187.

A purchaser from a mortgagor, as one of his legal representatives, is entitled to notice of foreclosure. *Madhub Thakoor* v. *Jhoonuck Lall Doss*, 12 W. R., 105.

After a notice of foreclosure, and shortly before the expiry of the year of grace, a mortgagee allowed the mortgagor six months to redeem the mortgage. The mortgagor subsequently died, and the mortgagee sued his legal representative to recover the property. *Held* that it was not necessary that fresh notice of foreclosure should be issued. *Buzloor Ruheem* v. *Abdoolah and another*, 10 W. R., 359.

It cannot be said that, if a notice of foreclosure addressed to a deceased mortgagor has reached the hands of his representatives, they have not had the notice, nor that they were debarred from paying or were not required to pay the amount of the mortgage upon receiving that notice. *Ram Chunder Halder* v. *Jonab Ali Khan*, 17 S. W. R., C. R., 230.

The regulation as to service of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary; but to justify resort to any other mode of service it must be shown that in spite of efforts made for that purpose the notice cannot for some reason be personally served.

A copy of the report of the nazir of the Civil Court, copies of the depositions of witnesses not taken in the presence of the parties to the suit, and a copy of the final foreclosure proceeding, are not legal evidence to prove the service of a notice of foreclosure. *Madho Singh and another* v. *Mahtab Singh and others*, 3 N. W. R., 325.

A mortgagee, under a conditional sale, caused notice of foreclosure to be issued, and subsequently by an agreement securing certain advantages to him he extended the term of grace. The terms of that agreement not having been complied with, the mortgagee was held to be entitled to revert to the foreclosure proceedings before instituted. *Lall Dhur Rae* v. *Gamput Rae*, 1 N. W. R., Par. 2, p. 22.

A notice of foreclosure, bearing the seal of the Court issuing it, but signed only by a Moonserim, is not a sufficient compliance with the law, which requires that the notice be given under the seal and official signature of the Judge. *Seith Hur Lall* v. *Manickpal and others*, 3 N. W. R., 176.

Where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal notice on the mortgagor not being essential. *Soorjoo Kant Banncrjee* v. *Kristo Kishore Poddar*, 14 S. W. R., C. R., 423.

Omission to give notice to the mortgagor or his representative is sufficient to vitiate the whole of the foreclosure proceedings. *Mussamut Khukroo*

Misrain v. *Jhoomuck Lall Dass*, 15 S. W. R., C. R., 263.

Regulation XVII of 1806, giving no special direction as to the person on whom notice of foreclosure is to be served, when the person for the time being entitled to the equity of redemption is a minor, and no guardian of such minor has been appointed under Act XL of 1858, service of such notice of foreclosure upon the minor and his mother will be deemed sufficient service. *Dabee Pershad* v. *Man Rhem*, 2 N. W. R., 444.

16.—Priorities and Marshalling.

The plaintiffs advanced a sum of money on the security of a simple mortgage of a share in four talooks, and obtained a simple money decree. They then caused the mortgaged premises to be attached, but did not proceed to sale. Afterwards they negotiated a loan to the judgment-debtors from a third party, the present appellant, upon a simple mortgage of one of the same talooks, concealing the existence of their prior lien, and appropriated the money so obtained in discharge of other debts due to themselves from their judgment-debtors. The appellant obtained a simple money decree, and caused the premises to be attached and sold. Before the sale the plaintiffs gave notice of their lien, and in consequence the appellant purchased for a trifle. The plaintiffs brought the present suit for a declaration of their prior lien, and for a re-sale of the premises in satisfaction of their mortgage. The appellant contended in his defence that as fraud was perpetrated by the plaintiffs in inducing him to make the loan without disclosing their prior lien, his mortgage should have priority over them. *Held* that the appellant must be considered as having the first incumbrance. That the notice of the plaintiffs' mortgage given at the execution sale could only affect the appellant's title as purchaser. Priority as between the appellant and the plaintiffs in respect of incumbrances already existing could not be affected by such notice. *Bharat Lall Bhagat* v. *Gopalsnaran Lall Bhagat*, 3 B. L. R., A. C., 1; S. C., 11 W. R., 286.

A. executed in favour of B. a simple mortgage of certain property. He afterwards executed in favour of C. a mortgage by bye-bil-wafa or conditional sale of the same property. C. obtained a decree for foreclosure, and got possession thereunder. B. then obtained a money decree against A., and in execution seized and sold and became the purchaser of the said property, and was put into possession of it. On C. suing B. to recover possession, B. claimed to be entitled to hold the property by reason of the prior lien which he had under the simple mortgage. *Held* that as B. had only got a money decree and no declaration of his rights as mortgagee, he could not set up a prior lien against C. *Kassilunissa Bibee* v. *Hurunissa Bibee*, 2 B. L. R., Ap., 6; S. C., 10 W. R., 468.

Per Seton-Karr, J.—Case remanded for the lower Court to find whether, when property hypothecated for a bond has passed a *bonâ-fide* purchaser, the same can be declared liable to satisfy such part of a money decree on the bond as cannot be satisfied from any other source.

Per Norman, J.—If A. has a mortgage on two different estates for the same debt, and B. has a mortgage on one only of the estates for another debt due from the same party, B. has a right in equity to throw A. in the first instance for satisfaction upon the security which he, B., cannot touch, where it will not prejudice A.'s right or improperly control his remedies. A purchaser of one of the estates has the same equity as a mortgagee. *Bishonath Mookerjee and another* v. *Kristo Mohun Mookerjee*, 7 W. R., 483.

When a person mortgages his property first to A. and then to B., B. takes the mortgage subject to A.'s lien. A. is not bound to warn B. that he has a previous lien; it is the duty of the borrower to give all information to the lender. If A. stood by while the borrower was negotiating a loan with B., and kept silence, though he knew that the borrower had again pledged his property to B., such silence could not be construed into a waiver of his claim, or in any way affect his rights. *Luchmun Suhae Chowdhry* v. *Gujraj Jha*, 4 W. R., 45.

A prior security by unregistered contract does not give a preferential title over a second mortgagee who obtained a conveyance of the land for valuable consideration and without notice, and has foreclosed the mortgage. *Nobo Coomar Doss* v. *Gorachand Mookerjee*, 2 W. R., 286.

A lien on property obtained by a previous mortgage has legal priority over that arising out of a later mortgage. *J. Beckwith* v. *Umesh Chunder Roy*, 3 W. R., 110.

The appellant having asked that plaintiff might be compelled to resort first to the two other properties for the satisfaction of his demand before touching the third, but having given no evidence to show that he was a *bonâ-fide* subsequent mortgagee without notice of the prior mortgage, the Court declined to accede to the prayer lest they should be prejudicing the plaintiff's rights or improperly controlling his remedies.

Quære,—Should the doctrine of marshalling of securities be introduced into this country? *Khetoosee Cherooria* v. *Ranee Madhub Doss*, 12 W. R., 114.

The claimant entered into an agreement for the purchase of certain property, and on the execution of the agreement deposited Rs. 15,000 as earnest-money of the contract and in part payment of the purchase-money. The claimant was not satisfied at that time with the title-deeds supplied by the vendor, but afterwards entered into fresh negotiations for the purchase upon different terms. The vendor died, and the present claim was filed in a suit to administer his estate. *Held* that the claimant was entitled to be paid in full the Rs. 15,000 in priority to all other creditors; and that his lien was not lost by the failure either of the original contract or the subsequent negotiations. *Kenny* v. *The Administrator-General of Bengal*, 3 B. L. R., O. C., 75.

The English law of tacking is not recognized in the Courts of this country. *Udaya Chandra Rana* v. *Bhajahari Jana*, 2 B. L. R., Ap., 45.

A mortgagor a few days after hypothecating a mouzah as security to the Government, mortgaged it with other property to the plaintiff. The deed of mortgage was immediately registered. The security deed was not registered till long afterwards. The mouzah having been sold by the Collector on account of a sum due under the security deed, it

was held that though the purchaser took the mouzah subject to the prior registered mortgage, yet the mode in which the property had been dealt with by the mortgagor entitled the purchaser to require that the other property should first be applied in satisfaction of the mortgage debt. *Toolsee Ram* v. *Munno Lall*, 1 W. R., 353.

The plaintiff had lent money to a Court Ameen, who mortgaged, as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might thereafter be deposited on his account. Those fees were subsequently attached by the defendant, who had obtained a decree for rent against the Ameen. After that the plaintiff obtained a simple money decree against the Ameen, and applied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment.

In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant,—*Held* that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount, and obtained a mere money decree. *Lalla Tilukdhari Lall* v. *J. Furlong*, 2 B. L. R., A. C., 236.

Fictitious sale.—Right of a subsequent mortgagee with notice.—Issues. *Garbhu Bhagat* v. *Kunglal Singh*, 7 B. L. R., Ap., 33.

The mere possession of the title deeds by a second mortgagee, though a purchaser for value without notice will not give him priority. There must be some act or default of the first mortgagee to have this effect. *Somasundaree Tambiran* v. *Sakkarai Pattan*, 4 Mad. Rep., 369.

In 1840, A. mortgaged certain lands to B., which he had granted in patni at a rent of Rs. 145. Subsequently, in September, 1844, A. granted a fresh patni at a reduced rent of Rs. 90; and on the 9th October, 1844, A. mortgaged the same lands to C. In 1856, C. obtained a decree for the redemption of the mortgage to B., and he paid off the debt to B., but it did not appear that he took an assignment of the mortgage for the purpose of keeping it on foot as a security against incumbrances created by A. subsequently to the date of that mortgage, and prior to that of the mortgage to himself; and in 1862 he obtained a final decree for foreclosure against A. In a suit by C. to set aside the lease of September, 1844,—*Held* that it was valid and binding upon him.

Semble,—The English principle of tacking does not apply to mortgages of land in the mofussil. *Gaur Narayan Mazumdar* v. *Brajanath Kunda Chowdry*, 5 B. L. R., 463; 14 S. W. R., C. R., 491.

In a suit for the redemption of immoveable property brought by the plaintiff as donee from a Hindu widow of the equity of redemption, the plaintiff's right to the property as reversioner cannot be enquired into, notwithstanding an allegation in the plaint that he was a near relative of the husband of the donor.

A donee of the grantor is a third party within the meaning of Regulation XVIII of 1827, Section 14, Clause 1, and, therefore, as against him a deed of sale of the property given in gift is only valid from the date on which it was stamped.

Precedents on this point questioned but followed.

Where a Hindu widow mortgaged immoveable property to one person, and afterwards gave it in gift to another,—

Held that the deed of gift did not convey to the donee the widow's equity of redemption. *Jagannath Vithal* v. *Apaji Vishnu*, 5 Bom. Rep., A C., p. 217.

Plaintiff and defendant No. 5 had mortgages over the same property, the mortgage of the latter being prior to that of the former.

Defendant sued for the money covered by the kistbundee, and obtained a money-decree, in execution of which the rights and interests of the mortgagor were purchased, after notice of plaintiff's lien by defendant No. 5, who entered into possession. *Held* that under the circumstances the mortgagor's rights and interests sold as above amounted only to the equity of redemption, and the sale did not extinguish plaintiff's right under the subsequent mortgage, and that the purchaser could be entitled to retain possession only in case of his paying off plaintiff's lien. *Deo Chaund Sahoo* v. *Teeluck Singh*, 14 S. W. R., C. R., 238.

G. borrowed money from S. He then borrowed money from D., mortgaging as security the property in suit. After that he borrowed from plaintiffs, executing a bond by which he again mortgaged the same property. Subsequently plaintiffs obtained a decree by which the mortgaged property was declared liable to sale for the amount decreed, sold the property in execution, and purchased it themselves. They were disturbed from possession by defendants in execution of a rent-decree under which they ousted plaintiffs, and got their own names registered as proprietors. Plaintiffs now sued for declaration and enforcement of their rights as purchasers at the above sale. Defendants claimed as purchasers in execution of a money-decree obtained against G. by the first creditor S., alleging that they paid off the money due to the second creditor D., and were entitled to hold possession, their purchase having been previous to that of the plaintiffs. *Held* that in purchasing the rights and interests of G. defendants purchased his right to redeem property already subject to two mortgages, and as they purchased with full notice, they could only retain possession by paying off both mortgages. *Held* that plaintiffs purchased not merely the equity of redemption, but G.'s rights and interests as they were when the mortgage was created, subject to the mortgage held by D., but free from subsequent incumbrances. *Narain Sahoo* v. *Ochoot Sahoo*, 14 S. W. R., C. R., 233.

The prohibition contained in Section 30 of Act IV of 1862, which regulates the Bank of Bengal against making loans and advances on the security of land, is no prohibition against the bank taking land as security for a past loan and an existing debt.

Where title-deeds of land had been deposited by a debtor with the Bank of Bengal, and a letter was given authorizing the bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the bank, it was held that a valid equitable mortgage was thereby created in favour of the bank as a security for the money due.

The Court declined to entertain the question whether the document relied on was one requiring a stamp, as being a matter not affecting the merits of

the case or the jurisdiction of the Courts. *Ibrahim Azim* v. *W. D. Cruickshank*, 7 B. L. R., 653.

The firm of C. N. and Co., Calcutta, had an account with a bank, of which R. was the manager, under an arrangement that the bank should discount bills accepted by C. N. and Co. to a certain amount, and that C. N. and Co. should keep in the bank a certain fixed cash balance. In November R., finding that the limit of the discount accommodation had been exceeded and the cash account overdrawn, declined to discount any more bills unless security were given for the amount then due to the bank. A., the only partner in the firm of C. N. and Co. then in Calcutta, verbally promised on 24th November to deposit with the bank the title-deeds of the premises in which C. N. and Co. carried on their business; and in consideration of such promise R. discounted further bills from 24th to 29th November. A. sent to R. a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which R. acknowledged the receipt. R. subsequently discovered they were not the title-deeds which A. had promised to deposit, and of this he gave A. notice by letter on 28th November. C. N. and Co., on 5th November, 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon finding that the bank claimed a lien on the deeds, brought a suit against the bank for recovery of them. *Held* that the deposit of the title-deeds was not void under Section 24 of the Insolvent Act.

Held also that the bank was entitled to retain the deeds as security both for the balance of the discount account existing at the time of the promise to deposit, and also for the bills discounted between the 24th and 29th November.

Semble,—The bank was entitled to hold the deeds actually deposited as if they were the deeds which formed the subject of the verbal promise to R. *A. B. Miller* v. *The Chartered Mercantile Bank of India, London, and China*, 6 B. L. R., 701.

17.—Regulation XV of 1793.

Mortgagees in actual possession should, under Section 11, Regulation XV of 1793, be examined as to the truth of mortgage accounts, excluding persons who, according to the manners and custom of the country, are unable to appear in Court, or others who from their position are not likely to be acquainted with the actual state of facts. Where one of the co-sharers has a competent knowledge of the facts his deposition is sufficient to prove the truth of the accounts. *Ram Phul Pandey* v. *Wahed Ali Khan*, 14 S. W. R., C. R., 66.

Section 6 prohibiting the Courts from awarding as interest a sum larger than the principal, is not applicable to a suit instituted after the passing of Act XXVIII of 1855.

Even under Regulation XV of 1793, it was the practice of the Court to allow interest in excess of principal, when the interest had accumulated owing to reasons not ascribable to procrastination on the part of the creditor. *Huromonee Gooptta* v. *Gobind Coomar Chowdhry*, 5 W. R., 51.

To enable a Court to ascertain the amount received by the mortgagee whilst in possession, the mortgagee should file his jumma-wasil-bakee papers, and proceed generally in accordance with Section 11. *Shah Ameerooddeen* v. *Ram Chand Sahoo*, 5 W. R., 53.

Regulation XV of 1793, Sections 8 and 9, forbids the maintenance of any suit arising out of an usurious transaction. *T. B. Wise* v. *Jugobundhoo Bose*, 2 B. L. R., P. C., 69.

18.—Regulation XVII of 1806.

Regulation XVII of 1806 came into operation in the District of Chupra on September 11th, 1806. *Sheikh Bukshush Hossein* v. *Bibee Fuzeelonissa*, W. R., 1864, 189.

Regulation XVII of 1806 took effect, not from the date on which it was passed by the Governor-General in Council, namely, September 11th, 1806, but from the date of its promulgation.

Suit in 1863 for the redemption of certain property in Zillah Sarun conveyed to the defendant by a deed of conditional sale in 1806, the day of payment (on failure of which the sale was to become absolute) being the 28th September, 1806. *Held* that the *onus* of showing the Regulation was promulgated in Sarun prior to September 28th lay on the plaintiff who sued for redemption; and that as he had failed to give such evidence, his suit must be dismissed. *Sureefoonissa* v. *Sheikh Enayet Hossein*, 5 W. R., 88.

The year mentioned in Section 8 of Regulation XVII of 1806 is to be reckoned from the date of the service of the notice under that section. *Mahesh Chunder Sen* v. *Tarinee*, 1 B. L. R., F. B., 15; 10 W. R., F. B., 27.

Under Section 7, Regulation XVII of 1806, if a mortgagee has obtained possession at any time before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due under the mortgage debt saves his equity of redemption. *Held* that the section applies where the mortgagee has obtained a decree for possession and wasilat, whether he executes it or not. *Sakriman Dichut* v. *Dharam Nath Tewari*, 3 B. L. R., A. C., 141.

The purchaser from a mortgagor is his legal representative; and when the mortgagee takes out foreclosure proceedings, the notice enjoined by Section 8, Regulation XVII of 1806, must be served on such purchaser if it issued after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. *Achumbit Misser and others* v. *Lall Nund Ram and others*, 11 W. R., 544.

Following precedents of the High Court, it was held that the purchaser from a mortgagor comes within the category of legal representatives under Regulation XVII of 1806. *Golam Bustagur Khan* v. *Jugger Singh and others*, 10 W. R., 86.

In order to obtain a decree for foreclosure against a mortgagor, the perwannah to be issued by the Judge under Section 8 of Regulation XVII of 1806 must distinctly notify to the mortgagor that if he shall not redeem the property mortgaged in the manner provided for by the preceding section within one year from the date of notification, the mortgage will be finally foreclosed and the condi-

tional sale will become conclusive. *Bhukun Khan* v. *Bechun Khan*, 3 N. W. R., 35.

If a mortgagor deposits money in Court without placing any actual restriction on its being paid over to the mortgagee, but with express notice that the mortgagor denies the existence of any mortgage, and intends to sue to recover back the money so deposited,—*Held* that this is not such a deposit, within the meaning of Regulations I of 1798 and XVII of 1806, as will save the right of redemption. *Abdool Rahman* v. *Kisto Lall Ghose*, 6 W. R., 225.

Under Section 8, Regulation XVII of 1806, a mortgagee is bound to serve notice of foreclosure upon the assignee of the mortgagor, whether such assignee be of the whole or a portion of the mortgaged premises, and whether notice of the assignment has been given to the mortgagee or not. *Ganga Gobind Mundul* v. *Bani Madhab Ghose*, 3 B. L. R., A. C., 172.

The notice of foreclosure under Section 8, Regulation XVII of 1806, is not merely a preliminary proceeding leading up to a judgment of foreclosure to be subsequently pronounced in Court. It not only fixes the date from which the period during which the mortgagor is to retain the right to redeem is to be computed, but it is of itself the operative act in the foreclosure proceeding. The service of the notice, therefore, should be evidenced by the clearest proof, and should be in all cases, if not personal, at least such as to leave no doubt in the mind of the Court that the notice itself must have reached the hands or come to the knowledge of the mortgagors. *Syud Eusuf Ali* v. *Mussamut Azumtoonissa*, W. R., 1864. 49.

The purchaser from a mortgagor is his legal representative; and when the mortgagee takes out foreclosure proceedings, the notice enjoined by Section 8, Regulation XVII of 1806, must be served on such purchaser if it is used after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. *Achumbit Misser and others* v. *Lalla Nund Ram and others*, 11 W. R., 544.

19.—ACT XIX OF 1843.

Held that the term "satisfied" as used in Section 2, Act XIX of 1843, does not merely signify that the mortgage-money may be realized by sale, but that all the stipulations of the mortgage deed are to be performed, and its terms and conditions fulfilled. *Pursidh Narain Rai* v. *Sheikh Mohamed Shookool Huq*, 1 N. W. R., Par. 1, p. 38.

Where, when Act XIX of 1843 was in force, a purchaser bought land with notice of a prior unregistered mortgage which was referred to in the purchase-deed, the purchaser agreeing to pay off the mortgage, it was held that the purchaser took subject to the mortgage notwithstanding its not being registered. *Kishorbhái Gallabhai* v. *Jorábhai Dají* 7 Bom. Rep., A. C., 56.

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